



9097

Leasehold Valuation Tribunal

Case Reference : CAM/00KG/LVA/2013/0001

Property : 29 Coniston Avenue,
Purfleet,
Essex RM19 1PG

Applicant : Jacqueline and Veronica Daley

Respondents : (1) Freehold Portfolios GR Ltd
(2) The Haven (Purfleet) Residents Co. Ltd.
(through its agents Warwick Estates
Property & Management Services Ltd.)

Date of Application : 26th March 2013

Type of Application : To determine reasonableness and
payability of variable administration charges

The Tribunal : Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. Freehold Portfolios GR Ltd. is substituted as first Respondent in place of Barratt Homes Ltd.
2. The administration charge of £96 for late payment of the ground rent is reasonable and payable.
3. The Tribunal is unable to determine whether any administration fees claimed on behalf of the second Respondent for late payment of service charges are reasonable or payable.

Reasons

Introduction

4. This application was received on 5th April 2013 with a letter of explanation dated 27th March 2013. The application said (a) that the Applicants challenged an administration fee of £95 claimed by Simarc Property Management Ltd ("Simarc") (b) that they also challenged a total of £545 paid to Warwick Estates ("Warwick") for late payment of service charges and (c) that the landlord was

Barratt Homes Ltd. There was no copy of the lease with the application.

5. The administration fees claimed by Warwick are set out in the following way:-

<u>Charge</u>	<u>Amount(£)</u>
30/8/12 Debt referral fee	120.00
1/11/12 court fee	175.00
28/1/13 Legal cost	75.00
1/3/13 court fees	<u>175.00</u>
Total cost	545.00

6. Strictly speaking, an application of this nature received without a copy of the lease is not a complete application. However it was accepted and a Directions Order was made on the 20th April 2013 timetabling this case to determination.
7. The directions started with a requirement on the part of the Applicants to file a copy of the lease by 10th May 2013 and it was said, in bold letters, "**if a copy of the original is not filed, the Tribunal will not be able to deal with this application**". A further letter was written to the Applicants on 14th May asking for a copy of the lease but there was no reply. Both Respondents were then ordered to file statements of case justifying the administration charges they were making by the same date. The Applicants were then ordered to file a statement by 24th May to say, having seen the explanations from the Respondents, whether they still objected to the Administration fees being claimed.
8. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in the directions order in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 10th June 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
9. Finally, the Applicants were ordered to file bundles of documents for the members of the Tribunal at least 10 days before 10th June.
10. The only 'party' to comply with any of the directions was Freehold Folios GR Ltd. who had purchased the freehold of the property from Barratt Homes Ltd on the 30th June 2006, according to the statement filed on their behalf. Neither of the Applicants nor the second named Respondent complied with any of the directions addressed to them.

Conclusions

11. The statement filed on behalf of Freehold Folios GR Ltd. is from their solicitor Glenn Stevenson of Stevensons. He explains about the acquisition of the freehold by his client and, in view of this, the Tribunal makes the first order in the

decision above.

12. The statement goes on to explain that the ground rent of £223.00 due on the 1st January 2013 was demanded on the 22nd November 2012. A copy of the demand is attached to the statement. It is in the correct form and also states, in effect, that if the ground rent is not paid on the due date, Simarc may be able to claim an administration fee. The statutory form for the recovery of an administration fee is also included.
13. Mr. Stevenson says that "*there was no obligation under the Lease to send these documents*". In fact that is not correct. Section 166 of the **Commonhold and Leasehold Reform Act 2002** now makes it a requirement to formally demand ground rent with prescribed information. Without such demand, ground rent is not payable. Administration charges must also be accompanied by statutory information.
14. Be that as it may, the proper notices were sent but payment was not made on the due date. Thereafter, time was spent by Simarc checking their records. They say that a total of over an hour was spent by a senior administration officer at various stages. Further letters were written. The relevant part of the lease is then quoted and a claim is made for £80 plus VAT, making a total of £96, as an administration charge, not the £95 referred to in the application.
15. As Mr. Stevenson has quoted from the lease, the Tribunal is aware of the terms of such lease which affect that part of the claim. Those terms confirm that the landlord can claim "*all the costs and expenses that the Landlord may incur by reason of any breach of the Tenant's covenants...*". Simarc do not receive a management fee from the Applicant lessees and the Tribunal therefore concludes that £80 plus VAT is both a reasonable fee for the work done by Simarc and is payable under the terms of the lease as set out in Mr. Stevenson's statement.
16. The problem with the remainder of the application is that because the Applicants have failed to supply a copy of the actual lease, rather than what appear to be extracts from a lease which may or may not be from the actual lease, the Tribunal is simply unable to say whether variable administration charges are payable for non payment of service charges. In addition, the failure of the second Respondent to provide any justification for the amounts allegedly claimed means that the Tribunal is in some difficulty in establishing whether the items of claim set out in the Application are reasonable.
17. All the Tribunal can say in order to assist the parties is as follows:-
 - The claim described as a debt referral fee is not understood. If it means a fee charged for referring the debt to a debt recovery company, then it seems excessive
 - No information has been given to the Tribunal which would indicate that court proceedings have been issued in which case the claims described as court fees are not reasonable
 - Legal fees may be recoverable subject to seeing details of the claim and the

fee note from the solicitor

- There is a letter from a debt recovery company with the papers which does say that its charges are £175 including VAT. If that is one of the court fees claimed, then it could well be reasonable. Some managers just issue court proceedings and some instruct debt recovery companies who tend to charge a minimum fee. Whichever it is, the managing agent is incurred in cost

18. The Tribunal accepts that this leaves thing rather 'up in the air' but as the Upper Tribunal has made it very clear on a number of occasions recently, the Tribunal's jurisdiction is exercised on an adversarial basis, not inquisitorial. Thus it is up to a party to present evidence to justify its case. All the Tribunal can do is ask for that evidence by making directions. If parties choose to ignore the directions, they must suffer the consequences.

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Bruce Edgington
President
12th June 2013

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