



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

Case References

**LON/00AH/LSC/2014/0030
LON/00AH/LSC/2014/0156**

Property

**40, St Peters Road, Croydon,
London CR0 1HG**

**First Respondent
Second Respondent**

**S.CLACY
W.NUNN**

**First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant**

**A.SANCHEZ
L.SAWYER
A.GILLET
40, St Peters Road Limited
J.TREFRY**

**Applicants'
Representative**

Carpenter & Co. (Solicitors)

Type of Cases

**Determination of amounts payable
in respect of service charges**

Tribunal Members

**A.ENGEL – Judge
M.TAYLOR F.R.I.C.S.
J.DALAL**

Date of Decisions

11th May 2014

DECISIONS

- A. Nothing is payable in respect of service charges as at 6th May 2014**
- B. All of the costs incurred or to be incurred by the Respondents in connection with these proceedings before the Tribunal 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**
- C. The Respondents are required to re-imburse to the Applicants, forthwith, the whole of the fees paid by the Applicants in respect of these proceedings before the Tribunal**

REASONS

[Page References are to Pages in the Trial Bundle – 2 lever arch files (A and B)]

The Property,

1. 40, St Peters Road, Croydon CR0 1HG is a block of 4 flats, which are let on long leases.

The Parties

2. The Respondents are the joint free-holders of the Property

3. The First Applicant is the lessee of Flat 4.
4. The Second Applicant is the lessee of Flat 1.
5. The Third Applicant is the lessee Flat 2
6. The Fourth Applicant is the Company formed for the purpose of enfranchisement.
7. The Fifth Applicant is the Lessee of Flat 3.

Background

8. Applicants Nos. 1 to 4 issued proceedings in Croydon County Court on 9th December 2013 in connection with the proposed enfranchisement of the Property – including (disputed) service charges.
9. On 17th December 2013, the service charge issue was transferred by the Court to this Tribunal.
10. On 13th February 2014, Judge Martynski (a Judge of this Tribunal) gave Directions in respect of the transferred service charge matter (LON/00AH/LSC/2014/0030).
11. By written application, dated 19th March 2014, the Fifth Applicant applied to the Tribunal for a determination of the amounts payable for service charges (LON/00AH/LSC/2014/0156).
12. On 27th March 2014, Judge Andrew (of this Tribunal) gave Directions in respect of the application referred to at No.11 above.

Consolidation

13. Both matters were heard at the same time, pursuant to the Directions of Judge Andrew and this Tribunal now Orders that the matters be consolidated pursuant to Rule 6(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 -which Order enables this Tribunal to give joint Decisions and Reasons in respect of both matters.

Hearing

14. A hearing before the Tribunal took place on 6th May 2014 at the Tribunal's Hearing Centre at 10 Alfred Place, London WC1E 7LR.
15. At the hearing, the First Respondent (Mr Clacy) represented himself and the Second Respondent.
16. The Applicants were represented by Mr Kelleher of counsel.

Evidence

17. At the hearing oral evidence was given by the First Applicant and the First Respondent.
18. In addition, there was a large quantity of documentary evidence.

The Service Charge Year

19. The service charge year runs from 29 September to 28 September.

The Respondents' Claim

20. The Respondents' claim is set out on Pages 1 to 4 of File B (Tab 16).
21. It is to be noted that the Respondents do not claim service charges in respect of 2009/10 and 2010/11. It appears that Mr Clacy was ill during that period and no service charge accounts relating to those 2 years have been drawn up. Thus, although the Applicants received valuable services during those 2 years, the Respondents are not seeking to recover any of the costs of those services from the Applicants.

The Applicants' Case

22. The Applicants concede that the work done and services provided were to a reasonable standard and that the cost thereof was reasonable.

23. However, the Applicants contend that there are various legal bars to the Respondents recovering all or part of the service charges.

24. The Tribunal deals with each of these (alleged) legal bars below.

Certification

25. The 4 Leases are at Pages 147 to 329 (File A) – Tabs 12,13,14 and 15.

26. The Leases are in similar form. They contain the usual provisions for payment of estimated service charges in advance and the balance to be paid or credited after the end of the service charge year.

27. The Leases also provide for the final service charges in respect of each service charge year to be ascertained and certified by a qualified accountant.

28. The Respondents did not demand (estimated) payments in advance – as they were entitled to do. There is a dispute about the number of demands for payment which were made but it is agreed that the demands for payment which were made, were issued after the end of the service charge year to which the demand related.

29. It is agreed that no certificates have been obtained – as at the 6th May 2014 (the date of the hearing).

30. Mr Kelleher submitted that in the above circumstances, nothing was payable (as at 6th May 2014) by way of services charges as certification was a condition

precedent to liability to pay any amount– after the end of a service charge year, in the circumstances of this case (where there had been no demand for advance – estimated – payments).

