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LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/00JA/LSC/2013/0020

Property: 31, Heritage Court, Peterborough PE1 4RB

Applicant: Graham John Wade

Respondent: The Hyde Group, 142 – 152 Long Lane Studios, Staple Street, London SE1 4BS

Date of Application: 13th February 2013

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

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.

Date of Application: 13th February 2013

Date of Hearing: 3rd May 2013

Tribunal: Dr John R Morris (Lawyer Chair)
Mr Gerard Smith MRICS FAAV (Valuer Member)
Mr David S Reeve MVO MBE (Lay Member)

Attendance:

Applicant: Mr GJ Wade, Applicant

DECISION

- The Tribunal determined that the estimated service charge of £1,677.08 for the period 1st April 2012 to 31st March 2013 and the estimated service charge of £1,432.65 for the period 1st April 2013 to the 31st March 2014 in respect of the Property were payable by the Applicant to the Respondent as demanded.
- The Tribunal made no order under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings.

REASONS

Application

1. This Application was made on 13th February 2013 for a Leasehold Valuation Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges.

Issues

2. The issues are as identified in the Application and relate to the reasonableness and payability of the service charges incurred for the year ending 31st March 2013 and to be incurred for the year ending 31st March 2014.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
5. Section 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.*
 - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*
6. Section 21B Notice to accompany demands for service charges
 - (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
 - (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*

- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

7. **Section 27A Liability to pay service charges: jurisdiction**

- (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.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) *the person by whom it would be payable,*
 - (b) *the person to whom it would be payable,*
 - (c) *the amount which would be payable,*
 - (d) *the date at or by which it would be payable, and*
 - (e) *the manner in which it would be payable.*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
 - (a) *has been agreed or admitted by the tenant,*
 - (b) *has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*

Description and Inspection of the Subject Property

- 8. The Tribunal inspected the Common Parts and Building in which the Property is situated on the day of the hearing in the presence of the Applicant. The Development is exclusively for persons over the age of 55 (Second Schedule of the Lease Paragraph 1(a) and (b)). The Building is a two and three storey block of 44 purpose-built flats constructed of brick under a pitched tile roof. There is a warden who has a

flat in the Building and is in attendance between 8.30 and 4.30 each day and there is an emergency call system in each flat to either call the warden or the 'out of hours' service.

9. Externally the Building is in fair to good condition with upvc windows and doors and rainwater goods. There is parking for visitors and tenants at the front of the Building and to the sides and rear are communal gardens laid to lawn and shrubs that are generally well maintained. It was noticed that some tenants with flats on the ground floor have their own small garden outside the French windows of the flat.
10. There is a door entry system. Internally there is an entrance hall with a sitting area, toilets and warden's office and a lift gives access to all floors. There is a common room with kitchen, a laundry with two washing machines and two dryers and a guest room. The Applicant's flat is on the first floor and comprises, a hall, living room with kitchen, bedroom and bathroom.

The Lease

11. A copy of the Lease was provided which was between the Stamford Construction Limited (1), Joan Adelaide Crane dated 10th March 1988 and is for a term of 99 years from the 1st October 1985. The written statement of Per Goodden, the Respondent's Leasehold Team Leader, states that the freehold title was assigned to the Respondent on 28th March 2012 and the Lease was assigned to John Raymond Wade (the Applicant's father) on 6th November 1998 and passed to the Applicant on the death of his father on the 10th April 2012 as his father's executor, probate having been granted on the 31st may 2012.
12. The relevant provisions of the Lease are as follows:
In the preamble to the Lease it is stated:

(1)(h) The Service Charge means the cost of the outgoings incurred by the Lessor in the repair and maintenance renewal and management of the development the provision of services therein and the cost of insuring the insured risk and other expenditure reasonably incurred by the lessor in the performance of his covenants hereunder including the fee of managing the development accountant fess and other professional fees and any Value added Tax incurred thereon

(i) The Lessor shall have the right to appoint a managing agent or agents to provide the services hereinafter provided and to carry out the obligations of the Lessor and the fees of such managing agent shall be included in the service charge
(ii) The amount of the service charge shall be ascertained and certified by a certificate signed by the Lessor's auditors or accountants or managing agents as experts and not as arbitrators annually as soon after the end of the Lessor's financial year as is reasonably practicable

