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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

**COMMONHOLD AND LEASEHOLD REFORM ACT 2002
Schedule 11, paragraphs 3 & 5**

Property : Various Apartments, Centenary Mill Court
New Hall Lane
Preston
PR1 5JQ

Applicants : Amar Adar, Julie Ann Malka Adar, Eldan Trading Limited,
Eldan Holdings (UK) Limited & Alfa Estate (UK) Limited

Respondents : Forte Freehold Managers Limited, Adderson Group Limited
& UK Ground Rent Estates Limited

Case number : MAN/30UK/LAC/2012/0016

Date of Application : 13 March 2012

Type of Application: Application for the variation of a fixed administration
charge

The Tribunal : P J Mulvenna LLB DMA (chairman)
K Kasambara BSc MSc MRICS

Date of decision : 19 December 2012

ORDER

That the administration charges challenged by the Applicants are reasonable and that the Applicants are liable for payment of the sums demanded.

DETERMINATION AND REASONS

INTRODUCTION

1. Amar Adar, Julie Ann Malka Adar, Eldan Trading Limited, Eldan & Alfa Estate (UK) Limited (together with Eldan Holdings (UK) Limited 'the Applicants') made an application dated 13 March 2012 to the Residential Property Tribunal under paragraph 3 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for the variation of a fixed administration charge in respect of various apartments in Centenary Mill Court, New Hall Lane, Preston, PR1 5JQ ('the Property'). Eldan Holdings (UK) Limited subsequently joined in as an additional applicant.
2. Forte Freehold Managers Limited, Adderson Group Limited & UK Ground Rent Estates Limited ('the Respondents') are, respectively, the collectors of the ground rent and insurance rent reserved on and issuing out of the Property; the proprietor of the superior leasehold interest in the Property; and the proprietor of the freehold interest in the Property.

3. The Property comprises 20 apartments (numbers 2, 4, 5, 6, 8, 11, 12, 14, 15, 17, 18, 20, 22, 87, 115, 135, 140, 168, 178 & 180A) in a former mill converted to provide 180 units of accommodation over seven floors, including a basement. There is a spacious common entrance area and an atrium in the centre of the building with some planting. The development also includes three new-build blocks containing a further 24 units. The whole, together with a large block-paved car park reserved for residents and verge landscaping, is enclosed and fronts a main road in a predominantly commercial/industrial area. It is situated within reasonable walking distance of Preston city centre and a few minutes drive from the motorway network at junction 32 of the M6. The Applicants are the lessees of apartments at the Property. Amar Adar is the lessee of apartments 6, 8, 14, 15, 87, 115, 135, 140, 166, 178 & 180A. Julie Ann Malka Adar is the lessee of apartment 22. Eldan Trading Limited is the lessee of apartments 2 & 4. Alfa Estate (UK) Limited is the lessee of apartments 5, 11 & 18. Eldan Holdings (UK) Limited is the lessee of apartments 12, 17 & 20.
4. The Applicants' leasehold interests are held under identical Leases for each apartment for a term of 125 years from 1 January 2004 ('the Leases').

THE HEARING

5. Directions were issued by Mr A Robertson, procedural chairman, on 21 August 2012 and subsequently amended at the request of the Applicants. The parties have complied with the Directions.
6. The Tribunal visited the Property prior to the substantive hearing for the purpose only of identifying and familiarising themselves with it rather than carrying out a formal inspection which, in view of the matters in issue, was unnecessary. The parties were neither present nor represented at the visit.
7. The substantive hearing of the application was held on 18 December 2012 at the Holiday Inn, Preston. The Applicants were represented by Mr A Adar and Mr M Fedjman. The Respondents were represented by Mr A Willoughby.

THE LAW

8. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides, insofar as it is material to the present case –
'Meaning of "administration charge"
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—
... (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 a 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.
2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that –

- (a) any administration charge specified in the lease is unreasonable; or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable...

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.'

9. The material provisions of section 166 of the Commonhold and Leasehold Reform Act 2002 are as follows:

'(1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment...

(5) The notice –

- (a) must be in the prescribed form, and
- (b) may be sent by post.

(6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address...'

THE LEASES

10. The Tribunal has construed the Leases as a whole, but has had particular regard to the Clause 3 and Schedule 4 which relate to the payment of rents.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

11. The Applicants submitted an application form which indicated that the application was for the variation of a fixed administration charge. Such an application would have fallen to be determined pursuant to paragraph 3 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. There does not appear to have been an application to amend the application form, but the application has been dealt with by the Residential Property Tribunal Service, including at the Directions stage, as an application pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination of the reasonableness of the administration charges.

