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

Case No: CHI/24UH/LSC/2012/0134

Re : 47 Norfolk Crescent, Sea Front, Hayling Island, PO11 0AN

Applicants Mr Richard Jones (Flat 3a);  
Ms Anna Peers (Flat 2);  
Mr Surajit De (Flat 1a); and  
Mr & Mrs Phillips (Flat 2a)

Respondent Mr Steven Paul Katz (the landlord)

Date of Application 3<sup>rd</sup> October 2012

Date of Inspection 10th January 2013

Date of Hearing 10th January 2013

Venue Residential Property Tribunal Service Office, 1<sup>st</sup> Floor,  
Midland House, 1 Market Avenue, Chichester, West Sussex  
PO19 1PJ

Representing the parties The Applicants were represented by Mr Andrew Strong of  
Atlantis Estates Limited ("Atlantis"), the managing agents  
appointed by the Right to Manage company.

The Respondent was represented by Mr Richard Egleton of  
Pallant Chambers, 12 North Pallant, Chichester, West Sussex  
PO19 1TQ

Members of the Leasehold Valuation Tribunal:

P J Barber LL.B	Lawyer Chairman
P D Turner-Powell FRICS	Valuer Member
Mrs M Phillips	Lay Member

Date of Tribunal's Decision: 15th January 2013

**Decision**

1. The Tribunal determines in accordance with Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the reasonable service charges payable in respect of the following items of expenditure for the Building for the period 1<sup>st</sup> January 2012 to 3<sup>rd</sup> September 2012, are as follows :-

- |                                       |                           |
|---------------------------------------|---------------------------|
| (i) Scurlock Decorating Repairs       | £1,560.00 (including VAT) |
| (ii) Debenhams Ottaway LLP Legal fees | £ 908.00 (including VAT)  |
| (iii) Capital Tax Accountants fees    | £ 540.00 (including VAT)  |
| (iv) Chandler Hawkins Surveyors Fees  | £ 720.00 (including VAT)  |

2. The Tribunal determines in accordance with Section 20C of the 1985 Act that none of the costs of the Respondent in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

### Reasons

#### INTRODUCTION

3. This application was made by Mr Richard Jones, leaseholder of Flat 3a, in respect of 47 Norfolk Crescent, Sea Front, Hayling Island, Hampshire PO11 0AN ("the Building") and to which 3 other leaseholders were subsequently joined as parties. The application was made to the Tribunal under Sections 27A and 19 of the 1985 Act for determination of liability to pay and reasonableness of the service charges, relating to the service charge period 1<sup>st</sup> January 2012 to 3<sup>rd</sup> September 2012, the latter being the date on which the right to manage was acquired in relation to the Building. The disputed issues for determination, as originally identified in the application, were as follows :-

- (a) General repairs £2,728.00; and
- (b) Cleaning £525.00; and
- (c) Management fees £1,800.00; and
- (d) Legal fees £4,029.20; and
- (e) Insurance £898.95; and
- (f) the application made by the Applicants in relation to the Respondent landlord's costs under Section 20C of the 1985 Act

However, by letter dated 22<sup>nd</sup> October 2012, Atlantis confirmed that items (b) cleaning and (e) insurance were agreed and at the hearing, the parties confirmed that (c) management fees had also been agreed. In the same letter, Atlantis further confirmed that the sum of £1168.00 had been agreed in regard to repairs and maintenance, leaving an invoice in a sum of £1560.00 still in dispute. However, none of the items claimed as Legal Fees were agreed, although the disputed amounts for determination in respect of legal costs are in fact £3039.20, plus Chandler Hawkins Surveyors fees of £720.00 and Capital Tax Accountants fees of £894.00.

4. Prior to the present application having been made, a Right to Manage company, namely "47 Norfolk Crescent RTM Company Ltd" (the RTM Company) had been formed and it took over the management functions of the Building with effect from 3<sup>rd</sup> September 2012. The RTM Company subsequently appointed Atlantis as its managing agent for the Building. The disputed service charge amounts relate to the period before the RTM Company and Atlantis took over management; namely the period from 1<sup>st</sup> January 2012 to 3<sup>rd</sup> September 2012, at which time, the Respondent's managing agent was Fresh Property Management Limited (FPML). The application relates to a converted former mid-terraced house, now comprising 8 leasehold flats. Copies of 2 leases for Flats 3 & 4, respectively dated 5<sup>th</sup> October 2007 and 12<sup>th</sup> October 2007, were produced and the Respondent had confirmed in his witness statement dated 25<sup>th</sup> November 2012, that all the leases are in the same form. The leases each provide for a lessee contribution of one-eighth to service charges for the Building. Mr Steven Paul Katz, the Respondent landlord, purchased the freehold of the Building in or about August 2011; he is also the long leaseholder of Flat 4.

