

H M COURTS AND TRIBUNALS SERVICE LEASEHOLD VALUATION TRIBUNAL

Case Reference : CAM/42/UH/LSC/2012/0085

Property : 2 Somermead Court, Malsters Way,
Oulton Broad, Lowestoft NR32 3PQ

Applicant : Mr M P Button

Respondent : Mr N A Truman

Type of Application : Liability to pay Service Charges

Date of Application : 4th July 2012

Date of Hearing : 5th October 2012

Appearances : The parties appeared in person

Tribunal : **Chairman: Mr Graham Wilson**
Members: Mr Gerard Smith MRICS FAAV REV
Mr David Reeve

DETERMINATION

Decision

- (1) The amount payable by the Applicant for service charges for the service charge year 2010 was £1,448.94.
- (2) The Tribunal had insufficient information to determine the service charge payable by the Applicant for the service charge year 2011.

The Application and the Background

1. This was an Application to determine the service charges payable at the subject property for the service charge years 2010 and 2011. The Applicant and his wife had assigned the Lease of the property (a term of 99 years from 1st January 1984) on a date unknown, but at the end of 2011 or at the beginning of 2012. Prior to exchange of contracts, the proposed assignee had insisted that the service charge position be resolved and the Applicant had paid the sum of £4,222.15 to the Respondent, the freeholder, and himself the leaseholder of one

of the four flats contained in the block. The Applicant had made the payment "under protest" so as to facilitate the sale. The charge was levied in respect of the years 2010 and 2011. The Application was thus designed to discover whether the payment was properly payable.

2. The Applicant had had the lease for some time and this was not the first dispute between the parties. The first dispute had gone to the County Court, but the parties had settled the dispute between themselves and had resolved the service charge position up to December 2009. The parties' agreement was incorporated into a Consent Order. Among the terms of settlement was the provision that there should be "no order as to costs".
3. The Chairman had earlier determined that no inspection of the property should take place and no representations had been received to the contrary.

The Law

4. The applicable law is to be found in the Landlord and Tenant Act 1985. It is convenient to set out the material parts 'en bloc'.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination 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.

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.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal

(2) In this section "relevant contribution" in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement –

- (a) if relevant costs incurred under the agreement exceed an appropriate

- amount, or
- (b) if relevant costs, incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount –
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

The “appropriate amount” is currently £250.

In summary, the law is that service charges must be “reasonable”, and there is an obligation on the landlord to consult tenants when works etc exceed the appropriate amount.

The Hearing

5. The parties appeared in person, although both had had the benefit of prior legal advice. The Applicant had prepared a Hearing Bundle.
6. The Respondent raised three preliminary points. He asked:
 - (1) whether the Applicant’s wife, a former lessee, should be a party to the Application;
 - (2) whether the Application was “time-barred”;
 - (3) whether the current lessee (Mrs Cook) should also be a party to the Application.

The Tribunal answered each question in the negative and the Hearing proceeded.

7. As to the service charge years, the Applicant made the following challenges. He first challenged a contribution to “2011.10/12 on account” of £1,462.97 – an amount, the Respondent claimed, that was calculated by averaging previous years. In fact, the calculation was incorrect (the figure correctly calculated was £1,652.52) but no decision could be reached in this respect, for the reasons appearing below.
8. Secondly, the Applicant challenged the service charge items for the year 2010, as follows:

Accountants - £373.75

This was a charge for the preparation of accounts for six years. This ran counter to the County Court settlement, which had settled matters up to 2009 on a "no costs" basis. The Tribunal found the Respondent's approach was thus flawed. One year would be allowed at £62.69 (see page 65 of the Hearing Bundle).

Surveyors - £440.63

The invoice at page 66 in the Hearing Bundle would be allowed, but that at page ~~67~~ would be disallowed. It was for the preparation of a report for the County Court case. To reiterate, the case had been settled on a "no costs" basis and it would not be reasonable for the Respondent to recover costs via an indirect route.

Legal Fees - £5,161.25

These were the Respondent's legal fees for the County Court case. These too were disallowed. To repeat, that case had been settled on a "no costs" basis and the Respondent should not have sought to undermine the County Court Order. The advice that he claimed that he had received to the effect that he could do so was misconceived.

Repairs - £800

The Applicant, who had seen the supporting invoices for the first time at the Hearing, did not pursue this challenge.

