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HM Courts
& Tribunals
Service

LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/34UF/LSC/2011/0171

Subject Property: 52 West Cotton Close, Northampton NN4 8BY

Applicant: Riverside Wharf (Northampton) Management Company Limited

Applicant's Solicitors: PDC Legal, Solicitors, Suites 4 & 5 Tower House, Tower Centre, Hoddesdon, Hertfordshire EN11 8UR

Respondents: Mr Iftikhar Muhammad Khan & Mrs Anjuum Iftikhar Khan, 355 Pershore Road, Birmingham B5 7RY

Date of Transfer
From County Court: 2nd December 2011

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Application for a determination of the reasonableness and liability to pay Administration Charges (Schedule 11 Commonhold and Leasehold Reform Act 2002)

Application under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings

Tribunal Mr JR Morris LLB LLM PhD (Chair)
Mr GRC Petty FRICS
Mr P Tunley

Date of Hearing: 2nd April 2012

Attendance:
Applicant: Ms T Lyons Counsel for the Applicant
Mr S Brown Property Manager
Miss C Gibson Applicant's Accounts Department

Respondent: Mr I M Khan

DECISION AND STATEMENT OF REASONS

Decision

- The Tribunal decided that the outstanding service charge has been properly demanded and is therefore payable
- The Administration Charges of £27.00 are reasonable and payable by the Respondents to the Applicant
- No Order is made under Section 20C of the Landlord and Tenant Act 1985

The application is transferred back to the Birmingham County Court under case no. IBE02314 to enable either party to apply for any further order dealing with any matter not covered by this decision, interest, costs and fees claimed in the court proceedings or enforcement.

Reasons

Application

1. The Application is made on a transfer, for a determination of reasonableness of service charges and administration charges by a Leasehold Valuation Tribunal, from the Birmingham County Court by District Judge Musgrave of Claim Number: IBE02314
2. The Respondent applied under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings before the Leasehold Valuation Tribunal.

The Law

3. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
4. Section 19 of the Landlord and Tenant Act 1985 states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. Section 27A of the Act gives a Leasehold Valuation Tribunal jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable although under subsection (4)(a) *No application may be made in respect of a matter which has been agreed or admitted by the tenant,*
5. Schedule 11 Commonhold and Leasehold Reform Act 2002 provides for the same conditions and jurisdiction with regard to administration charges which are defined as including payments demanded in addition to rent under paragraph 1 (1) (c) *"...in respect of a failure by the tenant to make a payment by the due date to the landlord..."*.

The Lease

6. A copy of a Lease dated 15th July 2005 between (1) Riverside Wharf (Northampton) Management Company Limited (Lessor), (2) Kingsley Stretton (UK) Ltd (3) Walton Property Management Limited (Landlord), (3) Iftikhar Muhammad Khan & Mrs Anjuum Iftikhar Khan (Lessees).
7. The Particulars of the Lease states that the Lease is for a term of 150 years less 10 days from 1st January 2002 and in paragraph 5 that the service charge percentage is

0.87%. The Lease is referred to as an Underlease and Clause 1 of the Lease states that the Head Lease is for 150 years from 1st January 2002 between (1) Bellway Homes Limited (Freeholder) and (2) Riverside Wharf (Northampton) Management Company Limited (Lessor). Clause 1 of the Lease sets out a number of definitions including the Accounting Period, which is from 1st January to 31st December.

8. Clause 4 of the Lease states that:

The Lessee covenants with the Lessor that the Lessee shall throughout the Term:

4.2 *To pay the Interim Charge and the Service Charge at the times and in the manner provided in Schedule 4 both such charges to be recoverable in default as rent in arrear of such charges are not paid on the due dates the Lessee shall pay to the Lessor on demand interest on such charges at the rate of 5% per annum above the base rate of Barclays Bank Plc from time to time or its equivalent calculated on a daily basis from that due date of actual payment (whether before or after any judgement) and such interest shall be recoverable as debt*

9. Schedule 4 of the Lease states that

1. *In this Schedule the following expressions have the following meanings respectively:*

1.1 *"Total Expenditure" means all costs and expenses whatsoever incurred by the Lessor in any Accounting Period in carrying out its obligations this Lease including (without prejudice to the generality of the foregoing):*