5. The disputed item of £1560.00 for repairs relates to a single repair invoice; there are 4 relevant invoices in respect of the Respondent's solicitors fees which are disputed and also an accountant's fee of £894.00, incurred for the preparation of certified accounts for the period in question. In addition, in August 2012, the Respondent had engaged a chartered surveyor to prepare a schedule of remedial works for the Building (Pages 16-18 of the Applicant's bundle) and the surveyor's fee of £720.00 for preparing the same is similarly in dispute.

#### **THE LAW**

6. Section 19(1) of the 1985 Act provides that :

*"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."*

7. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*"(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 cost, 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.*

8. "Service Charges" are defined in Section 18 of the 1985 Act as follows

*(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, improvements, 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

18(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 for 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 or later period.

9. Section 20C of the 1985 Act provides as follows :-

*"(1) A tenant may make 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, residential property tribunal or leasehold valuation tribunal, or the Upper 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.*

.....

*(1) 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."*

## **INSPECTION**

10. The Tribunal's inspection took place in the presence of Mr Strong and Mr Jones for the Applicants and the Respondent, Mr Katz, with his counsel, Mr Richard Egleton.

11. The Building consists of what was originally a single mid-terraced house believed to have been constructed in or about 1846, but now converted and arranged as 8 flats over 4/5 floors at basement, ground, mezzanine, first and second floor levels. The Building is constructed of yellow face bricks with a mansard type roof; some of the original sash windows have been replaced with UPVC units. The Building fronts on to a partially made up road, being Norfolk Crescent and faces towards the sea; the front door leads to a communal entrance hall, staircase and landings; there was a poorly constructed meter cupboard immediately inside the front door. The walls in the communal stair and landing area were painted in plain cream emulsion and the floors and stair treads laid with a rather poor and well worn carpet. Access to the rear is obtained from the road known as Sea Front, via an archway located under a much more recently constructed building, which probably replaced the original mews. There was a small parking area at the rear; the rear aspect of the Building was generally dilapidated and untidy.

## HEARING & REPRESENTATIONS

12. The hearing was attended by Mr Richard Jones and Mr and Mrs De of the Applicants and they were represented by Mr Andrew Strong of Atlantis. The Respondent Mr Katz was in attendance, represented by Mr Richard Egleton of counsel. Mr Egleton handed to the Tribunal and Mr Strong, copies of the Respondent's solicitors billing time detail analysis for the relevant period, together with copies of the decision of the Upper Tribunal in *Plantation Wharf Management Company Ltd –v- Jackson & Irving [2011] UKUT 488(LC)*. Mr Strong submitted that the service charge demands had not been properly served on the basis that the required summary of rights and obligations had, in each case, referred to the "Lands Tribunal", rather than the "Upper Tribunal"; however Mr Strong admitted that he was not actually aware of any change in the regulations or relevant statutory instrument, to this effect.

13. The parties confirmed that the matters arising from the original application which remain to be determined are as follows :-

General Repairs – Flat Roof repair January 2012	£1560.00
<u>SUB-TOTAL</u>	<u>£1560.00</u>
Legal Costs Debt Recovery August 2012	£ 408.00
Legal Costs RTM July 2012	£ 908.00
Legal Costs Debt Recovery July 2012	£ 823.20
Legal Costs Debt Recovery September 2012	£ 900.00
<u>SUB-TOTAL</u>	<u>£3039.20</u>
Surveyors costs August 2012	£ 720.00
<u>SUB-TOTAL</u>	<u>£ 720.00</u>
Accountants Fees September 2012	£ 894.00
<u>SUB-TOTAL</u>	<u>£ 894.00</u>

Final certified accounts in respect of service charge income and expenditure for the Building, had been prepared by the Respondent's accountants on 10th October 2012 in respect of the period 1<sup>st</sup> January 2012 to 3<sup>rd</sup> September 2012 (Page 60 of the Respondent's bundle); Mr Katz confirmed that they are correct. The parties were invited by the Tribunal to make submissions in respect of each of the above categories of expenditure, one by one.

