



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/26UK/LSC/2013/0053

Property : 17 Mull House, Himalayan Way,
Watford, Herts, WD18 6GJ

Applicant : The Swallows (BLK K,L,M,N)
Management Co. Ltd

Represented by Crabtree Law

Respondent : Hamida Hussain

**Represented by Saujani & Co.
Solicitors**

Date of Transfer : 20 March 2013

Type of Application : section 27A of the Landlord and
Tenant Act 1985 ("the 1985 Act")

Tribunal : Judge J. Oxlade
M. Krisko BSc. (EST MAN) FRICS

Date of Paper Hearing : 21 August 2013

DECISION

For the following reasons, the Tribunal¹ finds as follows:

- (i) under the terms of the lease the Applicant is entitled to demand service charges from the Respondent, who is liable to pay them,
- (ii) the demands served on the Respondent comply with sections 47 and 48 of the Landlord and Tenant Act 1987 ("the 1987 Act")

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¹ The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). In this decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

- (iii) the Applicant can recover management charges and interest under the terms of the lease; liability to pay the sums demanded will be dependent on the County Courts judgement in respect of the Respondent's three arguments set out at paragraph 11 herein,
- (iv) the case be transferred back to the County Court.

REASONS FOR DECISION

Background

1. The Applicant is a Management Company which claims to have responsibility under the lease and supplemental lease of the property, to maintain and insure the building in which the property is located and to gather in service charges to meet the costs of so doing. The Respondent is the lessee of the premises who is obliged to pay service charges for the purposes of maintenance and insurance.
2. On an unknown date, the Applicant issued a claim in the Barnet County Court against the Respondent, claiming unpaid service charges in the sum of £2698.54. Attached to the claim was a statement of account dated 26th July 2012, showing an opening balance, various sums debited to the account, and the balance due up to and including 1st April 2012 of £2698.54.
3. On 7th September 2012 the Respondent filed a defence, stating that she intended to defend the whole claim; in a fully particularised defence she made the following points:
 - (i) she admitted that she was the lessee of the property, having purchased the premises on 11th July 2011,
 - (ii) the previous lessee was Bestcare Enterprises Limited, with whom she was connected at that time,
 - (iii) that the Applicant had not explained in what capacity they were able to claim service charges; their address and Crabtree appeared to be one and the same,
 - (iv) the Applicant had not referred to the terms of the lease to establish liability to pay, nor the applicable lease,
 - (v) she had paid to the Applicant (through Solicitors) the sum of £1281.34 (the "part discharge argument"),
 - (vi) she had agreed with the previous lessee (Bestcare) to assume responsibility for the flat (including discharge of service charge liabilities) on the basis that she had the benefit of an unsatisfied judgement debt made against the Applicant in favour of Bestcare on 7th October 2010, in the sum of £879.28 (the "set off argument"),
 - (vii) further, the sums £48.41, £323.89, £151.52, and £606.06 were paid by Bestcare (when her Solicitors were acting for Bestcare); the Respondent relied on a nil balance sheet for Bestcare dated 21st October 2011, and a Solicitor's letter dated 31st July 2012 (the "Bestcare part discharge argument"),

- (viii) the Applicant's demand for (i) additional service charges relating to management fee of £240 on 30th December 2011, was wrong as were the claims for (ii) interest of £6.23, £13.32 and £24.93 and so were not payable (the "ancillary charges").

4. On 16th January 2013 District Judge Chesterfield sitting at Watford County Court issued a Direction that as the case concerned service charges the case would be transferred to the Leasehold Valuation Tribunal ("LVT"), unless the parties could provide good reasons not to do so. By email dated 1st February 2013 the Applicant raised an objection on the basis that the defence raised matters outside the jurisdiction of the LVT's i.e. the contractual position with the Respondent's predecessor. In earlier correspondence dated 23rd November 2012 the Respondent's Solicitor had said that the claim did not relate to service charges. However, on 20th March 2013 District Judge Chesterfield sitting at Watford County concluded that he was not satisfied that the case was not in respect of service charges relating to leasehold property, and so made an Order transferring the case to the LVT, to determine:

"the issue of whether such service charges are due",

which Order was made pursuant to paragraph of Schedule 12 of the Commonhold and Leasehold Reform Act 2002, which provides that:

"(1) Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the Court (a) may by Order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination in question".