(viii) The Tenant shall if required by the Lessor pay to the Lessor such sum or sums in advance and on account of the service charge as the Lessor shall specify at their discretion to be fair and reasonable advance payment
(viii) As soon as reasonably practicable after the signature of the certificate the Lessor shall send to the tenant an account of the service charge payable by the Tenant for the year in n question setting out therein full credit for all interim payments paid by the Tenant in respect of the said

year and the Tenant shall within twenty eight days make payment to the lessor of any balance due. The Lessor shall similarly make payment to the Tenant of any balance due to the Tenant if any sum has been overpaid by the tenant by way of interim payment

- (i) *The Tenant includes the executors administrators and assigns of the Tenant and where tow or more persons are expressed to be the Tenant covenants entered into by them shall be deemed to be entered into jointly and severally*

13. Clause 3 of the Lease states:

The Tenant hereby covenants with the Lessor as follows:

- (2) *To pay without any deduction by way of further and additional rent a sum on account of the service charge such sum shall be paid quarterly in advance on the usual quarter days*
- (3) *To repay to the Lessor a fair proportion of all existing and future rates and outgoings of every kind*

14. Clause 5 of the Lease sets out the Lessors covenants including the services the cost of which is met by the service charge. The written statement of Per Godden itemises those deemed to be relevant.

15. The Application is for a determination of the reasonableness and payability of the service charges to be incurred for the years ending 31st March 2013 and 2014. A copy of the estimated service charges for the years in issue together with the proportion of the cost allocated to the Property was provided.

16. Estimated Account for year 1st April 2012 - 31st March 2013

Items	Estimated Cost	Annual Cost
	£	£
Scheme Costs for all Residents		
Care Call & Monitoring Systems	5,505.39	115.37
Caretaking & Other Staff Costs	30,453.95	638.20
Cleaning Costs	2,963.43	62.10
Communal Electric Bills	6,578.98	137.87
Communal Telephone Bills	662.47	13.88
Communal Water Charge	5,809.85	121.75
Controlled Door Entry	314.24	6.59
Electrical Maintenance inc Bulbs & Inspections	290.92	6.10
Fire Safety in Servicing and Inspections	929.44	19.48
Furniture Furnishings White Good & Decoration	823.89	17.27
Grounds Maintenance	6,984.81	146.38
Lift Maintenance & repairs	5,472.70	114.69
Provisions	2,198.68	46.08
Responsive Maintenance	401.49	8.41
Homeowner Costs		
Buildings Insurance	2,086.89	43.73
Provisions Homeowner only	0	0
Administration and Accounting Costs		
Management Fees	8,550.21	179.18
Total	80,027.34	1,677.08

17. Estimated Account for year 1st April 2013 - 31st March 2014

Items	Estimated Cost	Annual Cost
Scheme Costs for All Residents		
	£	£
Care Call & Monitoring Systems	5,732.13	120.12
Caretaking & Other Staff Costs	21,210.60	444.50
Cleaning Costs	2,563.99	53.73
Communal Electric Bills	7,240.69	151.74
Communal Telephone Bills	663.79	13.91
Communal Water Charge	4,801.48	100.62
Controlled Door Entry		
Electrical Maintenance inc Bulbs & Inspections	104.82	2.20
Fire Safety in Servicing and Inspections	715.75	15.00
Furniture Furnishings White Goods & Decoration	891.34	18.68
Grounds Maintenance	6,171.79	129.34
Lift Maintenance & repairs	5,330.42	111.71
Provisions	2,198.64	46.08
Responsive Maintenance	1,098.33	23.02
Homeowner Costs		
Buildings Insurance	2,000.35	41.92
Audit Fees and Other Professional Fees	637.07	13.35
Administrative and Accounting Costs		
Management Fees	7,002.24	146.74
Total	68,363.43	1,432.66

