

10471



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

Case Reference : CAM/33UF/LLC/2014/0001

Property : Flat 14, Dormy House, 2 Cromer Road, Sheringham,
Norfolk NR26 8RP

Applicant : Bryan Alan Parsons (acting in person)

Respondent : Fairfield Rents Ltd

Representative : James Davies, counsel instructed on behalf of
Urbanpoint Property Management Limited

Type of Application : For an order that all or any of the costs incurred by
the landlord in connection with proceedings under
Case Reference CAM/33UF/LSC/2014/0024 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 by the tenant
[LTA 1985, s.20C]

Tribunal : G K Sinclair & G F Smith MRICS FAAV REV

Determination date : Wednesday 3rd December 2014

Date of Decision : 15th December 2014

DECISION FOLLOWING PAPER DETERMINATION

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- Material statutory provisions paras 4–5
- Findings on points raised by the parties paras 6–16

Summary

1. By this application, which follows on from an earlier tribunal decision under Case Ref CAM/33UF/LSC/2014/0024, the applicant seeks an order under section 20C concerning his own flat 14, Dormy House (the subject premises under that earlier application) but without affecting any other leaseholder.
2. Mr Parsons advances four points which he argues justify the making of such an order, but the respondent challenges each one and raises a fifth which goes to the tribunal’s jurisdiction to entertain the application at all.
3. For the reasons which follow the tribunal declines to make the order sought but would respectfully suggest that Mr Parsons is in fact barking up the wrong tree, as the respondent would appear anxious to recover its costs directly from him (under the terms of his lease) and not against the leaseholder body as a whole as one element of the collective service charge.

Material statutory provisions

4. Section 20C of the Landlord and Tenant Act 1985 (as amended) provides that
 - (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 tribunal¹ or the First-tier 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 the 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;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the 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

¹ Section 20C extends to both England and Wales. The devolved Welsh Assembly has jurisdiction in this area and has retained its own Leasehold Valuation Tribunals and Residential Property Tribunals, the First-tier Tribunal (Property Chamber) having jurisdiction only in England

the application is made after the proceedings are concluded, to the 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.
5. The earlier proceedings had commenced as a money claim by the landlord in the County Court, by which it sought to recover service charges and unspecified administration charges. The court purported to transfer the matter to the tribunal. By section 176A of the Commonhold and Leasehold Reform Act 2002
- (1) Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court –
 - (a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;
 - (b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.

Subsection (2)(c) specifies the Landlord and Tenant Act 1985 as one of the Acts to which this provision applies.

Findings on points raised by the parties

6. By consent the application was dealt with by way of written submissions, those before the tribunal comprising :
- a. The application form and detailed grounds of application in box 13, plus a copy of the lease and the earlier tribunal decision
 - b. A letter from the applicant to the respondent dated 10th September 2014
 - c. The respondent's submissions (settled by counsel) dated 2nd October 2014
 - d. The applicant's submissions in reply dated 15th October 2014.
7. The respondent raises a preliminary point which goes to the very jurisdiction of the tribunal to make the order sought. The earlier proceedings were referred to the tribunal by the County Court, and the question identified as requiring its determination was the reasonableness and payability of service charges from a date unknown and falling due on or before the issue of the claim on 26th September 2013. The tribunal having determined that question by its decision dated 9th July 2014 (as later adjusted by a correction certificate dated 18th August 2014) the other aspects of the claim, including the issues of interest, costs and time for payment, were transferred back to the court.² Should the respondent wish to add the costs of the earlier proceedings to any annual service charge it would necessarily be to the charge for a year subsequent to that or those in issue, and not therefore part of the court proceedings referred to the tribunal.
8. The tribunal notes also that it appears to be the intention of the respondent to recover its costs against the applicant directly under paragraph 4 (ii) of the

² See paragraph 41 of the decision

Second Schedule to the lease, namely all charges, costs and expenses incurred or suffered by the lessor arising out of or in connection with or incidental to any breach of any of the covenants on the part of the tenant and any steps taken in contemplation of or in connection with the preparation and service of a notice under sections 146 or 147 of the 1925 Act. Non-payment of the service charge is a breach (even though the tribunal determined that the amount lawfully due was much lower than that initially claimed). The applicant had paid nothing at all.

9. Recovery of costs under paragraph 4(ii) of the Second Schedule is a matter for the court and not this tribunal purporting to exercise a jurisdiction under section 20C, and as “the proceedings” - rather than the determination of a “question” - were (or perhaps still are) before the court section 20C(2)(a) in all likelihood requires the application to be determined by the County Court.
10. This tribunal therefore declines to make the order sought by the applicant but, to assist the court, offers its views on the various points made by Mr Parsons.
11. The applicant’s point 1 is that the lease gives no provision for either party to claim costs for service charge disputes, although he goes on to refer to paragraph 2 of the Second Schedule, which mentions arbitration. Arbitration is a consensual means of dealing with a dispute that would otherwise be referred to the courts. Acting under the powers vested in it by the Arbitration Act 1996, section 61, the arbitral tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.
12. In any case, although the wording of the Fourth Schedule is not as clear as it could be, it is arguable that in seeking to enforce payment by the applicant of the lessor’s costs of the matters set out in paragraphs 1, 5, 6 and 7 of the Third Schedule (including the costs of solicitors) those costs “also include all costs and fees in taking steps to preserve or improve the property”, for without taking action to enforce payment by all lessees there will be a deficit in the service charge account and the condition of the property will not be preserved.
13. As to the applicant’s second point, the fact that the original claim was higher than the sum awarded should not prevent the respondent from recovering its costs. The applicant had paid nothing, nor made an offer which beat the sum which the tribunal determined to be due and payable.
14. As to his third point, the fact that the applicant may have had an arguable point on some issues does not mean that he succeeded, for example on the issue of the appropriate percentage of the works attributable to structural works.
15. As to his fourth point, the issues raised by him here were dealt with at the earlier hearing and decision. It is also pertinent that the applicant, the only lessee who was refusing to pay, considers that the fact that he wished to challenge some issues (but on some of which he failed) justifies him in being exempted from liability to pay his due share of the cost if added to the global service charge, but he does not apparently consider it unfair that the blameless lessees of other flats should be subjected to a costs liability almost entirely of his making. Mr Parsons seems not to have sought legal advice at any stage, nor to have realistically assessed the merits of his case.

16. To repeat what the tribunal has already said in paragraph 10 above, it declines to make any order under section 20C on the ground of want of jurisdiction, and it offers the detailed observations set out in paragraphs 11 to 15 merely by way of assistance to the court – should that be necessary.

Dated 15th December 2014

Graham Sinclair

Tribunal Judge