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**H M COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL  
Case No: CAM/22UG/LSC/2012/0075**

**Property** : 7 Layer Court,  
Layer Road  
Colchester  
Essex CO2 7HT

**Applicant** : Robert Bacon

**Respondent** : Grahame Nicholas and Sonia Patricia Long

**Date of Application** : 24th May 2012

**Type of Application** : to determine reasonableness and payability of  
service charges and administration charges

**Date of Hearing** : 20th September 2012

**Appearances** : The Applicant was represented by Mrs Susan  
Moore of East Anglian Properties of 38 North  
Hill, Colchester  
The Respondents did not appear and were  
not represented

**Tribunal Members** : Mr M Graham Wilson  
Mr Roland Thomas MRICS  
Mrs Cheryl St Clair MBE BA

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**DETERMINATION**

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***Decision***

1. The Respondent's Application to adjourn the Hearing was refused.
2. The Tribunal determined that the service charges for the following service charge years were reasonable and were payable by the Respondent:

2008	£577.02
2009	£1,541.38
2010	£2,704.07
2011	£1,261.10

### *Reasons – Application to Adjourn*

1. The Tribunal inspected the two blocks of four flats, of which the property was one, in the presence of the Applicant's representative. The blocks were well-maintained and located in a pleasant residential area.
2. The Respondent's Application to adjourn the Hearing was dealt with at the beginning of the Hearing. It has been made in an email to the Tribunal Office the day previously. The email read:

As discussed with Katerina this afternoon could we request that the hearing could be rearranged from the 20<sup>th</sup> as my wife is currently in labour. We would also like to point out that a bundle of paperwork has only just been received by hand from East Anglian Properties.

At the direction of the Tribunal Chair the Office replied:

Your email has been referred to the Lawyer Chair of the Tribunal. He has directed that the Inspection proceed. Your e-mail will be treated as an application to adjourn the Hearing and will be dealt with as a preliminary of the Hearing. You must decide whether to attend to make the application. You must also decide whether to submit medical or other evidence. The Applicant will doubtless draw attention to the history of at least one similar application in an earlier case. You may wish to deal with that. It does not appear that you have, in any event, complied with the Tribunal's Directions. So far as the late delivery of Documents (if it is such) is concerned, if that relates to the hearing bundle produced by the Applicant, all the documents contained in it would appear to be documents already known to you. In summary, you should not assume that an adjournment will be granted as a matter of course in this case.

To this the Respondent replied:

We are unable to attend in that case.

3. An Application to adjourn in circumstances such as those alleged by the Respondents may be thought generally likely to proceed. It did not succeed. It did not succeed in this case because:
  - (1) It was made at the eleventh hour.
  - (2) It was not supported by evidence of any kind.
  - (3) The Respondent did not attempt to address the issues in the Office's email, in particular
  - (4) they failed to explain why they had failed to participate in the case as directed in the Order for Direction and
  - (5) did not dispute that in at least one previous case had sought an eleventh-hour adjournment.

(6) It was clear that there had been a long-running but unexplained resistance on the part of the Respondents to the payment of service charges.

(7) it was not in the public interest, given the expense of convening Tribunal Hearings, to adjourn Hearings except in the most exceptional of circumstances and where a party was plainly fully and actively engaged in pursuing its case.

### ***Reasons – Payability and Reasonableness***

#### **The Law**

1. This is to be found in Sections 19 and 27A of the 1985 Act which in part read:

##### **19. Limitation of service charges: reasonableness**

- (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.

##### **27A. Liability to pay service charges: jurisdiction**

- (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 amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An Application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

2. Mrs Moore for the Applicant produced Service Charge Accounts for the years referred to in the Application, except for those for 2012. The Application in respect of that year was premature. That is not to say that service charge payments on account may not be recoverable but the present Application was not framed in that way.

The Accounts were not included in the Hearing Bundle but were produced after some delay at the Hearing. Mrs Moore explained that she had little experience of Leasehold Valuation Tribunal hearings and had not appreciated that such Accounts would be the essential starting point of an Application under the Act. The dispute about particular items may lead to the production of invoices, but their production would not otherwise (necessarily) be required.

3. The Tribunal considered the Accounts. In doing so, it bore in mind that:

- (1) 7 out of 8 tenants had not apparently challenged the service charges and
- (2) the property was plainly well-maintained.

The Applicant himself explained that until the arrival of the Respondents, the flats had been successfully managed without the need for managing agents, each tenant paying a contribution to any expenses as and when they arose.

4. The Respondent's resistance to paying such service charges had led to an earlier application to vary the leases so as to import modern service charge provisions into a form of lease dating from 1971.

5. The Tribunal found each of the service charge items figuring in the accounts reasonable and itself calculated the Respondent's proportion (a task normally done in advance by the Applicant's representative) and determined <sup>the</sup> same as appears in the Decision at the beginning of this Determination.

**GRAHAM WILSON**

**Date: 20<sup>th</sup> September 2012**