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

Case Reference : BIR/OOCS/LLC/2014/0004

Property : 292-314 Newton Road, Great Barr, Birmingham, B43 6QU

Applicant : Mr Inderjit Gill

Respondent : The Anne and John Walters Charitable Trust represented by
Messrs Pennycuick Collins Chartered Surveyors

Type of Application : Application for an Order under s.20C of the Landlord &
Tenant Act 1985 to exclude the costs of a service charge
determination for the subject property by the Tribunal
(Ref.BIR/OOCS/LSC/2013/0021) from the service charge
payable by the Lessee.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge D.R. Salter LLB Hons.

DECISION

Introduction

- 1 This is an application by Mr I. Gill, one of the tenants of 292-314 Newton Road, Great Barr, Birmingham, who was a Respondent in a service charge determination by the Tribunal, case ref. (BIR/OOCS/LSC/2013/0021), for the costs resulting from the application to be excluded from the service charge payable by the tenant.

The Law

- 2 The property is held by lease dated 18th January 1962 between Alfred Walker & Son Ltd. (Landlord) and G.H. Rabone (Tenant) for a term of 99 years from 25th December 1960 at a ground rent of £18.50 per annum. Under the Fourth Schedule clause 8, the landlord is permitted to charge the 'costs charges and remuneration of the Lessor and any Agents or Agent employed by the Lessor to manage or administer the Mansion.'
- 3 As a preliminary finding, the Tribunal finds that this is sufficiently wide to allow the landlord to recover the costs of its service charge application to the Tribunal, subject to the statutory constraints of section 19 the Landlord & Tenant Act 1985 ('the Act').
- 4 Furthermore, section 20C of the Act provides that a tenant may make an application for an order that all or any of the costs incurred in connection with proceedings before this tribunal are not to be passed through the service charge. The Tribunal may make such order as it considers just and equitable in the circumstances.

Submissions

- 5 The Tribunal Directions required the parties to submit their cases in writing by 4.00 pm on 12th June 2014 and Counter Submissions by 4.00 pm on 3rd July 2014, later extended by Further Directions to 29th July 2014. The Applicant's submission was received by email on 12th June and the Respondent's by written submission on 11th June 2014.

6 The Applicant's Submission

The Applicant's points can be summarised below:

- 1 that the main items contested at the hearing had arisen before he became a leaseholder in December 2012;
- 2 that he had been unable to provide any evidence relating to the main items and would have been unable to gain from the case;
- 3 that the application had been made by the landlord because other tenants had not paid the service charge and that the landlord's agents would then incur further legal fees that would be added to the service charge;
- 4 that not all of the leaseholders had participated in the Tribunal hearing and the costs should not be shared;
- 5 that it was a 'civil dispute' that should not affect all the leaseholders and
- 6 that the leaseholders had also incurred costs.

7 The Respondent's Submission

The Respondent submitted that:

- 1 it was the Applicant's responsibility to prove to the Tribunal that it would be just and equitable to grant a section 20C order to prevent the landlord's costs from being added to the service charge. The Tribunal's power was discretionary and had

to be exercised judicially in accordance with guidance in *The Tenants of Langford Court v Doren* LRX 37/2000 Lands Tribunal) and *Plantation Wharf v Jackson* [2011] UKUT 488(LC).

- 2 that the landlord had been overwhelmingly successful in the underlying proceedings. The disputed sum had been £32,930.06 of which £30,091.44 had been allowed within the service charge.
- 3 no offers of settlement or admission had been made by the lessees.
- 4 the tenants had initially challenged all items of service charge expenditure but at the hearing asked the Tribunal to limit its decision to the three items listed in the landlord's application (impliedly increasing the landlord's costs unnecessarily).
- 5 that the lead applicant, Miss Starling, had made allegations regarding the conduct of the landlord and managing agent that in the opinion of the agents, required attendance by Counsel to represent the landlord.
- 6 in summary, the Applicant had not discharged the burden of proof and that it would not be just and equitable to make a section 20C Order.

8 **Decision**

The Tribunal has considered all of the parties' submissions and finds in respect of the Applicant's points as follows:

- 1 Although Mr Gill may only have bought the lease in December 2012, he was listed as a Respondent in the underlying proceedings and named in the evidence submitted to the Tribunal by the lead respondent Natalie Starling-Booth. He did not dissociate himself with the proceedings and was bound by the decision.
- 2 A similar point to (1) above, the Respondent was listed in the proceedings and bound by the decision.
- 3 This relates to the possibility of future legal fees being added to the service charge but this is not something that can be considered by the Tribunal on this application because the landlord has not given any express intent to charge fees and at present there is no sum in dispute. If charges are made in the future then they may form the subject of a further application to the Tribunal but not at this stage.
- 4 The question of whether all the leaseholders gave evidence at the hearing has no bearing on the costs which are specified at one twelfth of the landlord's certified expenses in clause (3)(b) of the lease.
- 5 The Applicant leaseholder participated in the proceedings and is bound by the terms of the lease.
- 6 The Tribunal appreciates that all parties incurred costs in the proceedings but the service charge is an obligation by the tenant to pay the landlord's costs as determined by the lease.

- 9 The Tribunal finds that the Applicant has not discharged the burden of proof required to succeed and accepts that the landlord's application in the underlying proceedings was substantially successful. The Tribunal also accepts points 3,4 and 5 made by the Respondent in paragraph 7 above.
- 10 For all these reasons, the Tribunal finds that it would not be just or equitable to grant a section 20C Order in these proceedings.

Appeal

- 11 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely and stating the result sought by the party making the application.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date: -8 OCT 2014