UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges -- condition precedent to the lessee's liability -- whether lessee prevented by estoppel by convention or waiver from relying upon the condition precedent

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

(1) PETER JAMES BUCKLITSCH
(2) ROSALYN CELIA BUCKLITSCH

Appellants

and

MERCHANT EXCHANGE MANAGEMENT COMPANY LIMITED

Respondent

Re: 13 Merchant Exchange,
Skeldergate,
York
YO1 6LT

Before His Honour Judge Huskinson

Decision given upon written representations

The following cases are referred to in this decision:

Clacy v Sanchez [2015] UKUT 0387 (LC)
Birmingham City Council v Keddie [2012] UKUT 323 (LC)
Republic of India v India Steam Ship Co Limited ("the Indian Endurance and The Indian Grace") [1998] AC 878
Mitchell v Watkinson [2014] EWCA Civ 1472
Stena Line v Merchant Navy Ratings Pension Fund Trustees [2010] EWHC 1805 (Ch)

DECISION

1. This is an appeal from the decision of the First-tier Tribunal Property Chamber (Residential Property) (hereafter "the F-tT") dated 7 December 2015 whereby the F-tT gave a decision regarding the recoverability by the respondent as landlord from the appellants as tenants of certain service charges (and also administration charges) in respect of 13 Merchant Exchange, Skeldergate (the flat) which the appellants held from the respondent as lessees upon a long lease at a low rent.

2. The appeal comes before the Upper Tribunal pursuant to section 11 of the Tribunals, Courts and Enforcement Act 2007. Section 12 provides that if the Upper Tribunal, in deciding such an appeal, finds that the making of the decision by the F-tT involved the making of an error on a point of law then:

> "(2) The Upper Tribunal –
>
> (a) may (but need not) set aside the decision of the First-tier Tribunal, and
>
> (b) (if it does) must either –
>
> (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
>
> (ii) re-make the decision
>
> (3) In acting under sub-section (2)(b)(i), the Upper Tribunal may also –
>
> (a) direct that the members of the First-tier Tribunal who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside;
>
> (b) give procedural directions in connection with the reconsideration of the case by the First-tier Tribunal."

3. For the reasons set out below I conclude that the F-tT did make an error of law and its decision must be set aside. In these circumstances I must decide whether the case must be remitted to the F-tT or whether I can remake the decision. The present appeal is proceeding, with the consent of the parties, as an appeal by way of review which is to be decided upon written representations. Upon such an appeal I cannot, upon the material before me, make the necessary findings of fact which will be required for the decision to be remade. It therefore is necessary that the case is remitted for reconsideration by the F-tT. In these circumstances I propose to set out my reasons for this decision fairly briefly.

4. The lease under which the appellants hold the flat from the respondent is not before me. I understand the respondent is a management company owned by the leaseholders, the appellants being shareholders in the respondent (along presumably with the other leaseholders). I understand the flat may recently have been sold by the appellants to a purchaser, but for the purpose of the present appeal nothing turns upon that.

5. The question before the F-tT, so far as concerns service charge, was as regards what if anything was recoverable by way of service charge by the respondent from the appellants for the two years ending 24 December 2014 and 24 December 2015. Bearing in mind the date of the application to the F-tT, the claim for service charge in respect of the year ending 24 December 2015 must have been for payment of the on account instalments of service charge provided for by the lease. It is not entirely clear to me whether this is also the case for the claim for service charge for the year ending 24 December 2014, but I assume that this claim is also for the on account service charge rather than for a final amount.