1.1.4 *at its absolute discretion if considered to be appropriate or necessary by it, to set aside such sums of money as the Lessor shall in its absolute discretion require to meet such future costs as the Lessor shall in its absolute discretion shall expect to incur of replacing, maintaining and renewing those items which the Lessor covenants by this Lease to replace, maintain or renew; such sums of money to be held by the Lessor upon trust of the Lessee and the other residents and to be applied solely in accordance with the provisions of this Lease*

1.1.5 *any fees (legal or otherwise) properly incurred by the Lessor in collecting the Annual Rent, the Service Charge and Interim Charge and any other sums from the Lessee or resident*

1.2 *"Service Charge" means the percentage of the Total Expenditure specified in paragraph 5 of the Particulars...*

1.3 *"Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its agents shall specify at its discretion to be a fair and reasonable interim payment*

2. *In this Schedule any surplus accumulated from previous years shall not include any sums set aside for the purposes of paragraph 1.1.4 of this Schedule*

3. *The first payment of the Interim Charge ... shall be paid to the Lessor by equal half yearly instalments by bankers order on the first days of January and July in advance and in case of default shall be recoverable from the Lessee as rent in arrear*

4. *If the Interim Charge paid by the Lessee in respect of any Accounting Period exceeds the Service Charge for that period the surplus of the Interim Charge so paid over and above the Service Charge shall be accumulated by the Lessor either:*
 - 4.1 *credited to the account of the Lessee in computing the Service Charge in succeeding Accounting Periods as provided in this Schedule*
 - or*
 - 4.2 *(at the Lessor's discretion or from time to time during the Term) set aside by the Lessor pursuant to paragraph 1.1.4 of this Schedule*
5. *If the Service Charge of any Accounting Period exceeds the Interim Charge paid by the Lessee in respect of that Accounting Period together with any surplus accumulation from previous years then the Lessee shall pay the excess to the Lessor ...*

Description and Inspection

10. The Tribunal, in the presence of Mr Stephen Brown the Property Manager, inspected the Block in which the Subject Property is situated in anticipation of the reasonableness of the Service Charge being in issue.
11. The Tribunal found the Block to be one of a modern development of 10 four-storey blocks of self contained flats. The blocks are 5 years old and the exterior of brick and render is in good condition. The windows are of a metal alloy. It could not be seen from the ground floor what form of construction the roof comprised.
12. Access to the internal common parts is by a door entry. The entrance lobby, stairs and landings are carpeted and well maintained. There are 3 flats off each landing.
13. The communal grounds comprise a car park, lawns and borders of shrubs. They are generally well maintained. Each flat is allocated a parking space and there are a number of spaces marked for visitors. The public road outside the development is congested with parked cars, which are believed to be those of non-residents of the Development. The Development is about half a mile from the town centre.

Preliminary

14. The Applicant's Claim to the County Court was in respect of non-payment of Service Charges and Administration Charges. It was not clear from the Respondent's Defence whether both Service Charges and Administration Charges were submitted as being unreasonable and therefore whether the whole or part was not payable. Therefore, the whole matter having been transferred to the Leasehold Valuation Tribunal, the case was treated as if both were in issue and Directions were made and an Inspection arranged accordingly.
15. At the Hearing the Tribunal asked the Respondent whether or not he agreed that the Service Charges were reasonable and payable. The Respondent replied that he agreed that the Service Charges were reasonable and payable. The Tribunal then confirmed with the Respondent that he was submitting that the Administration Charges made by the Applicant for non-payment of Service Charge were not reasonable and were not payable. The Respondent confirmed that he was submitting

that the administration charges made by the Applicant for non-payment of Service Charge were not reasonable and were not payable.

16. The Tribunal found that the Respondent had agreed that the Service Charges were reasonable and payable and therefore they were not in issue and by reason of section 27A (4) Landlord and Tenant Act 1985 the Tribunal did not have jurisdiction to deal further with that matter.
17. Counsel for the Applicant agreed with the Tribunal that the Lease did not specify either an administration charge or a formula for calculating one. Therefore paragraphs 1 and 2 of Schedule 11 Commonhold and Leasehold Reform Act 2002 apply.
18. The matter therefore in issue was the reasonableness and payability of the Administration Charge in relation to the Accounting Period ending 31st December 2011.

Evidence

19. Counsel for the Applicant drew the Tribunal's Attention to a Statement of Account dated 12th August 2011 and to the Applicant's Statement of Case. Both documents were in the Hearing Bundle and had been included in the Court Papers.
20. The Statement of Account showed as follows:

Credits:

From 21st October 2009 until 21st December 2010 there had been a payment by Standing Order of £100.00 per month by the Respondent to the Applicant.

