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

**Case Reference** : **BIR/00CN/LIS/2013/0042**

**Property** : **Apartment 1 The Square on the Square  
Birmingham B3 1QZ**

**Applicant** : **Mr Simon Robert Luke Onions**

**Representative** : **Ms Sarah Robson**

**Respondent** : **The St Paul's Club Limited**

**Representative** : **Counsel – Mr James Sandham instructed by  
Brethertons LLP**

**Type of Application** : **1) An Application for the determination of  
liability to pay and reasonableness of service  
charges pursuant to section 27A of the Landlord  
and Tenant Act 1985 and**  
**2) An Application for an order for the  
limitation of the landlord's costs in the  
proceedings under section 20C of the Landlord  
and Tenant Act 1985**

**Tribunal Members** : **Mr V Ward FRICS &  
Judge M K Gandham**

**Date and venue of  
Hearings** : **19 March & 20 May 2014  
The Tribunal Hearing Suite  
Fifth Floor Priory Courts  
33 Bull Street  
Birmingham B4 6DS**

**Date of Decision** : **12 November 2014**

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**DECISION**

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## **Introduction**

1. This is an Application dated 27 September 2013 under sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act"), as amended by The Transfer of Tribunals Functions Order 2013, which requires the Tribunal to determine as to whether the service charges demanded by the Respondent are payable, and the amounts which are reasonably payable, in respect of Apartment 1, The Square on the Square, Birmingham, B3 1QZ ("the Property") for the following service charge periods:

1/7/07 to 31/12/07

1/1/08 to 31/12/08

1/1/09 to 31/12/09

1/1/10 to 31/12/10

1/1/11 to 31/12/11

1/1/12 to 30/9/12

2. There is, additionally, an Application under section 20c of the Act that requires the Tribunal to determine whether any, or all, of the costs incurred by the Respondent in connection with these proceedings are to be taken into account in determining the amount of any service charges payable by the Applicant.
3. Following directions issued by a Procedural Chairman on 29 October 2013, the Tribunal directed that the Application be dealt with on the basis of an oral hearing. Written representations were received from the Applicant and the Respondent and these were copied to either side.

## **Background**

4. The Applicant, Mr Simon Robert Luke Onions, is the Lessee of the Property and holds the residue of a 125 year lease from 1 January 2004 in respect of the same at a current rent of £150.00 whilst the Respondent, The St Paul's Club Limited, holds the freehold interest in the development of which the Property forms part.

## **Inspection**

5. On 19 March 2014, the Tribunal attended at The Square on the Square ("the Development"). Present at the inspection were the Applicant and his Representative, Ms Sarah Robson ("Ms Robson"), whilst the Respondent was represented by Ms Beverley Wootton ("Ms Wootton") - Finance Manager for CP Bigwood the managing agents, Ms Rachel Allen ("Ms Allen") - Property Manager of CP Bigwood, Ms Anna Liggins of Brethertons Solicitors and Mr James Sandham, Counsel, of Arden Chambers ("Mr Sandham").

6. The Square on the Square comprises a development of 22 properties arranged around a central courtyard. The Property is a ground floor maisonette situated at the front of the development.

### **The Law**

7. The Act provides:

#### **Section 27A Liability to pay service charges: Jurisdiction**

- 1) An Application may be made to a Leasehold Valuation Tribunal (now the First-tier Tribunal Property Chamber (Residential Property)) for a determination whether a service charge is payable and, if it is, as to –
  - a) the person by whom it is payable;
  - b) the person to whom it is payable;
  - c) the amount which is payable;
  - d) the date at or by which it is payable, and
  - e) the manner in which it is payable.
- 2) Subsection (1) applies whether or not any payment has been made.
- 3) An Application may also be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to –
  - a) the person by whom it is payable,
  - b) the person to whom it is payable,
  - c) the amount which is payable,
  - d) the date at or by which it is payable, and
  - e) the manner in which it is payable.
- 4) No Applications under subsection (1) or (3) may be made in respect of a matter which –
  - a) has been agreed or admitted by the tenant;
  - b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
  - c) has been the subject of determination by a court, or
  - d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- 5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to these Applications.