Applicant's Case

18. The Applicant stated in written representations confirmed by the Respondent's Statement of Case that his father John Raymond Wade died on 10th April 2012, appointing the Appellant as his executor. On 11th April 2012 The Respondent requested a copy of the death certificate and a letter from a solicitor confirming the name of the executor (a copy was provided). On the 11th May 2012 a letter dated 8th May 2012 was received from the Applicant identifying himself as the executor and enclosing the death certificate (a copy was provided).
19. The Applicant identified the following costs on the Application Form as being in issue:
- Call Care & Monitoring Systems
 - Care taking & Other Staff Costs
 - Communal Electric Bills
 - Communal Telephone Costs
 - Communal Water Charges
 - Furniture and Furnishings & White Goods
 - Lift Maintenance and Repairs
 - Provisions
 - Management Fees
20. The Applicant stated that he considered the identified costs were unreasonable because neither his father, now deceased, nor he, who does not live in the Property, benefits from the services.
21. It had been pointed out that he was liable by virtue of the terms of the Lease. The Applicant stated that if he was a prospective purchaser of the Lease then the

contents of the Lease would have been made available to him and it would have been his choice to accept or decline the terms of the Lease. However the Property was bequeathed to him and the terms of the Lease were not available to him until his father died and Probate was granted. He has therefore inherited a liability to which he had not agreed.

22. He said that he accepted the cost of certain items as they related to the communal obligations but the items identified he considered were not.

Respondent's Case

23. The Respondent's Representative, Per Goodden in a written statement said that the accounts itemising the actual costs of the service charge for the year ending 31st March 2013 would be available in September 2013 and those for the year ending 31st March 2014 would be available in September 2014. With regard to this the terms of the Lease were reiterated in respect of the payment of any shortfall between the interim charge and the actual costs and the refunding of any credit should the actual costs be less than the interim charge paid.
24. The proportion of the total of the service charge costs payable in respect of each flat is calculated on the basis of the floor space. The total floor area of all dwellings at Heritage Court has been assessed as 1,874.37 square meters and the floor area of 31 Heritage Court has been assessed as 39.28 square meters. Therefore on the basis of floor space, the fair proportion of the total cost of maintaining the common parts of the building, and providing services enjoyed in common, attributed to the Property, 31 Heritage Court, held by the Applicant, is 2.1%.
25. The Respondent's Representative listed the Respondent's rights and obligations in relation the service charge set out in Clause 5 of the Lease as follows:
- 5 (2) take out buildings insurance
 - 5 (4) (a) (i) maintain the structure of the building including the gutter and rainwater pipes
 - 5 (4) (a) (ii) maintain all gas and water pipes, fire and safety equipment and all electrical equipment including the audio emergency communication system
 - 5 (4) (a) (iii) maintaining the internal common areas including the lounge, guest room laundry, warden's flat, lift and forecourt
 - 5 (4)(a) (iv) maintaining paths road boundary walls fences and gardens in the development
 - 5 (4) (a) (v) maintain furniture and equipment in the internal common areas
 - 5 (4) (b) pay all gas water and electric charges and any other services incurred in respect of the common parts of the block and the provision of services enjoyed in common
 - 5 (5) keep clean the internal parts
 - 5 (6) decorate the internal and exterior common parts of the building
 - 5 (7) ensure all residents abide by the terms of the lease
 - 5 (8) clean the windows of the individual dwellings as necessary
 - 5 (10) make the best efforts to provide a warden service
26. The Respondent's Representative stated that for each of the items of the service costs there was a corresponding provision in the Lease permitting the charge to the tenant. It was stated that the quantum of the estimate has not been disputed for either the period 31st March 2012 to 1st April 2013 or 31st March 2013 to 1st April 2013. Only the liability to pay is questioned. It was added that the Applicant had previously disputed liability for payment of the service charge in a letter received on the 2nd November 2012 (a copy was provided) in which he said "I do not understand why the

full amount has to be paid when the facilities are no being fully used." In reply on the 5th November 2012 the Respondent wrote to the Applicant (a copy was provided) explaining, "the charges are for the communal areas of the building and estate, which has to be paid for by all owners of the property on the estate, even if the property is not occupied."

27. In conclusion the Respondent's Representative stated the Respondent was of the view that "the clauses in the Lease referred to in the Statement of Case fully entitled it to recharge all the costs listed in the estimated service charge invoices for the period of the 1st April 2012 to 31st March 2013 and for the period 1st April 2013 to the 31st March 2014 as a due service charge in respect of 31 Heritage Court."
28. Copies of the invoices sent to the Applicant together with the accompanying explanatory documents including the statutory Summary of Right and Obligations were provided.