6. The F-tT set out some relevant provisions regarding service charge in paragraph 16 and 17 of its decision, including certain comments regarding apparent errors of drafting, which are in the following terms:

> "16. Paragraph 22 makes provision for the Tenant to pay for the Landlord's costs of carrying out the services provided under Schedule 7. Paragraphs 23 and 24 provide for the mechanics of payment:
>
> 23. The Tenant shall on the date of this lease and thereafter on each quarter day (namely 25 March, 24 June, 29 September and 25 December) during the Term pay to the Landlord on account of the Tenant's obligations under paragraph 22 of this Schedule an advance amounting to:
>
> 2.3.1 for the period for the date of this lease to [*sic*]
>
> 2.3.2 one quarter of the proportionate amount (as certified in accordance with paragraph 12 of Schedule 7) due from or payable by the Tenant to the Landlord for the accounting period to which the most recent notice under paragraph 13 of Schedule 7 relates.
>
> 24. The Tenant shall within 21 days after the service by the Landlord on the Tenant of a notice in writing stating the proportionate amount (certified in accordance with paragraph 13 of Schedule 7 and due from the Tenant to the Landlord pursuant to paragraph 22 of this Schedule for the accounting period to which the notice relates) pay to the Landlord (or be entitled to receive a credit to his account from the landlord) any balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Tenant to the Landlord pursuant to paragraph 23 during that period.
>
> 17. Two comments may be made about this provision. Firstly it seems likely that it was intended that paragraph 2.3.1 was intended to be completed with some reference to date at the end of the first or second year of the lease and make provision for a fixed amount of payment for that time period. That was clearly overlooked and the term was not completed. Secondly the references to paragraphs 12 and 13 in Schedule 7 are clearly wrong and should be references to paragraphs 13 and 14."

7. The F-tT also set out certain provisions from schedule 7 of the lease regarding the obligations of the landlord which were in the following terms:

"11.1 The Landlord shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for further expenses liabilities and payments whether certain or contingent and whether obligatory or discretionary.

11.2 …

12. The landlord shall keep proper books of accounts of all costs and expenses incurred by it in carrying out its obligations under the Schedule or otherwise in relation to Merchant Exchange except in paying the rent reserved by the Head Lease and an account shall be taken on 31 December 2004 and on 31 December in every subsequent year during the Term and at the end of the Term of the amount of those costs and expenses incurred since the commencement of the Term (or since the date of the last preceding account as the case may be) after deducting interest received (if any) on cash in hand.

13. The account referred to in paragraph 11 [*sic*] shall be prepared and audited by a competent accountant who shall certify the total amount of the said costs and expenses (including the audit fee of the account) for the period to which the account relates and the proportionate amount due from the Tenant to the Landlord pursuant to paragraph 22 of Schedule 6.

14. The landlord shall within 2 months of the date to which the account is taken serve on the Tenant a notice in writing stating the total and proportionate amount specified by and certified by the accountant PROVIDED that all the covenants and obligations of the Landlord contained in or arising under this Schedule are subject to and conditional upon the same matters as are specified in the last paragraph of the Schedule 4."

8. For the moment I concentrate upon the question of the service charges which were claimed rather than the administration charges.

9. Various questions were raised regarding the service charges including the reasonableness of certain sums. These are not relevant matters for the purpose of the appeal. The point which arises on the appeal concerns the F-tT's decision upon a point which was raised by the appellants as to whether anything at all was payable by way of service charge – the argument raised being that nothing was payable because a condition precedent to any liability arising had not been fulfilled.

10. At the hearing before the F-tT neither party was legally represented. It appears that this argument on the part of the appellants (namely that a condition precedent to liability had not been fulfilled) was raised for the first time at the hearing.

11. After the hearing the F-tT issued further directions dated 24 July 2015. These directions reminded the parties that there had been a previous case before the F-tT concerning the same parties regarding service charges payable for earlier years (the 2014 decision). The F-tT had given a decision in that case regarding how much was payable by way of service charge by

the appellants to the respondent for certain service charge years up to and including 24 December 2012. In its further directions the F-tT noted that the present argument, namely non fulfilment of a condition precedent, had not been raised in the 2014 proceedings. The F-tT stated:

> "7. Having subsequently considered this argument, the Tribunal considers that it is possible, in the light of the rule in *Henderson v Henderson* as explained in *Johnson v Gore Wood* [2002] 2 A.C. 1. that raising this issue in the current proceedings is an abuse of process as it could have been raised at the previous tribunal. A copy of the decision in *Johnson v Gore Wood & Co* is attached to these further directions."

