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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UH/LIS/2012/0065

Between:

Brian Ravenhall (Applicant)

and

Proxima GR Properties Limited (Respondent)

Premises: Flat 2, Homewater House, Waterlooville, Hampshire PO7 7JY

Hearing: 28th September 2012

Tribunal: Mr D Agnew BA LLB LLM Chairman
Mr P D Turner-Powell FRICS
MsT Wong LLB

DETERMINATION AND REASONS

DETERMINATION:

1. The Tribunal determines that the item of the service charges demanded for the years 2005 to 2011 in respect of Employer's Liability Insurance is payable by the Respondent and the sums demanded are reasonable and payable. The items in the service charges for the years 2006, 2007 and 2008 in respect of holiday pay for a relief House Manager are payable and the sums claimed are reasonable. Insofar as a demand may be made for either Employer's Liability insurance or holiday pay for a relief House Manager in future these items will in principle be payable but will be subject to the requirement of reasonableness required by section 19 of the Landlord and Tenant Act 1985.

   The Tribunal declines to make an order under section 20C of the landlord and Tenant Act 1985.

REASONS:

Background

2. On 25th April 2012 the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 as to whether certain service charges levied by the Respondent in respect of the Applicant's flat at 2, Homewater House, Waterlooville,

Hampshire PO7 7JY (hereafter referred to as "the Premises") were payable. There were just two service charge items challenged by the Applicant. They were, first, in respect of the premiums for Employer's Liability insurance taken out to cover the Landlord's managing agents' employees who are based and work at Homewater House and, secondly, the holiday pay paid for a relief House Manager when this has been necessary.

3. The actual figures involved are as follows:-

Holiday relief pay
2006 - £37.56
2007 - £32.46
2008 - £45.47
No relief House Manager has been required at Homewater House since 2008 as the full-time House Manager has not been sick or taken more than a few days' holiday at a time since then.

Employers' Liability insurance premiums
Y/e 31.12.05 - £93.63
Y/e 31.12.06 - £94.48
Y/e 31.12.07 - £134.43
Y/e 31.12.08 - £95.28
Y/e 31.12.09 - £98.60

4. Directions were issued on 2nd July 2012 requiring statements of case and bundles of documents in support to be filed by each party. This was duly done and the case came before the Tribunal for hearing at the Tribunal's offices at 1, Market Avenue, Chichester on 28th September 2012.

Inspection

5. The Tribunal inspected the premises immediately prior to the hearing on 28th September 2012. Present at the inspection were the Applicant, the House Manager who showed the Tribunal round the common parts of the building and, for the Respondent, Mrs Sandra Barton, a Chartered Legal Executive and Legal Services Manager with Peverel Management Services Limited, the Landlord's Managing Agents.

6. Homewater House is a development of 96 retirement flats one of which is occupied by the House Manager. The development was constructed in two phases. Phase 1 contains 72 flats and Phase 2, built some years later but in a similar style and connected to Phase 1 by a corridor houses 24 flats. In addition there are two laundry rooms, one for each Phase, a guest "suite" in Phase 1 and a guest room in Phase 2. There is also a large communal lounge/dining room with a small kitchen attached. The House Manager has an office at the entrance to Phase 1 and there is a lift to all floors.

7. The building is situated on a busy road and roundabout very close to the shopping facilities of Waterlooville. Upvc double glazing very effectively shuts out the traffic noise from the road. The building is constructed of brick under a tiled roof. It is surrounded by very pleasant well maintained gardens and there is provision for the parking of a good number of cars in the grounds.

8. The whole building was well maintained: the carpeting was of good quality and in good order as was the internal and external decoration.

9. At the Applicant's request the Tribunal took note of the buildings insurance details that were pinned up on the notice board in the communal hallway.

The lease

10. Mr Ravenhall's lease is dated 30th August 1985 and was made between McCarthy and Stone (Developments) Limited and Frederick Charles Wilson and was expressed to be for 99 years. Under this lease the Lessee covenants by clause 3(2) to pay by way of further or additional rent a sum equal to 2/228ths part of the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and management of the Building and the Estate...the provision of services therein and the other heads of expenditure incurred by the Lessor in the performance of its covenants.... including the fees of its Managing Agents and Accountants or other professional persons plus Value Added Tax (if applicable) such further and additional rent hereinbefore described (hereinafter called "the service charge")... Clause 5 of the lease sets out the Landlord's covenants which includes the obligation to use its best endeavours to maintain the services of a Warden (now called House Manager).

The Law

11. By Section 27A of the 1985 Act it is provided that:-
(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.

The Hearing

15. Three witnesses, all of whom had filed and served witness statements in accordance with Directions, joined Ms Barton for the hearing. They were Judi Runciman, Group Head of Insurance for the Peverel Group, Christine Pearce who is Head of Client Accounts for Peverel Retirement Division and Julie Vivian, Head of Human Resources for Peverel Retirement.

The Applicant's case

16. The Applicant gave detail as to how over a long period of time he had done battle with various senior people at Peverel over the service charges and the service charge accounts. The Applicant himself is a retired accountant with considerable experience of management and maintenance accounts for blocks of flats. He explained how he had challenged Peverel over several years in respect of the format of their accounts and exposed several errors in the accounts. For this reason he had little confidence in the accounts that Peverel produced. Gradually over time and after considerable perseverence on the Applicant's part the errors were remedied. Ultimately he has established a good rapport with Christine Pearce in particular. However, there remained two areas where he was unable to accept that the lessees should be charged under the service charge. These areas were (1) the holiday pay of relief House Managers covering the Homewater House permanent House Manager's sickness or holidays and (2) the portion of the Employer's Liability insurance premium that was attributable to those working at Homewater House, as opposed to head office staff.

17. With regard to the former, the Applicant said that he accepted that a relief House Manager may need to be deployed to Homewater House from time to time when the permanent House Manager was unavailable, and he accepted that the lessees of Homewater House should be required to pay the relief manager's wages and National insurance contributions. It was only the relief manager's holiday pay to which he objected. Fortunately, there had been no need for a relief House Manager since 2008 but he challenged the principle in case a greater use of a relief Manager was required for the future. He said that he accepted that it was a legal requirement for Peverel to pay holiday pay but the lessees were already paying holiday pay for the House manager and he asked why the lessees should have to pay the holiday pay of holiday relief. He considered that the lessees should only pay for the hours the relief house Manager actually worked.

18. With regard to the Employer's liability premium for staff employed at Homewater House, the Applicant's case was simple. He said that the lessees were not employers and therefore they should not have to pay this premium. He said that this was an expense of Peverel which should be taken into account when fixing their management fee. He

also said that Peverel might get more that way as it would be included in a global management fee!

The Respondent's case

19. Mrs Vivian explained the situation with regard to holiday pay for relief House Managers. The employer is obliged by the Working Time Regulations 1998 to pay holiday pay to such workers. The way it is done is to roll it up with their basic pay, but they must be able to show the employee that it has been paid and how it is calculated. It is calculated on the basis of the number of hours actually worked at the development concerned so that only those who have had a relief House Manager actually have to pay for them. If this were not done in this way, developments such as Homewater House who have not had to have a relief house manager for a number of years would have to contribute to the costs of the provision of House Managers at other developments. It is considered that the way this is done is much fairer than the alternative.

20. With regard to the employers' liability insurance premium, Mrs Runciman explained that it is a legal requirement of the Employers' Liability (Compulsory Insurance) Act 1969 for employers to have such insurance. Peverel purchase this insurance on a group policy to obtain the best rates from insurers. The premium is calculated by insurers on the basis of the wages that are paid to the employees. Peverel extract the amount of wages paid to the employees who work on the individual developments such as the House Managers and cleaners, send this information to brokers who then apportion the premium between the various properties. Again this is to ensure that only those who employ such staff are paying their share of the premium and that those who do not have such staff do not. The premium in respect of central office employees is not apportioned to the various properties but is a central overhead which is included and recovered as part of Peverel's management fee. The Tribunal was assured that there was no double counting when the management fee is calculated. There had been no challenge by the Applicant to the amount of the management fee and indeed he had said that if this charge was included in the global management fee he would have been satisfied, and Peverel might have been able to recover more by this method.

The Determination.

21. The Tribunal had no hesitation in deciding that the Respondents were entitled to recover both types of service charge items challenged by the Applicant. They were both part and parcel of the overheads of the Landlord's managing agents in providing the services that the Landlord was obliged to provide under the lease and required by law to be paid. The Tribunal could find no good reason for finding that these items were not recoverable simply because they had been identified and charged separately from the management fee. It would be wrong to say

that the items were not recoverable as a result of the managing agents trying to be more transparent and breaking down their charges to identify precisely how the charges have been arrived at. The absurdity of the Applicant's case was evident when he conceded that if these charges had been subsumed into a global management fee then he would have had no argument and Peverel might have been able to charge more. The Tribunal is satisfied that these charges have been calculated and separated out from the management charge in order to be fair and so that the properties that do not have the services of the employees in question do not have to contribute to the expense.

22. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 so that, if granted, the Landlord should not be able to add the cost of these Tribunal proceedings to any future service charge. Mrs Barton opposed the making of such an order. Whilst the Applicant was entitled to seek a determination on these points from the Tribunal, the Respondent had been put to a great deal of work to respond to the Application. She accepted that there had been times in the past when the Applicant had not received a response to his queries within a reasonable time and there had been occasions when he had received incorrect answers. She apologised for this but she said that more recently the Applicant had been given a full explanation of the reason for the charges that he queried in this application which was the same explanation as given in evidence in this case, but he had felt unable to accept it and that is why this application was made. The Respondent should not be deprived of the opportunity of seeking to recover its costs by way of future service charges if the Tribunal find that the charges were payable by the lessees.

23. The Tribunal considered the section 20C application carefully. Having found that the Applicant fails on his challenge to the charges in question and finding that the explanation for these charges given to him shortly before he initiated this application was essentially the same as the evidence given by the Respondent, the Tribunal decided that it would not be just and equitable to make an order under section 20C in those circumstances.

Dated this 25th day of October 2012

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D. Agnew BA LLB LLM
Chairman