Hearing

29. The Hearing commenced at 11.00 a.m. on 3rd May 2013 at Peterborough Magistrates Court. The Applicant attended. A representative from the Respondent did not appear at the start of the hearing. The Clerk telephoned the Respondent's Office but the person answering did not know whether the Respondent was out be represented the Tribunal therefore continued under paragraph 14(8) of the Leasehold Valuation Tribunals (procedure) (England) Regulations 2003 (SI 2003/2099). The hearing had concluded and the Applicant had left before the Respondent informed the Tribunal that its representative had mistakenly gone to the Tribunal offices in Cambridge.
30. At the Hearing the above evidence was referred to. The Tribunal explained to the Applicant that the charges under the Lease were payable irrespective of whether the premises were occupied or the services were used. The example was given of a tenant on the ground floor with a separate entrance was obliged under the Lease to pay for the lift and the cleaning and maintenance of the common parts of a hallway and stairs given access to flats on floors above even though that tenant never used the lift or entered those parts of the Building.
31. The Applicant said that he appreciated the Lease provided for the charges and understood the point the Respondent was making. However, he applied to the Tribunal because he thought that it would be able to waive the charges if it thought that they were unreasonable where a tenant was not occupying the flat or using the services. He said that he had been trying to sell the flat and found it very expensive to pay the service charges in the mean time.
32. The Tribunal explained that it could not go against the terms of the Lease. The Applicant could only negotiate terms between himself and the Respondent to help him with payment e.g. paying a proportion of the service charge now and then paying the remainder when the Property was sold. However, the Respondent may be reluctant to do this due the need to maintain cash flow to pay the on-going liabilities.

Determination

33. The Tribunal having inspected the Development found firstly that the premises had all the facilities that were referred to in the estimated service charge accounts including grounds, door entry system, warden, call system, fire system, lift and communal lounge with kitchen. Secondly it found that the costs itemised in the estimated service

charge in relation to those facilities were permitted under the provisions in the Lease as follows:

Items	Provision in Lease
Scheme Costs for All Residents	
Care Call & Monitoring Systems	Clause 5(4)(a)(ii)
Caretaking & Other Staff Costs	Preamble 1(h); 5(10)
Cleaning Costs	Clause 5(5)
Communal Electric Bills	Clause 5(4)(b)
Communal Telephone Bills	Clause 5(4)(b)
Communal Water Charge	Clause 5(4)(b)
Controlled Door Entry	Clause 5(4)(a)(ii)
Electrical Maintenance inc Bulbs & Inspections	Clause 5(4)(a)(ii)
Fire Safety in Servicing and Inspections	Clause 5(4)(a)(ii)
Furniture Furnishings White Goods & Decoration	Clause 5(4)(a)(v)
Grounds Maintenance	Clause 5(4)(a)(iii); 5(4)(a)(iv)
Lift Maintenance & repairs	Clause 5(4)(a)(iii)
Provisions	Preamble 1(h)(viii)
Responsive Maintenance	Clause 5(4)(a)
Homeowner Costs	
Buildings Insurance	Clause 5(2)
Audit Fees and Other Professional Fees	Preamble 1(h)
Administrative and Accounting Costs	
Management Fees	Preamble 1(h)

34. Thirdly the Tribunal found that the Applicant did not dispute the amount of the service charge only that he should not be liable for all of it because he did not use the facilities, as he did not live in the Property. As explained to the Applicant by the Respondent in correspondence the Applicant was still liable under the Lease to pay the service charge even though he did not use the facilities or live in the Property.
35. As explained to the Applicant at the Hearing the Tribunal did not have jurisdiction to reduce or waive any of the service charge liabilities incurred under the terms of the lease.
36. Therefore, the Tribunal determined that the estimated service charge of £1,677.08 for the period 1st April 2012 to 31st March 2013 and the estimated service charge of £1,432.65 for the period 1st April 2013 to the 31st March 2014 in respect of the Property were payable by the Applicant to the Respondent as demanded.
37. The Tribunal made no order under section 20C of the Landlord and Tenant Act 1985 for the limitation of service charge arising from the landlord's costs of proceedings.

JR Morris (Chair)

28th May 2013