



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/29UP/LSC/2024/0045

Property : 17 Albion Drive, Larkfield, Kent ME20 6FG

Applicant : Connor O'Shea

Representative :

Respondent : Orchard 1 Management Company Limited

Representative : Mr Montgomery, counsel, instructed by
JB Leitch Ltd

Type of Application : Determination of liability to pay and
reasonableness of service charges
Section 27A Landlord and Tenant Act 1985

Tribunal Members : Regional Judge Whitney
Mr B Bourne MRICS

Date of Hearing : 7 January 2025

Date of Decision : 30 January 2025

DECISION

Background

1. On 12 March 2024 the Applicant made an application for determination of his liability to pay and reasonableness of service charges for the years 2023-2024 and 2024-2025. The Applicant further sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
2. The Tribunal held a case management hearing on 16th October 2024 and Judge Jutton issued directions for the matter to come to hearing. These were substantially complied with and the Tribunal was provided with a bundle of 290 pdf pages. References in [] are to pdf page numbers within that bundle.

Hearing

3. The hearing took place at Maidstone Magistrates on the morning of 7th January 2025. No inspection took place.
4. The Applicant appeared in person and Mr Montgomery of counsel represented the Respondents. Ms Batchelor and Ms Joliffe from the managing agents Trinity were in attendance. Below is a precis only.
5. Mr O'Shea confirmed at the outset that the only issues remaining in dispute related to the budgeted charges for the year 2024/2025 and 8 items identified in his statement [75]. He agreed that he accepted that the lease terms had been complied with and he agreed the proportion he was being asked to pay and that all the items were items which were recoverable from him. His issue related to the reasonableness of the sums being claimed.
6. Mr O'Shea presented his case first and was questioned by Mr Montgomery. At [115] was a revised Budget dated 25th September 2024. Mr O'Shea confirmed upon questioning by the Tribunal that he was content with that budget. If that budget had formed the basis of the interim demand he would have been happy with the same.
7. Mr Montgomery confirmed his client accepted that the revised budget [115] contained the figures they were now seeking for the estimated charge for the year 2024/2025 and they accept these are the sums which should have been demanded.
8. Mr O'Shea invited the Tribunal to make orders pursuant to Section 20C and Paragraph 5A as he believes it would be in accordance with natural justice to do so as it was in everyone's interest to have bought the claim.

9. The Tribunal agreed given the issues relating to the service charges had been effectively agreed between the parties given Mr O'Shea's concession he was only required to address the Tribunal on the question of 20C and paragraph 5A.
10. Mr Montgomery submitted that no orders should be made. Mr O'Shea was now content with the revised figures which had been issued in September 2024. If he had at that point confirmed his agreement then the hearing today and much of the proceedings would not have been required. He failed to confirm this at the case management hearing and in his submission it was unreasonable to prevent the recovery of the costs of this action.
11. In reply Mr O'Shea pointed out in his opinion making the application was his only mechanism for challenge.

Decision

12. We record that the parties agreed that the revised budget found at [115] reflects the proper sums which the parties agree should have been payable for the estimated service charge for the year 2024/2025 and Mr O'Shea confirmed he agreed he was responsible for his proportion of this amended budget sum.
13. All other matters save for consideration of orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 had been agreed between the parties prior to the hearing.
14. Effectively the only matters for us to consider related to the various costs provisions.
15. It seems unfortunate that the parties had not identified prior to the hearing that the Revised Budget was acceptable to Mr O'Shea. We agree with Mr Montgomery that if this had been the case much cost could have been avoided.
16. The making of the various costs orders sought are matters of discretion. Mr O'Shea has achieved reductions in the sums claimed and various concessions were properly made by the Respondent. However it appears these were by way of the revised budget. This revision took place after the issue of the proceedings but prior to the case management conference.
17. It is unclear why at the case management conference if Mr O'Shea was content with the revision he did not say so. It may have been that all further action could then have been avoided. Given it was not the Respondent had to prepare and attend at the hearing. There conduct in so doing cannot be criticized.

18. We have considered the bundle as a whole which we read prior to the hearing and obviously the events at the hearing. We exercise our discretion so as to make an Order pursuant to Section 20C that none of the costs up to and including those incurred in attending at the case management hearing on 16th October 2024 are recoverable as a service charge expense. We decline to make any further order and so any costs after that date may be recovered if the lease so allows (and we make no findings on this).
19. We have decided that the above is equitable taking account of the concessions made in the revised budget and the conduct of the proceedings as a whole. We make clear that if there is any dispute as to the amount of such costs then that would be for a separate Tribunal to determine.
20. We decline to make an order pursuant to paragraph 5A. We are not aware what if any administration costs are claimed and consider it inappropriate for us to determine such sums. We also exercise our discretion to decline to make any order requiring the reimbursement of any fees paid by the Applicant.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.