



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	:	<b>BIR/41UE/LSC/2012/0054 and BIR/41UE/LIS/2013/0023 and BIR/41UE/LIS/2013/0024</b>
<b>Properties</b>	:	<b>36 Flats at Valley Heights, Chervil Rise and Tansey Rise, Lyme Valley, Newcastle-under-Lyme, ST5 3FB</b>
<b>Applicants</b>	:	<b>Housemans Management Company Ltd (Applicant 1) Avon Bray Ltd (Applicant 2) Abacus Land and GR(1) Ltd (Applicant 3)</b>
<b>Applicants' Representative</b>	:	<b>Ms R Meager</b>
<b>Respondents</b>	:	<b>36 Leaseholders of Flats at Valley Heights, Chervill Rise and Tansey Rise, Lyme Valley, Newcastle-under- Lyme, ST5 3FB</b>
<b>Respondents' Representative</b>	:	<b>Mrs M E Ainsworth and Ms J Jovanovic</b>
<b>Type of Application</b>	:	<b>An Application for an order under Section 20C of the Landlord &amp; Tenant Act 1985</b>
<b>Tribunal Members</b>	:	<b>Mr G S Freckelton FRICS (Chairman) Mr P Hawksworth LLB</b>
<b>Date and venue of Hearing</b>	:	<b>The case was dealt with by written representation.</b>
<b>Date of Decision</b>	:	<b>7<sup>th</sup> May 2014</b>

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**DECISION**

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## **1. INTRODUCTION**

- 1.1 On 19<sup>th</sup> February 2014, the First-tier Tribunal (Property Chamber) issued the decision in respect of an application by the freeholders together with a further application made by a Leaseholder under Sections 27A (and 19) of the Landlord & Tenant Act 1985 for determination of the liability and reasonableness in respect of service charges for the service charge years commencing part 2006 – 31<sup>st</sup> December 2012.
- 1.2 Ms Jovanovic as Applicant in respect of Application Numbers BIR/41UE/LIS/2013/0023 and BIR/41UE/LIS/2013/0024 had made an Application under Section 20C of the Landlord & Tenant Act 1985.
- 1.3 Mrs Ainsworth, on behalf of the Respondents, subsequently made an Application under Section 20C of the Landlord & Tenant Act 1985 in respect of Application Number BIR/41UE/LSC/2012/0054.
- 1.4 In its Decision dated 19<sup>th</sup> February 2014, the Tribunal directed that submissions from the parties in relation to the Section 20C Applications should be submitted to the Tribunal within 21 days from the date of the Decision. Copies of the submissions were to be sent to the other party but the parties were not permitted to respond to the opposing parties submissions.
- 1.5 The purpose of an application under Section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance given in previous cases is to the effect that an Order under Section 20C is to deprive the landlord of a property right and it should be exercised sparingly (see for example, Veena SA v Cheong (Lands Tribunal [2003]1 EGLR 175).
- 1.6 As the Decision was issued on 19<sup>th</sup> February 2014, the parties should have made submissions in respect of the Application under Section 20C by 12<sup>th</sup> March 2014. The Applicants subsequently requested an extension of 7 days, which was granted by the Tribunal.

## **2. SUBMISSIONS**

Various submissions were made in respect of the Application under Section 20C, which are briefly summarised as follows: -

### **Mrs M E Ainsworth, 3 Valley Heights, Valley View, Newcastle under Lyme**

- 2.1 Mrs Ainsworth submitted: -
  - (i) that she was opposed to the landlord's use of a barrister at the Hearings, which she considered was unnecessary;
  - (ii) that she was opposed to paying the Applicants' application fee;

- (iii) that Mr J Ward (the Property Manager) was in attendance at the Hearing and could have dealt with matters on behalf of the Applicants thus, saving the costs of a barrister;
- (iv) that any costs passed to the leaseholders would be unjust as the Management Company was failing to maintain the blocks adequately and failing to collect service charge payments from the leaseholders and
- (v) that as the Management Company claims it has no money to maintain the blocks, they should not propose to use service charge funds to pay the costs, court fees or use a barrister at the Hearing.

