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**LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTHERN RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985  
SECTION 27A (1) and SECTION 20C**

**Property:** Apartment 165, 6 Royal Quay Liverpool 3 4EX

**Applicant:** Liverpool Quays Management Company Limited

**Respondent:** Mrs Carol Ann Moscardini

**Tribunal:** Mr G C Freeman (Chairman)  
Mr I James MRICS  
Miss C Roberts

**Date of Hearing:** 1<sup>st</sup> June 2010

**DECISION**

**A. No service charge shall be payable in respect of the Property unless and until the Applicant supplies to the Respondent accounts for the service charge prepared in accordance with the Seventh Schedule of the Lease for the years in question.**

**B. Subject to A above the reasonable service charge for the Property for the periods in question are the amounts set out in the Appendix to this decision.**

**C None of the costs incurred, or to be incurred, by the Applicant in connection with proceedings before the leasehold valuation tribunal, are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.**

**Application and Hearing**

1. By its application dated 15<sup>th</sup> October 2009 the Applicant seeks a determination of the reasonableness of service charges for the above property where costs have been incurred for the years 2007 to 2009 inclusive. The Applicant named the Respondent in its application as its Tenant.

2. Directions dated 29<sup>th</sup> October 2009 (“the Directions”) were issued by a procedural chairman. The Tribunal granted the extension of time requested on behalf of the Applicant in order that the Applicant could comply with the Directions.
3. A hearing was held on 2 February 2010, following which the Tribunal issued further directions. The hearing was resumed on 1<sup>st</sup> June 2010 at the Alicia Hotel, 3 Aigburth Drive, Liverpool L17 3AA at 10.00am. The Applicant was represented by Mr Lawrence McDonald of Counsel, instructed by J.B. Leitch, Solicitors, Mr Christopher Parle ACA a Director and Secretary of the Applicant, Mr A Ryder, Estate Manager and Ms S Moore, a Director of the Applicant. The Respondent represented herself.

### **Inspection**

4. The Tribunal inspected the Property on the morning of 2 February 2010. It consists of a self contained purpose built flat within a larger block of flats constructed recently on the Liverpool waterfront. It is a high class development of 93 flats, duplexes and penthouses in three blocks. There are a further four blocks of similar flats close by, known as King’s Waterfront (“KW”). Both developments have their own management companies which share some management facilities. Each block has its own lift, door entry system, smoke and fire alarm system and car parking area.

### **The Lease**

5. The Lease of the Property is dated 9<sup>th</sup> May 2003 and is made between Liverpool Housing Trust Limited and Riverside Housing Association Limited of the first part, the Applicant of the second part and the Respondent of the third part. It grants a term of 125 years from the 8<sup>th</sup> October 1999 (less the last ten days) and reserves a rent of £100.00. The Seventh Schedule reserves a service charge which is to be estimated by the managing agents of the Management Company. Clause 2 of the Schedule provides:-

*“As soon as reasonably practical after the end of the year 2002 to 2003 and every succeeding year when the actual amount of the said costs, expenses, outgoings and matters for the year have been ascertained the Lessee shall forthwith pay the balance to the Management Company or be credited in the books of the Managing Agents or (if none) the Management Company with any amount overpaid”*

6. Clause 4 of the same schedule provides:-

*“The Management Company shall supply to the Lessee not less frequently than once every year a summary of the costs expenses outgoings and matters mentioned in Part II of this Schedule for the previous year . . . which summary shall also incorporate statements of the amount (if any) standing to the credit of the Lessee in the reserve fund”*

7. Perhaps surprisingly, the Lease provides no method of calculating the proportion of service charge attributable to the Property. Part 1 of the Seventh Schedule merely states that *“the Proportion for each year shall be estimated by the managing agents for the time being . . . ”*

#### **The Applicant’s Case**

8. The Applicant outlined the history of management of the Property. Until December 2007, the Property had been managed by a firm of managing agents, Andrew Louis. Since that date the Applicant had managed the development itself with the aid of J.B.Leitch, who were employed to collect the service charge. A bookkeeper, Mrs McCurdy, was also employed. Various costs which were common to both this development and the adjoining KW development were apportioned between both developments. These included, for example, the cost of a site manager. Such costs were apportioned on the basis of four sevenths payable by KW with the remaining three sevenths payable by the Applicant, on the basis that the KW site had four blocks and the Applicant’s site had three.
9. The Applicant produced copies of the statutory accounts of the Applicant for the periods in question as evidence of the service charge payable.

