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HM Courts
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Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00AT/LSC/2011/0393

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

Property: 203 Firestone House, Clayponds Lane, Brentford,
Middlesex TW8 0GW

Applicants: Grace Golding and Simon Power

Respondent: GWQ Management Limited

Date heard: 22 September 2011

Appearances: The applicants in person

Sarah Hynes and Mark Monkhouse, Mainstay Residential
Limited, for the respondent

Tribunal: Margaret Wilson
Andrew Lewicki FRICS
John Francis

Date of the tribunal's decision:

15 Nov 2011

Introduction and background

1. This is an application by Grace Golding and Simon Power ("the tenants") under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine their liability to pay estimated service charges for the year 1 October 2010 to 30 September 2011. The respondent to the application is, as substituted at the pre-trial review, GWQ Management Limited (GWQ"), a management company which is a party to the lease and responsible for providing services and collecting the service charges. GWQ Management Limited trades under the name Mainstay Residential Limited.

2. The tenants hold a lease of 203 Firestone House, which they acquired in July 2009. There is a one bedroomed flat in a block of flats in Great West Quarter, a very large development of flats and commercial premises, which is still in the course of construction by Barratt West London Limited or an associated company. The lease also demises a designated car parking space. When it is completed the development will comprise over 1000 residential properties, including social housing units, together with commercial properties which include shops, restaurants and a large hotel. The facilities provided for the residents include a private gym.

3. Schedule 6 to the tenants' lease estate lists the services which GWQ covenants to provide. Part A lists the "Estate Services", Part B the "Building Services", Part C the "Common Services", and Part D describes the "Car Park Charge". Part E contains provisions which apply generally to the services listed in the other parts of the Schedule. Schedule 7 defines the lessee's proportion of the service charge as a "fair and reasonable proportion" of the costs attributable to the different categories of service and provides for an accountant's certification of the costs. Paragraph 7.1 of Schedule 7 provides that the lessee is to pay:

1. In advance on the first day of October in every year ... the Lessee's proportion of the amount estimated from time to time by the

Management Company or its managing agents as the Maintenance Expenses for the year ...

2. Within 21 days after the service by the Management Company on the Lessee of a certificate in accordance with paragraph 8 of this Schedule 7 for the period in question the Lessee shall pay to the Management Company the balance by which the Lessee's proportion received by the Management Company pursuant to paragraph 7.1 of this Schedule 7 falls short of the Lessee's proportion payable to the Management Company as certified by the said certificate during the said period and any overpayment shall be credited against future payments due from the Lessee to the Management Company.

4. By their application, which is dated 31 May 2011, the tenants challenged all the advance service charges demanded of them on 11 October 2010 for the year 2010/2011, namely a Private Gym Service Charge of £200, a Car Park Charge of £150, a Building Service Charge of £804, and an Estate Service charge of £355.22, less £34.10 overpaid in respect of the previous year. In response to the tribunal's pre-trial directions made on 5 July 2011 they lodged a statement of their case and a bundle of documents. GWQ did not serve a statement of its case as it had, by 16 August 2011, been directed to do, but on the day before the hearing it served on the tenants some further documents which were not in the tenant' bundle but which it wished the tribunal to take into account at the hearing. These included a recent decision of a leasehold valuation tribunal relating to a flat in another block in Great West Quarter which the tenants said they had not had time to consider. In the circumstances we declined to read or take account of that decision.

5. At the hearing the tenants appeared in person and GWQ was represented by Sarah Hynes and Mark Monkhouse, two of its employees. We did not consider that it was necessary to inspect the development.

The law

6. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as "*an amount payable by the 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*". Relevant costs are defined by section 18(2) and (3). By section 19(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*". By section 19(2), "*Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise*".

The dispute

7. The tenants' first complaint was that when they bought their flat they had been led by the Barratt's sales team to believe that the service charges would be between £900 and £1200 a year, and they believed that they had thereby been misled. They produced, at page 64 of their bundle, a document produced by Barratt Homes giving information about, among other things, the service charges which provided that the estimated service charge for one bedroomed flats in Firestone House was "in the region of £950 to £1200 pa". However the document also said "Figures shown above are for guidance only and are subject to change. Calculations have been based upon full year costs and full occupation on site. Services and consequent costs may vary between now and site completion". It is clear that the tenants do not have an

arguable case on this issue. There is no doubt that they were warned that the costs indicated were only an estimate, and the lease, which they should have read or about which they should have received advice, before they signed it, made plain that the service charges were variable, depending on cost.

8. Their second complaint was that it was unfair that they should have to pay the advance service charge in one instalment at the start of the service charge year, but that is a clear requirement of their lease with which they and GWQ are obliged to comply unless the parties otherwise agree, and we are afraid that they do not have an arguable case on this issue.