### General Repairs – Roof Valley Scurlock Decorating : January 2012 £1560.00

14. The invoice relates to valley repairs and debris clearance above Flats 3 and 4 and also certain repair to a water damaged bathroom ceiling structure at Flat 4. The Applicants had suggested that the water damage could have been fully covered by an insurance claim; however Mr Katz explained that whilst interior consequential decorative damage may have been covered by insurance, the roof work was a wear and tear item, not covered by insurance. Mr Katz further explained that the work which was at a high level in the Building, was carried out from ladders, without scaffolding being used. Mr Strong asked whether Mr Katz had any connection with FPML and Mr Katz said that he did not; the contractor Scurlock Decorating, had simply been recommended and instructed by FPML.

### Legal Costs : Debt Recovery £408.00 – Period 13<sup>th</sup> July to 7<sup>th</sup> August 2012

15. Mr Egleton submitted that the relevant clauses in the Leases being relied upon by the Respondent were 4(6) and 4(7); reference was made to the *Plantation Wharf* case, although he

conceded that the facts and lease provisions in that case were not exactly the same as in the present case. The Respondent was asked to explain exactly what this invoice related to, given that the sub-heading and text within the invoice were not entirely clear. Mr Katz said that this invoice did not relate to advice given by Debenhams Ottaway LLP in regard to service charge or other debts owing by specific, individual lessees; the advice being, he said, of a general nature only in regard to debt recovery. Questions were raised in regard to the caveat provision in Clause 4(7) of the Leases to the effect : *"To pay all proper costs incurred by the Lessor...insofar as the costs of enforcement are not recovered from the Lessee..."*. Mr Egleton submitted that recovery of such costs from individual lessees, was not a condition precedent to be met prior to the landlord being able to effect recovery generally from all lessees, under the service charge arrangements; he further asserted that the purpose of the caveat to Clause 4(7) was merely to prevent double recovery. Mr Katz stated that legal proceedings for debt recovery had been started against 2 lessees, namely Miss Phillips of Flat 2a, and Mr and Mrs Phillips of Flat 3; however Mr Katz was adamant that the cost of legal work carried out in those matters was entirely separately billed and not included in any of the invoices under consideration at this hearing.

Legal Costs : RTM £908.00 – Period 25<sup>th</sup> June to 5<sup>th</sup> July 2012

16. The sub-heading for this invoice only, was "Re : Right to Manage". Mr Katz stated that he was unfamiliar with the Right to Manage when it arose and given that, at the time, the lessees concerned owed money to him in respect of their service charges, he felt the need to obtain advice on the consequences and implications of the Right to Manage proceeding in such circumstances. Mr Egleton submitted that Clause 4(6) in the leases is sufficiently widely drafted to cover all the landlord's legal and other proper costs.

Legal Costs : Debt Recovery £823.20 – Period 5<sup>th</sup> July to 11<sup>th</sup> July 2012

17. Mr Katz was asked to explain why, if as he had said, he had experience from owning other properties at various other locations in the country, he needed to take general advice on debt recovery from solicitors, apparently on various occasions; Mr Katz indicated that although he owned other properties he had only had to deal with debt recovery on one previous occasion and did feel the need to obtain general guidance on the subject, as distinct from instructing his solicitors in regard to specific recovery against individual lessees. Mr Strong pointed out that in his opinion, debt recovery was generally a matter which most competent managing agents should be capable of dealing with, in terms of collating data and records, and that in most instances, the instructions to solicitors could then be limited simply to the issuing of proceedings, using the data prepared by the agents. Mr Strong further asserted that the engaging of solicitors to provide general debt recovery advice over an extended period, at the same that managing agents were appointed and being paid, would also result in a degree of duplication. Mr Katz submitted that FPML had attempted unsuccessfully, to effect recovery and thus it then became necessary for him to take legal advice in the matter. Mr Egleton referred to Clause 5(15) of the Leases which requires the lessor *"To use all reasonable endeavours to keep the charges at the lowest reasonable figure consistent with the proper performance and observance of its obligations herein but the Lessee shall not be entitled to challenge or object to any expenditure incurred by the Lessor on the ground that the materials work or services in question might have been provided or performed at a lower cost."* Mr Egleton referred again to the *Plantation Wharf* case and further submitted that the Applicants could not therefore object to the hourly rate charged by the Respondent's solicitors which he added, was not unreasonable in any event.