12. The appellants submitted detailed further submissions (drafted by counsel) in relation to this point.

13. By further directions dated 26 October 2015 the F-tT drew the parties' attention to the decision of the Upper Tribunal (Lands Chamber) in *Clacy v Sanchez* [2015] UKUT 0387 (LC) and asked for further submissions in the light of that case as to whether there had arisen from a course of conduct some equitable estoppel precluding the appellants from seeking to rely upon the condition precedent argument or whether the appellants had waived their right to insist upon this condition precedent.

14. In response to these directions the respondent indicated that it had had an opportunity to consider the decision in *Clacy v Sanchez* and that it did not have any further representations to make. The appellants submitted further detailed written submissions once again drafted by counsel.

15. By its decision dated 7 December 2015 (there having been a delay by reason of the unfortunate illness of the Judge) the F-tT decided:

(1) The service charges had not been charged in accordance with the manner provided for in the lease (in particular regarding the requirement of the preparation of audited accounts) and that this requirement was a condition precedent to liability.

(2) However this failure to comply with the condition precedent did not prevent the respondent from recovering the relevant service charges for the two years in issue. This is because, so the F-tT found, there had arisen an estoppel or waiver which prevented the appellants from insisting upon the condition precedent. In paragraphs 37 and 38 of the decision the F-tT stated as follows:

> "37. In this case there was not clear "meeting with previous lessees where it had been agreed that certification was not required" as there was in *Clacy*. But the decision in *Clacy* demonstrates no representation or promise is required, The respondents have been tenants for 11 years. They have never, until now, complained about the ways the accounts have been put together. They are shareholders in the applicant company. Thus Mr Bucklitsch was at the AGM of the Company on 11 December 2014. He raised issues including the water rates. The final accounts for 31 December 2013 were adopted

unanimously. (See the Minutes included in our bundle at tag 4(b)). Furthermore when he did seek to question the service charge in the 2014 decision no issue about the amounts was raised.

38. To use the words of H H Judge Cousins in *Clacy*, the respondents "have waived any right to resile from the position that has been adopted" for the last 11 years."

(3) The F-tT concluded that, as regards the potential abuse of process argument (see paragraph 11 above) it was not necessary for the F-tT to decide that argument and the F-tT therefore did not address it.

(4) The F-tT then gave its conclusion regarding the reasonableness of various items of service charge.

(5) Within the decision the F-tT also concluded that the administration charges claimed by the respondent were recoverable under the terms of the lease and were reasonable.

16. The F-tT granted permission to appeal to the appellants so far as their grounds of appeal involved arguments that the F-tT had wrongly interpreted or wrongly applied the relevant law.

17. Substantial written representations accompanied by legal authorities have been submitted by the parties. For the appellants the materials submitted includes:

(1) The grounds for appeal and the skeleton submissions in support of the application for permission to appeal.

(2) The appellants' statement of case for the appeal dated 23 February 2016.

(3) The appellants' written representations incorporating the appellants' reply to the respondent's statement of case dated 9 May 2016.

(4) The appellants' response to the respondent's written representations dated 8 June 2016.

The material submitted on behalf of the respondent includes:

(5) The respondent's statement of case opposing the appeal dated 13 April 2016

(6) The respondent's written representations and response to the appellants representations dated 31 May 2016.

18. As a preliminary complaint regarding the F-tT's procedure and decision the appellants contend that there has been procedural error or unfairness. They draw attention to the fact that pursuant to its first set of further directions the F-tT raised a point, not taken by the respondent, being a point potentially favourable to the respondent. By its second set of further directions the F-tT raised a further point, once again not taken by the respondent, being a point once again potentially favourable to the respondent. The appellants stated that the first appellant had raised concerned as to the regrettable "… impression of bias on the part of the Tribunal" by reason of the F-tT having raised issues, for the second time, that the respondent had not raised or otherwise sought to rely on.