#### **The Respondent’s Case**

10. The Respondent’s case may be summarised shortly. The Respondent does not object to the payment of a service charge, or to the proportion payable in respect of the Property. The Respondent simply says she is entitled to accounts showing how the service charge has been expended. She has not received such accounts despite service of a Notice under section 21 (1) of the Landlord and Tenant Act 1985 by her solicitors. She further claims that at various times during the period in question a manager known as “Oscar Properties” and a “facilities manager” known as Callidus Facilities Management Limited of Northern Ireland have been employed. It appears that Ms S Moore is resident in Northern Ireland as well as being a director/proprietor of these companies, and a Director of the Applicant and a flatowner. The Applicant claims that no declaration of interest has been made in respect of these agreements as required by company law.

#### **The Law**

- 11 Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:

- (1) In the following provisions of this Act “service charge” means” an amount payable by a tenant of a dwelling as part of or in addition to the rent –
- (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

12. Section 19 provides that

(1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

13. Section 27A provides that

(1) an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

14. No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

15. In *Veena v SA Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that

the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

### **The Tribunal's Findings**

16. The Tribunal concluded that the amount payable by the Respondent for the provision of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
17. Having decided this, the Tribunal had to apply a three stage test to the application under section 27A:-
  - 17.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
  - 17.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the 1985 Act?
  - 17.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended
18. Applying the recoverability test under paragraph 17.1 above, the Tribunal noted that the Lease permits the Respondent to recover service charges. However the Lease is explicit in that the Applicant must provide accounts in accordance with the Seventh Schedule (see paragraph 6 above). The Applicant has failed to provide such accounts, even when directed to do so in the directions given by the Tribunal in this case. (See paragraph 10 of the directions dated 2<sup>nd</sup> February 2010). The Tribunal finds that the Applicant is in breach of section 21 (1) of the Act in failing to supply the Respondent with the information requested in the Notice served by Nether Edge Law on 5<sup>th</sup> December 2008, despite apparently taking professional advice. Section 25(1) of the Act provides that it is a summary offence for a person to fail, without reasonable excuse, to perform a duty imposed on him by Section 21. Subsection 25(2) provides for a fine not exceeding level 4 on conviction.
19. The Tribunal then proceeded to consider the various payments, invoices and receipts which had been provided by the Applicant. The Tribunal were disturbed to note that these included invoices for air travel by Easyjet from Belfast to Liverpool and for food and beverages as well as credit card payments. The Tribunal considered that such payments should not be found in service charge accounts, unless there are very good reasons for the same. As a general rule any such payments should be declared to all the directors of the management company and authorised by them **before** the expenditure is incurred.
20. There are also payments to firms of solicitors for legal advice for pursuing a claim against the developer for defects to the development of which the

Property forms part. The Tribunal could find no provision in the Lease for such payments as a service charge item. Accordingly, such payments were disallowed by the Tribunal in calculating the service charge payable in respect of the Property. The Tribunal also disallowed other payments for which no satisfactory explanation was available. There is appended to this decision at Appendix 1 the Tribunal's decision as to what they considered to be reasonable service charge expenditure for the periods in question, taking the above into account. The appendix shows the total expenditure incurred. The Tribunal found that the liability attributable to the Property is one equal share of such expenditure. However no payment shall be due and payable by the Respondent until the Applicant complies with the Lease and provides accounts pursuant to the Seventh Schedule.