9. They also said that they and other lessees were very concerned that the service charges might continue rise year by year, but, as we explained at the hearing, there can never be any guarantee that that will not happen where service charges are variable and based on cost. Their protection is that, by section 19 of the Act, service charges must be reasonably incurred and are subject to challenge.

10. We then considered all the estimated charges in all categories for the year in question, bearing in mind, as we explained to the tenants, that the management company's obligation in relation to advance service charges is to make a reasonable estimate of the charges, and that there is always a range of possible reasonable charges. We also assume, as we are entitled to do, that the charges were estimated on the basis that the management and other services would be provided to a reasonable standard. If in the event that proves not to be the case, then the actual charges can in principle be challenged when they are known.

11. Of the charge for the private gym, tenants said that the services provided were not of a high standard in that it was not always regularly cleaned. Ms Hynes said the charges were at present subsidised by the freeholder because not all the flats were occupied, and the actual charges for the year were likely to be substantially higher than the capped charges. She agreed that there had been problems with the cleaning but said they had been addressed. We

are satisfied that £200 is a reasonable estimated charge in respect of the costs of the gym.

12. Of the charge for the car park, the tenants said that it was excessive. They said that the car park was not cleaned, that security was substandard and numerous thefts had taken place, including the theft of Mr Power's motor cycle. Ms Hynes said security was a difficult issue on a site which was in the course of construction and which had a number of housing estates in the vicinity, but that that a new security system had come on line in January 2011 and that the services were getting better as the development progressed. She said that these costs, too, were capped by the freeholder and that the actual costs, which included the costs of parking control, sweeping, light bulbs, would be likely to exceed the combined capped charges. We are satisfied that these estimated charges are also reasonable.

13. The Building Service Charge is not subsidised. The method of apportionment to the tenants, which is based on floor area, was not challenged. Ms Hynes explained that the costs were based on the consideration by the managing agent of the costs for the previous year, with reasonable allowances for anticipated increases in costs for the current year. We considered each of the charges which formed the budget figure for the year. In relation to the charges for communal electricity, Ms Hynes said that the electricity meters were read monthly and all charges were based on actual consumption. In relation to insurance, we were told that the brokers approach three or four major insurance companies for quotations, and that, although the block was insured under a block policy which covered a large number of properties, the claims history of each block was identified in a separate schedule and did not affect the premium for other properties.

14. In relation to the managing agent's fees, the tenants said that they, and other lessees, considered the management to be of a low standard and the agents to be slow to respond. Ms Hynes said that the fees were based on £92 for a one bedroomed unit and £110 for a two bedroomed unit. It emerged that there were two different budgeted sums for the management of Firestone

House in 2010/2011: £6350 and £3310. Insofar as the higher sum found its way into the advance service charge demanded of the tenants, it was, in the circumstances, excessive.

15. We are satisfied that, with the exception of the management charge (if based on the higher budgeted figure), all the estimated Building Service Charge costs are within a reasonable range.

16. We also considered each of the costs comprised in the estimated Estate Service Charges. Ms Hynes explained that in about July 2010 the management office was completed and handed over to the management company, and that, by that date, the development had become large enough to warrant an estate manager and an extra estate worker. In addition it had been decided from January 2011 to employ two night security guards. For these reasons there had been a large increase in the budgeted figure of £141,500 for estate staff for the year by comparison with the equivalent sums, both budgeted and actual, of £34,290 for the previous year. Asked by Ms Golding why these additional workers had not been budgeted for in the previous years, Ms Hynes said that the number of staff had been increased as the completed parts of the development had increased, and GWQ were satisfied that the increased level of staffing was necessary. She said that she regretted that this had not been made plain at a residents' meeting earlier in the year. She described the estimated costs for fitting out the management office and explained that it had been decided that no allowance needed to be made for refuse removal in the current year. The item for automated bollard maintenance was considered in detail. The tenants said that the system was of no benefit to them and that the only vehicles which used it were customers of Barratts'. Ms Hynes said that the system was used to prevent unauthorised parking, which was of general benefit, which we accept.

18. Again, we accept that the estimated service charges were budgeted responsibly and we find no grounds upon which we can determine that they were over-budgeted.

Determination

19. While we can well understand the tenants' concern about the increasing service charges, we are satisfied that, with one exception, the advance service charges were based on reasonable estimates, responsibly made. We do not find ourselves satisfied that there was any element of over-budgeting.

Costs

20. Ms Hynes and Mr Monkhouse agreed that the landlord would not seek to place any costs incurred by the landlord in relation to these proceedings on any service charge and we therefore make an order under section 20C of the Act by consent. The tenants also asked for an order that the fees which they paid for the application and hearing should be reimbursed but in our view their application was not justified and in the exercise of our discretion we decline to make that order.

CHAIRMAN.....

DATE.....