FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LAM/2015/0012**
Property	:	**The Canary Riverside Estate**
Applicant	:	**Various Leaseholders at Canary Riverside**
Representative	:	**In person**
Respondent	:	**Octagon Overseas Limited (1) Canary Riverside Estate Management Limited (2)**
Representative	:	**Trowers and Hamlins LLP**
Type of application	:	**Application under S.20c of the Landlord & Tenant Act 1985.**
Tribunal member(s)	:	**Ms. A. Hamilton-Farey Mr. L. Jarero BSc, FRICS**
Date and venue of hearing	:	**On the papers provided by the parties**
Date of decision	:	**17 March 2017**

DECISION

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Decision

(1) The tribunal makes an Order under S.20C of the Landlord and Tenant Act 1985 in that the respondents in the original application may not recover any of their costs of these proceedings from the service charges.

(2) It is understood from the applicant (leaseholders') bundle, that the landlord has retained monies from the service charges paid to the tribunal appointed manager in relation to a schedule of costs, within the applicants bundle [tab 12, page 100] and that schedule being supported by the various invoices [tab 13, pages 101-114]. Following the making of this Order, the respondents should reimburse the leaseholders' service charges, via the Manager, the total sum of £320,826.96.

The application

1. The applicants seek a determination pursuant to S.20c of the Landlord & Tenant Act 1985 that the landlords may not recover their costs of proceedings before the tribunal under case reference LON/00BG/LAM/2015/0012.

2. On 5 August 2016 the tribunal issued a decision appointing Mr. Alan Coates of HML Andertons as manager of the estate for a period of three years. Following on from that decision, the tribunal reviewed its decision on 15 September 2016. Various appeals were then raised and the matter was heard by the Upper Tribunal which issued its judgment on 30 September 2016. That decision confirmed the appointment of the manager, but did identify one specific area that might be the subject of an application under S.24(9) of the 1987 for a variation of the Management Order. A hearing of that application took place on 2 March 2017. A further hearing is listed for 4 and 5 April 2017 to determine what, if any, amendments are required to the existing Order.

3. As part of their original application the tenants also made an application under S.20c. This was not dealt with at the end of the substantive hearing, and was stayed at the request of the respondents who sought to judicially review the Upper Tribunal decision.

4. During a case management conference on 6 February 2017, it was agreed that the application under S.20c would be stayed awaiting the decision of the High Court on judicial review. The High Court refused permission in a decision of 6 February 2017. It is therefore appropriate that this application proceeds.

5. The parties agreed that the matter should be dealt with by way of written representations without the benefit of a hearing. Both parties made submissions for which the tribunal is grateful.

6. It is the applicants case that an Order under S.20c should be made due to the fact that:-

   (i) the respondents failed to respond in any meaningful way to the S.22 notice serviced in May 2014;

   (ii) the respondents failed to disclose all of the necessary documents on time and in accordance with directions;

   (iii) the respondents were responsible for delays to the substantive hearing date;

   (iv) That the respondents objected to the applicants' bundles and served their own bundle of witness statements that was not copied to the applicants.

   (v) That the applicants were successful in their application;

7. The applicants made reference to *Langford Court v Doren 2007 LRX 37*, in which HHJ Rich QC said; *'In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise'*

8. It is the applicants' case that it would be just and reasonable for an Order to be made.

9. The respondents say that no Order should be made against Octagon Overseas Limited because nothing in the final management order affects it and it has not lost any powers or functions, it exercised no management functions and is not criticised in the tribunal's decision.

10. The no order should made against CREM because;

   - The applicants chose to wait a year between the service of the S.22 notice and the application to the tribunal;

   - It is wrong to criticise the respondents in relation to the disclosure;

- It is wrong to criticise the respondents in relation to the production of their own bundles;

- That the applicants consented to one of the adjournments, and that the tribunal granted one of the adjournments over the objections of the applicants, and the respondents cannot be at fault for this tribunal acceding to the application;

11. The respondents say that the proper approach of this tribunal is to make no order but to leave the applicants to rely on their S.19 LTA 1985 rights when they have seen what costs the respondents wish to pass through the service charge.

12. The submissions of the parties have been helpful to the tribunal. However, the tribunal considers that an order should be made for the following reasons:-

    - The applicants cannot be criticised for waiting a year between the service of their S.22 Notice and the making of an application to this tribunal. The applicants had given sufficient opportunity for the respondents to comply with the Notice. This is a substantial development and many of the criticisms of the respondents related to long-outstanding repairs and maintenance issues. It was reasonable for the applicants to give the respondents an opportunity to make good those matters;

    - The applicants cannot be criticised for waiting due to the fact that they are litigants in person, although represented at the hearings, and have had to compile much of the information for the tribunal themselves. Their desire not to litigate unless necessary has to be commended and they have incurred substantial costs of their own, that they are unable to recover.

    - The suggestion that the applicants may exercise their rights under S.19 of the LTA 1985, only leads to more litigation and further costs for all parties (if opposed), and we take into account again the fact that the applicants have self-funded this application.

13. Although the respondents say that success should not be the driving factor, it is pertinent to take into consideration that the tribunal appointed the manager due to serious failings in the management of the estate. The decision was not over-turned on appeal to the Upper Tribunal or on an application for judicial review. It could therefore be said that the applicants 'won at every opportunity'.

14. This tribunal considers that the applicants had no alternative but to make an application; that application was successful and the applicants

should therefore not be penalised by having to bear the respondents' costs of their unsuccessful defence of the claim.

15. As to whether or not the tribunal should make an order against Octagon Estates as freeholder, as the applicants point out Octagon were at all times named as a respondent to the proceedings, and it is therefore correct that the order should apply to all respondents to these proceedings.

Tribunal:	Date:
Ms. A. Hamilton-Farey Mr. L. Jarero BSc FRICS.	17 March 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).