



First Remediation Contribution Order granted under the BSA 2022

In *Batish and others v Inspired Sutton Ltd* [2023], the First Tier Tribunal granted the applicant leaseholders the first Remediation Contribution Order to be made under the Building Safety Act 2022.

The test set out in the BSA 2022

Under section 124 of the Building Safety Act 2022 (“**BSA**”), the First Tier Tribunal (“**FTT**”) may, on the application of an interested person (and subject to it being considered ‘*just and equitable*’ to do so) make a Remediation Contribution Order (“**RCO**”) in relation to a ‘*relevant building*’. As its name suggests, the purpose of a RCO is to require a company to make payments in connection with the remediation of relevant defects.

A RCO may be made against a landlord, a person who was a landlord at the qualifying time, the developer of the concerned building or any associated person. Associated persons include group companies, beneficiaries of a trust that holds the interest in the relevant building and partnerships.

A relevant building for the purposes of the BSA 2022 is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11m (or five storeys) high.

Background

Mr. Batish and seventeen other leaseholders applied for a RCO in the sum of c.£193k for the remediation of defects under fifteen separate leases in a high-rise self-contained block of flats at 9 Sutton Court Road, Surrey (“the **Property**”). The defects

included unsafe ACM and HPL cladding, and render on part of the facades. The balconies were also deemed to be a fire safety hazard.

On 27 September 2020, the leaseholders had been served with a section 20 notice under the Landlord and Tenant Act 1985 (the “**Notice**”). The Notice explained that the cost of the cladding works was to be funded by way of a government grant, but any works excluded from that grant would fall to be funded by the leaseholders by way of the service charge. As it turned out, the grant did not include the cost of balcony replacement and it was those costs which the leaseholders sought.

The leaseholders applied for the RCO against three respondents; the landlord and developer, Inspired Sutton Limited (“**Sutton**”), the landlord’s parent company, Inspired Asset Management Limited (the “**Parent Company**”) and the landlord’s directors, Tommy Lyons and James Friis (the “**Directors**”). The Parent Company was subsequently removed from the proceedings owing to the statutory protections afforded to it by virtue of it being in liquidation from the outset. The FTT also determined that the Directors did not fall within the definition of associated persons, as neither of them was a “*body corporate or partnership*”, meaning they were also removed from the proceedings. As for Sutton, it had failed to engage in the proceedings and, upon subsequent application by the leaseholders, was in fact precluded from taking part.

Held

The FTT made the RCO sought against Sutton, ordering it to reimburse the leaseholders in the sum claimed within 14 days of the order. The Award was to be divided amongst them in accordance with their service charge proportion charged pursuant to their respective leases.

The FTT found that: -

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- The costs the leaseholders sought to recover in respect of the remedial works for the defective balconies related to *'relevant defects'*.
- The external defects and balconies did constitute a *'building safety risk'* within the meaning of section 120(5) of the BSA 2022.
- The FTT found that the *'just and equitable'* test had been satisfied as it was proven that the leaseholders had been obliged to pay for works which ought to have been met by Sutton.
- Schedule 8 paragraph 2 of the BSA 2022 provides that no service charge is payable in respect of a relevant defect for which a relevant landlord is responsible. Accordingly, since Sutton was the developer and the landlord at the qualifying time, and was responsible for the relevant defects, the costs were *'not to be regarded as relevant costs to be taken into account'* in calculating the service charge.

depend on the ability of Sutton to satisfy the Award. It is important that any party seeking to bring an application for an RCO first considers the viability of their opponent before expending too much on the application process.

Analysis

This case provides a useful first insight into the steps the FTT will take in assessing claims for RCOs. Moving forwards, RCOs are set to prove an effective tool for leaseholders and other interested persons who wish to recover the cost of fire safety remedial work from those properly responsible, and many more RCOs are expected to be granted pursuant to the BSA 2022 in due course.

Whether in this instance the leaseholders' victory ultimately avails them of anything will of course

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