Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ("the Act") &
20C LANDLORD AND TENANT ACT 1985

Premises:	(1) St James Mansions, Mount Stuart Square, Cardiff Bay, Cardiff. (2) St Stephens Mansions, Mount Stuart Square, Cardiff Bay, Cardiff.
LVT ref:	LVT/0020/08/13
Applicants:	(1) St James Mansions RTM Company Limited (2) St Stephens Mansions RTM Company Limited
Respondents:	(1) Fairhold NW Limited (2)Peverel OM Property Management Limited
Determination:	13 December 2013
Tribunal:	Mr R S Taylor – Lawyer Chairman Mrs Ruth Thomas MRICS – Surveyor member

1. In our determination on the substantive issues of this matter, dated 13 November 2013, we invited submissions in respect of s.20C Landlord and Tenant Act 1985 by noon on the 27 November 2013.

2. The Applicants' submissions dated 25 November 2013 are date stamped into the Tribunal on the 28 November 2013 and the Second Respondent's are dated the 3 December 2013. The fact that both submissions are out of time does not, in this instance, bear upon our decision in any way.

3. s.20C Landlord and Tenant Act 1985, upon application by a tenant, invests in the Tribunal a discretion to block the contractual recovery of the landlord's costs of proceedings under service charge provisions in a lease "as it considers just and equitable in the circumstances."

4. Both parties referred us to the case of *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Limited* [2013] UKUT 0264 where HHJ Walden-Smith summarised the authorities in respect of s.20C. Her Honour stated,

> "[51] First, in *The Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000 His Honour Judge Rich QC set out the principles upon which a discretion under section 20C should be exercised:
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> > "28. In my judgment the only principle upon which the discretion should be exercised is to have regard to what is just and reasonable in all the circumstances. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings in which they arise…
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> > 30. Where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an Order under s.20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.

> 31. In my judgment the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust."

[52] In *Schilling v Canary Riverside Development PTE Limited* LRX/26/2005 His Honour Judge Rich QC said,

> "13. … the *ratio* of the [*Doren*] decision is "there is no automatic expectation of an order under s.20C in favour of a successful tenant. So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s.20C in his favour.
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> 14. … Weight should be given rather to the degree of success that is the proportionality between the complaints and the Determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other hand."

HHJ Gerald referred to one of his earlier decisions, *The Church Commissioners v Dedebai* [2010] UKUT 380 (LC), in which he set out various issues that the LVT may wish to consider in determining whether it is appropriate to make an order under section 20C. In so far as that judgment might be seen to prescribe the matters that the LVT ought to take into account, thereby super-imposing the various headings set out in CPR 44.3, I do not consider that would be the correct interpretation of the judgment. Whether a section 20C order is made is entirely discretionary and to be ordered to ensure that the right to claim as part of the service charge is not used in circumstances that make its use unjust. An LVT is not to undertake (as HHJ Gerald put it) a 'mini taxation' exercise.

> [53] While section 20C itself permits an order to be made with respect to all 'or any' of the costs, in my judgment a section 20C order should only be made where it would be unjust for the landlord to include all, or any part, of the costs in the service charge. It is ultimately, a matter for the LVT to exercise its discretion. The LVT may wish to look at the degree to which the tenant succeeded in its complaints, the conduct of the parties, and the degree of success on the issues, the eventual determination as to whether such an order ought to be made is one for the LVT to make exercising its own judgment having heard all the evidence and submissions. It would be an error to equate the exercise of that discretion with the more formulaic exercise that must be undertaken if costs are to be awarded in the civil courts pursuant to the provisions of part 44 of the Civil Procedure Rules."

5. The parties also referred the Tribunal to the case of *Kullar v Kingsoak Homes Ltd* [2013] UKUT 015 (LC) which is another case where it was emphasised that the LVT is entitled to consider not only the outcome of proceedings but also the conduct and circumstances of the parties.

6. In the St Stephens' case the Second Applicant was unsuccessful and will be liable for the Respondents' reasonable costs under s.88(3) of the Act in any event. Further, the Second Respondent makes some persuasive points in Mrs Khan's 20C submissions concerning very late delivery of the Applicants' expert evidence which did not go to the heart of the ultimate issues before the Tribunal.

7. In the St James' case the First Applicant was successful on a technical point. The result is that there is no requirement for the First Applicant to pay the Respondents' costs of the proceedings (see s.88(3)) which may result in the Second Respondent seeking to recover the costs via the service charge provisions in the lease.

8. However, the overarching difficulty we have here is that the “application” advanced pursuant to s.20C is made by two RTM companies and not tenants. It follows that these submissions, not advanced by any tenant, are bound to fail.

Legal Chairman

18 December 2013