

USEFUL CASES – LANDLORD & TENANT

Roythornes property litigation case update

Chuan-Hui and others v K Group Holdings Inc and others [2021] EWCA Civ 403

A maintenance trustee, responsible under a lease for repairing a block of flats, was entitled to recover maintenance charges due from leasehold tenants pursuant to a management order made by the First-tier Tribunal prior to the trustee's appointment.

The court held that Sums recovered by a tribunal-appointed manager were not of a different nature than if recovered under the terms of the lease. Payments made by reference to the lease were "service charges" falling under the Landlord and Tenant Act 1985, and the fact that earlier charges had been recovered under a management order made no difference.

The facts of the case are as follows:-

- The building is a purpose-built block comprising commercial units, two flats on the ground floor and twenty-eight flats on the first to eighth floors (the Flats). Disputes about the management of the building, service charges and a collective enfranchisement claim have continued for several years.
- The Flats were held on an underlease where the maintenance trustee, rather than the landlord, was responsible for repairing the premises.
- The building needed substantial repair and maintenance. Service charge demands were levied which totalled in excess of £3,000,000 in relation to proposed major works. Scaffolding was purchased and remained around the building for several years. Some attempt was made to carry out the works but no real progress was achieved so in 2010 seven the leaseholders applied to the LVT (Leasehold valuation Tribunal, predecessor of the FTT) for the

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appointment of a manager under the Landlord and Tenant Act 1987 s.24 and for a determination of the playability of service charges under section 27A of the Landlord and Tenant Act 1985.

- The tribunal decided that the Manager (“M”) and the landlord (“L”) should be jointly appointed under s.24 as managers. M’s appointment was only to last 3 years (2010 – 2013). After that, the maintenance trustee would take over from M.
- Disputes about the service charge continued and in 2016, M and the maintenance trustee entered into a deed of assignment to transfer the entitlement to arrears of service charge from M to the maintenance trustee.
- Later that year, proceedings for recovery of arrears of service charges and ground rent of approximately £1 million were issued by M, the landlord and proprietor of two leases against the leaseholders. Of that sum, approximately £360,000 related to arrears accrued before the maintenance trustee had been appointed.
- The leaseholders argued that the maintenance trustee was not entitled to recover any arrears of service charge that arose during M’s appointment.
- The leaseholders submitted that after the expiry of a management order made by the FTT, the appointed manager had no further power to deal with payments arising during the term of that order unless specific provision had been made within the management order itself.
- They argued that payments made by leaseholders under a management order were not “service charges”, meaning that the purported assignment made by M to the maintenance trustee in 2016 was of no effect.
- They further challenged the FTT’s finding that the matter had not been pleaded.

Important point to note:-

The lease and the obligations set out in it to include payment of services charges continues notwithstanding the order, therefore, the new manager could enforce payment of arrears without needing an assignment. The arrears automatically accrued to them. On that analysis, it was not necessary to consider whether sums claimed through the management order were service charges within the Act.



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