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HM COURTS AND TRIBUNALS SERVICE

File Ref No. MAN/00BR/LSC/2012/0133

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985.

in relation to

Apartment 48, City Loft, 94, The Quays, Salford, M50 3TS

Applicant:	Ya Xu
Respondents:	Zenith Management (NW) Limited
Property:	Apartment 48, City Loft, 94, The Quays, Salford, M50 3TS
Application:	For a determination of liability to pay and reasonableness of a service charge under section 27A (and 19) of the Landlord and Tenant Act 1985
Date of Decision:	25 March 2013
Members of the Leasehold Valuation Tribunal (the Tribunal):	Mr. P. W. J. Millward LLB (Chairman) Mrs E. Thornton-Firkin BSc MRICS

The Application

1. By the Application dated 20 September 2012 the Applicant seeks a determination as to liability to pay and reasonableness of service charge demands issued by the Respondent relating to the Property. The Applicant paid the application fee of £70.00. The Residential Property Tribunal Service (RPTS) notified the Respondent that it had received the Application and sent it a copy with all documents which accompanied it and thereafter an Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 11 January 2013 and sent to the parties on that date. Neither party requested a hearing pursuant to paragraph 4 of the Directions and the matter was set down for determination on papers provided.

2. Pursuant to the Directions both parties provided a Statement of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the Act), as to the payability and reasonableness of the service charge in respect of the Property.

3. The Application relates to demands for service charges raised in 2010 and 2011. The Applicant states that the area of the Property as set out in the Lease is incorrect, that this fact has been acknowledged by the Respondent in relation to the service charge payable in 2012, and that as a

result the service charges paid in relation to the previous years should be reduced and a refund made to her. The total service charge paid by the Applicant for the year 2010 is in the sum of £1,450.62 and for the year 2011 is £1,929.84, both based on a floor area of 797 square feet.

The Lease

4. The Applicant is the lessee of the Property under a lease made between City Lofts (Salford Quay) Limited (1) Salford Quay Management Limited (2) and Andrew John Camilleri (3) for a term of 250 years from 1 January 2007 (the Lease).

5. The Applicant acquired the leasehold interest in the Property by later transfer. The freehold interest in the Property (together with other property) was acquired by UK Ground Rent Estates (3) Limited by a transfer dated 24 February 2012 The Respondent was throughout the relevant period the Management Company appointed by the freeholder.

6. By clause 3.1.2 of the Lease the Applicant covenants to contribute and pay "the Tenant's Proportion".

7. "The Tenant's Proportion" is defined on page 10 of the Lease as "0.5661% of the Service Charge attributable to the building and the Estate (excluding the expenditure attributable to the car park) Provided That the Landlord shall have the right acting in the interests of good estate management to make fair and reasonable allowances in such calculations for the differences in the repairs services and facilities provided or supplied to the Property or adopt such other method of calculation of the proportion of such sums attributable to the Property as is fair and reasonable in the circumstances".

8. The "Service Charge" is defined as the monies payable for the provision of services in accordance with schedule 4 of the Lease.

9. Schedule 4 of the Lease sets out an extensive definition of the services to be provided.

The Law

10. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:

    (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 provides that

    (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.

Section 27A provides 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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.
(3) ....
(4) No application under subsection (1)...may be made in respect of a matter which –
(a) has been agreed by the tenant.....
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Inspection

11. The Leasehold Valuation Tribunal (the Tribunal) did not inspect the Property or the common areas of the block in which the Property is situated.

12. The Property is a flat on level 6 in a development of similar properties. There are communal areas both inside and outside the building in which the Property is situate which are maintained by the Respondent on behalf of the Lessor.

The Submissions of the Parties

13.The Applicant's statement includes (amongst other things) the following submissions:-

13.1 The apportionment of the service charge in the Lease is incorrect as it is based upon an erroneous floor measurement.