Debits:

As at the 21st October 2009 there were service charges outstanding of 334.05

On 31st December 2010 a Service Charge of £893.97 and a Reserve Fund of £56.62 was debited to the account

On 24th March 2010 a Deferred Payment Charge of £30.14 was debited.

On 31st December 2011 a Service Charge of £920.34 and a Reserve Fund of £50.00 was debited to the account

On 28th July 2011 a Deferred Payment Charge of £36.00 was debited to the account.

On 2nd June 2011 a Land Registry Fee of £18.00, an Administration Fee of £42.00 and a Legal Fee of £180.00 was debited to the account.

21. The Tribunal noted the Statement of Case and questioned Mr Brown, the Applicant's Property Manager and Miss Gibson, the Applicant's Accounts Representative and found the Applicant's case to be as follows.
22. The Applicant in November of each year prepared a Service Charge Budget including Reserve Fund for the following year. A copy of the Budget and a Demand for the annual Service Charge is then sent to the Tenants. Some Tenants pay the whole year's charge in a single payment, some pay half the charge by way of Interim Charge on 1st January and 1st July in accordance with the Lease and some pay by monthly Standing Order for which the Applicant's Agent makes a Deferred Payment

Charge. Miss Gibson was not able to say how many paid by the respective methods but it appeared that a significant number of Tenants paid by monthly standing order.

23. In the present case the Respondents had been paying by monthly standing order of £100 from 21st October 2009 until 21st December 2010. In July 2010 the Applicant's Agents informed the Tenants that as from 1st January 2011 the Agent was changing its bank and that payments were to be made to the new bank. Following service of a copy of the Budget for 2011 and a Demand (including the Summary of Rights) for the whole sum on 16th December 2010 the Service Charge of £920.34 and Reserve Fund of £50.00 was debited to the Respondent's Account with the Applicant's Agent. The Demand (a copy of which was provided) had at the foot of the document the new bank details and a statement that £201.85 was due. This apparently comprised £31.51 carried over from the previous year, £50.00 Reserve Fund contribution and £120.34 for the first month's instalment thereby including the odd £20.34 presuming that the remaining instalments would be of £100.00. The Demand also stated that the frequency of payments was to be monthly.
24. The Applicant's Representatives stated that no payments were received from the Respondents. When questioned with regard to the possibility of payments having been made to the wrong bank and therefore not credited to the Respondent, Miss Gibson said that sometimes payments were received which did not have the Tenant's reference number on it, in which case it was not possible to credit the Tenant. When this happened the payment was returned to the Tenant's bank by the Applicant's bank with a letter of explanation and an amended payment would be made by the Tenant's bank. In the course of the transition from the old to the new bank account, payments were received, which did not have the Tenant's reference number. Irrespective of whether the payment was received by the old or new bank the same action was taken as previously, in that the payment was returned to the Tenant's bank with a letter of explanation. If in the course of the transition either bank received a payment, which did have a Tenant's reference number then the amount was credited to the Tenant. If it had been sent to the old bank account a letter was sent to the Tenant's bank informing it that future payments must be made to the new bank account. In addition the old bank account remained open until July 2011 although all payers were told to use the new account from 1st January 2011. Miss Gibson said, therefore, any payment that had a reference number and could be linked to a Tenant was credited to that Tenant, any payment made to the old bank account was re-directed to the new where possible or if not because the Tenant could not be identified would be returned and in either case the Tenant's bank was informed of the new bank details. In addition the old account was left open so no payment would be 'lost'.
25. The Applicant produced copies of a number of reminder letters as follows:
- 22nd March 2011 from Applicant's Agents to Respondents addressed to the Subject Property
 - 3rd May 2011 from Applicant's Agents to Respondents addressed to the Subject Property
 - 17th May 2011 from Applicant's Agents to Respondents addressed to the Subject Property
 - 3rd June 2011 from Applicant's Debt Collection Agency to Respondents addressed to the Subject Property
 - 6th July 2011 from Applicant's Debt Collection Agency to Respondents addressed to the Subject Property acknowledging a payment of £100.00
 - 2nd August 2011 from Applicant's Debt Collection Agency to Respondents addressed to the Subject Property acknowledging a further payment of £100.00