**Mrs Aideen Walsh, 1 Valley Heights, Newcastle under Lyme**

2.2 Mrs Walsh submitted that her co-owner and husband Dr Walsh and herself, did not take the case to the Tribunal and only purchased their property in December 2012 so were not involved in any of the issues prior to that date.

**Ms J Jovanovic, 7 Chervil House Newcastle under Lyme**

2.3 Ms Jovanovic submitted: -

- (i) that the Tribunal should make an order under Section 20C as the County Court directed the landlords to apply to the Tribunal in 2010 and they did not do so until 2013;
- (ii) that the Court did not instruct Ms Jovanovic to pay an increase in service charge but to apply to the Tribunal for a determination;
- (iii) that Ms Jovanovic has always paid £187.50 per half year and the delay in submitting an application to the Tribunal has resulted in the freeholders being short of funds to carry out adequate maintenance and
- (iv) that legal action had been taken against some owners of flats at Valley Heights for non-payment but not all, which she considered to be unfair.

**Mr J McMillan, Flat 4, Chervil House, Newcastle under Lyme**

2.4 Messrs Myers & Co Solicitors made a submission on behalf of Mr James McMillan on 21<sup>st</sup> March 2014. Mr McMillan was the owner of Flat 4, Chervil House. The submissions on behalf of Mr McMillan were:

- (i) that he objected to the Applicant's claiming legal costs from the leaseholders by way of a service charge;

- (ii) that he purchased his property just over 2 years ago and had never disputed the service charge, which was always paid in a timely fashion. As such, he was not an owner of a property at Valley Heights, nor did he have anything to do with the property during the majority of the time period to which the dispute relates;
- (iii) that he had not taken part in the proceedings and has been grouped together with the remaining leaseholders in the Application of Housemans Management Company Ltd;
- (iv) that it is unjust to suggest that all the leaseholders should be liable for the Applicant's legal fees as the dispute appears to be between the Management Company and only a few leaseholders who have refused to pay service charges and
- (v) that although Housemans' submission relates to Clause 9 of the Third Schedule of the Lease, he does not consider that this applies to proceedings such as these, where Housemans themselves have instigated proceedings against all the leaseholders, regardless of whether or not they are involved in any dispute.

**Housemans Management Company Ltd**

2.5 Ms. Meager, on behalf of the Applicants, submitted: -

- (i) that the Tribunal should not make an order under Section 20C preventing them from claiming the expenses in bringing the case before the Tribunal;
- (ii) that the Applicants are entitled to recover their costs in connection with these proceedings through the service charge and in particular, Clause 9 of the Third Schedule;
- (iii) that although the Applicants initially brought proceedings to determine the service charges for the years ending 31<sup>st</sup> December 2009, 2010, 2011, 2012 and 2013, Ms J Jovanovic then challenged the earlier years ending 29<sup>th</sup> February 2008 and 31<sup>st</sup> December 2008 thus widening the areas of dispute;
- (iv) that the Applicants should be able to respond to submissions (where accompanied by reasons and authorities) made by the tenants in connection with the application under Section 20C. (The Tribunal had previously directed that they will receive submissions in respect of the Application under Section 20C but that the parties shall not respond to same);

