



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

Case References : **BIR/41UE/LLC/2022/0003
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Subject premises : **Tower Court/Trinity Court/Windsor Court
No 1 London Road
Newcastle-under-Lyme
ST5 1LT**

Applicants : **Leaseholders of flats at the subject
premises**

Respondent : **Ian Hollins**

Representative : **Robert Bowker**

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

Tribunal members : **Deputy Regional Judge Nigel Gravells
Graham Freckelton FRICS**

Date of decision : **25 May 2022**

DECISION

Introduction

- 1 On 10 May 2022 the Tribunal issued its Decision on an application (‘the Directions application’) under section 24(4) of the Landlord and Tenant Act 1987 Act (‘the 1987 Act’), by which the Respondent sought Directions in relation to the handover of the management of the subject premises to Number One London Road RTM Company Limited (‘the RTM company’): see BIR/41UE/LAM/2022/0002.
- 2 On the same date the Tribunal invited the parties to make representations on the Applicant leaseholders’ application under section 20C of the Landlord and Tenant Act 1985 (‘the 1985 Act’).
- 3 On 3 May 2022 the Tribunal had received a section 20C application from Richard Sproston, the leaseholder of one of the apartments in the subject premises, which he purported to make on behalf of all the leaseholders of the subject premises, although he was unable to provide the names and addresses of the other leaseholders.
- 4 On 12 May 2022 the Tribunal received a second section 20C application from Xenophon Sgouros, the leaseholder of another of the apartments in the subject premises. This application provided the names and addresses of the other leaseholders and was stated to be made on their behalf.
- 5 On 18 May 2022 the Tribunal received a third section 20C application (dated 19 May 2022) from the RTM company. This application also provided the names and addresses of the leaseholders.
- 6 The section 20C applications relate to the Respondent’s costs incurred in connection with proceedings before the Tribunal to determine the Directions application.

Preliminary issue

- 7 In the view of the Tribunal the section 20C application made by the RTM company is misconceived because section 20C of the 1985 Act only enables a *tenant* (leaseholder) to make an application.
- 8 In any event, the application by the RTM company adds nothing to the applications made by Mr Sproston and Dr Sgouros on behalf of all the leaseholders.
- 9 However, since the representations made on the application form address some of the arguments made by Mr Sproston and Dr Sgouros, the Tribunal gave appropriate weight to those representations.

Legislation

- 10 Section 20C of the 1985 Act (so far as material) provides –

- (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 ... the First-tier 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 tenant or any other person or persons specified in the application.

...

- (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.

Representations of the parties

- 11 Kerry Machin, who submitted the application in the name of the RTM company in her capacity as a Director of the company, raised questions about the Respondent's management of the subject premises; but many of her observations, while potentially relevant to other proceedings before the Tribunal, were not relevant to the specific issue raised by the present application.
- 12 However, she did submit that the Directions application was unnecessary because the issues could have been resolved in consultation between the Applicant leaseholders and the Respondent.
- 13 On the other hand, Mr Sproston accepted that the Directions application was 'eminently understandable'. However, he submitted that, since the application raised no real dispute between the parties, there was no reason for the Respondent to incur the costs of instructing Counsel. Dr Sgouros seemed to adopt a similar position: while the Respondent was entitled to instruct Counsel, it would not be reasonable for the Respondent to pass the cost on to the Applicants through the service charge.
- 14 On behalf of the Respondent Mr Bowker argued that the Directions application was intended to facilitate a smooth transition in the management of the subject premises from the Respondent to the RTM company by seeking Directions from the Tribunal on several key issues. The intention was to achieve clarity for the benefit of all parties, irrespective of whether the Tribunal determined the issues in favour of the Applicant leaseholders or the Respondent. Mr Bowker submitted that the Respondent's decision to apply to the Tribunal (i) is consistent with the overriding objective of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 because it promotes an outcome that is fair and just; and (ii) recognises that, legally and practically, the Respondent is subordinate to the Tribunal. For those reasons, Mr Bowker submitted that it would not be just and equitable in the circumstances to make a section 20C order in the Applicants' favour.

Determination

- 15 The Tribunal is of the view that it was sensible and reasonable for the Respondent to make the Directions application. Given that the relationship between the Respondent and a significant number of the Applicant leaseholders since the appointment of the Respondent as manager of the subject premises has not been wholly amicable, it would almost certainly have been unwise to leave the details of the transition in the management to be agreed between the parties themselves without the assistance of the Tribunal.
- 16 However, that leaves the question whether the Respondent should be entitled to recover costs incurred by him in connection with the proceedings before the Tribunal. Although the Respondent has produced no schedule of costs, the Tribunal assumes that those costs largely comprise Counsel's fees. Mr Bowker stressed throughout his submissions on the Directions application that he intended to address the issues in an objective and non-partisan manner; and he adhered to that approach. However, as a result – and this is not intended as a

criticism of him – he added little to the representations and submissions already provided by the Respondent. For that reason, in the view of the Tribunal the costs incurred by the Respondent in instructing Counsel were not reasonably incurred.

- 17 The Tribunal also notes that, notwithstanding the non-partisan approach adopted by Mr Bowker, the Respondent, in his application and subsequent clarification, sought both some ‘neutral’ Directions and also other Directions that in their terms favoured him. The latter included Directions relating to the Rapleys issue, the RTM issue and three aspects of the budget issue. The Tribunal agreed to make the Direction sought in respect of only one of those five issues.
- 18 Exercising its discretion under section 20C(3), and applying the test of what is just and equitable, the Tribunal is of the view that, for the reasons set out above, it would be just and equitable to order that the costs incurred by the Respondent in connection with the proceedings before the Tribunal in relation to the Directions application 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 and the other leaseholders specified in the section 20C applications.

25 May 2022

Professor Nigel P Gravells
Deputy Regional Judge