- 5th August 2011 from Applicant's Debt Collection Agency to Respondents addressed to the Correspondence Address acknowledging the payment referred to in the letter above.
26. The Tribunal questioned the Applicant's Representatives regarding the addresses used for the letters. Miss Gibson said that in relation to non-payment of rent or service charges where there is a correspondence address and a property address, letters are sent to both properties by the Applicant's Managing Agent and Property Debt Collection Limited, Applicant's Debt Collection Agency. It was noted that the correspondence address had been used for the Service Charge and Reserve Fund Demands in December 2010 and the Administration Charges in August 2011. Counsel for the Applicant pointed out that in any event the address for service at the Land Registry was the Subject Property not the correspondence address given to the Managing Agent.
 27. Counsel for the Applicant submitted that the Service Charge and Reserve Fund had been properly demanded in December 2010, the reminders had been sent but the Respondents had failed to pay causing the Applicant to incur reasonable costs in order to obtain payment, which the Applicant was entitled to be reimbursed by the Respondents.
 28. Mr Khan on behalf of the Respondents submitted in written representations confirmed orally at the hearing, firstly, that the Applicant had wrongfully demanded the full amount of the Service Charge and Reserve Fund. He said that under the Lease the Applicant should have only demanded £435.17 payable on the 1st January 2011 with a further £435.17 payable on the 1st July 2011. He added that the manner of demanding the whole sum in advance caused unnecessary stress.
 29. Secondly, he considered that the Applicant was acting oppressively. He said that he had other properties in the same Development and a similar situation had arisen with regard to the payment of the service charge because of the confusion over the bank details and he understood other tenants were in a similar situation. He said that no action had been taken against him in respect of the other properties he owned and believed that the proceedings were being used as a test case. He said that he had now started to pay and that the court action was pre-emptive and a waste of money as the tenants would ultimately pay the costs.
 30. Thirdly, he said that he had been paying a £100.00 by standing order, which over the year 2010 was more than the Service Charge and the Reserve Fund and therefore he had believed that he was in credit starting the year 2011.
 31. Fourthly, he said he had been unaware that his bank had stopped the payments. He said he was equally unaware that the Applicant's bank details had changed. The standing order that he had placed with his own bank did not have a termination date and therefore should have continued during 2011. So far as he was concerned payments had continued from January until July. He said that when he received the letter from the Debt Collection Agency and found out that payments were not being made he instructed his bank and it will be noted that payments began again on the 27th July 2011.
 32. Lastly Mr Khan said that apart from the letter of the 3rd June 2011 no reminder letters had been received at the correspondence address and that he had never received any letters from the Subject Property as it was sub-let.

33. Mr Khan also referred to his personal circumstances saying that the matter was particularly stressful considering his age, state of health and financial situation as the rent provided he and his wife with a pension.

Section 20C Application

34. Mr Khan stated in the course of his case that the Respondents considered the referral to the court unnecessary and therefore the charges unreasonable because as soon as they were made aware of the situation the standing order was put back in place. It was therefore submitted that an order should be made under which the Applicant should not be allowed their costs for these proceedings to be included in the service charge.
35. Counsel for the Applicant stated that the Applicant had incurred reasonable additional costs by having to recover the unpaid service charges. The Applicant had done all that was reasonable to make the Respondent aware of the change to the bank details, had sent reminders regarding the non-payment, and the Respondent should have been aware that payments were not being made by reference to bank statements before the matter was referred to the Applicant's Debt Recovery Agent. It was therefore submitted that no order should be made.

Decision

36. The questions the Tribunal needed to ask were:
Firstly, was the service charge payable taking into account the form of the Demand?
Secondly, was it reasonable that the Applicant should take the action it did and therefore the costs incurred payable?
Thirdly, if it was reasonable to take that action, was the amount of the costs incurred reasonable?
37. In answering the first question the Tribunal considered whether the service charge itself was payable. It considered the Budget and the Demands sent by Applicant in December 2010 and the provisions of the Lease. No issue was raised as to the lawfulness of the Demands in so far that they carried the name and address of the Landlord's Agent, as required by section 47 of the Landlord and Tenant Act 1987, and were accompanied by the Summary of Rights, as required by section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257). The issue raised by the Respondent was that it appeared from the Demand that the whole of the amount of the Budget apportioned to each Tenant was due whereas under the Lease only half the sum was due.
38. The Tribunal found that although the Demand should have been expressed more clearly in this respect, nevertheless, the Respondents were not misled and knew that under the terms of the Lease only half the estimated charge set out in the Budget was payable on the 1st January. The Tribunal also found that the Demand had been customised for the Respondents in that at the foot of the document the amount required was £201.00 on receipt and a monthly payment thereafter, although the amount was not specified. The Tribunal found that this was in keeping with the manner of payment that the Respondents had made for the previous 14 months and that it was reasonable for the Applicants to expect the Respondents to instruct their bank to pay a standing order for which the first payment would be £201.00 and thereafter £100.00 per month.