19. In my judgment the F-tT cannot properly be criticised upon this basis in the present case. The question before the F-tT was how much was recoverable by way of service charge for the relevant two years. The appellants had raised for the first time at the hearing the argument that nothing was payable by reason of the failure to comply with a condition precedent regarding (putting it broadly) the audit and certifying of accounts and certifying the amounts of service charge. The F-tT was aware that both parties were appearing without legal representation. The F-tT was also aware that there had been an earlier 2014 decision when this point had not been raised by the appellants. I do not consider that it should be seen as a demonstration of bias for a F-tT to ask for assistance from the parties in circumstances where a point of law in its view potentially arises upon the facts before it, being a point of law of potential importance in the ultimate disposal of the case. I notice the observation in paragraph 22 of the appellants' written representations dated 13 August 2015 in relation to the first further directions issued by the F-tT. Here reference is made to the fact that the tenant (i.e. the appellants) had not in the 2014 proceedings raised the condition precedent argument. The appellants state:

> "… the Tribunal will of course note that the previous Tribunal members (necessarily including at least two experienced property professionals) did not identify the arguments themselves either (something which was within their power to raise of their own initiative in much the same way as this Tribunal has raised this abuse of process issue of its own initiative)."

I have considered the case of *Birmingham City Council v Keddie* [2012] UKUT 323 (LC) but I see nothing in that case justifying an allegation of improper conduct or bias on behalf of the F-tT for raising the potential abuse argument (and subsequently the potential estoppel/waiver argument) in the present case. In *Birmingham City Council v Keddie* the Leasehold Valuation Tribunal had determined whether or not it was reasonable to replace the old windows – this was a matter of fact which had not been raised by either party. However in the present case the F-tT were faced with a legal argument (namely the condition precedent point) raised for the first time at the hearing. The F-tT were entitled, in circumstances where they were concerned that on the facts as the F-tT perceived them to be there may exist legal reasons why this condition precedent argument could not properly succeed, to ask the parties to address them on these legal arguments.

20. The appellants made reference to the principles in relation to the establishment of an estoppel by convention as described by Lord Steyn in *Republic of India v India Steam Ship Co Limited ("the Indian Endurance and The Indian Grace")* [1998] AC 878 at 913–914:

> "[A]n estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption. It is not enough that each of the two parties acts on an assumption not communicated to the other. But … a concluded agreement is not a requirement."

21. The principles are further described in *Mitchell v Watkinson* [2014] EWCA Civ 1472 where the Court of Appeal at paragraph 48 referred to two judgements of Briggs J (as he then was) and quoted from the second namely *Stena Line v Merchant Navy Ratings Pension Fund Trustees* [2010] EWHC 1805 (Ch) at paragraph 134:

> "In the present case, counsel were content to accept, subject to one small adjustment proposed by Mr Spink, the summary of the relevant principles in paragraph 52 of my judgment in Benchdollar , after a review of the relevant authorities….. The summary is as follows:
> "…. the principles applicable to the assertion of an estoppel by convention arising out of non-contractual dealings, to be derived from Keen v. Holland , and the cases which comment upon it, are as follows:
> i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them.
> ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it.
> iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.
> iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.
> v) Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position."
>
> 137. Mr Spink's suggested adjustment was to part (i) of that summary, where I suggested that the common assumption must be "expressly shared between them". Mr Spink submitted that the crossing of the line between the parties may consist either of words, or conduct from which the necessary sharing can properly be inferred, relying on note 2 at page 180 of Spencer Bower (op. cit.) and *The August Leonhardt* [1985] 2 Lloyd's Rep 28 at 34–5. I accept that submission."

22. In summary the appellants submitted that the brief findings of fact made by the F-tT in paragraphs 37 and 38 of its decision (see paragraph 15(2) above) were insufficient to justify a finding of estoppel by convention.

23. The respondent in its submissions seeks to uphold the decision of the F-tT by reference to the facts which the F-tT did find. In paragraph 12 of its submissions dated 13 April 2016 the respondent recognises that the F-tT (after setting out certain facts in paragraph 37 of its decision) has not then identified specifically the basis upon which it considered an estoppel to have arisen. The respondent seeks to make good the finding of an estoppel and of waiver by reference to facts as perceived by the respondent and said to be capable of being found in the documents that were before the F-tT and/or in the evidence before the F-tT.

