

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/24UF/LIS/2010/0038

Re: 30 Cornwell Close, Rowner, Gosport, Hants PO13 9QL

Applicant Grange Village Residents Association Limited

Respondent Samuel Ekmerechi Oparah

Date of Transfer to the Tribunal 9 April 2010

Date of Inspection 15 October 2010

Date of Hearing 15 October 2010

Venue Tribunal office, Chichester

Representing the parties For the Applicant:
Martin Growse - Countrywide Managing Agents
Ruth Campbell and Rachel Kimber-Leasehold Legal Services
The Respondent in person

Members of the Leasehold Valuation Tribunal:

M J Greenleaves
Miss C Barton MRICS

Lawyer Chairman
Valuer Member

Date of Tribunal's Decision: 23 November 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2007/08, 2008/09 and 2009/10, the following sums are reasonable sums for service charges for those years in respect of 30 Cornwell close, Rowner, Gosport in respect of which the Respondent is liable to pay a 0.95% share:

Year	Reasonable charges
2007/08	£88,346.64
2008/09	£73,624.61
2009/10	£96,455.77

2. Particulars of the calculation of the above sums are shown in the appendix annexed to this decision and reasons.

Reasons

Introduction

3. This was an application made by Grange Village Residents Association Limited (the Applicant) for a determination whether service charges claimed from the Respondent for the above years are reasonable and payable by the Respondent, the matter having been transferred to the Tribunal from the Portsmouth County Court (case number 9 PO03675) by order dated 8 December 2009 and received from the court by the Tribunal on 9 April 2010.

Inspection

4. On 15 October 2010 the Tribunal inspected the property in the presence of Mr Growse and Ms Kimber and the Respondent. The subject property is part of one of 6 blocks of flats (there being a total of 107 flats). The blocks were originally constructed for service personnel about 50 years ago. Access to upper floors are by means of shared external concrete stairwells and open walkways. The blocks appear to be in fair condition for their age and character. Construction of the blocks is believed to be of 'crosswall' type, with lightweight panels and cladding forming the front and rear elevations under flat roofs. The grounds are largely laid out to grass. The access roads within the development are unadopted.

Hearing & Representations

5. A hearing was held the same day, those attending being those noted above. So far as relevant to our consideration and decision we note the evidence and submissions below.
6. The Applicant's case.
7. In accordance with the Tribunal's directions, the Applicant had prepared new accounts for each of the years in question and these were summarised on page 135 of their bundle of documents. They submitted that each of the figures set out as actual expenditure on that sheet were reasonable and that the work done for that expenditure was reasonably incurred, subject to the following: –
- a. Accountancy - the fees for each year included work done by the auditors in respect of the Applicant's company status and its corporation tax;
 - b. Company secretarial fees in 2009/10 related also to the Applicant's company status;
 - c. the following items should be withdrawn from the service charge accounts:
 - i. damages of £290 paid to a resident in 2009/10;
 - ii. late filing penalty fee of £100 in 2007/08;
 - iii. invoice for £25 dated 8 October 2007 of Robert Crowe.
 - d. The out of hours emergency helpline charges for 2008/09 and 2009/10 additionally included cover for providing help in respect of matters for which tenants, rather than the Applicant, were liable e.g. in respect of household equipment;
 - e. special levies in the years 2007/08 and 2009/10 relates to the managing agents supervision costs for major works in those years;
 - f. management fees had been charged on a basis agreed with the Applicant: in 2007/08 £127 including VAT per unit; 2008/09 £136 and in 2009/10 £140;

- g. insurance commissions received were shared equally between the Applicant and the managing agent;
- h. legal and professional fees: in 2008/09 these related to the a filing fee in Companies House of £30 and late filing fee of £100; this in 2009/10 related to legal fees for collection of service charge arrears (not relating to the Respondent);

8. Subject to the above, the Applicant considered that all the charges were provided for by schedule 4 to the Respondent's lease and were reasonable and the Respondent was liable to pay his proportion in accordance with his lease.

9. The Respondent's Case.

10. The Respondent largely set out his case in his written statement to which he attached schedules relating to individual invoices produced by the Applicant. His comments in respect of very many invoices was that they related to private work and were not covered by the service charge; many related to the dates prior to his purchase so that he was not liable; some were uncompetitive or excessive, some should be included within e.g. accountancy or management fees or the litter collection contract; not working or unnecessary.

11. So far as material to the issues before the Tribunal, other points he made at the hearing included in particular:

- a. querying the need for a company secretary;
- b. on what basis the helpline is chargeable; tenants being liable for their own internal matters;
- c. whether the insurance premiums are competitive ;

Consideration

12. in coming to our decision we took into account the oral and written submissions that we had received and the documents and statements to which we had been referred by the parties.

