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**HM Courts  
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Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT  
ACT**

**Case Reference: LON/00BK/LSC/2012/0541**

**Premises: Flat 19, Orchard Court, Portman Square, W1H  
6LE**

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**Applicant: Orchard Court (Portman Square) Ltd**

**Respondent: Clipter Holdings Limited**

**Date of hearing: 12 December 2012**

**Applicant's  
representative: Mr D Dovar (Counsel)**

**Respondent's  
representative: Mr H Sancheti**

**Leasehold Valuation  
Tribunal: Mr M Martynski (Solicitor)  
Mr H Geddes JP RIBA MRTPI  
Ms J Clark JP**

**Date of decision: 7 January 2013**

**Decision summary**

1. The Service Charges and charges on account claimed for the Service Charge years ending June 2011 and June 2012 and for the period June 2012 to December 2012 are reasonable and are payable by the Respondent.
2. The Tribunal determines that the Respondent shall pay the Applicant £500.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

3. The Respondent shall pay a further £500.00 to the Applicant towards its costs incurred in these proceedings on the grounds that the Respondent has behaved unreasonably in connection with these proceedings and has put the Applicant to unnecessary cost.

## **Background**

4. The Building in question is a block containing 55 high value<sup>1</sup> serviced flats. The block is close to Marble Arch and the residents there enjoy a substantial level of service. The Respondent company has the long lease of the subject flat.
5. The Applicant company (which is the head lessee of the block) is composed of the long leaseholders of the various flats in the block. The directors of the company (who are leaseholders in the block) are unpaid.
6. The Applicant's application was for a declaration as to the reasonableness and payability of Service Charges for the period June 2011 to December 2012. The total Service Charges claimed for this period from the Respondent amount to £68,167.83.
7. The Respondent company openly admitted that there is a dispute concerning ownership of the subject flat. The current resident of the flat is claiming ownership of the flat as against the company and there are proceedings in the High Court. That resident is not paying any of the Service Charges in respect of the flat and the Respondent Company was candid in saying that, as its only asset is the subject flat and as the resident of that flat was not paying any rent, it had no funds from which to pay the Service Charges itself.
8. Evidence on behalf of the Respondent was given by way of a witness statement from Mr Pradeep Sancheti who described himself as the sole director of the Respondent company. Mr Pradeep Sancheti did not attend the hearing. The Respondent was represented at the hearing before the Tribunal by Mr H Sancheti, a lawyer qualified in India and New York.

## **The issues and the evidence**

9. Various issues were raised by the Respondent in its defence to the application. Not all of those issues were pursued at the hearing. The issues in question are set out below.

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<sup>1</sup> The Respondent's director stated in his witness statement that he estimated the value of the subject flat at around five million pounds

*Staff costs – 2011 - £224,570*

10. The Respondent's defence at paragraph 2.1 on this issue read as follows;

It is disputed that the Wages for the building must amount to £223,570.

The matter was not taken any further in Mr Pradeep Sancheti's witness statement. The Respondent's representative, Mr H Sancheti, admitted that neither he nor Mr Pradeep had actually been to the block in question. Mr H Sancheti said that the staff wages "ought to be lower". There had been an enquiry on behalf of the Respondent regarding the number of staff employed but there had been no real investigation as to the detail of the costs incurred.

11. The Applicant's managing agent, Mr R Appleby, gave evidence to the Tribunal as to the staff employed at the building and the costs of the staff. The Applicant employs ten staff comprising six porters providing a 24 hour service, a part-time cleaner, a full-time yardman, a full-time maintenance man and a house manager. Details were given as to the level of wages paid to porters (around £19,000 per annum) and the house manager (around £32,000 per annum plus accommodation).
12. There is no doubt that the building is very fully staffed. Mr Appleby conceded that the wages paid to staff were at or near the top end of the wage scale for such staff. High wages were paid in order to secure and retain the best quality staff.
13. There was no evidence before the Tribunal to support a challenge that the level and the cost of staffing was unreasonable.

*Relief portering*

14. The Respondent argued that as the costs of relief portering were much higher in 2010 (£23,917) than in 2011 (£8,764), it must follow that the costs in 2010 were unreasonable.
15. Quite clearly such a simplistic assumption cannot be correct in the absence of more detailed evidence. There was no such evidence from the Respondent. The Applicant's representatives pointed to the fact that although the costs of relief staff were high in 2010 (due to turnover in permanent staff) the cost of permanent staff was lower for that year.
16. Again, there was no evidence before the Tribunal to support this challenge.

*Ex-gratia payment to staff - £5,000*

17. The Respondent argued that such a payment was unreasonable.
18. Mr Appleby for the Applicant stated that this payment had been agreed by the directors of the Applicant company. The payment had been made to a member of staff who was leaving after 15 years service. The payment was made to encourage and maintain staff loyalty. The Applicant made the payment under clause 6. (15) of the Respondent's lease. That clause authorised payments of this nature.
19. The Tribunal was satisfied that the payment was reasonable and that such a payment could be made under the terms of the lease.

*Fees paid to staff agency*

20. The objection to this item was set out in the Respondent's defence as follows;

It is also questionable whether fees ought to be paid to a staff agency when in the current economic climate, suitable staff can be found through standard enquiries and the use of directories, Yellow Pages and the like.

21. The objection makes no real sense. It is not clear what 'standard enquiries' means and clearly the reference to 'Yellow Pages and the like' is nonsensical.
22. Mr Appleby explained that whilst it may be cheaper to advertise for staff rather than use agencies, such advertising would be more expensive in terms of the management time needed to sift and interview applicants.
23. The Tribunal is satisfied with the Applicant's response to the challenge and declares that the sums in question are reasonably incurred and are payable.