5. On 16th May 2013 the LVT made Directions for the filing of evidence, noting the following:

- (i) the Tribunal's jurisdiction was limited to those issues raised by the parties in the County Court claim and defence, so that any party wishing to challenge reasonableness of the service charges would have to issue a separate application under section 27A of the 1985 Act,
- (ii) the issues appeared to be whether or not (a) the Applicant was entitled to demand service charges, (b) the Respondent was liable to pay them, (c) whether or not the Respondent is entitled to set off against service charges, the judgement debt in favour of Bestcare for £879.28 ("the set off argument) and (d) whether the demands for payment of the service charges were compliant with sections 47 and 48 of the Landlord and Tenant Act 1987.

6. The application was listed for hearing on the papers, in default of either party requesting an oral hearing, which neither party has done. Pursuant to the Directions the Applicant has filed a bundle of documents, including a reply to the Defence, a witness statement of Alex Marshall-Clarke, various documents and service charge demands (totalling £1339.28, not the full sum claimed of £2698.54), and a copy of the lease and supplemental lease. The Respondent has

not complied with Directions, and so the Tribunal has only those documents which were filed by the Respondent in the County Court, namely: defence, statements of account dated 21st October 2011 and 26th July 2012, Order in favour of Bestcare dated 7th December 2010, Solicitors correspondence dated 7th December 2010, 31st July and 7th September 2012, copy cheque dated 7th September 2012 for the sum of £1281.34 in favour of Crabtree Property Management. The Tribunal notes that the Applicant had applied a nil balance to Bestcare's closing service charge statement.

7. Neither party has issued a separate application before the Tribunal pursuant to section 27A of the 1985 Act.

The Tribunal's Jurisdiction

8. On transfer of a case (or part of a case) from the County Court to the Tribunal, the Tribunal shall consider only those parts of the dispute which (a) are specifically transferred to it and (b) which the Tribunal has jurisdiction to deal with.

9. The Tribunal's jurisdiction to consider reasonableness and payability of service charges is established by section 27A of the Act, which provides as follows:

Section 27 A

(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".

10. Section 27A of the 1985 Act does not give the Tribunal jurisdiction to undertake (i) an account of what service charges are outstanding, nor (ii) to determine what has been paid/is unpaid, save where necessary for the purpose of assessing payability of ancillary charges i.e. interest and management charges.

11. Accordingly, of the issues raised in the pleadings the Tribunal has no jurisdiction to determine the following:

- (a) the part discharge argument,
- (b) the set off argument, nor the
- (c) the Bestcare part discharge argument.

Discussion

The parties legal relationship

12. The Proprietorship Register of the Land Registry Office Copy Entry for 1 to 18 Mull House records that on 7th October 1997, Fairway Property Investments Limited obtained title absolute. The Respondent concedes that she is the lessee of the property.

13. On 14th March 1996 a tripartite lease (“the lease”) of the property was created for 99 years, establishing Fairview New Homes Plc as “the lessor”, The Swallows (Blocks K, L, M & N) Management Company Limited as “the company”, and Anna Maria De Kacerda Adamovic & Nenad Adamovic as “the lessees”.

14. The lease recorded that the Company had been incorporated with the object of providing services to and for the lessees of the parts of the blocks and otherwise managing the property (preamble (3)), and that the company had covenanted with the lessee and the lessor to perform the obligations as set out in Part IV of the Schedule (Clauses 7 and 8). Part IV provides that the company will maintain, repair, redecorate, and renew the structure and exterior, conduits and common parts, discharge water charges and electricity, and keep proper accounts of all costs and charges expended; additionally it will keep the premises insured. Further, that the lessee had covenanted to pay to the company on demand the costs, charges and expenses incurred or to be incurred by the company in performing its obligations under Part IV; in the alternative, if the lessor incurred these costs, then the lessee would instead pay the costs to the lessor, if notified that it (not the company) had incurred them (clause 5(a)).