### **Section 20c Limitation of service charges: costs of proceedings**

- 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 leasehold valuation 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 person specified in the application.

### **Authorities referred to in this matter**

8. *Gilje & Others v Charlegrove Securities Ltd* (2003) EWHC 1284 (Ch); (2004) 1 All ER 91 referred to as "Gilje".

*London Borough of Brent v Shulem B Association Ltd* [2011] EWHC 1663 (Ch) referred to as "Shulem".

*Redrow Homes (Midlands) Ltd v Hothi & Others* [2011] UKUT 268 (LC) referred to as "Redrow Homes".

### **The Initial Hearing**

9. A Hearing was held after the inspection on 19 March 2014 at the Tribunal Hearing Suite, Priory Court, Birmingham. After opening the Hearing, it was quickly apparent to the Tribunal that neither the Applicant nor the Tribunal had documentation that the Respondent was intending to rely on in making their case.
10. These included the following:
  - Service charge demands
  - Balancing demands
  - Copies of Invoices from Clement Keys Chartered Accountants confirming accounts preparation
  - Service charge accounts
11. After a short adjournment, it was decided that the matter would be reconvened at a later date in order to give the Applicant the opportunity of considering the documentation and further to allow a period for constructive negotiations between the parties.

## The Reconvened Hearing

12. The reconvened Hearing was again held at the Tribunal Hearing Suite on 20 May 2014. Present at the Hearing were those parties who had attended the inspection in March, as detailed above.
13. At the reconvened Hearing, and also in a written statement, Miss Robson, on behalf of the Applicant, stated that she was of the opinion that the recent demands for full and final payment of outstanding service charge amounts in respect of the Property, by CP Bigwood on behalf of the Respondent, were in direct contravention of the Landlord & Tenant Act 1985 section 20B – the Limitation of Service Charges; time limits on making demands. Pursuant to section 20B (1) of the Act, a landlord has 18 months to demand payment of costs as service charges. The 18 month period runs from the date on which the landlord incurs these costs. If a demand for payment is not made in time, then by virtue of section 20B (2) of the Act, the landlord can preserve its right to payment if, within 18 months from the date in which it incurs the costs, it notifies the tenant in writing that these costs have been incurred and that the tenant will subsequently be required under the terms of his or her lease to contribute to them by way of service charge. Miss Robson stated that she believed that the demands for the amounts outlined in her statement had not been served within the correct legislative timescales, as required by the section 20B stipulation, and that no section 20B notices had been served to date.

To summarise the payments in question were as follows:

1/7/07 to 31/12/07  
2 payments of £187.68

1/1/08 to 31/12/08  
4 payments of £187.68

1/1/09 to 31/12/09  
3 payments of £187.68

1/1/10 to 31/12/10  
1 payment of £187.68

1/1/11 to 31/12/11  
4 payments of £216.36

1/1/12 to 31/09/12  
3 payments of £220.63

14. A synopsis of the financial management of the development and related matters thereto was provided by Miss Robson. It was indicated that the first demand for payment, in the sum of £375.37, was received in December 2006 after the purchase of the Property in September 2005. This demand was issued by Parkstone

Developments, the original developer. The demand was for 6 months service charge payable in advance from 1 January 2007 – 30 June 2007 to be payable by 13 December 2006, giving the Applicant 13 days to provide payment which in Miss Robson's opinion was in contravention of Clause 1 of the Fifth Schedule of the Lease which states as follows:

*“...the interim charge shall be paid to the Landlord by equal quarterly payments in advance on the 1st day of January, April, July and October.”*