24. The present appeal proceeds by way of a review upon written representations. I have, of course, received no oral evidence. Nor do I have copies of the witness statements or the documentation that was before the F-tT. Instead I have arguments from the respondent that, properly appreciated, the evidence in the case can give rise to an estoppel by convention/waiver. I have arguments from the appellants that this is not so. The present appeal can only be decided upon the material before me.

25. In the present case the F-tT has found the estoppel by convention and/or waiver on the basis of the facts summarised in paragraphs 37 of its decision. These facts are: that the appellants have been tenants for 11 years; that they have never until the present case complained about the ways the accounts have been put together; they are shareholders in the respondent; that the first appellant was at the AGM of the respondent on 11 December 2014; that he raised issues including the question of water rates; that the final accounts for 31 December 2013 were adopted unanimously; and that when the appellants did seek to question the service charges in the 2014 decision no issue about the accounts was raised.

26. With respect to the F-tT I do not consider that these facts, without more, can give rise to an estoppel (whether by convention or otherwise) and/or waiver such as to disentitle the appellants from relying upon the condition precedent point. The facts as found are not sufficient to show that the various matters needing to be established, as recognised in the citation in paragraph 21 above, are established. The present case can be contrasted with that of *Clacy v Sanchez* where, as recorded in paragraph 32 of the Upper Tribunal decision, the F-tT had made findings of fact in relation to a significant meeting which had been held regarding how that property was to be managed. Also in the present case it is unclear to me what documents in what form were received when by the appellants in relation to any allegedly relevant service charge.

27. I conclude that the decision of the F-tT must be set aside.

28. I do not have enough evidence upon which to remake the decision.

29. The matter must be remitted for further consideration by the F-tT.

30. I notice that the potential argument referred to by the F-tT as the abuse of process argument (see paragraph 11 above) was not considered at all by the F-tT. I also notice that the parties recognise that if the present appeal, in relation to the estoppel by convention/waiver argument, is allowed then this further argument will need to be determined (whether it is

described as abuse of process or issue estoppel or cause of action estoppel). In paragraphs 43 of its submissions dated 13 April 2016 the respondent stated that in these circumstances the case should be remitted back to the F-tT to consider this abuse argument (unless the Upper Tribunal were able to determine it on the present material -- which I cannot). Also the appellants in their submissions of 8 June 2016 at paragraph 6 e. state:

> "Since the FTT never actually considered this issue and since this appeal proceeds by way of a review of their decision it would be quite wrong for the issue to be now considered as part of this appeal. Lengthy submissions and evidence would be required."

The need for this abuse argument to be considered upon evidence is a further reason why I cannot remake the decision upon this appeal which is proceeding by way of review on written representations.

31. I therefore allow the appellants' appeal. I set aside the F-tT's decision. I remit the case to the F-tT for reconsideration. At such reconsideration it will not be open to the appellants to raise any arguments regarding the reasonableness of the service charges or administration charges -- the existing decision of the F-tT upon these points was not the subject of the present appeal and is to remain in place. The questions for the F-tT will be whether there exists an unfulfilled condition precedent which prima facie prevents the respondent from recovering anything by way of service charge for the service charge years ending 24 December 2014 and 2015; whether there has arisen any estoppel (whether by convention or otherwise) or waiver preventing the appellants from relying upon the condition precedent point; whether the appellants are entitled to raise the condition precedent point having regard to the abuse of process argument (as so described by the F-tT -- see paragraph 11 above); and how much (if anything) in the light of the F-tT's decision upon these points is properly payable by the appellants by way of service charges or administration charges for the relevant two years. The question of the administration charges will remain a point for decision by the F-tT because it appears the validity of the demand for the administration charges depends (anyhow in part) upon whether the claimed service charges were in fact due from the appellants. If the appellants succeed in their arguments that they are not liable for the service charges, then this finding may affect the question of the extent (if at all) to which the administration charges are recoverable. The question of whether there exists a condition precedent is included in the matters to be reconsidered because I cannot reach my own view upon the point on the material before me (I do not have a copy of the lease). Also the question of whether such condition precedent (if it exists) remains unfulfilled is to be reconsidered because on the material before me it is unclear what documents were considered when by what accountant(s) for what purpose.