13.2 The Lease states that the apportionment for the Property is 0.5661%. This is calculated by dividing the stated floor area of the Property (74 Sq M) by the total floor area of City Loft (13,071 Sq M). The floor area stated in relation to the Property is wrong. The Property is stated to be a 2 bedroom apartment whereas in fact it is a I bedroom apartment and has a floor area of only 50 Sq M (measured externally). In November 2011 the Respondent sent me a revised measurement for my apartment saying that it is in fact 498 Sq Feet (equating to 45.43 Sq M). As a result the Respondent sent to me a credit of £738.51 being the reduction in service charge for 2011 based upon the revised floor area of the Property.

13.3 The Respondent has refused to amend the apportionment for 2010 even though it has confirmed that the service charge demand for that year was based on incorrect floor area.

13.4 The total service charge in relation to the Property for 2010 is £1,450.62. This is based upon a floor area of 74 Sq M. Based upon the revised floor area the service charge for the Property would reduce to £890.56 – a reduction of £560.06. Furthermore, the total (original) service charge for 2011 was in the sum of £1,929.84. Based upon the revised floor area of 45.43 Sq M the service charge should be reduced to £1,184.76, a reduction of £744.08. I have received a credit of only £738.51. This leaves a balance of £6.57 for the year 2011which should also be credited to the Applicant and added to the aforementioned sum of £560.06 – a total of £566.63. (NB. These figures differ slightly

from those set out in the Application)

13.5 In her reply to the submissions made by the Respondent the Applicant stated

13.5.1 The Application relates to the liability to pay and the reasonableness of the service charge on the Property for 2010 and 2011

13.5.2 The Respondent has stated that there is no reference in the Lease that the percentage of 0.5661 is, or should be, based upon the Property's area in relation to the overall area of the wider estate. What is the basis of the apportionment if it is not based on floor area. The Tribunal should not accept this excuse. If it is accepted the Landlord can put any apportionment in leases without reason.

13.5.3 The previous management company, Living City Asset Management, sent an apportionment schedule to the Applicant's Solicitors at the time of her purchase. This schedule clearly states floor area and apportionment percentage in relation to all properties in the building. In the schedule the Property is shown as a 2 bedroom apartment with a floor area of 74 Sq M. The total floor area of the whole building is stated to be 13,071 Sq M. 74 Sq M is 0.5661 % of 13,071 Sq M.

13.5.4 The Property is in fact a one bedroom apartment with a floor area of 489 Sq Feet (equal to 45.43 Sq M).

13.5.5 Mr Ben Hale of Living City Asset Management's accounts department confirmed that the service charge invoice is based on the Company's noted square footage of the Property.

13.5.6 The question of the floor area was raised on many occasions with Living City Asset Management. Mr Ben Hale said the Company's directors were looking into it. The Company never chased me for the service charge. The Applicant did realise that the problem related to all leaseholders and believed that the delay in replying was due to the complexity of the matter, whereas the truth was that Living City Asset Management were in the process of selling the management of the building .

13.5.7 The Applicant did not make the Application because the Respondent revised the floor area in 2011. The Application was made because the wrong floor area was used in relation to the Property.

13.5.8 All apartments which are located in the same position as the Property on each floor are noted as having a floor area of 74 Sq M, which means that other leaseholders in the building were paying the wrong service charge apportionment. It would be fair to all other leaseholders to correct the apportionment retrospectively.

13.5.9 The Applicant repeated the calculation referred to in paragraph 13.4.

14. The Respondent's statement includes (inter alia) the following submissions:-

14.1 The Respondent acknowledges that the percentage of the service charge attributable to the Property is 0.5661% according to the Lease. As such the contribution of 0.5661% formed part of the contract between the lessee and the landlord. There is no reference in the Lease that this percentage is based upon the Property's area in relation to the whole estate – indeed to imply or suggest this would not be correct.