Legal Costs : Debt Recovery £900.00 – 8<sup>th</sup> August to 4<sup>th</sup> September 2012

18. Mr Strong again submitted that the Applicants were of the opinion that it was excessive and unnecessary for the Respondent to incur various invoices in respect of successive general advice about debt recovery from his solicitors, as distinct from separate legal work for effecting recovery

from specific individuals. Despite the provision of the Respondent's solicitors time detail analysis, Mr Strong submitted that such analysis should have been provided sooner than on the day of the hearing and that in any event, the details contained in such analysis remained unclear, hard to follow and ambiguous.

#### Surveyors Fees £720.00 September 2012

19. Mr Strong pointed out that it seemed inappropriate for the Respondent to have obtained a Schedule of Remedial Works for the Building, just 6 days before the date on which the Right to Manage company was to take on responsibility for management functions in any event. Mr Katz said he could not remember the actual date on which he had commissioned the survey but he felt that the RTM Company had broken trust and had little intention of carrying out proper repairs. Mr Katz added that he was keen to have a survey in order to demonstrate the condition of the Building immediately prior to the RTM Company taking over management responsibilities for it. Mr Strong pointed out that Right to Manage claim notices had been served approximately 4 months earlier and that as the RTM Company had not even begun to be responsible, it was unreasonable to suggest that trust was broken. Mr Strong had few comments to make in regard to the amount of the invoice but did feel that it was somewhat expensive.

#### Accountants fees £894.00 September 2012

20. Mr Strong submitted that the amount was excessive in view of the relatively small number of invoices and flat units which were involved; he added that in his opinion he would expect a fee of £750.00 to be more in line with the accountancy work involved for a block of 30 flats. Mr Katz said that accountants charge at various different rates; however the firm he had used had the advantage of being local to the managing agents.

#### Section 20C Costs

21. Mr Egleton submitted that the vast majority of the costs had been reasonably incurred and pointed to evidence given by Mr Katz that the managing agents had tried issuing demands and that in the absence of payment being made, it was obvious that he had to consult solicitors; consequently such costs were relevant and ought to be taken into account. Mr Strong said that the Applicants had been forced into making the application; FPML had declined to enter into any meaningful dialogue with them about the costs and little supporting information had been supplied to lessees to verify or justify the sums concerned. Mr Strong added that the application could have been avoided had information been provided and a sensible dialogue entered into; accordingly his view was that the Respondent's costs in the proceedings ought not to be allowed. Mr Strong referred also to a lack of communication with lessees by the Respondent and his agent, and questioned why the Respondent's own solicitors had not themselves suggested that he should make application to the Tribunal if it was felt that he was in a position to justify all the various costs. Mr Strong asserted that the large sums incurred for legal advice in reality seemed to represent the whole of the advice obtained in regard to all and any aspects of the Respondent's ownership of the Building and not just in respect of those matters properly rechargeable under the service charge mechanism. Mr Strong further submitted that the Applicants had shown good faith by agreeing and paying on a number of items, once further information had been supplied, in consequence of the order for disclosure contained in the directions in these proceedings.

#### THE LEASES

22. Clause 2(18) of the Leases provides that "Service Charge" has the meaning ascribed to it in the Fourth Schedule. The Fourth Schedule provides that "the Service Charge" means a sum equal to the Percentage Contribution of the Total Expenditure, and Total Expenditure is defined as being the :

*“aggregate of the expenditure incurred and the sums of money set aside (including VAT (if any) or any other tax payable thereon) by the Lessor in any Accounting Period in carrying out its obligations under Clause 5 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Property...”*

23. Clause 5(5) includes the following lessor`s covenant :-

*“through the Term to maintain and keep in good and substantial repair and condition :-*

*a. the structure of the Property.....”*

24. Clause 5(11)(ii) includes the following lessor`s covenant :-

*“To employ all such surveyors buildings architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the property maintenance safety and administration of the Property”*

25. The Leases contain various lessee`s covenants including as follows :-

*Clause 4(4) to : “Pay by way of further or additional rent the Interim Service Charge and the Service Charge at the times and in the manner provided in the Fourth Schedule hereto...”*

*Clause 4(6) “To pay all legal costs and other proper costs (plus any VAT) incurred by the Lessor”*

*Clause 4(7) : “To pay all proper costs incurred by the Lessor in the running and management of the Property and in the enforcement of the covenants on the part of the Lessee the Other Flat Owners and any other Lessee or owner or occupier of the Property and the conditions and regulations contained in this Lease insofar as the costs of enforcement are not recovered from the Lessee or owner or occupier in breach ....”*

