



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

Case reference : LON/00BJ/LLC/2014/003

Property : 42 Culverden Road, London SW12
9LS

Applicant : Production Technology Consultants
Limited

Representative : Mr A Behchet

Respondent : The leaseholders as per the
schedule attached to the
application

Representative : None

Type of application : For an order under section 20C
preventing the landlord from
recovering its costs of the
proceedings through the service
charge

Tribunal members : Judge O'Sullivan
Mr Jarero BSc FRICS

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR

Date of decision : 4 July 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (2) The tribunal declines to make any order for costs under Rule 13.

The application under section 20C

1. By an application dated 3 February 2014 the leaseholder of Flat 42C Culverden Road, Mr Iain Watson, applied for an order under section 20C of the 1985 Act. The application related to proceedings under the same reference number brought by the landlord under section 20ZA. In those proceedings the landlord had made an application for dispensation under section 20ZA which the tribunal refused. The tribunal gave its reasons in a decision dated 14 November 2013. In summary however the tribunal was not satisfied that the works were urgent and concerns were raised as to whether the landlord was approaching the problems at the property in the right way.
2. The leaseholder set out his grounds for the application in the application form in full. The grounds were that an order under section 20C should be made given that the landlord had not allowed the application and it would be unfair for the leaseholders to bear the costs. Mr Watson also expressed concern at the manner in which legal costs incurred in connection with the proceedings had been charged as he did not consider they had been properly demanded. The leaseholder has since sold his interest in the flat.
3. The tribunal made simple directions dated 6 March 2014 which required the leaseholder to put any documents in evidence by 21 March 2014 and for the landlord to respond by 4 April 2014. The leaseholder indicated that he did not wish to file any further documents and wished to rely simply on the application form.
4. For the landlord Mr Behchet made a witness statement although this was unsigned and undated. The landlord opposed the application. Its main argument is that the application was "economical with the truth". The landlord also says that the invoices were raised as it discovered that the flat was being sold to protect its position. Mr Behchet also says that the tenant did not object to the lack of tenant's summary of right and obligations. The statement does not however address whether it would be reasonable for the tribunal to make an order under section 20C given the decision made by the tribunal in the substantive case.

Application under Rule 13

5. Mr Behchet also goes on to make an application for the Respondent's costs amounting to £1240. The basis for this application is not entirely clear. It is made up as follows;
 - a) Invoice dated 26 November 2012 addressed to Mr Watson £404.72. This appears to relate to a claim for legal costs incurred in these proceedings and are the subject of this application under section 20C. The tribunal does not have any application before it under section 27A of the 1985 Act in relation to the reasonableness of these costs.
 - b) Legal expenses invoice from Cubism Law dated 4 March 2014 £600
 - c) Preparation and defence costs £240 – this appear to be the landlord's costs in preparing the submission in relation to the section 20C application.
6. The only basis upon which the tribunal is able to award costs of this nature is pursuant to rule 13 of the tribunal Procedure (First – tier Tribunal) (Property Chamber) Rules 2013.
7. Rule 13 provides that;

“13(1) The Tribunal may make an order in respect of costs only-

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in-

(ii) a residential property case ..”

Application under Rule 13- the tribunal's decision

8. The tribunal is not satisfied that the leaseholder has acted unreasonably in bringing, defending or conducting proceedings. We therefore decline to make any order under Rule 13. In any event the details of the costs said to have been incurred lack any substance, we have not been provided with a copy of the solicitors invoice nor any basis upon which we should allow the landlord's own internal costs. The “costs” said to be claimed from the leaseholder in fact appear to be either service charge items or administration charges which would be required to be the subject of an application under section 27A of the 1985 Act or schedule 11 of the Commonhold and Leasehold Reform Act 2002. We consider the application by the landlord for costs to be wholly misconceived for these reasons.

Application under section 20C – the tribunal’s decision

9. Having considered the contents of the application form and the submissions from the landlord and taking into account the determination reached in the substantive proceedings, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: S O’Sullivan

Date: 4 July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.