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

Case Reference : **BIR/00CS/LLC/2015/0001**

Properties : **9, 17, 23, and 24 Ascot Walk, and 81
Ascot Close, Warley, Oldbury, West
Midlands B69 1HD/HA**

Applicant : **Mrs Pariksita Mistry (1)
Mr Gitaben Patel (2)
Mr Suresh Mansukhal Rajpura (3)
Mr Dalpat Mistry (4)**

Representative : **Mr Suresh Mansukhal Rakpura**

Respondent : **Cyril Freedman Ltd**

Representative : **Brady's Solicitors**

Type of Application : **Application for an order under section
20C of the Landlord and Tenant Act
1985**

Tribunal Members : **Judge C Goodall LLB
Mr S Berg FRICS
Mrs S Tyrer FRICS**

**Date and venue of
Hearing** : **7 May 2015 at the Property Tribunal Hearing
Suite, 35 Bull St, Birmingham.**

Date of Decision : **20 MAY 2015**

DECISION

Background

1. On 29 October 2014, the Tribunal made a decision (“the October Decision”) in an application by Cyril Freedman Ltd (“the Respondent”) for a determination of the payability and reasonableness of service charges and administration charges for the five properties referred to in the title page of this decision (reference BIR/00CN/LIS/2014/0048,49 and 50). Those properties are held on long leases as follows:

Property	Current lessee	Date lease from	Term
9 Ascot Walk	Pariksita Mistry and Gitaben Patel	25 Dec 1972	99 years
17 Ascot Walk	Suresh Mansukhlal Rajpura	25 Dec 1972	99 years
23 Ascot Walk	Suresh Mansukhlal Rajpura	25 Dec 1972	99 years
24 Ascot Walk	Dalpat Mistry and Suresh Mansukhlal Rajpura	25 Dec 1972	99 years
81 Ascot Close	Suresh Mansukhlal Rajpura	25 Dec 1972	99 years

2. The October Decision concerned historic liabilities up to and including the service charge year 1 July 2010 to 3 June 2011. On 3 June 2011, residents at both Ascot Walk and Ascot Close took over management of their own buildings under the Right to Manage provisions of the Commonhold and Leasehold Reform Act 2002. In respect of each of the four properties at Ascot Walk, the outstanding service charge claimed was £1,953.03. The Tribunal reduced that amount to £1,637.74 for each property. In respect of 81 Ascot Close, the service charge claimed had been £1,086.64. The Tribunal reduced that claim to £821.68. In respect of administration charges, the amounts claimed had been £737 for each of 9, 17, and 23 Ascot Walk, £671.20 for 24 Ascot Walk, and £134.40 for 81 Ascot Close, a total of £3,016.60. The Tribunal disallowed all administration charges. Of the total amount of service charge and administration charge claimed of £12,466.46, the Tribunal allowed recovery of £7,372.64.
3. On the 20 January 2015, the Applicants applied for an order under section 20C of the Landlord and Tenant Act 1985 (“the Act”) that all or any of the costs incurred, or to be incurred, by the Respondent in connection with the October Decision are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
4. The Application was considered at a hearing on 7 May 2015. The Applicants’ had set out their case in the application form and in an email dated 9 April 2015. The Respondent’s position is set out in a statement dated 26 March 2015. Mr Suresh Rajpura represented the Applicants; Mr

Villau, a representative of LBC Law as agents for Bradys Solicitors represented the Respondent.

5. The Application was made because the Respondent claimed the sum of £5,512.20 for costs in respect of each of the five properties; a total sum of £27,561.00.
6. In these proceedings, the Respondent has not sought to explain or justify these costs. It is the case that the proceedings that lead to the October Decision originally started in the County Court. It may be the case that subsequently to the October Decision, the Respondent has served a notice upon the Applicant's under section 146 of the Law of Property Act 1925 and / or commenced forfeiture proceedings. There are hints of these activities in the papers before the Tribunal but there is insufficient detail for the Tribunal to know the extent of the work which justifies the costs sought, and there are no orders requiring the Applicants to pay any costs which have been brought to the Tribunal's attention.
7. The five properties are mortgaged. The Respondent says that it has obtained payment of its costs as claimed above direct from the mortgagees, and it has no plans to seek them under the service charge.
8. This application has been made because the Applicants in reality seek an independent assessment of the costs that are claimed. The Tribunal has a considerable degree of sympathy with this desire. The Tribunal has not been informed what the costs are for. If they are for the legal work in connection with the October Decision, the Tribunal knows of no basis upon which those costs are recoverable. If there is such a basis, the costs do indeed seem at first sight to be very large for the work required, and disproportionate to the outcome of it. Of course, there may be a perfectly good explanation, but it was not made available to the Tribunal.
9. However, the Tribunal has to agree with the Respondent that it has no power or jurisdiction to review the costs in an application made under section 20C of the Act. That section, the essential wording of which is set out in paragraph 3 above, only enables the Tribunal to order that the costs cannot be recovered under the service charge. It does not extend to enabling the Tribunal to review the costs, nor to prevent them being paid by a third party directly.
10. In considering the merits of the application before the Tribunal, the Tribunal is persuaded that it would be right to make an order under section 20C of the Act. In the October Decision, the Tribunal decided that some deductions should be made from the service charges as set out in paragraph 2 above. In relation to administration charges, the Applicants (the Respondents in the October Decision) were entirely successful. There was no legal justification for seeking administration charges from the Applicants, and this had already been determined in an earlier case involving the same Respondent. Where a landlord or manager seeks

charges with no legal justification, and then repeats the same claim after a judicial decision against that practice, the Tribunal considers that it is just and equitable that it should not be entitled to recover its costs via the service charge.

11. The Tribunal's decision is that it makes an order under section 20C of the Act that any costs in connection with the October Decision are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
12. This decision is unlikely to be of any great comfort or value to the Applicants who will need advice on whether there is any route by which they might obtain an independent assessment of the costs they have been charged and which have been paid by their mortgagees.

Appeal

13. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

20 MAY 2015