



FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference	<b><u>MAN/00BY/LBC/2022/0024 to 0156, 0158 to 0331 &amp; 0334 to 374</u></b>
Property	Phoenix Place 5 Prince Edward Street Liverpool L5 3AA
Applicant	Better Intelligent Management Limited and Phoenix Place (Liverpool) Management
Representative	Mr Philip Byrne instructed by HM Legal
Respondent	Various Leaseholders
Representative	Mr Jonathan Upton, instructed by Mishcon de Reya
Type of Application	Application for Stay of the Proceedings pending the determination of the County Court
Tribunal Members	Judge R Watkin Regional Surveyor N Walsh FRICS
Date and Venue of Hearing	21 June 2023 - remote
Date of Decision	21 June 2023

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DECISION OF THE  
TRIBUNAL

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## Decision

The Tribunal determines as follows:

1. the proceedings shall be stayed pending the outcome of the county court proceedings issued in the county court at central London and a claim number KO1CL732.
2. the Respondents' Application for costs of the determination of the preliminary issue is dealt with by the Tribunal in the absence of the parties following written submissions.

## The Applications

1. The Tribunal received an Application ("Application") dated 26 May 2023 from the leasehold owners (the "Respondents") of 99 of the units at Phoenix Place, 5 Prince Edwin Street, Liverpool, L5 3AA registered at HM Land Registry under title number MS558901(the "Property") seeking:
  - a. A stay of the Tribunal proceedings pending the outcome of County Court proceedings.
  - b. Alternatively, that the Case Management directions are varied.
2. The Application is opposed by the Applicants

## The Documents

3. The Tribunal has received and considered an index bundle of documents (pages 1 – 749) together with:
  - a. Skeleton argument on behalf of the Respondents by Mr Jonathan Upton dated 20 June 2023
  - b. Skeleton arguments on behalf of the Applicants by Mr Philip Byrne dated 20 June 2023
  - c. Application for costs by Mr Jonathan Upton dated 19 June 2023 behalf of the Respondents

## The Background

4. The background to the matter is that the Applicants have made two applications (the "Applications"), both dated 16.8.22, seeking:

- (1) dispensation from the consultation requirements pursuant to s.20ZA of the 1985 Act; and
- (2) a determination under s.168 of the Commonhold Leasehold Reform Act 2002 ("the 2002 Act") that a breach of covenant has occurred.

5. By an order dated 28.10.22 the Tribunal directed the parties to file representations as to whether the Tribunal has jurisdiction to determine all, part or none of the Applications.
6. Following written submissions from the parties, the matter was considered at a hearing on 27 March 2023 and the decision of the Tribunal dated 27 April 2023 was delivered to the parties in which the Tribunal determined that: (i) the cluster rooms are not "dwellings" for the purposes of the Act 1985 or the Act 2002; and (ii) the studios are "separate dwellings" for the purposes of the Act 1985 of the Act 2002.
7. As a result, the Tribunal determined that it does not have jurisdiction in relation to the cluster rooms.
8. The Tribunal is now informed that on 10 May 2023, the Respondents issued proceedings in the County Court at Central London claiming the following relief:
  - 1) A declaration in relation to the interpretation of the leases;
  - 2) A declaration as to the validity of the notices served upon the Respondents;
  - 3) A declaration that the Respondents are not liable to pay any costs incurred in the preparation and service of the notices or in contemplation of forfeiture in respect of the breaches alleged;
  - 4) A declaration that, if the windows in the external walls of the Blocks are demised to the Respondents, the Respondents are not in breach of the repairing obligations within the leases.
  - 5) A declaration that the works proposed to the windows not works for which the Respondents would be liable to contribute towards under the terms of the leases.
9. It is for the Tribunal to consider whether it would be appropriate for the proceedings to be stayed pending the outcome of the Court proceedings, in which case the findings of the Court could be adopted by the Tribunal or whether it is more appropriate for the Tribunal to proceed in order to determine the proceedings on behalf of the leasehold owners of the studios without delay.

## The Position of the Respondents represented by Mr Upton

10. The position of the Respondent's in contending that a stay was appropriate was outlined in full within the respondent skeleton argument and Mr Upton elaborated further during his oral submissions contending as follows:

