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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDORD AND TENANT ACT 1985 – SECTION 20C**

LON/00AG/LLC/2010/0002

Premises: Coram Mansions, 66 Millman Street, London WC1N 3EG

Applicants: Flat 2: Mr. M Garrett
Flat 3: Mr. A Nelson
Flat 4: Mr. B McArdle
Flat 5: Mr. A Uff
Flat 6: Mr. S Garner

Represented by: Mr. S Garner

Respondents: (1) Bertney Investments Ltd. (Landlord)
(2) Goldwyn Ltd & Mrs. M Saleh (Flat 1)

Represented by: Mr. J Coleman for the Landlord
Dr. Saleh for 2nd Respondent

Tribunal: Ms. LM Tagliavini, LL.M, DipLaw, BA Hons, Barrister
Mr. P Tobin, FRICS, MCI Arb
Ms. L Walter, MA (Hons)

Hearing Date: 7 June 2010

1. This is an application made pursuant to section 20C of the Landlord and Tenant Act 1985. The Applicants seek to limit the refusal by the Tribunal to exercise its discretion under section 20C in LON/OOAG/LSC/2009/0651, to the lessees of Flat 1 only, and direct that the lessees of Flats 2, 3, 4, 5, and 6 should not be required to pay any proportion of those legal costs added to the service charges.
2. In LON/OOAG/LSC/2009/0651, an application was made by the landlord, seeking a determination of the reasonableness and payability of service charges for the years 2004-2008. Only the lessees of Flat 1 were Respondents to that application, which was determined by the same constituted Tribunal as determines this current application. The Tribunal issued its decision dated 16/02/10 and determined that it would not exercise its discretion under section 20C in favour of the applicant tenant, the lessee of Flat 1. Subsequently, the Applicant now proposes to add the legal costs arising out of those proceedings to the service charges of all lessees in the proportion required by their leases; i.e. 1/6.
3. The current Applicants, the lessees of the non-participating flats in the previous application, now seek a declaration by the LVT that those (legal) costs should not be added to their service charges, as relevant costs. In support of this argument the Tribunal were referred to the consolidated appeals in Schilling & Schilling –and – Canary Riverside Development PTE; It was said there, that the Tribunal did have jurisdiction to make only some lessees pay costs added to the service charges; HHJ Rich stated:

“Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them.”

4. In this case, the Applicants asserted that they had not played any part in the previous proceedings, had paid all their service charges, and apart from a few minor items did not disagree with the sums charged on behalf of the landlord. As the current Applicants had played no part in incurring the landlord's costs, it was an unfair and unjust to be required to contribute towards them.

5. Mr. Coleman for the landlord, agreed in principle that it would be just and equitable for the Tribunal to exercise its discretion pursuant to section 20C. However, Mr. Coleman did not concede it was fair or reasonable to limit the landlord to 1/6 of the costs recoverable from the lessees of Flat 1 only.
6. Dr. Saleh on behalf of the lessees of Flat 1 indicated that he did not oppose the application and stated that he had accepted the Tribunal's decision in LON/OOAG/LSC/2009/0651, and was prepared to pay his share of the costs incurred.

Decision:

7. Section 20C states:

(i) 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 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.

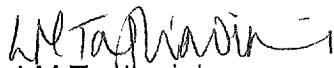
(2).....

(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."

8. It is the Tribunal's opinion that the wording of this section is sufficiently wide, so as to permit any tenant, whether or not they were a party to the original application, to apply for relief pursuant to section 20C of the Landlord and Tenant Act 1985. The Tribunal therefore accepts that it has jurisdiction to determine this 'stand alone' application, more commonly brought by parties to ongoing existing proceedings.
9. Having regard to the limited concessions made on behalf of the landlord, the Tribunal accepts Mr. Garner's submissions that, having regard to all the circumstances of this case, it would be just and reasonable for the Tribunal to exercise its discretion pursuant to section 20C and direct that those costs incurred arising out of legal proceedings in LON/OOAG/LSC/2009/0651 should not

considered as relevant costs for the purpose of determining the service charges payable by the lessees of Flats, 2, 3, 4, 5, and 6.

10. The Tribunal recognises that this may shift a perceived injustice from the non-participating tenants (lessees) in the original application to the landlord, as the extent of the service charges recoverable from the lessee of Flat 1 must, in the Tribunals' view be calculated in accordance with the terms of that lease. This in effect will require the lessee of Flat 1 to pay a 1/6 share of those costs, with the remaining 5/6 falling to be paid by the landlord.
11. The Tribunal did not decide the issue of the reasonableness of the legal costs claimed by the First Respondent, as this had not formed part of the original application. Although directions had been given by the Tribunal that a detailed breakdown of those costs should be prepared by the First Respondent, this had not been done, and only a superficial breakdown was provided. In light of the Tribunal's decision, the Tribunal is not now required to determine the reasonableness of those costs and therefore, the reasonableness of those costs will have to be subject to a separate application should the lessees of Flat 1 choose to pursue this matter.
12. The Applicants had also asked the Tribunal to determine whether any future costs associated with any proposed appeal to the Upper Tribunal by the lessees of Flat 1, should also be subject to the Tribunals' exercise of its discretion under section 20C. However, s20C(c) requires such application to be made to the Upper Tribunal and this Tribunal does not have the power to fetter the use of discretion by a higher Tribunal. In any event, Dr. Saleh informed the Tribunal that he was no longer pursuing an appeal to the Upper Tribunal and therefore this issue was no longer required to be determined.
13. In so far as any costs have been incurred arising out of this application, the Tribunal considers that having regard to the decision reached, and all the circumstances of this matter, that it would not be just and equitable to allow those costs to be added to the service charges of any of the lessees (including Flat 1).


Chairman: LM Tagliavini

Dated: 07/06/10