14.2 The Applicant purchased the Property on this basis and is therefore bound by the Lease to contribute 0.5661% of the service charge unless, as stated in the Lease, the landlord exercises his right to "adopt such other method of calculation of the proportion of such sums attributable to the Property as is fair and reasonable in the circumstances"

14,.3 As the incoming landlord the Respondent felt it would be prudent to carry out an in depth review of the entire estate including (inter alia) the workings/basis of the annual budget, its suitability, its reasonableness and also its apportionment between lessees. The Respondent considered the review was in the interests of the estate and to the benefit of all leaseholders as a whole. The review was carried out at the cost of the Respondent and was not passed on to the lessees via the service charge account.

14.4 Prior to the Respondent's involvement in the management of the development the Applicant's apartment was correctly charged 0.5661% of the service charge. At the commencement of the Respondent's involvement in 2011 the 2010 service charge accounts had been correctly certified in accordance with the 0.5661% contribution as stated in the Lease. The Respondent could not retrospectively change the percentage as

it was clearly correct and in accordance with the Lease.

14.5 The review carried out by the Respondent related only to the then current year 2011 and not previous years. The Respondent had received legal advice that accounts for previous years had been correctly certified and were in accordance with the Lease and were therefore binding upon the Respondent and all tenants.

14.6 Accounts had not been certified in relation to 2011 onwards and the Respondent decided to adopt the alternative method of calculation referred to in the Lease. All tenants were notified of the proposed review. Upon conclusion of the review all tenants were notified of the intension to change the service charge billing to an area based approach. As a result the Property represented 489 Sq Feet out of a total of 140,121 Sq Feet, which equates to 0.3490%.

14.7 The actions of the Respondent have at all times been fair and reasonable and all service charge monies have been demanded correctly and in accordance with the Lease and are thus payable. All changes were made in accordance with the mechanics of the Lease and any retrospective award against the Respondent would see it directly penalised for acting in an open, transparent and proactive manner.

14.8 The Applicant believes that a small credit is due for 2011. The Applicant believes that as a result of the apportionment review she should have been invoiced in the sum of £1,184.05 for the year. The Applicant incorrectly states that the charges for 2011 were £1,929.84 less £738.51, resulting in a net payment of £1,191.33. However the actual charges for 2011 were £1,182.59 towards total costs of £341,282.00 which equates to 0.3470% (not 0.3490%) meaning a small under charge of £1.46 (due to the effect of rounding up). Therefore no additional small credit is due to the Applicant.

The Hearing

15 Neither party requested a hearing.

The Tribunal's Determination

16 The Tribunal considered very carefully the written submissions of the parties and the documents provided.

17. The issues to be determined by the Tribunal are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.

18. The Applicant makes no suggestion the services carried out in years 2010 and 2011 were excessive, poorly carried out or not carried out at all. The Application relates only to the percentage attributed to the Property.

19. The Respondent took over management of the building in 2011. As authorised by the Lease it recalculated the contribution of each apartment. The sum due for 2011 is as per the Respondent's schedule – ie £1182.59.

20. The Tribunal also considered carefully the arguments put forward by both parties in relation to a possible review of the percentage payable in the previous year. The Tribunal determined that the arguments put forward by the Respondent were correct – that as the service charge accounts had been signed off for the previous year it would be inappropriate to carry out a review in relation to that year as the demands had been fully in accordance with the terms of the Lease, and as they had been certified were binding on all parties.

21. The amount payable for 2010 will therefore remain at £1,450.62 upon the basis that the figures stated in the Application are correct. If those figures are incorrect then the amount payable will be that shown in the audited accounts.

Paragraph 20C Costs

22. The Applicant applied under section 20C of the Act for an order that any or all of the costs of the Respondent incurred in connection with the Application are not to be taken into account in determining the amount of service charge payable. The Tribunal does not consider that an order under s.20C of the Act is appropriate in the present case as the Tribunal found for the Respondent.

4th June 2013

P W J Millward – Chairman