32. I direct that each party is to prepare a single self standing statement of case and single self standing skeleton argument in relation to these issues. I refer to self standing documents because I can see complications if the documentation submitted makes reference back to numerous previous such documents.

33. The case is to be the subject of a rehearing, upon such oral and written evidence as each party chooses to adduce. I leave it to the F-tT to give any further procedural directions including regarding timetable for each procedural step and date of hearing. I direct that the

members of the F-tT who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside. (However on this latter point and in defence of the members who did make the decision, I refer to my finding in paragraph 19 above that the appellants' anxieties regarding bias are ill-founded)

34. There is also before the Tribunal an application on the part of the appellants that the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985 as amended in respect of the costs of the present proceedings before the Upper Tribunal. In their submissions dated 8 June 2016 the appellants elaborate upon their application under section 20C and ask that it should extend not merely to the costs of the proceedings before the Upper Tribunal but also to the costs of the proceedings before the F-tT regarding the issues which are the subject of this appeal. Upon this latter point I notice that no permission was granted to the appellants to appeal to the Upper Tribunal against the F-tT's decision regarding section 20C. I also noticed that on the remittal of this matter to the F-tT it will be open to the F-tT to consider the costs of these proceedings, so far as they are costs relating to proceedings before the F-tT. Accordingly the F-tT can itself reconsider the question of whether an order should be made under section 20C in respect of the costs before it. I therefore decline to make any order under section 20C in relation to the costs of the proceedings before the F-tT.

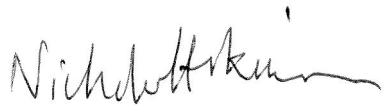
35. My jurisdiction under section 20C(3) is to make such order on the application as I consider just and equitable in the circumstances. The circumstances include the matters mentioned below. I notice that the respondent is a management company which is effectively owned by the leaseholders at the development. I do not know the current details of the financial position of this management company, but it is often the case that such a management company has effectively no assets beyond those which are obtained from the leaseholders for the purpose of providing the services. I notice from paragraph 54 of the respondent's representations dated 31 May 2016 that the respondent points out that it is a lessee controlled management company and has very little scope to raise additional funding. If the respondent is prevented from recovering the costs of these proceedings before the Upper Tribunal through the service charge clause it is unclear to me what if any assets are available for the respondent out of which such costs could be paid. I do not consider it would be just and equitable in all the circumstances to make an order under section 20C as requested by the appellants.

36. The parties will no doubt give careful consideration as to whether there is some way of reaching a satisfactory settlement so as to avoid further potentially expensive and time-consuming litigation between them. When considering these matters the parties may think it right to include within their considerations the question of whether there is any significance in either of the following possible concerns regarding how useful such litigation ultimately might be:

> (1) If the appellants were ultimately to succeed upon their argument that the failure to comply with a condition precedent meant that nothing was (yet) payable by way of service charge to the respondent in respect of the two relevant service charge years, a question might arise to the following effect, namely whether it is now open to the respondent to put right any failure to comply with the condition precedent by obtaining appropriately audited/certified documentation and by then making a demand for the

relevant service charge payments based upon these documents. I do not express any view as to whether such a claim on the part of the respondent could ultimately succeed, but if it were capable of succeeding then the present litigation (if resolved in favour of the appellants) might merely serve to postpone rather than extinguish the liability for the service charges on the part of the appellants for the two years in question.

(2) If the appellants succeed in their argument that, by reason of failure to comply with a condition precedent, no service charges at all are recoverable it is possible that this might result (especially if other lessees took a similar point) in the respondent becoming insolvent, which presumably would be disadvantageous to all the lessees including the appellants themselves, or their purchaser.



His Honour Judge Huskinson

13 December 2016