

9580



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

**Case Reference** : CHI/29UC/LAC/2013/0010

**Property** : 145 Bingley Court, Canterbury, Kent  
CT1 2SX

**Applicants** : Ian Carn and Deidre Joyce Carn

**Representative** : N/A

**Respondent** : Sinclair Gardens Investments  
(Kensington) Limited

**Representative** : P Chevalier &Co

**Type of Application** : Schedule 11 of the Commonhold and Leasehold  
Reform Act 2002

**Tribunal Members** : Judge Lal, Mr RA Athow FRICS

**Date and venue of  
Hearing** : Chairman's home, 11<sup>th</sup> November 2013.

**Date of Decision** : 17<sup>th</sup> November 2013

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**DECISION**

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**Application**

1. On 16<sup>th</sup> July 2013, the Applicants (as leaseholders of the Property) applied to the Tribunal for a determination of their liability to pay certain administration charges under a lease of the Property dated 19<sup>th</sup> December 2008 between (1) Fairview New Homes (Hoddesdon) Limited, (2) Rheims Way (Canterbury) Management Company Limited and (3) the Applicants (the "Lease").

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2. The Tribunal issued Directions on 23<sup>rd</sup> July 2013. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure. In accordance with the Directions, on 3<sup>rd</sup> October 2013, the Respondent served a written statement from Mark Kelly of Hurst Managements (managing agents for the Respondent) and the Applicants served a Statement in Response on 7<sup>th</sup> October 2013. The Tribunal has considered these documents and the further correspondence between the parties enclosed with the papers.

### **Facts of the Case**

3. The Property comprises a flat within a block of 45 flats let out on long leases. The Applicants acquired the Lease of the Property on 19<sup>th</sup> December 2008. The Respondent acquired the freehold of the Property on 14<sup>th</sup> December 2009. The dispute between the Applicants and the Respondent relates to the liability of the Applicants to pay certain amounts of interest and administration charges under the Lease.

### **The Applicant's Case**

4. The Applicants claim that they are not liable to pay any interest or administration charges under the Lease as all notices relating to these amounts were sent by the Respondent's agent to the wrong address and therefore not received by the Applicants until receipt of a letter from P Chevalier & Co on 28<sup>th</sup> November 2011.

5. Following this letter, the Applicants note that all outstanding ground rent was paid but the amounts of interest and administration charges were not paid by the Applicants as they considered the amounts not to be properly incurred by them due to the notices being sent to the incorrect address. The Applicants note that the Respondent has now agreed to withdraw the demand for any interest or administration charges in relation to this matter. However, although there are no monetary amounts in dispute, the Applicants seek the Tribunal's opinion as to whether they were liable for the amounts claimed by the Respondent.

### **The Respondent's Case**

6. The Respondent notes that the interest and administration fees in dispute have been waived and therefore there is no matter for the Tribunal to hear. As far as the notices relating to interest and administration fees are concerned, the Respondent claims that the notices were sent to the correct address (namely the address of the Property) and the managing agent outlines the procedure that is followed in such cases. The Respondent claims that this is an "ill-conceived" application and therefore claims costs of £184.80 in relation to the preparation of managing agent's submissions.

## **The Tribunal's Decision**

7. The Tribunal has considered all of the evidence before it, including the detailed written statements of both parties and the terms of the Lease and all of the additional correspondence between the parties. The Tribunal has also exercised its independent judgment.

8. The important point in this case is that it is an application under paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 where the Tribunal is being asked to determine whether administration charges are payable under the Lease. As the amount of interest and administration charges is no longer in dispute, the Tribunal is not required to make a determination as to liability or quantum. The Applicant is asking the Tribunal to determine matters outside its jurisdiction, namely to rule whether the notices relating to the interest and administration charges were properly served. It is not the Tribunal's role to give general legal advice in connection with the service of the notices when an actual liability no longer exists. What the Applicant seeks is properly the preserve of professional legal advice. In the circumstances the Tribunal refuses the Application in the terms that it is now before it. However and in consideration of how the matter has developed, the Tribunal does not consider that the Applicants should be liable for any costs of the Respondent in relation to this application. This reflects the admitted errors by the Respondent and therefore the Respondent's order for costs of £184.80 is dismissed.

## **Section 20C of the Landlord and Tenant Act 1985 Application**

8. The Applicants made a further application preventing the Respondents from charging their costs to the service charge account. Having regard to the guidance given by the Land Tribunal in the **Tenants of Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make such an order under s.20C of the Landlord and Tenant Act 1985. This is in view of the Respondents withdrawing their claim for interest and other charges and accordingly the Tribunal makes an Order under this Act, the Respondents will be prevented from charging their costs to the service charge account.

Judge S.Lal  
17<sup>th</sup> November 2013

## **Appeals**

9. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

10. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

11. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.