

Service Charges: Consultation, demands, costs

Kimberley Ziya
Landmark Chambers

Introduction

- Residential service charges
- Statutory framework – **Landlord and Tenant Act 1985**
 - **s.18**: definition of “service charges” and “relevant costs”
 - **s.19**: test of reasonableness
 - **ss.20 & 20ZA**: consultation requirements
 - **s.20B**: time limit
 - **s.20C**: costs

Today's talk

- Three cases on consultation
- What s.20B means for service charge demands
- Costs – the effect of a recent decision on waiver of forfeiture

Consultation – Key concepts

- Qualifying works: “works on a building or any other premises”: **s.20ZA(2)**
- Qualifying long term agreement: “an agreement entered into by a landlord or superior landlord for a term of more than 12 months”: **s.20ZA(2)**
- Consultation requirements
 - Set out in the **Service Charges (Consultation Requirements) (England) Regulations 2003**
 - Failure to comply = contributions limited to **£100 per tenant** for QLTAs and **£250 per tenant** for QWs

Phillips v Francis [2014] EWCA Civ 1395

- Case on the meaning of qualifying works
- It is permissible to have “sets” of works – not an annual limit of £250
- Have to avoid artificial splitting up of works
- What constitutes a “set” is a common sense test:
 - Are the various works carried out in the same location?
 - Are they all the subject of a single contract?
 - Are they all done at the same time?
 - Are the items of work different in character from, or do they have no connection with, each other?

Corvan v Abdel-Mahmood [2018] EWCA Civ 1102

- Definition of QLTAs
- What does “for a term of more than 12 months” mean?
- Clause: *“The contract will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months’ notice by either party”*
- Court of Appeal: *“...the deciding factor is the minimum length of the commitment”*
- Applied in **Bracken Hill Court at Ackworth Management Co Ltd v Dobson** [2018] UKUT 333 (LC)

Trafford Housing Trust v Rubenstein [2013] UKUT 581 (LC)

- Service of consultation notices
- Consultation generally requires two periods of 30 days which run from “*the date of the notice*”
- This means the date it performs its function of notifying the tenant i.e. when it is received (deemed or actual)
- Proof of posting and proper address required if relying on **Interpretation Act 1978** for deemed receipt

Time limit for demands

- Special limitation period for residential service charges – **s.20B**
 - Must serve demand within 18 months of the date when you incur the costs
 - OR serve a s.20B(2) notice within the same period
- Brent LBC v Schulem B Association [2011] EWHC 1663 (Ch)
 - “Demand” = contractually valid demand
 - PTA granted but not pursued
- Skelton v DBS Homes (Kings Hill) Ltd [2017] EWCA Civ 1139
 - Apparent approval of Schulem B by the Court of Appeal
- **Watch this space:** No.1 West India Quay Ltd v East Tower Apartments, 24-25th February 2020

Costs – Stemp v 6 Ladbroke Grove Management Ltd [2018] UKUT 375 (LC)

- Freeholders of 69 Marina v Oram [2011] EWCA Civ 1258 – landlord entitled to costs of a SC dispute under a clause entitling them to costs “*incidental to the preparation of a s.146 notice*”
- Stemp – **spanner in the works?**
 - Right to forfeit arises at the point of alleged breach but cannot be exercised until there has been a determination by the tribunal
 - Can you waive the right before you can exercise it?
 - **UT said yes!**
- Why is this a problem?
 - Facts of Stemp itself – major works demand, disputed in FTT
 - Section 20B limitation on other SC costs being incurred

Questions?

© Copyright Landmark Chambers 2019

Landmark Chambers

Registered office:
180 Fleet Street, London
EC4A 2HG | DX: 1042 (LDE)

London

+44 (0) 20 7430 1221

Birmingham

+44 (0) 121 752 0800

Contact

clerks@landmarkchambers.co.uk

www.landmarkchambers.co.uk

 @Landmark_LC

Thank you for listening

kziya@landmarkchambers.co.uk

© Copyright Landmark Chambers 2019

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

 clerks@landmarkchambers.co.uk

 www.landmarkchambers.co.uk

Follow us

 [Landmark_LC](https://twitter.com/Landmark_LC)

 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers)