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HM Courts  
& Tribunals  
Service

**LEASEHOLD VALUATION TRIBUNAL**

**Case number : CAM/33UB/LSC/2011/0174**

**Property** : 11 & 12 Chase Court, Thetford, Norfolk IP24 3BT

**Application** : For determination of liability to pay service charges for the years 2008–2011 inclusive [LTA 1985, s.27A]

**Applicant** : Chase Court Residents' Management Ltd (Co. No. 02896452) c/o T W Gaze LLP, 10 Market Hill, Diss, Norfolk IP22 4WJ

**Respondents** : Darren Matthew Goodley, 11 Chase Court, Thetford IP24 3BT  
Muhammed Akbar Hussain, 12 Chase Court, above

**DECISION**

handed down 16<sup>th</sup> March 2012

**Tribunal** : G K Sinclair (chairman), G Smith MRICS FAAV REV, D S Reeve

**Hearing date** : Thursday 1<sup>st</sup> March 2012 at the Bell Inn, Thetford

**Representation** *Applicant* Ms Jenna Goodall, Thos Gaze & Son, Co. Secretary  
Jacky Lond, Thos Gaze & Son

*Respondents* no appearance

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**Introduction**

1. The applicant is a lessee-owned company which manages a three storey block of ten flats which was formerly part of a larger residential development by the junction of the London and Bury Roads in Thetford, Norfolk. Initially the company was run and through it the property managed by Mr T Havell, one of the lessees; but in January 2008 he announced that he was leaving, and therefore others would need to step up take over management of the company and the building. Not a lot seems to have happened in the next few years, save for payment of such essential matters as insurance and utility bills, but in about April 2011 Thos Gaze & Sons, a local firm of chartered surveyors and valuers, was invited to assume professional control. Ms Jenna Goodall was duly elected as Company Secretary and her firm became managing agent on the company's behalf.
2. It was therefore with some surprise that the tribunal learnt that Ms Goodall was unable

to confirm whether the company was also the freeholder, although the date of formation of the management company (before the advent of the right to manage and purpose-built RTM Company structures) and the fact that the adjoining blocks are managed separately rather suggested to the tribunal that it was. One might expect a managing agent to know who the freeholder is, especially whether ground rents are payable.

3. For the reasons which follow the tribunal is satisfied on the balance of probabilities that the items invoiced for have been reasonably incurred and that, although no valid demands have yet been served, the leaseholders have each (for the purposes of the Landlord and Tenant Act 1985, section 20B) been given sufficient notice that these amounts had been incurred and would later be charged for. Unfortunately for the applicant, as no valid demand had yet been served the amounts claimed are not yet payable. The tribunal also identified some flaws in the lease which require amendment – if necessary by application to the tribunal under Part 2 of the Landlord and Tenant Act 1987 to ensure that each leaseholder's service charge liability is accurate, proportionate and covers all relevant costs, which particularly include the buildings insurance.

#### **The lease**

4. The sample lease provided is not for one of the subject premises but for flat 13. It is dated 27<sup>th</sup> April 1990 and granted by The Hawks Mill Development Co Ltd to Dawn Zoe Smith for a term of 99 years from 1<sup>st</sup> January 1990. The rent reserved is £50 per annum until 1<sup>st</sup> January 2030, £100 per annum for the next forty years, and thereafter £1 500 for the remainder of the term.
5. The lessor's covenants, including covenants to maintain, repair and insure the premises appear in clause 4 and the Sixth Schedule. In clause 3 and the Eighth Schedule the lessee covenants to pay *inter alia* his share of the maintenance expenses, which are set out in clause 1.11 and the Seventh Schedule. In Part I the lessee's proportion is defined as 1/24th part of the expenses incurred for matters relating to the property described in the Second Schedule, the accounting period is a period of twelve months ending on 31<sup>st</sup> December or such other period as the lessor may from time to time designate, and the payment dates 1<sup>st</sup> January and 1<sup>st</sup> July. On those dates the lessee must pay his share of the lessor's estimate of expenditure, with a balancing payment payable when the annual account is prepared and certified by an accountant as soon as practicable after each year end. Part II lists the matters on which such expenditure may be incurred.
6. A significant problem with the lease is that while the lessee's proportion of the expenses is expressed as 1/24th part the lease plan shows only 20 numbered units and associated car parking spaces. Of these, units 1–4 on the left of the plan are described as freehold and the boundary line is shown around the two blocks numbered 5–10 and 11–20. These two blocks are now in separate ownership and management. The tribunal asked, and was told that all units in the subject block are obliged to pay the same equal share. With an obligation to pay 1/24th and only 10 flats liable to pay there is an obvious shortfall which can be cured only by variation of all the leases, either by universal agreement (which in the context of this application concerning two non-payers seems unlikely) or by application to a Leasehold Valuation Tribunal under Part IV of the Landlord and Tenant Act 1987. If, however, the maisonettes on the second and third floors bear a heavier burden then it is possible that the shares will work out satisfactorily.

### **Applicable legal provisions**

7. The method of calculation and overall amount payable by tenants for maintenance, repairs, other services and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :
  - 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.
  
8. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)<sup>1</sup> is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under section 27A.
  
9. In order that leaseholders can keep track of what they may owe, and to discourage tardiness by freeholders or their managing agents, section 20B provides that :
  - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
  - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.
  
10. Two further provisions, concerning demands for payment of service charge, have been put in issue or are relevant to this case. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord.
  
11. Secondly, since 1<sup>st</sup> October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.<sup>2</sup> The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at

<sup>1</sup> Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

<sup>2</sup> SI 2007/1257

least 10 point.<sup>3</sup>

### **Inspection, hearing & evidence**

12. The tribunal conducted a brief inspection of the exterior of the block at 10:00 on the morning of the hearing. Also present were Ms Goodall and Ms Lond, for the applicant. Neither respondent attended or was represented. This was hardly surprising, as they had not complied with any of the tribunal's directions or sought to become involved in any way.
13. The block, with two storeys of brick construction under a pitched roof with dormer windows, sits gable end on to the road. The five upper floor maisonettes are accessed externally, with four sharing an external staircase and walkway and the fifth (furthest from the road) having its own external staircase. Each unit has its own marked car parking space, laid with gravel, and one area planted with shrubs. To the left, looking from the road, is another block owned and managed separately and even further to the left a small terrace of four freehold houses.
14. The tribunal was provided with a hearing bundle comprising the application and tribunal directions, a copy lease and memorandum and articles of association of the applicant company, annual accounts and invoices for payment of service charge, some brief witness statements from leaseholders happy to pay what has been levied (and resentful of those who refused), a colour plan of the estate, and miscellaneous documents. The hearing commenced at 11:00 but at around noon was adjourned so that Ms Goodall could obtain further proof of payment of insurance premiums, etc which was faxed from her office.
15. Two fundamental problems identified by the tribunal were that those responsible for management, both before Thos Gaze & Sons became involved and since, were simply unaware of :
  - a. The potential problem concerning the recoverable proportions of expenditure from each lessee under the lease, with the current management just carrying on with what was done before (which the tribunal notes included charging 1 bedroom flats a lower insurance premium than those with 2 bedrooms); and
  - b. The legal provisions governing the content of service charge demands and notices which since 2007 have had to accompany them.<sup>4</sup> No lawful demands had been made. One of the respondents, Mr Goodley, had taken legal advice and this may be what he was hinting at in his e-mail at page 113 (although his principal complaint seems to have been that no services had been provided, so why should he pay).

### **Findings**

16. The tribunal is satisfied from the ledgers, invoices and other documents put before it that insurance premiums have been paid for each year in issue, and that gardening contracts have been reasonably priced and the work (which is modest) carried out satisfactorily.
17. Although no lawful demands have been served the tribunal is satisfied from the invoices,

<sup>3</sup> *Op cit*, reg 3

<sup>4</sup> See paras 10 & 11 above

ledgers and minutes of annual meetings that not only the fact of this expenditure but also the detailed reasons for it were drawn to the lessees' attention within the time-scale required by section 20B(2).

18. Since Ms Goodall has assumed control of management of the property additional work has been undertaken, although with the nature of the building and the site the level of maintenance required has been modest. However, charging for expenditure has simply followed established practice, with costs divided by ten instead of in the proportions set by the lease. Ms Goodall was referred by the tribunal to the *Service Charge Residential Management Code* ("the Blue Book") published by the Royal Institution of Chartered Surveyors, and approved by the Secretary of State under the terms of section 87 of the Leasehold Reform, Housing & Urban Development Act 1993 and encouraged to make use of it, to ensure in particular that if major works are planned the company complies with the statutory consultation process.
19. Should valid demands now be served in respect of the same total expenditure that this tribunal has determined to have been reasonably incurred for insurance and other chargeable works of reasonable quality, and in the correct proportions provided for in each lease, then such demands shall be recoverable without further recourse to this tribunal.
20. If the proportions of expenditure provided for in the leases deprive the company of a full recovery then it should seriously entertain making an application under Part IV of the Landlord and Tenant Act 1987.

Dated 16<sup>th</sup> March 2012

Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal