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HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Commonhold and Leasehold Reform Act 2002 - Schedule 11
Landlord and Tenant Act 1985 – Section 20C

Property: 27 Greystoke Place, Southfield Green, Cramlington,
Northumberland, NE23 6NL

Applicant: Calum John Wiley

Respondent: Bushcharm Limited

Date of determination: 11 May 2012

The Tribunal: Laurence Bennett
Alan Robertson

Application

1. Mr Calum John Wiley applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of administration charges relating to 27 Greystoke Place, Southfield Green, Cramlington, Northumberland, NE23 6NL (the Property).
2. Mr Wiley seeks an order under Section 20C of the Landlord and Tenant Act 1985 in respect of costs recoverable by Buscharm Ltd, the Respondent.

Preliminary

3. The Applicant and the Respondent are the respective owners of the Lessors and Lessees interest in the Property created by the lease specified below.
4. The application was received 29 September 2011.
5. Directions dated 16 December 2011 by a Vice President of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submissions of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
6. Each party provided submissions and documentary evidence to the Tribunal.
7. The Tribunal convened on 11 May 2012 without the parties to determine the application.

The Law

8. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-

1(1) In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –

- (a) for or in connection with the grant of approvals under his lease, or application for such approvals,
- (b) for or in connection with the provisions of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

1(3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –

- (a) Specified in his lease, nor
- (b) Calculated in accordance with a formula specified in his lease

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5 (1) An application may be made to a leasehold valuation tribunal for determination whether an administration 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

9. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

10. The first commencement date was 30 September 2003

The Lease

11. The Applicant holds the leasehold interest in the property created by a lease dated 28 January 1971 made between William Leech (Holdings) Ltd (1) John T Bell & Sons Ltd (2) for a term of 99 years from 1 March 1968 (the Lease). The Lease also relates to other dwellings and indicates that other flats and houses on the estate in which the Property is located are let on similar terms.

12. The 4th Schedule to the Lease states:-
1. No additional building or erection (whether permanent or temporary) shall be erected or placed on any site.
 2. No alteration or addition shall be made nor shall any fixture of whatever nature be attached to the exterior of any building or any other erection on any site.
 3. No alterations shall be made to any building erected on any site which shall affect the general external appearance or architectural character of the site or of the group of buildings of which the building on the site forms part.
- 4-7 (not relevant to the issues)
13. Clause 9 of the Lease states:-
- (i) Notwithstanding anything herein contained the Lessor may vary or release the stipulations contained in the Fourth Schedule in respect of any site.
 - (ii) If the Lessee or occupier of any site shall desire to have the said stipulations varied or released he shall apply to the Lessor and submit such plans and specifications as the Lessor may reasonably require.
 - (iii) Before considering any such application the Lessor may require payment of a reasonable fee which shall not be refunded in the event of a decision adverse to the applicant.
 - (iv) The Lessor shall have an absolute discretion to vary or release the said stipulations either conditionally or un-conditionally and in making such decision may but shall not be obliged to have regard to the general appearance and amenities of the estate and the interest and expressed wishes of any of the occupiers of the sites.
 - (v) Any such variation or release shall be evidenced by Deed to be prepared at the expense of the applicant.

Facts and Submissions

14. The Property comprises a two bedroom ground floor flat in a purpose built block of two flats.
15. It is not disputed that the Applicant has carried out major alterations to the Property to provide wheelchair access and rear entrance porch and installation of a box bay window in the lounge.
16. The comprehensive correspondence submitted by the parties indicates that on 3 July 2011 Mr Wiley sent a copy of the planning application to the Respondent's agents and sought "retrospective permission to make the alterations."
17. Subsequent correspondence reflects the requirements of the lease for a variation and the Respondent's request for payment before submitting a deed of variation.
18. The Respondent's solicitors have itemised the requested charges and provided details of the work to be carried out:
 - a. costs of senior executive of managing agents - £400
 - b. costs of deed of variation - £375
 - c. VAT at 20% on (b) - £75

The Applicant was offered a without prejudice concession but this has been withdrawn.

19. The Respondent does not dispute that the charges are a variable administration charge which are not specified in the Lease nor calculated in accordance with a formula in the Lease.

Tribunal's conclusions with reasons

20. Noting the provisions of the Lease and the request made by the Applicant to the Respondent we are satisfied that the sums requested are a variable service charge falling within Paragraph 1 (b) and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and are within the Tribunal's jurisdiction.
21. We find from the circumstances evidenced by the parties that a variation is required to the Lease to provide the consent requested by the Applicant. This is not a matter of dispute.
22. We accept from the evidence that costs have been incurred by the Respondent arising from the Applicant's request and will be incurred in the provision and completion of the variation. The Lease requires that this variation should be by deed. Bearing in mind that the variation relates to finite works already executed we consider that the deed will be straightforward and simple in form.
23. With 20 in mind and taking into account the activity so far evidenced by the correspondence and submissions we conclude that the work reasonably requires three hours involvement by a senior executive of the Respondent's managing agents at charge out rate of £100 per hour totalling £300 and preparation of a simple deed amounting to one hour by a solicitor's fee earner at £190 plus VAT of £38 giving a total of £528.

Section 20C

24. Section 20C Landlord and Tenant Act 1985 states:

- (1) A tenant may take an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (3) The Court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

25. We have considered The Applicant's request for an order under Section 20C of the Landlord and Tenant Act 1985. We make no finding whether the Lease permits recovery of the Lessor's costs incurred in this application by way of service charge. However, taking into account that the subject matter of this application relates to determination of charges payable we do not find it appropriate that the Lessor should have payment in addition. We make the order requested.

Order

26. The sum payable to Buscharm Ltd by Mr Wiley for variation of his Lease in respect of the alterations that have taken place shall be £528.
27. The Lessor shall not treat costs in relation to the application as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessee.



L J Bennett

Chairman

11 May 2012