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**HM Courts
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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [&
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]**

Case Reference: LON/00BK/LLC/2012/0006

Premises: Ground Floor & 4th Floor Flat, Westbourne
Terrace, London W2 3UH

Applicant(s): Dr Louis al-Dhahir

Representative:

Respondent(s): Kolup Investments Limited
Fast view Properties Limited

Representative:

**Date of Paper
Determination:** 22 October 2012

**Leasehold Valuation
Tribunal:** Ms M W Daley (Hons) LLB
Mr M Cairns MCIEH
Mr P Clabburn

Date of decision: 30 October 2012

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

The issues

- (2) The sole issue is whether the Tribunal ought to grant a retrospective application in respect of the Applicant's request for a Section 20C order in the Application LON/00BK/LSC/2011.

The application and Documents considered by the Tribunal

1. This is an application by the leaseholder of Flat 48A Westbourne Terrace, London W2 for an order under section 20C of the Landlord and Tenant Act 1985 that all the costs incurred by the landlord in proceedings brought by Ms Gifty Lampejo, the leaseholder of Flat 1, 46B Westbourne Terrace, against the landlord under reference LON/00BK/LSC/2011 should not be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by him or by Mr and Mrs Partridge, the leaseholder of Flat 48D Westbourne Terrace, or by Mr Rod Schragger, the leaseholder of Flat 48D Westbourne Terrace. In its decision dated 7 June 2011 under reference LON/00BK/LSC/2011 the tribunal ordered that such costs should not be regarded as relevant costs in determining the amount of any service charges payable by Ms Lampejo.
2. At the pre-trial review on 12 September 2012, the Applicant indicated that he was content for the application to be dealt with as a paper determination. The Tribunal directed that the Application should stand as the Applicant's statement, and that the Respondent should no later than 28 September 2012 send one copy to the applicant and three copies to the tribunal of its statement of case.
3. The Applicant's statement of case was set out in the Application form. The Applicant, Dr al-Dhahir, stated as follows-: "*In 2011, the tenant Ms G Lampejo applied to the LVT to dispute some of the expenses included in the service charge statement for the year ending 24 December 2010(Case Ref.LON/00BK/LSC/2011/0215). Her property is one of the 8 flats that comprise 46-48 Westbourne Terrace. When she applied to the LVT she also successfully applied for an order to be made under section 20C of the 1985 Landlord & Tenant Act so that all of the legal costs incurred by the Respondent Kolup Investments, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable. However, when the service charge statement for the y/e 24th Dec 2011 was issued by the Managing Agents... they had included this £3,417.60 of legal costs and invoiced, Ms Lampejo as well as the other tenants (lessees) accordingly. . Only after she reminded City Estates of the Section 20C order did they correct her invoice and remove all her share of these legal costs from*

the service charge. Dr Al-Dhahir continued by stating -: When I asked City Estates why they thought it was logical or reasonable that the other tenants, such as myself, should not have these same legal cost disregarded as a service charge expense, they simply replied that each tenant needed to apply individually for a Section 20 C ... Since the other tenants were not party to the dispute between Ms Lampejo and Kolup Investments, it does not appear logical to expect these tenants to contribute to Kolup's legal expenses in this matter if the LVT has already determined that Ms Lampejo need not make any contribution to their expenses..."

4. In reply the Respondent stated that -: *"...The application form in LON/00BK/LSC/2011/0215 states..." the other 3 leaseholders are disputing the service charge and if no resolution is reached will make an application to the LVT" The other leaseholders were well aware of the proceedings ... but chose not to be involved. They did not in fact apply to be joined. ... Mr L Al-Dhahir, actually put in a witness statement ... There can be absolutely no doubt that he was aware of those proceedings which he fully supported. Despite this, the Applicant did not apply to join those proceedings, not even the s20C application. The Applicant is well aware of the provisions of leasehold law, having been a managing agent of this property for 10 years...*

5. The Respondent stated that it would not be just and equitable to make a s20C order in favour of the Applicant or the other leaseholders as the Respondent had been put to the expense of making a demand and preparing the account and that there must be a finality to the litigation. The Respondent also stated that the Applicant had effectively "had his chance but failed to take it."

The Respondent also asked that if the section 20C order was granted in respect of the proceedings LON/00BK2011/00215 the Respondent ought not to pay the application fee, and no section 20C order ought to be granted in respect of this application.