21. The Tribunal made no finding as to the declarations of interest which the Respondent alleges should have been made by Ms Moore. It is not part of the Tribunal's jurisdiction to adjudicate on such matters.

#### **Section 20C**

22. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Respondent made an application under s20C of the Act to disallow the costs incurred by the Applicant of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
23. Although the Tribunal determined that it has found that the service charges for the period in question to be largely reasonable, the Applicant has failed to provide accounts in accordance with the lease and has also failed to supply information properly requested under section 21A of the Act. The Tribunal therefore decided that the costs of the application should be excluded for the purposes of calculating the service charge for the Property.

#### **APPENDIX**

See Attached



.....  
G.C.Freeman  
Chairman

Dated 13 July 2010

	Item of Expenditure	2007			2008			2009		
		Claimed	Allowed	Comments	Claimed	Allowed	Comments	Claimed	Allowed	Comments
1	Management Charges	£2,977.59	£2,977.59							
2	Estate Manager	£8,672.73	£8,672.73		£8,369.52	£8,369.52		£14,087.13	£14,087.13	
3	Phones	£1,411.30	£1,411.30							
4	Security	£7,617.80	£7,617.80		£12,070.64	£12,070.64		£18,815.60	£12,000.00	Excessive Increases Over Previous Years
5	Window Cleaning	£939.17	£939.17		£3,756.66	£3,756.66		£3,169.18	£3,169.18	
6	Water Sewage & Pumps	£9,820.13	£9,820.13		£3,386.71	£3,386.71		£2,866.69	£2,866.69	
7	Fire Alarm & Emergency Lights	£5,453.07	£5,453.07		£2,287.70	£2,287.70		£261.77	£261.77	
8	External Lighting									
	a) Supply	£345.69	£345.69		£35,655.65	£35,655.65		£15,453.02	£15,453.02	
	b) Light Maintenance	£3,707.97	£3,707.97		£121.02	£121.02		£185.34	£185.34	
9	Insurances	£9,654.28	£9,654.28		£14,210.94	£14,210.94		£11,278.80	£11,278.80	
10	External Maintenance	£20,945.91	£20,678.06							
				Disallow £267.85 for Leafblower / Includes General Maintenance, landscaping and internal decorations						
11	Legals	£16,713.79	£1,584.50	Non S/C Recoverable Items DWF	£2,382.99	£980.04	Disallow £1402.95 DWF Non S/C	£16,978.79	£656.46	Disallow £16,322.33 Non S/C
12	Internal Cleaning	£2,949.35	£2,949.35		£3,126.89	£3,126.89				
13	Internal Lighting	£12.09	£12.09							
14	Lift	£6,037.74	£6,037.74		£3,719.40	£3,719.40		£6,294.32	£6,294.32	
15	Internal Maintenance	£763.75	£763.75							
16	Landscaping				£2,168.56	£2,168.56		£3,261.43	£3,261.43	
17	Service Charge Collection Fee				£2,236.45	£2,208.30	Deduct Flight Costs £28.15	£10,898.69	£3,540.00	Disallow £7358.69
18	Ext Lighting Maintenance Repair				£1,572.61	£1,572.61		£280.93	£280.93	
19	Intercom / Gates				£1,592.13	£1,592.13		£1,097.10	£1,097.10	
20	TV & Satellite				£11,935.50	£11,935.50				
21	General Maintenance				£2,699.76	£2,688.60	Disallow £11.16 for Sandwiches	£352.73	£352.73	
22	Administration				£7,463.72	£6,939.84	Disallow Travel Expenses (£266.74) and Photography (£257.14)	£5,270.36	£5,078.55	Disallow Voucher (£81.00) Calidas (£110.31)
23	Bank Charges				£298.68	£298.68		£221.77	£221.77	
	<b>TOTALS</b>	<b>£98,022.36</b>	<b>£82,625.22</b>		<b>£119,055.53</b>	<b>£117,089.39</b>		<b>£110,773.65</b>	<b>£80,085.22</b>	