15. In addition, no certified service charge accounts for 2005 accompanied the letter for the period 2005 – 2006.
16. Miss Robson stated that the next correspondence received by the Applicant was from Curry & Partners in March 2009, who had subsequently been appointed as managing agents in respect of the Development. Included within the introductory correspondence was a service charge demand requesting payment in advance for the period 1 April 2009 – 30 June 2009 for £187.68. Again no service charge accounts were provided for the years 2006, 2007 or 2008. When this was queried with Curry & Partners by the Applicant, he was told that the information would be forthcoming; however, Miss Robson stated that it had never been received. On 31 July 2009, Diane Taylor of Curry & Partners wrote to the Applicant stating that the recently issued request for overdue service charge had in fact been issued in error and confirmed that Curry & Partners were still in the process of obtaining all the financial information from Parkstone Developments and would, upon receipt, revise individual service charge accounts.
17. In February 2010, Curry & Partners issued a service charge demand for the period 1 April 2010 – 30 June 2010 and this, Miss Robson contended, was the first demand received in that year. At that time, the Applicant had not received any certified service charge accounts since he had acquired the Property, nor had any arrears been chased. In July 2010, a second quarterly service charge demand was issued for the third quarter of the year and, on 12 August 2010, a further demand was issued for the final quarter of the year. Demands were not accompanied by any certified service charge accounts.
18. On 31 March 2011, Curry & Partners issued a demand to the Applicant for the service charge period 1 January 2011 – 31 March 2011 and 1 April 2011 – 30 June 2011. This correspondence was sent directly to the Property, rather than being sent to the Applicant's correct address which was noted on the service charge demand. The percentage charge relating to the Property had also changed from 8%, specified on the lease, to 9.6%, with no explanation.
19. On 12 September 2011, a balancing service charge was issued from CP Bigwood for the period 1 January 2008 – 31 December 2008 and certified service charge accounts for the year ended 31 December 2008 were enclosed. These were the first certified accounts received since the Applicant purchased the Property. Subsequently CP Bigwood wrote to the Applicant detailing a service charge estimate

for the year ending December 2012. This letter stated that an invoice was enclosed for the on account charges relating to the Property due 1 January 2012. On that invoice no outstanding balances were shown.

20. On 16 May 2012, Adrian Archer (of CP Bigwood) wrote to the Applicant outlining overall service charge arrears of £4,862.89, with no accompanying statement or breakdown of charges. Payment in full was demanded within 7 days, in respect of the arrears accrued between 18 November 2005 and 30 June 2012. When the Applicant queried this demand he was told by Mr Archer that more detail would be provided in connection with the same, including a breakdown.
21. The Applicant's Statement indicated that total service charges for the Development were substantial and certified service charge accounts for the year ended 31 December 2012 indicated total arrears of £24,717.54. Miss Robson was of the view that there was a direct correlation between the service charge deficit and recent demands issued to the Applicant for full and final payment of outstanding arrears, in an attempt to rectify the service charge deficit. Continuing, she believed that the demands had been made erroneously and without full interrogation and explanation and with no explanation of the Respondent's accountability for the management of these arrears and reasoning behind such demands.
22. On 24 July 2012, a further demand was issued by CP Bigwood outlining arrears totalling £5,078.62. This letter was accompanied by a statement detailing in full all service charges due on the Property between 2006 and June 2012. Seven days were provided for payment, with a threat of legal action if no payment was received. At this point, the Applicant was only in receipt of certified service charge accounts for the years ending 31 December 2006, 2007 and 2010.
23. Miss Robson stated that, at the escalation of the matter, C P Bigwood did acknowledge some demands had not been served in time and subsequently that some charges were not recoverable. In the first instance, they adjusted the Applicant's account by reimbursing balancing charges, on the basis that Section 20B only related to balancing payments. However, Miss Robson advised CP Bigwood that the Gilje authority had now been superseded by a more recent case, Shulem, and that accordingly this meant that all charges shown on the statement at Appendix B of the Applicant's Written Statement were subject to section 20B.
24. Upon being advised of Miss Robson's opinion of the above, CP Bigwood agreed to review the account charges and then agreed to re-credit charges for the periods that had been highlighted in orange on the Applicant's Written Statement. Miss Robson advised the Tribunal that this was the final communication from CP Bigwood and that they had not provided a suitable explanation as to why they considered the other charges were outside the scope of section 20B.
25. Of the documents comprising the Respondent's second bundle, the service charge and balancing demands were of particular contention as these were effectively documents that Miss Robson alleged that the Applicant had never received. In

addition, Miss Robson pointed out that some of the older invoices showed an address for the Applicant relating to a property that had only been purchased after the date shown on the invoice and additionally that the demands were on CP Bigwood headed paper at a time when they were not in fact the managing agents.