9. Thirdly, the Applicant challenged a document called "Final Account 2010" which was a claim for the cost of repair and decoration running to £9,378.87. This was said to be for work carried out in 2010 and thus to be added to the 2010 service charge year. Why this item had not been included in the 2010 service charge accounts was not explained. However, the Applicant had been charged for a proportion of this work and it was part of the payment that he had made "under protest".
10. This account, which the Respondent appeared at the Hearing tacitly to acknowledge, fell foul of the consultation requirements of the 1985 Act. The Respondent claimed that his approach, which did not include the service of the appropriate notices, had never been a source of difficulty in the past. That, however, could not justify the Respondent's approach ^{and} was thus rejected.
11. The Tribunal decided that, it being no part of the Applicant's case that the work had not been carried out, would be allowed as follows:
 - *Item: £973.75 (removal of windows etc). Allowed at £194.75 (the "appropriate amount" reduced proportionately).*

- *Item: £3,761.17 (decoration). Allowed at £250 (the "appropriate amount")*
- *Item: £3,525 (scaffolding). Allowed at £250 (for the same reason).*
- *Item: £1,118.95 (work to soffits, balconies). Allowed at £223.79.*

The total allowed was thus £918.54, as against the £9,378.87 that the Respondent claimed that he had spent. This was the consequence of the Respondent's disregard of the statutory requirements. Other Tribunals may have rejected the claim in its entirety, but this Tribunal had resolved not to do so on the basis of the nature of the work and the lack of challenge to its having been carried out.

12. The Applicant's fourth challenge was to an invoice dated 30th April 2011. While it was within that service charge year, it was open to question whether it was appropriate to describe it as such. It appeared rather to be a claim for damages from the Applicant and his then wife for damage caused by their activities in the subject property. The issue could, if necessary, be resolved on another occasion (as to which see below).
13. The service charges for the year 2010 were reduced and apportioned as follows:

Somermead Court 2010

| | Claimed | Decision |
|------------------|---------------|---------------|
| Insurance | £795.92 | £795.92 |
| Electricity | £318.20 | £318.20 |
| Sewerage | £482.34 | £482.34 |
| Water | £454.92 | £454.92 |
| Lift Maintenance | £109.11 | £109.11 |
| Window Cleaning | £250.00 | £250.00 |
| Repairs | £800.02 | £800.02 |
| Accountants | £373.75 | £62.29 |
| Surveyors | £444.38 | £176.25 |
| Legal fees | £5,161.25 | £0.00 |
| Bank Charges | £121.16 | £121.16 |
| Management | £1,352.00 | £1,352.00 |
| Cleaning | £650.00 | £650.00 |
| Gardening | £754.00 | £754.00 |
| | ===== | |
| | £12,067.05 | £6,326.21 |
| Flat 2 @ 20% | £2,413.41 | £1,265.24 |

"Final Account 2010"

| | Claimed | Decision |
|---------------------|-----------|----------|
| Windows etc | £973.75 | £194.75 |
| Decorating | £3,761.17 | £250.00 |
| Scaffolding | £3,525.00 | £250.00 |
| Additional work etc | £1,118.95 | £223.79 |
| | ===== | |
| Total | £9,378.87 | £918,54 |
| Flat 2 @ 20% | £1,875.77 | £183,70 |

The total payable by Flat 2 was thus £1,448.94.

14. The Tribunal turned to the 2011 service charge year. The Tribunal explained to the parties at the conclusion of the Hearing that the absence of service charge accounts, let alone supporting invoices, had made it impossible to make a determination for that year. The Respondent should supply the Applicant with those accounts. If he chose to do so, the Applicant could then make a further Application to the Tribunal.
15. It was a matter for regret that yet further proceedings should be in contemplation. The Respondent had himself described his management of the four flats as "amateurish". It was noted that he had resolved to appoint managing agents. He had sought to argue, however, that the Applicant was conducting a vendetta against him. Of this, the Tribunal were not persuaded. The Respondent's approach to management had been described by the Applicant as "single-minded". It would have been as apt to describe it (based on the evidence of his conduct of the Hearing) as verging on the dictatorial and characterised by a disregard of the statutory requirements and an abject failure to prepare proper financial material for his tenants. His disregard of the Consent Order negotiated in the County Court was not excusable. The thousands of pounds that the Respondent had spent on legal costs would have been better spent on getting guidance to his duties as landlord. Failure to do that had had the result that money possibly properly expended was irrecoverable.
16. The Tribunal made the determination that appears at the beginning of this Decision.

Graham Wilson
Chairman

Date: 5th October 2012.