## **CONSIDERATION**

26. We, the Tribunal, have taken into account all the oral evidence and the case papers, including those particularly brought to our attention, and the submissions of the parties. As regards the objection made by the Applicants to the validity of the service charge demands, the Tribunal takes the view that the references in the summary of rights, referring to the “Lands Tribunal” rather than the “Upper Tribunal” did not prejudice the Applicants and that it was nevertheless clear enough that a right of further appeal existed. On balance the Tribunal agreed with Mr Egleton that this was de minimis in relation to validity of the demands generally and that in consequence, the demands were nevertheless validly served.

27. In regard to the Scurlock Decorating repair invoice for £1560.00, the Tribunal noted the view of the Applicants that the work referred to in the invoice may have been carried out, but their concern was in regard to a lack of detail and supporting information and also as to whether the work might properly have been covered by insurance. The Tribunal took into account and accepted the evidence given by the Respondent in regard to the work involving an item of wear and tear, not being covered by insurance. The work as described in the invoice appeared to have done, and evidently involved working from ladders at a significant height. Accordingly this invoice will be allowed as claimed.

28. In regard to the Chandler Hawkins surveyors invoice for £720.00, the Tribunal noted that this had been issued shortly before the date on which the RTM Company had taken over the management functions for the Building. However, the Respondent was still responsible for the Building at the time and the document should still be of use to the RTM Company for the purposes of assessing future required works. Accordingly this invoice will be allowed as claimed.

29. In relation to the Capital Tax Accountants invoice for £894.00, the Tribunal noted that certification of the accounts for the relevant period, would have necessitated scrutiny of only a



limited number of invoices and also noted the view of Mr Strong that the invoice appeared excessive in regard to a building comprising just 8 flats. Accordingly the Tribunal will allow only a sum of £450.00 & VAT (£540.00) for this item.

30. As regards the invoices for legal fees of Debenhams Ottaway LLP respectively for £823.20, £408.00 and £900.00, the Tribunal noted the Respondent's assertion that these all related to general debt recovery advice which he considered had been necessary; he had said in evidence that legal advice for specific or individual debt recovery against lessees had been separately billed. Mr Katz had indicated that the further legal fees invoice for £908.00, related to both further general debt recovery advice, and also advice in regard to the right to manage. Whilst the Tribunal accepted that legal fees in this case, may constitute part of the service charges, any costs must nevertheless be reasonably incurred. The Tribunal took note that the Respondent had said in evidence that he had experience in letting property in other parts of the country and that he had on at least one previous occasion had to pursue a tenant for debt recovery. The Tribunal noted the provisions of Clause 4(7) of the Leases, and although Mr Egleton asserted that enforcement of costs against individual defaulting lessees, was not a condition precedent to recovery from all lessees under the service charge, the use of the word "recovered" rather than "recoverable" might result in a different interpretation. However, in any event, the Tribunal took the view that it was not reasonable for a landlord with the Respondent's property management experience, to require general, as opposed to specific, legal advice over an extended period from June to September 2012, in circumstances where legal advice for individual debt recovery work was also being separately and additionally billed. The Tribunal took into account the point made by Mr Strong that it would be not unreasonable to expect a competent managing agent to deal at least to some extent, with debt recovery issues and without the necessity of the landlord having to obtain separate general legal advice over an extended period of several months. However the Tribunal did accept that it was reasonable for the Respondent to obtain some general legal advice in the context of the right to manage and the implications thereof in regard to any then outstanding debt recovery matters. Accordingly, the Tribunal allows the legal invoice for £908.00, but disallows the other three invoices respectively for £823.20, £408.00 and £900.00.

31. In regard to the application in respect of the Landlord's costs of these proceedings under Section 20C of the 1985 Act, the Tribunal were persuaded that it had indeed been necessary for the Applicants to make the application, which could have been avoided if more information had been provided sooner by the Respondent. The Tribunal further took into account the fact that the Respondent had attempted inappropriately to include invoices in respect of his extended legal advice, within the service charges. It had accordingly been necessary for an application to be made in relation to the various issues considered at the hearing and referred to above. In consequence, the view of the Tribunal is that none of the Respondent's costs shall be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicants.

32. We made our decisions accordingly.

.....  


[Signed] P J Barber LL.B

Chairman

A member of the Tribunal  
appointed by the Lord Chancellor