- a. Mr Upton contended that there was no urgency for the work pointing out the fact that whilst the applicants had previously indicated that they wish to carry out the work during the summer of 2023, it was likely that they had now missed that window. He also contended that the work was not sufficiently serious to mean that it needed to be carried out urgently.
- b. An oral hearing would be necessary in any event and, therefore, there is likely to be little difference in listing time between it being heard in the Tribunal or the court. Moreover, he indicated that as there had been no evidence filed by the applicants within their acknowledgement of proceedings before the court, the matter could be listed for a quick disposal hearing. Upon further inquiry of Mr Upton in that regard, he indicated that it was unlikely that there would be any significant opposition if the applicants did seek to adduce evidence within those proceedings.
- c. Mr Upton expressed surprise over the fact that if the works were urgent that the applicants had not seemed to progress the works in the meantime
- d. Mr Upton also emphasised that the applicants were taking a fairly aggressive stance against leaseholders and had forfeited a number of leases due to ground rent arrears.
- e. Finally, Mr Upton contended that the obvious solution was to stay the proceedings as the Tribunal had no jurisdiction to determine the issues in relation to the cluster apartments, there would be no prejudice to the applicants but that there was a risk of costs being duplicated if the matter was to first proceed within the Tribunal.
- f. Mr Upton confirmed that the Respondents represented by him were seeking to recover their costs arising from the determination of the preliminary issue.

## Applicant's Position

11. Equally, the applicant's position in response was set out within the skeleton argument of Mr Byrne. The applicant contended:

- a. The Tribunal is already seized with the proceedings which have already been case managed and could be determined promptly and without an oral hearing as neither

party has requested one.

- b. The county court proceedings will not determine all matters and the matter will have to return to the Tribunal even if determined by the court in order for the question of the dispensation under s.20ZA to be considered.
- c. Whilst the Tribunal proceedings would not deal with the proceedings in relation to the cluster units, Mr Byrne contended that the matter was likely to be resolved through pragmatic discussions between the parties following the outcome of the matter before the Tribunal.
- d. That the point raised by Mr Upton in relation to the forfeitures that have occurred are of no consequence to the present proceedings and simply a matter of the applicants exercising their lawful rights.
- e. Mr Byrne contended that the Respondents were seeking to unnecessarily delay matters.
- f. Mr Byrne did not object to the Respondent's application for costs being adjourned to be dealt with by way of written submissions by the parties and, if the Tribunal deems it appropriate, determined in the absence of the parties.

## DECISION

- 12. Following a detailed consideration of the submissions of the parties, the written submissions and the relevant documentation that the Tribunal was referred to during the hearing, the Tribunal determined that the Tribunal proceedings should be stayed pending the outcome of the County Court proceedings for the following reasons:
  - a. whilst it is noted that not all of the Respondents to the Tribunal proceedings are seeking a stay, the remaining Respondents are taking no active part in the proceedings in circumstances where they are entitled to do so;
  - b. the court is the only jurisdiction that is able to determine the majority of the matters in relation to both the cluster units and the studio units as the court is able to give a determination in relation to the interpretation of the leases, the validity of the notices and the extent of any necessary repairs.
  - c. In the event that the matter was to continue before the Tribunal, the Tribunal could only determine those issues in so far as they relate to the studio units, with

the result that the Applicants would still not have a full resolution enabling them to move forward with the works until they have the determination of the court.

- d. Furthermore, whilst Mr Byrne had indicated that he believed matters would be resolved pragmatically following the outcome of the Tribunal proceedings, there is nothing to prevent a pragmatic resolution between the parties at any stage and, therefore, there is no real reason to presume that it will happen sooner if the matter proceeds through the Tribunal.
- e. Whilst the Tribunal accepts that the matter is still likely to have to be returned to the Tribunal for a determination of the section 20ZA of the Landlord and Tenant Act 1985 dispensation issue, once the matter has been determined by the court, it is likely it to be a very straightforward issue.
- f. As the matter would need to be listed for an oral hearing and additional directions set down for expert evidence to be provided, any gain in time by way of the Tribunal being able to proceed sooner is likely to be outweighed by the negative impact of the additional costs that will be incurred as a result of the matter, potentially, having to be heard in both jurisdictions.

13. The Tribunal notes that whilst the application for the costs of the second group of Respondents (represented by Mr Yell at the previous hearing was considered within the Tribunal's decision dated 27 April 2022, no application for costs on behalf of the present Respondent's was made at that time. Therefore, the Tribunal concludes that the Respondents are entitled to make an application for costs and do so.

14. Due to insufficient time to deal with the costs application at the hearing on 19 June 2023, the Tribunal has directed that the parties provide written submissions in relation to the question of costs and that the Tribunal will then consider those costs in the absence of the parties and, if the Tribunal considers it appropriate, will determine the issue in the absence of the parties and, if not, the matter will be listed for further hearing.

15. This decision was communicated to the parties at the hearing on 21 June 2023 and will be contained with the written decision of the Tribunal which Mr Byrne is to draft and forward a version that has been agreed with Mr Upton to the Tribunal.

## Appeal

16. This paragraph shall apply upon the decision being formally pronounced. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of

law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Judge R Watkin

Regional Surveyor N Walsh FRICS