*Boiler fees*

24. In common with many of the challenges raised by the Respondent, this challenge had no real basis. On this point the Respondent's defence said as follows;

It is not stated who the Gas provider of the Orchard Court is, but representative of comparable properties have disclosed in confidence that they have substantially lower gas bills. No particulars have been provided by the Claimant as to what steps it has taken to approach other gas suppliers and negotiate a lower rate on behalf of the leaseholders.

25. There was no evidence of any kind as to the 'disclosures' made as to other gas bills or the properties/boilers which those bills related to.

26. The Applicant's response to the defence confirmed that the contract for gas and electricity is tendered annually.

*Managing agent's fees – 2010, £29,910 and 2011, £31,443*

27. Again, this challenge had no real basis. On this point the Respondent's defence, inter alia, was as follows;

I have spoken to other Managing Agents with experience in Central London who are willing to undertake the work for a substantially lower sum.

28. There was no evidence of any kind as to the fees that would be chargeable by other managing agents.
29. The defence also challenged the managing agent's fees on the basis that the agents had not been managing the block properly inasmuch as they had incurred unreasonable expenditure. The Tribunal has not found any of the Service Charges challenged to be unreasonable and so the challenge to the management fees on this ground must fail.

*Insurance*

30. A challenge had been made in the defence to the insurance premium for the block. This challenge was not pursued at the hearing.

*Bank charges*

31. A challenge had been made in the defence to bank charges for the block. This challenge was not pursued at the hearing because the challenge was based on a mis-reading of the accounts by the Respondent's representatives.

*Legal and professional fees*

32. Yet again, this challenge had no real basis. On this point the Respondent's defence, inter alia, was as follows;

I have contacted firms of solicitors who represent other similar companies and they have stated that they would be willing to represent the company for a fixed annual stipend of £20,000.

33. No details of the solicitors approached were given. In any event, to the Tribunal's knowledge, no firm of solicitors would agree to undertake a completely unspecified amount of work for a fixed fee.
34. The defence went on to say that the legal costs had doubled between 2010 and 2011. This fact by itself is of course meaningless without knowing the circumstances behind the increase. The Applicant explained

in its response to the defence that the reason for the increased fees was that the Applicant had to defend (successfully) a claim brought by a former employee in the Employment Tribunal.

*Gas charges 2010 & 2011 – approx £114,000 for each year*

35. This challenge, which had been raised in the defence and responded to in the Applicant's reply, was not pursued at the hearing.

*Television costs - £40,000*

36. The Applicant explained that the leaseholders had decided to purchase a fibre optic integrated reception system as opposed to an individual satellite dish arrangement for a single capital cost rather than an annual rental. This new system offered a comprehensive choice of channels which residents could opt into as they wished. There was no further challenge to this explanation.

*Refurbishment of staff flat*

37. The need for staff accommodation and the cost of works to a staff member's flat was questioned by the Respondent. No further detail was given to this challenge.
38. The Applicant explained that under the terms of the leases at the block it was entitled to provide staff with accommodation and that furthermore, it was under a duty to maintain and keep in good condition any flat used by staff. The flat in question was refurbished with new kitchen and bathroom fittings and was redecorated following the retirement of the porter. The cost of the works was said to be in the region of £18,000.
39. In the absence of any more detailed challenge, the Tribunal found that these costs were reasonably incurred.

*Sundry expenses*

40. This challenge, which had been raised in the defence and responded to in the Applicant's reply, was not pursued at the hearing.

*Insurance claim*

41. This challenge, which had been raised in the defence and responded to in the Applicant's reply, was not pursued at the hearing.

## Costs

42. The Applicant paid fees to the Tribunal totalling £500.00 in respect of its application and asked the Tribunal to order the Respondent to reimburse the Applicant in respect of these fees.
43. Given that the Applicant has been wholly successful in its application it is entirely right that the Respondent should pay the sum of £500.00 in respect of fees to the Applicant.
44. The Applicant made an application that the Respondent pay to it the further sum of £500.00 towards its costs of the proceedings on the grounds that the Respondent had behaved frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings and that as a result of the Respondent's conduct, it had been put to unnecessary expense.
45. The Tribunal considers that the Respondent's conduct in these proceedings has been unreasonable. It has, as referred to in this decision, raised objections to the Service Charges that in some cases made no sense and which in every case had no real substance. From the correspondence between the parties' solicitors shown to the Tribunal, the Tribunal is satisfied that the Respondent was provided with information regarding the Service Charge prior to these proceedings and that the Respondent has not made any serious attempt to investigate that Service Charge or to make any proper investigations in considering the reasonableness of the charge.
46. There is no doubt that the defence filed by the Respondent was very largely without merit and that as a result the Applicant was put to unnecessary expense (which the Applicant's Counsel confirmed far exceeds £500 in legal expenses) in answering the unmeritorious challenges made.
47. The Tribunal therefore orders the Respondent to pay a further sum of £500.00 to the Applicant in respect of its costs.
48. The total sum of £1,000 should be paid by the Respondent to the Applicant within 28 days of the date of this decision.

Chairman:



Mark Martynski

Date:

7 January 2013

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (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 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 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.

#### **Section 19**

- (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 provisions 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.

#### **Section 27A**

- (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-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (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).

#### **Schedule 12, paragraph 10**

- (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.