- (v) that the Respondents have not set out the grounds upon which they seek to have Applicants' contractual entitlement and contractual obligations displaced;
- (vi) that the Lease is a contract signed by each and every tenant and, as such, that they would be liable for the cost of proceedings such as these through the service charge provisions in the Lease;
- (vii) that the Tribunal has discretion as to whether to make an order under Section 20C but that in exercising that discretion, the Tribunal must have regard to what is just and equitable in all the circumstances (The Tenants of Langford Court –v- Doren Ltd LRX/37/2000[Lands Tribunal Unreported 2001]) and (Veena SA –v- Cheong [2003]1 EGLR 175);
- (viii) that in Schilling –v- Canary Riverside LRX/26/2005 [Lands Tribunal Unreported 2006] His Honour Judge Rich QC considered that “weight should be given ... to the degree of success, that is the proportionality between the complaints and the determination and to the proportionality of the complaint that is between any reduction achieved and the total service charges on the one hand and the costs of the dispute on the other hand”;
- (ix) that the starting point is to look at the matters in issue and consider whether the tenants have been successful, in whole or in part;
- (x) that across the six service charge periods that were disputed by the tenants, the differential between the Tribunal's Determination and the amounts invoiced by the Applicants was slightly in excess of 3%. As such, the Applicants have substantially succeeded in establishing that the service charge costs were reasonable;
- (xi) that the Applicants issued proceedings because they had reached a point with a number of tenants where there was no prospect of obtaining payment of arrears and in fact, at the time of the Hearing, the arrears exceeded £14,000;
- (xii) that the action was entirely proper and the Applicants had co-operated fully with the Tribunal in the provision of evidence. Conversely, the counter-applications and defence from Ms Jovanovic and Mrs Ainsworth produced no evidence to support the allegations that were made at the Hearing and
- (xiii) that there can, therefore, be no justification for making an order pursuant to Section 20C preventing the Applicants from recovering the costs of the proceedings through the service charge.

### **3. DECISION**

3.1 The Tribunal is satisfied that the Lease provides for the Management Company to charge, as part of the service charge, the Management Company's costs in bringing the case before the Tribunal in so far as these costs are determined by the Tribunal in accordance with Section 20C of the Landlord & Tenant Act 1985. The relevant provisions in the Lease are Clauses 4 and 4.1 of the Second Schedule and Clause 7 of the Fifth Schedule.

3.2 The Tribunal consider that the starting point for their determination is to look at the matters in issue and to consider whether the various Respondents have been successful, either in whole or in part, in resisting the Application by the Applicants or in the case of Ms Jovanovic whether she has been successful in her Application relating to the earlier years.

3.3 The Tribunal note that in this respect the followings amounts (as stated in the submission by the Applicants) were recovered by the Management Company in respect of the various service charge years: -

29/02/2008	100%
31/12/2008	97.79%
31/12/2009	99.85%
31/12/2010	98.89%
31/12/2011	92.23%
31/12/2012	90.86%

Therefore, in the last two service charge years, significant reductions have been made in the service charges as determined by the Tribunal.

3.4 As stated in the summary above (paragraph 2.1.(i)), Mrs Ainsworth, on behalf of the Respondents, limited her Section 20C submission to a challenge of the use of a barrister as she did not consider a barrister was necessary to present the Applicants' case.

3.5 At the abortive Hearing held on 8<sup>th</sup> October 2013 in Stoke on Trent, the Tribunal was not assisted by Mr Adams, Counsel for the Applicant. In part, this was due to the unsatisfactory nature of the Hearing bundles, which were not the fault of Mr Adams. Nevertheless, the Tribunal do not consider that his fee for attendance on that day should be part of the service charge.

3.6 Conversely, at the Hearing held on 10<sup>th</sup> December 2013, the Tribunal was considerably assisted by Ms Meager who was, in very difficult circumstances, organised and concise in her submissions and extremely well prepared, which in the Tribunal's view significantly assisted the conduct and progress of the Hearing and saved potential further hearing days (with attendant travelling costs of the parties) being incurred. Thus, the Tribunal's view is that the reasonable counsel's fees of Ms Meager are properly recoverable under the service charge.