6. The Tribunal were provided with a copy of the application in the proceedings LON/00BK2011/00215, a copy of the witness statement of Dr Al-Dhahir and a copy of the Tribunal's decision in respect of the proceedings, LON/00BK2011/00215.

The Background to the proceedings in LON/00BK2011/00215

7. The Tribunal in reaching its determination considered the determination in the proceedings LON/00BK2011/00215. The issues raised in the application were set out in paragraph 3, and were identified as follows (a) Whether the Applicant was liable to contribute towards the landlord's legal costs in defending an application before the LVT and if so whether such costs had been reasonably incurred... (b) Whether management fees were payable under the terms of the lease. And if so whether such costs had been reasonably incurred... (c) Whether legal costs incurred by Antony Gold are recoverable and if so whether they had been reasonably incurred.

8. The Applicant disputed that the cost were recoverable under the terms of the lease. This was disputed by the Respondent, and the Tribunal considered the exact wording of the clause relied upon in paragraph 12 of the determination, which stated:- Clause 1(2) of Fifth Schedule "*Total Expenditure means the total expenditure incurred by the Lessor in any Accounting Period in carrying out its obligations under clause 3(2) and (6) hereof and any other costs and expenses reasonably incurred in connection with the building.*"
9. Of this clause, the Tribunal noted that in dealing with the recoverability of the legal costs the Tribunal considered the authorities on costs, it should be noted that:- "*... there are several conflicting decisions on the issue of recoverability of costs and it is difficult to reconcile them...However the Tribunal agrees that wording of the lease in this case closely mirrors that in Iperion and [The Tribunal] considers that it is bound by the decision in Iperion.*" Given this the legal cost that were in issue were allowed in full.
10. In respect of the Applicant application under Section 20C of the Act, the Tribunal noted that it had considered the copy of correspondence with which it has been provided. The Tribunal is of the view that the Applicant has made every effort to open up a dialogue in relation to the charges and to seek clarification but the managing agents have done little to try and agree matters. Has they entered into discussions the need for this application may not have been necessary. Taking this into account together with the fact that the Applicant has been partly successful the Tribunal makes an order under section 20C.
11. Having read the documents and considered the submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Reasons for the Tribunal's decision

12. The Tribunal have determined that the Application under section 20C LTA 1985, ought to be granted. The Tribunal have noted that neither party have in making its submission placed any reliance upon the relevant legal authorities on the question of cost.
13. The Respondent's solicitors have referred to the wording of section 20C, and have correctly pointed out that the order can be made on behalf of the tenant or any other party named in the application. The Tribunal have also noted that the Respondent's submissions have not raised any issue that suggest that the application is time limited, and have merely submitted that as the Respondent had been put to the expense of making a demand and preparing the account and that there must be a finality to the litigation.
14. Whilst noting this, the Tribunal have also noted that the parties have urged the Tribunal to consider what is just and equitable, and this is the manner in which

the Tribunal has considered this issue. In determining what is just and equitable, the Tribunal have adopted the approach of the Tribunal determining this matter in Application LON/00BK2011/00215. The Tribunal in that application decided that it was just and equitable to grant the order sought, on the basis that in the view of the Tribunal, the litigation could have been avoided had the managing agents being willing to enter into a dialogue. It would seem perverse for this Tribunal to ignore the finding of the Tribunal in the earlier proceedings, which in part recognises that the need for the proceedings was brought about by the conduct of the managing agents in LON/00BK2011/00215, and simply pass the cost on to the other 'disinterested' tenants.

15. Accordingly the Tribunal have determined that it is reasonable for an order to be made under section 20C of the Landlord and Tenant Act 1985, and that the order will be for the benefit of Dr Louis al-Dhahir and the other leaseholders named in the application.

Application under s.20C and refund of fees

16. The Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application. Having heard the submissions from the parties, and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant, the reason for this decision, is that the Application could have been made as part of the original leaseholders application in LON/00BK2011/00215.
17. In the application form the Applicant applied for an order under section 20C of the 1985. Having read the submissions from the parties and taking into account the determinations above, 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge to the Applicant and the leaseholders named in this application.

Chairman:
Ms
M.W.Daley _____

Date:
05.11.2012

Appendix of relevant legislation

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).