31. Mr Kelleher referred us to the textbook Woodfall – Landlord and Tenant and the Upper Tribunal case of Rita Akorita v Marina Heights (St Leonards) Limited [2011] UKUT 255 (LC).
32. Mr Clacy did not advance a contrary legal argument. However, he informed the Tribunal that he had attended a meeting with previous Lessees where it had been agreed that certification was not required and that a Lessee who had a query would refer it to Mr Clacy who would then send the Lessee a copy of the relevant invoice. We accept this evidence but such arrangement does not affect the legal entitlements of the Applicants.
33. We accept Mr Kelleher’s legal argument and we hold that certification is a condition precedent to liability for payment of any sum for service charges in the circumstances of this case and that as there were no certificates as at 6th May 2014, nothing was payable as at that date.
34. We wish to add that we fully accept Mr Clacy’s explanation that he had not obtained certificates because that would have entailed costs which would then have been added to the Applicants’ service charges. However, whilst it became clear as the hearing progressed that many of Mr Clacy’s actions (and inactions) were carried out in a spirit of benevolence towards the Applicants, we must apply the law.

Other Issues

35. Although, our determination of the certification issue means that, in our opinion, the Applicants are not liable to pay any amount in respect of service charges as at 6th May 2014, we consider it desirable to set out our views on other matters raised by the Applicants, in case the factual position changes after 6th May 2014 and having regard to the possibility that our decision on the certification issue might be wrong – particularly as the Respondents were not legally represented before the Tribunal. However, we do not consider that it is appropriate for us to comment on the correct allocation of payments which have been made.

Limitation

36. Mr Kelleher submitted that Section 19 of the Limitation Act 1980 precludes the recovery of service charges due prior to 9th December 2007 (i.e. 6 years prior to the commencement of the proceedings in the County Court). No contrary legal argument was advanced by Mr Clacy.

37. We accept Mr Kelleher's submission on this issue.

Section 20B of the Landlord and Tenant Act 1985 (the Act)

38. It was agreed by Mr Clacy and Mr Kelleher that by reason of Section 20B, no service charges were due in respect of 2006/7 and 2007/8 and that 26.3% of service charges which might otherwise be due in respect of 2008/9 would not be recoverable.

39. We make no finding in respect of the effect (if any) of Section 20B on the years after 2007/8, as there may well be disputed factual matters related thereto – which we did not delve into – in view of our decision on the certification issue.

40. It is a sad irony that as the Respondents did not enforce their rights to advance payments of estimated service charges, they do not benefit from the protection afforded to Landlords by the case of Gilje v Charlegrove Securities Limited [2004] 1 AER 91.

Consultation Requirements – Section 20 of the Act

41. At Pages 124 to 128 of File A (Tab 8), the Applicants have highlighted certain items which they submit are “caught” by the Consultation Requirements.

42. We have not considered this matter in any detail – in view of our decision on the certification issue and having regard to the probability that the Respondents would wish to consider applying for retrospective dispensation pursuant to Section 20ZA of the Act, if this matter is to be determined.

Notice of Rights – Section 21B of the Act

43. There was a clash of evidence between the First Applicant and Mr Clacy on this matter. We preferred the evidence of Mr Clacy to that of the First Applicant on this matter and we find as a fact that there was compliance with the requirements of Section 21B of the Act.

Landlord's Name and Address – Section 47 of the Landlord and Tenant Act 1987

44. The Landlord's name and address was on the demands adduced in evidence.

45. Mr Kelleher submitted that there was a breach of Section 47 in respect of demands which were not adduced in evidence and, on the Applicants' case, never issued.

46. In our view, this submission is hypothetical and not a matter that falls for determination on the evidence before this Tribunal.

Interest

47. Mr Clacy claims interest pursuant to an alleged agreement between himself and the Fifth Applicant. This Tribunal has no jurisdiction to determine this matter.

Per-centage – Third Applicant.

48. Mr Kelleher submits that the Third Applicant is not liable for any service charges as her lease (Flat 2 – Pages 188 to 230. File B) fails to specify a per-centage – see Pages 193 and 227.

49. However, the Tribunal is satisfied that there is an implied term that the per-centage is 25% and this is confirmed by the practice of the parties.

Section 20C of the Act

50. All applicants made applications under Section 20C. These proceedings were required in order for the Applicants to establish their legal rights. Accordingly, it is, in our view, just and equitable that we make the Order set out at B above.

Re-imbusement of Fees

51. Likewise, it is just and equitable that we make the Order set out at C above - pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Costs

52. The Tribunal has a discretion to award costs if a party has acted unreasonably – see Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
53. Soon after the commencement of the hearing, I issued an oral warning to Mr Clacy that we might consider making an Order for costs against the Respondents as his case appeared so weak on the certification issue.
54. Had it not been for the matters (which later emerged) which are referred to at Nos. 21,22,34 and 40 above, we might well have made a costs order against the Respondents – bearing in mind that the Applicants had (reasonably) incurred the costs of legal representation.
55. However, in view of the matters referred to at Nos. 21,22, 34 and 40 above such order would, in our view, be inappropriate. The reality is that due to Mr Clacy's benevolence – despite his desire to “do deals” and ignore the “legalities” – the Applicants are likely to end up much better off financially (at the expense of the Respondents) than would otherwise be the case, in circumstances where the Applicants concede that the services provided to the Property were of a reasonable standard and that the costs sought in respect thereof are also reasonable.

SIGNED:

A.J.ENGEL - Judge

A person may appeal to the Upper Tribunal – with permission of this Tribunal. Written application for permission to appeal must be made in writing to this Tribunal so that it is received by this Tribunal within 28 days of this document being sent to the person making the application.

An application for permission to appeal must identify the decision to which it relates, state the grounds of appeal and the result sought – see Part 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013