26. On the Applicant's behalf, and in summary, Miss Robson said that demands had not been produced, that the burden of proof of service had not been demonstrated by the Respondent and that the mismanagement of the development by CP Bigwood and lack of communication had led the parties to this point.
27. On behalf of the Respondent, Mr Sandham initially offered his opinion in respect of the two authorities stated by Miss Robson – Gilje and Shulem. Mr Sandham indicated that, in his view, Gilje only applied to interim demands, it did not apply to payments on account. On the basis of Gilje, he therefore contended that compliance with section 20B is irrelevant in this matter other than in relation to the sums demanded as balancing charges. In addition, he stated that Shulem had no impact on this matter.
28. With regard to the late production of service charge certificates, Mr Sandham stated that the failure to serve a valid certificate only had the effect of removing the entitlement of the Respondent in respect of the deficit charge demanded. He quoted the Redrow Homes authority in this regard.
29. Mr Sandham confirmed that the Respondent, in addition to agreeing that any balancing service charges to the end of 2009 were not recoverable due to section 20B of the Act, was also willing to waive any balancing service charge which may have been due to it at the end of the 2010 service charge period.
30. In relation to the issuing of service charge statements and accounts, Mr Sandham called as a witness Miss Wootton, who had also provided a Statement, as a witness. Miss Wootton explained that the demands detailed in the Respondent's second bundle were produced by a computerised accounts system which, when producing historic demands, would always use the Applicant's current address and that identical copies of the invoices, even to include the appropriate headed paper, could not therefore be produced.
31. In relation to Miss Robson's contention that the Applicant had only received the documents provided within the Applicant's bundle, Mr Sandham challenged the same and stated that, as the Applicant had not given any evidence and could not be cross examined, the Tribunal must consider that on the balance of probabilities the invoices were sent. Accordingly, he was of the opinion that the amounts (allowing for the conceded adjustments) were due.
32. Mr Sandham acknowledged that CP Bigwood, and to an extent Curry & Partners, inherited "a mess" which took a significant period of time to sort out and further that all service charge certificates were not issued in a timely manner.



## **The Tribunal's determination**

33. The fundamental points for the Tribunal to determine are whether or not it considers that the various service charge balancing demands were served on the Applicant and whether section 20(B) would be applicable to the service charges in dispute.
34. Usually service charges must be demanded within 18 months of the costs being incurred by the landlord. If this is not practical, within the same 18 month period, the tenant must be notified in writing, by way of a section 20B notice, that the costs have been incurred and that the tenant is, or will be required, under the terms of the lease, to contribute to them by payment of a service charge. Common law authorities have made it clear that these provisions are not relevant where payments on account are made and the actual expenditure does not exceed those amounts (i.e. when there is no further requirement for an additional balancing payment to be made).
35. The Gilje authority determined that section 20B had no application in relation to challenging service charges where payments on account are made to the lessor (the reasonableness of which fall to be dealt with under section 19(2) of the Act) and that section 20B only came into effect if the landlord had spent more than that demanded on account, in which case he had to raise a further demand within the 18 month period. The ethos behind section 20B was that a tenant should not be faced with a bill of expenditure of which he had not had sufficient notice.
36. In the Shulem matter, the landlord sought to rely on a letter sent to the lessees enclosing an indication of estimated total cost of the works and tenant's individual contribution as either a service charge demand under the terms of the Lease or a valid section 20B Notice. It was determined that the letter was not a valid demand under the lease nor did the letter amount to written notification under section 20B as this required the landlord to state the actual costs, whereas the letter made it clear that the invoice related to estimated costs. Mr Justice Morgan held that Section 20B required the landlord to state the costs it had actually incurred; however, in his ruling, he also confirmed the decision in Gilje, in that section 20B had no application in relation to matters where payments are made on account in respect of service charges.
37. The Tribunal considers that Mr Sandham's interpretation of Redrow Homes is correct, in which it was stated that a management company's failure to calculate a maintenance adjustment within a reasonable time would not result in the total loss of the right to charge any service charge for the year in question, unless there was an express provision to this effect in the lease.
38. The Tribunal notes that when the Property was purchased, the Applicant must have been aware, as the Lease makes this clear, that a service charge was due and would ultimately have to be paid. In addition, the Lease is clear that service charge would be requested on account, by way of quarterly payments in advance. However, the management of the Development in the early years was, as acknowledged by the

Respondent, poor, and at best would have been confusing for leaseholders including the Applicant.