12. The Tribunal is aware of the decision in *Birmingham City Council -v- Keddie & Hill* [2012] UKUT 323 (LC) in which it was held that a leasehold valuation tribunal had no jurisdiction to determine issues not raised by the application. Having heard submissions on behalf of the parties, however, the Tribunal decided that it was appropriate, in the particular circumstances of this case, to proceed on the basis of a determination of the reasonableness of the administration charges under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal so decided for the following reasons:
 - (i) the indication that the application was for the variation of a fixed administration charge was clearly erroneous as the Leases do not contain provisions relating to fixed administration charges;
 - (ii) it is in the interests of the parties and in the public interest to have the issues determined without the additional expense of fresh applications and the attendant costs of, and additional time in, processing the same;
 - (iii) the parties have prepared for the present hearing and adduced evidence and made submissions on the basis of an application pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and are not, therefore, prejudiced by the issues being determined by the Tribunal.
13. The Tribunal heard oral evidence and submissions from Messrs Adar and Fedjman on behalf of the Applicants and from Mr Willoughby on behalf of the Respondents. The Tribunal also had before them the written evidence and submissions of the Applicants and the Respondents.
14. The Applicants have challenged administration charges made by the Respondents in respect of action taken as a consequence of non-payment of the ground rent and insurance rent due in respect of each of the apartments comprising the Property. The challenge in the application was on three bases which were expressed in the following terms:
 - '1. The Respondent having full knowledge as to the Applicant being the tenant of all twenty properties created an excessive charges by sending individual letters to the Applicant instead of one letter for all the properties.
 2. The Respondent continued to demand Administrative Charges from the Applicant even after receiving payment for the ground rent and insurance.
 3. The Respondent refused to negotiate in good faith with the Applicant a reduction of the Administrative Charges which resulted in an increase in these charges.'
15. At the hearing, the Applicants raised two additional grounds of challenge:
 - (i) it was said that the original demands had not been received and it was, therefore, unreasonable to take action which gave rise to the imposition of administration charges;
 - (ii) the charges in respect of the letters sent to mortgagees were said to be excessive.
16. The Respondents have provided full details of the extent of the arrears which gave rise to their action and of the bases upon which their charges were calculated. They have answered the bases of challenge raised in the application as follows:

1. There are several different tenants of the apartments comprising the Property and it was clear to the Applicants which properties were in arrear; it is extremely common for a lessee to have outstanding monies on one property but not another; for these reasons it is common practice to serve separate notices for each property.
 2. The Applicants have made no further payments since 20 March 2012. The total amount now outstanding is £10,488.40 (including costs in studying the application, researching the matter, preparing papers and a witness statement; an allowance had been made for the sum of £5,063.33 received on 20 March 2012:
 3. The costs sought to be recovered by the Respondents had been calculated on a strict time basis and in accordance with the principle decided in *Lloyds Bank Limited -v- Eastwood & others* [1974] 3 All ER 603.
17. In relation to the additional grounds of challenge, Mr Willoughby submitted that the Tribunal had no jurisdiction to consider such ground on the basis of *Birmingham City Council -v- Keddle & Hill* (see paragraph 12 above), but further submitted that, in any event, the Applicants had provided no information to support a finding in favour of such grounds.
 18. The Tribunal have considered the issues on the whole of the written evidence and the oral and written submissions now before them and, applying their own expertise and experience, have reached the following conclusions on the issues before them:
 1. The Tribunal accepts the Respondents' submissions in relation to the first basis of challenge: contrary to the Applicants' assertion, there is not a single lessee, but several. Moreover, each apartment is held under a separate Lease and, therefore, there is a distinct contractual relationship in respect of each apartment. It is reasonable, in these circumstances, to treat each apartment on a separate basis.
 2. On the face of the documentation before the Tribunal, it appeared that the Applicants had made no payments prior to the application being made to the Residential Property Tribunal. It would, in those circumstances, have been unreasonable and misleading for the Applicants to have included this element of challenge in the application. However, on being made aware of the position, Mr Fedjman suggested that the application had been erroneously dated 13 March 2012 – it should have been dated 13 April 2012. The Tribunal noted that the Residential Property Tribunal Service stamped the application form as having been received on 19 April 2012. The likelihood was, therefore, that the application had been dated wrongly.However, the Tribunal did not find that there was merit in this ground of appeal. The Applicants had made a payment of £5,063.33 on 20 March 2012 expressly for the ground rent and the insurance rent. The administration charges (albeit subject to dispute as to reasonableness) were still outstanding. The Respondents had a right to take continued action and did not act unreasonably in doing so.
 3. The basis of the charges made by the Respondents is not inherently unreasonable. In the proceedings before the Tribunal, the Applicants have produced no evidence to suggest that the administration charges are unreasonable. In particular, no evidence has been produced of comparable

administration charges which would suggest that the service charges are inherently unreasonable. The Respondents have raised no sustainable issues as to value for money in relation to any of the individual costs recharged.

19. In relation to the additional grounds raised by the Applicants, the Tribunal accepts Mr Willoughby's submission that there is no jurisdiction to consider such grounds on the basis of the *Birmingham* case: the Respondents were not given notice of the additional grounds in the application and were not, therefore, alerted to the need to respond to them. However, the Tribunal would comment on the merits of the additional grounds.
20. In relation to the alleged non-receipt of the demands, the Tribunal considers that non-receipt is not material. The provisions of section 166 of the Commonhold and Leasehold Reform Act 2002 permit service by post and are silent on the question of receipt. The Tribunal has unchallenged evidence from the Respondents that the demands were sent to the addresses notified to the Respondents by the Applicants. That is sufficient to render the demands payable by the Applicants.
21. The question of the reasonableness of the charges made was based upon a subjective view that they appeared to be excessive. There is no objective evidence to support such a view. The Tribunal would have rejected the challenge on the basis of the reasoning set forth in paragraph 18.3 above.
22. The Tribunal finds, on the basis of the whole of the evidence and submissions before them, that the administration charges challenged by the Applicants are reasonable and that the Applicants are liable for payment of the sums demanded.

COSTS

23. Mr Willoughby made an application for costs, if the Respondents were to be successful. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:
 - (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
 - (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
 - (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.

- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'
24. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.
25. Mr Adar made an application for reimbursement of fees, if the Applicants were to be successful. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:
- '(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).'
26. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case, particularly as the Respondents had successfully resisted all the grounds of challenge raised by the Applicants.
27. The Applicants requested an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondents in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondents have acted unreasonably in any respect and has decided that it would not be reasonable or proportionate to make an order.

Signed.....
P J Mulvenna

Chairman

19 December 2012