- 3.7 An issue raised before the Tribunal was the delay in submitting the Application to the Tribunal following an earlier case before the County Court. This was referred to above in paragraph 2.3.(i).
- 3.8 At the inspection of the property on 8<sup>th</sup> October 2013, the Tribunal noted that the properties were not particularly well-maintained (please see paragraphs 5.2 and 5.3 of the Decision). The Applicants' contention was that difficulties in collection of the service charge payments was the reason for this but the Tribunal are of the opinion that the position was exacerbated by the time taken to submit the Application, which was finally submitted in October 2012 following a County Court Hearing in 2010. The Tribunal feel that some reduction in the landlord's costs is just and equitable to reflect this delay. The Tribunal therefore determine to reduce the costs of attendance at the Hearings by the representatives of the Managing Agent by 20% to reflect the delay.
- 3.9 With regard to the Application made by Ms Jovanovic, it is apparent from the table above that little or no reduction was achieved during the earlier years. In practice, it appeared to the Tribunal that the other Respondents and Ms Jovanovic conducted their cases as one and as such, the Tribunal does not consider it reasonable to differentiate between Ms Jovanovic and the other Respondents in respect of the Section 20C Application.
- 3.10 A point arises as set out in paragraph 6 of the submission on behalf of the Applicant dated 9<sup>th</sup> March 2013 and summarised in paragraph 2.5.(iv) of the above as to whether any further submissions ought to be required from the Applicants. In fact, apart from the submission of Mr McMillan and Mrs Walsh (on behalf of herself and her husband), no substantive points on Section 20C are made by the Respondents or Ms Jovanovic and thus, the Tribunal does not feel that it is necessary for further submissions to be sought.
- 3.11 As stated in the summary, Mr McMillan and Mrs Walsh (on behalf of herself and her husband) contend that they have played absolutely no part in this application and have not been in arrears in respect of their service charge payments.
- 3.12 The first question that the Tribunal addressed in considering these submissions is to what (if any) extent have Mr McMillan and Dr McCarthy and Mrs Walsh benefited from the Tribunal's findings. Looking at the table above, no significant benefits have accrued to them until the year ending 31<sup>st</sup> December 2011. The Tribunal has some sympathy with the arguments put forward but Mr McMillan and Dr McCarthy and Mrs Walsh have benefited from the reduction in service charges determined by the Tribunal for the years ending 31<sup>st</sup> December 2011 and 31<sup>st</sup> December 2012. The Tribunal also considered that the Lease provides for them to be responsible for payment of such charges and does not consider that it would be just and equitable for an order under Section 20C to be made in favour of Mr McMillan and Dr McCarthy and Mrs Walsh individually.

3.13 It should be noted, particularly by the Respondents, that notwithstanding the provision of Section 20C, it is always open to a tenant to argue at a later stage that the Applicants' legal and other costs, which it seeks to recover through the service charges are excessive and unreasonably incurred, and therefore, should be disallowed in accordance with Sections 19 and 27A of the Landlord & Tenant Act 1985. At the point of such an application, the full quantification of such costs will of course be known.

3.14 To summarise, the Tribunal therefore make an order under Section 20C of the Landlord & Tenant Act 1985 to limit the Applicants' costs in respect of the Application as follows: -

- (i) The costs of Mr Ward and Mr Ryan for attending the hearings on both days is to be limited to 80% of the reasonable costs incurred for those days. the Tribunal impose this restriction to reflect the points made in 3.8 above and also to recognise that communications generally between the Applicants and the Respondents could have been more effective and constructive with more input from the Applicants than was apparently the case;
- (ii) The cost of the Counsel's fees for Mr Adams not to be included and shall not form part of the Service Charge and
- (iii) All other costs including Ms Meager's reasonable Counsel's fees are to be recoverable as part of the service charge.

As stated above and for clarification, the above costs are subject to the right of any and all tenants to subsequently challenge any cost item under Sections 19 and 27A of the Landlord & Tenant Act 1985 when they are known.

3.15 If either party is dissatisfied with this Decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chambers). Any such application must be made within 28 days of this Decision (Rule 52(2) of the Tribunal Procedure First-tier Tribunal Property Chamber Rule 2013.

Graham Freckelton FRICS  
Chairman  
Midlands Leasehold Valuation Tribunal