15. On 23rd January 2009 a supplemental lease was entered into by Fairway Property Investments Limited and Bestcare Enterprises Limited for a term of 125 years, for a premium of £6500, recording that it was supplemental to the original lease and that the same covenants, provisos and conditions applied as in the original lease.

16. From the above the Tribunal finds that the Respondent is liable to discharge service charges incurred by the Applicant in discharge its obligations under Parts IV of the lease; accordingly, the Applicant was entitled to issue proceedings for recovery of unpaid service charges against the Respondent as set out in paragraph 1 above.

Sections 47 and 48 of the 1987 Act

17. The legislation provides that when making any demand of the lessee the demand shall include the landlord’s name and address, and further that the landlord shall furnish to the lessee an address in England and Wales at which proceedings can be served on him; otherwise, any rent, or service charge cannot be recovered.

18. The Respondent had raised as an issue the Applicant's failure to explain the relationship between itself and Crabtree Property Management, who appeared to share the same address. The Applicant has dealt with this point at paragraphs 1 and 2 of the Reply to defence, namely that Crabtree Management are appointed as the Company Secretary for the company, and so the registered office for the company. Although the Respondent has not said so explicitly, this observation could be regarded as questioning compliance with sections 47 and 48 of the 1987 Act.

19. In sample demands dated 28th July and 5th September 2012 Crabtree Property Management have correctly referred to the Landlord as being Fairway Property Investments Limited, and given an address which includes an address for service of proceedings. The Respondent has not disputed that these are accurate copies.

20. The Tribunal finds that the Applicant has complied with sections 47 and 48 of the 1987 Act.

Ancillary Costs

21. The Respondent has challenged the recovery of ancillary charges which were incurred in respect of management fee and interest.

22. As the liability to pay the ancillary costs depends on the success of the Respondent's defence as to the part discharge argument, the set off argument, and the Bestcare part discharge argument, the Tribunal cannot determine whether these sums are due and payable.

23. The Applicant relies on clause 2(5) of the lease, as providing a legal basis for recovery of *management charges*, as part and parcel of the liability to meet costs charges and expenses incurred by the lessor for the purpose of or incidental to the service of a section 146 notice. In the reply to the defence, the Applicant says that the sum of £240 was incurred to meet the managing agents time incidental to the preparation of the preparation of a notice of forfeiture; it disputes that the sum was incurred because of the Applicant's error or mismanagement of the service charge account.

24. The Tribunal is satisfied that the sum of £240 is recoverable under the terms of the lease; whether or not the County Court decides it is payable depends on the Respondent succeeding in her argument that she has three basis for challenging the debt.

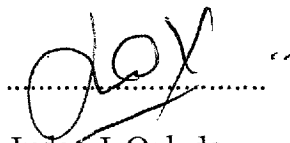
25. The Applicant relies on Clause 1 of the lease which provides that the lessee will pay by way of additional rent *interest* on any service charge which is unpaid for more than 21 days. The Tribunal is satisfied that this sum is recoverable; again, whether or not the County Court decides it is payable depends on the Respondent succeeding in her argument that she has three basis for challenging the debt.

Conclusion

26. The Respondent has not sought to challenge the reasonableness or payability of service charges, save in respect of management charges and interest, and this argument is limited to whether there was any principle debt at all, so giving rise to a legitimate charge for ancillary costs. Accordingly, the Tribunal has no jurisdiction under section 27A of the 1985 to consider or determine the three arguments which the Respondent raised in her defence and which are set out in paragraph 11 herein.

27. The only matters over which the Tribunal has jurisdiction result in the following findings:

- (i) the Applicant is entitled to demand service charges of the Respondent, who is liable to pay them under the terms of the lease,
- (ii) the demands comply with sections 47 and 48 of the 1987 Act,
- (iii) the Applicant can recover management charges and interest under the terms of the lease; liability to pay will be depended on the County Courts judgement in respect of the Respondent's three arguments set out at paragraph 11 herein.



Judge J. Oxlade
Judge of the First Tier Property Tribunal (Residential Property)

22nd August 2013