13. Lease terms. So far as material to the issues before us these are:

- a. clause 4 provides for the Respondent to pay a maintenance contribution of 0.95% of total expenditure;
- b. the services in respect of which the Respondent is required to pay his contribution are set out in the 4th schedule and are:
 - i. "1. All costs charges and expenses paid or incurred by the company in connection with performance and observance of the covenants on its part herein contained [*which are set out at length in clause 6 of the lease*] and any other matter which the company in its absolute discretion considers to be in the interests of good estate management together with any value added tax thereon.
 - ii. 3. All fees associated with any borrowing by the company or the freeholder to enable either to enjoy their rights will perform the covenants hereunder together with any interest payable in respect of such borrowing.
 - iii. 5. The cost of management of the property which shall be taken as 10% of the total of the foregoing items.

- iv. 6. The auditors fees for extracting and collating the necessary information and preparing and issuing the certificates hereinbefore mentioned.
 - v. 8. To pay all expenses of providing maintaining repairing renewing servicing or otherwise relating to the communal television aerial or aerials any intercommunication installation and such other mechanical or electrical devices as the company may deem it appropriate to install as in the opinion of the company being the general benefit of the lessee and other Lessees of the property."
14. As regards the Respondent's contention that various charges were excessive or uncompetitive, etc, we had his assertions but no evidence to consider. As regards his contention that because some works were carried out before he purchased his property, by reason of Section 23(1) of the Landlord and Tenant (Covenants) Act 1995, the Respondent is only liable for his proportion of the cost of work carried out before he purchased to the extent that valid demands for service charge are or were issued against him since his purchase. Accordingly, save as set out below, we were satisfied on the evidence before us and using our knowledge and experience that each of the items set out on page 135 of the bundle of documents for each of the years in question was reasonable and reasonably incurred,
15. Accountancy fees. It was evident on the face of the auditors invoices that a significant part of the work done related to work resulting from the status of the Applicant as a company. That is an internal matter for the company itself and in our view does not fall to be recovered through service charge under the terms of the lease which we have set out above. Furthermore, it appears that part of the auditors fees relate to preparing accounts for calendar years rather than the service charge years required by the lease so that charges have been made for work which is incorrect. For these reasons we consider that for each of the years in question the part of the accountancy fees properly chargeable service charge were £700.
16. Company secretarial, late filing fees, annual return, corporation tax. Again, each of these 'results from work associated with the status as a company and as such are not recoverable as service charge under the terms of the lease.
17. Damages paid to residents. These were withdrawn by the Applicant as noted above, in our view properly.
18. External redecoration 2009/10. Included in this figure is the sum of £525 paid to Mrs Gellender for "redecorations and general repairs to the exterior front and back of 53 Samson Close... Including materials from 2000 – 2003". We were told that the managing agents authorised her to do work as she was trying to sell her property. It is evident however that the invoice includes materials going back 9 or 10 years; further there is no indication whether Mrs Gellender genuinely incurred this cost or whether it was perhaps carried out by a friend or relative without intention of recovering cost. We would also be concerned about managing agents authorising any resident to carry out work and charging for it and thereby losing control of management of this estate. Accordingly we were unable to find that the charge was reasonably incurred and disallowed it.
19. Gardening and tree maintenance. These areas of the estate comprise only rough grass and a number of mature trees There are no beds, borders or other areas requiring more expert work and we considered on that basis that the charges were excessive for the necessary work. We accordingly reduced the recoverable fees in each year to £3500.
20. Insurance premiums and commission.

21. We found that the premiums incurred were reasonable, and accept the managing agents' evidence that the management company has been credited with commissions received so that, as a member, the Respondent will benefit in that way.
22. Management fees. Whatever the managing agents may have agreed with the directors of the Applicant, it is plain from the lease that, very unusually in our experience, the managing agents fees are calculated as a fixed 10% of the other service charge items, other than, in our opinion, accountancy fees (which are not one of the "foregoing" items referred to in paragraph 5 of the Fourth Schedule, but seem to come within the terms of paragraph 6). The managing agents accepted that that was what the lease states. In the table in the appendix we have calculated it accordingly.
23. Legal and professional fees so far as these relate to recovery of service charge arrears, they are not recoverable as service charge under the terms of the lease. In respect of the annual return filing fee at page 430 of the bundle, that relates to the company status of the Applicant and as noted above is not recoverable as service charge. The room hire fee at page 723 of the bundle is very likely in our view to applied to a company meeting rather than a meeting concerning service charges, and is therefore not recoverable as service charge.
24. TV aerial hire. We were told by the Applicant that there were 5 communal aerials and that these had been hired year by year since 1983. These are now being replaced at a purchase price of £800/£900 each. We found no reason why this change had not been considered a few years ago. It would have been very significantly cheaper in previous years as it will prove to be from now onwards. Accordingly, we did not consider that these charges were reasonably incurred and reduced them in each year to £1000.
25. Helpline. We found no basis on which the Applicant could charge to service charge such part of these fees as related to the matters which were the liability of tenants alone. To that extent they are not recoverable and in the years 2008/09 and 2009/10 we accordingly reduced them to £600 and £650 respectively.
26. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor

Appendix

(See attached)