39. The Tribunal found that the form of the Demand complied with a continuing course of conduct between the parties and the contents of the Demand, in the circumstances, would have been sufficiently clear to the Respondents. Therefore the Tribunal decided the service charge itself was payable.
40. In answering the second question the Tribunal considered the conduct of the Applicant. It found that the Applicant had sent a reminder on the 22nd March 2011 and the 3rd and 17th May 2011. The Tribunal considered that on the balance of probabilities these letters were sent to both the correspondence address of the Applicant as well as to the Subject Property.
41. The Tribunal found that it was reasonable for the Applicant to have expected a payment prior to the Applicant referring the matter to the Debt Collection Agency in July 2011. In doing so the Tribunal took into account the circumstances in which a reasonable delay might have been caused which included:
- the Respondents having to re-instruct their bank regarding the standing order in relation to the amount or the new Applicant's new bank account
 - the payment by the Respondents' bank of the standing order into the Applicant's old bank account
 - the time in which it might take the Respondents to realise that the payment was not being made if based upon the original standing order instructions, e.g. time between their receiving bank account statements.
42. Therefore the Tribunal decided that it was reasonable for the Applicant to refer the matter to the Debt Collection Agency and incur the related costs.
43. In answering the third question the Tribunal noted the costs, which were:
- | | | |
|---------|-------------------------|-----------------------------|
| £36.00 | Deferred Payment Charge | 28 th July 2011. |
| £42.00 | Administration Fee | 2 nd June 2011 |
| £180.00 | Legal Fee | 2 nd June 2011 |
| £18.00 | Land Registry Fee | 2 nd June 2011 |
| Total | £276.00 | |
44. The Deferred Payment Charge for the facility of paying monthly instead of bi-annually was, in the knowledge and experience of the Tribunal determined to be reasonable. In making this decision the Tribunal took into account the costs involved in monitoring monthly payments compared with bi-annual payments, the foregoing of interest under paragraph 4.2 of the Lease.
45. The Administration Fee of £42.00 for collating information to be sent to the Debt Collection Agency was in the knowledge and experience of the Tribunal determined to be reasonable. In making this determination it was noted that no charge had been made for reminder letters.
46. The Legal Fee of £180.00 was in the knowledge and experience of the Tribunal determined to be reasonable for the work carried out by the Debt Collection Agency in opening a file on the Respondents, obtaining a Land Registry Search, for writing four letters to the Respondents and monitoring the payments made. The Tribunal is aware that this is a standard charge and may cover more or less work depending on the circumstances. The Tribunal was of the opinion that it might not have considered the fee reasonable if the Respondents on realising that the standing order had not been met had then paid the outstanding amount in full negating the monitoring element of the Debt Collection Agency's charge.

47. The Land Registry Fee is a disbursement, which is a fixed charge by the Land Registry for providing a copy of the Register. The Tribunal decided that it was reasonable to obtain a copy of the Land Registry Entry for the Subject Property to obtain information relating to the Respondent's address for service of documents relating to the property, and to other parties interested in the property such as mortgagees.
48. The Tribunal found that Mr Khan's personal circumstances in respect of his age, health or financial situation as regards the rent being to provide a pension did not affect the payability of the service charge or the reasonableness and payability of the Administration Charge.
49. The Tribunal considered that whether or not this was a 'test case' or that action had not been taken against the Respondents in respect of other cases did not affect the outcome of the present case.

Section 20C Application

50. The Tribunal was of the opinion that the costs were reasonably incurred in the course of recovering the non-payment of service charges and as a result the Landlord under paragraph 1.1.5 of Schedule 4 of the Lease was entitled to recover these costs through the Service Charge and the Tribunal did not find any reason why the Applicant should be prevented from doing so.

JR Morris

18th April 2012