39. With regard to the points raised by Miss Robson in paragraph 25, the Tribunal accepts the evidence given by Miss Wootton as to the reasons why some of the invoice dates and addresses do not correlate and, without the evidence of the Applicant directly, also accepts on balance that the invoices and demands were served with the acknowledgements made by the Respondent. In addition, the Tribunal notes that, although the Applicant clearly confirmed he had received some of service charge demands, he had made no payments to date.
40. In view of the legislation and stated authorities, the Tribunal determines that the following charges are due and payable:

| Date         | Sum               | Type | Period              |
|--------------|-------------------|------|---------------------|
| 16.07.08     | -£ 311.50         | BAL  | 28.09.05 - 31.12.06 |
| 16.07.08     | £ 30.79           | BAL  | 01.01.07 - 01.12.07 |
| 29.05.08     | £ 187.68          | ISC  | 01.07.08 - 30.09.08 |
| 06.02.09     | £ 187.69          | ISC  | 01.10.08 - 31.12.08 |
| 06.02.09     | £ 187.68          | ISC  | 01.01.09 - 30.03.09 |
| 26.02.09     | £ 187.68          | ISC  | 01.04.09 - 30.06.09 |
| 28.05.09     | £ 187.68          | ISC  | 01.07.09 - 30.09.09 |
| 10.09.09     | £ 187.69          | ISC  | 01.10.09 - 31.12.09 |
| 31.01.12     | -£ 266.43         | BAL  | 01.01.09 - 31.12.09 |
| 04.01.10     | £ 187.68          | ISC  | 01.01.10 - 11.03.10 |
| 25.02.10     | £ 187.68          | ISC  | 01.04.10 - 30.06.10 |
| 01.07.10     | £ 187.68          | ISC  | 01.07.10 - 30.09.10 |
| 18.08.10     | £ 187.69          | ISC  | 01.10.10 - 31.12.10 |
| 27.03.12     | -£ 94.14          | BAL  | 01.01.10 - 31.12.10 |
| 21.03.11     | £ 216.36          | ISC  | 01.01.11 - 31.03.11 |
| 21.03.11     | £ 216.36          | ISC  | 01.04.11 - 30.06.11 |
| 23.05.11     | £ 216.36          | ISC  | 01.07.11 - 30.09.11 |
| 22.08.11     | £ 216.36          | ISC  | 01.10.11 - 31.12.11 |
| 28.06.12     | -£ 4.90           | BAL  | 01.01.11 - 31.12.11 |
| 14.06.13     | -£ 144.24         | ADJ  | 01.01.11 - 31.12.11 |
| 27.10.11     | £ 220.63          | ISC  | 01.01.12 - 31.03.12 |
| 21.03.12     | £ 220.63          | ISC  | 01.04.12 - 30.06.12 |
| 29.05.12     | £ 220.63          | ISC  | 01.07.12 - 30.09.12 |
| 04.09.12     | £ 220.64          | ISC  | 01.10.12 - 31.12.12 |
| 14.06.13     | -£ 147.09         | ADJ  | 01.01.12 - 31.12.12 |
| <b>TOTAL</b> | <b>£ 2,687.29</b> |      |                     |

## **Costs**

41. The Applicant has applied for an order, in accordance with section 20C of the Landlord and Tenant Act 1985, that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.
42. As has been indicated above the management of the Development, particularly in the early years, was poor and from the evidence provided it appears the Applicant had made efforts to resolve the payment situation. These efforts were frustrated by agents, and personnel within the various firms, changing frequently. The Tribunal concludes therefore that the Applicant made efforts to settle this matter without recourse to a third party and only made the Application to the Tribunal when the Respondent threatened legal action.
43. The section 20C application therefore succeeds and the costs incurred in dealing with this Application by the Respondent are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

## **Appeal**

44. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward  
(Chairman)

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