



10345

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : BIR/ 00GG/LIS/2013/0053

Property : 18 Simpson Square, St. Michael's Street,
Shrewsbury, Shropshire, Sy1 2EQ

Applicant : Holding & Management (Solitaire)
Limited

Representative : Mrs. Misbah Khan, Legal Consultant,
Peverel Property Management

Respondent : Mr. Stephen John Harrison & Mrs. Anne
Harrison

Representative : In person (and assisted by Ms. Samantha
Frost

Type of Application : Under:
section 27A Landlord and Tenant Act
1987 for a determination of liability to
pay and reasonableness of service
charges; and
Schedule 11 Commonhold and Leasehold
Reform Act 2002 as to whether any
administration charge is payable and, if
so, the amount.

Tribunal Members : Judge A. McNamara
Mrs. S. Tyrer FRICS
Mr. C. Gell FRICS

**Date and venue of
Hearing** : 8-9 September 2014, Shrewsbury
Magistrates' Court

Date of Decision : 3 October 2014

DECISION

The application

1. Following issue of a Claim Form dated 25 March 2013, The Applicant (A) sought to recover from The Respondents (R) the sum of £5005.86 (plus associated costs of £100 and the issue fee of £190) in respect of unpaid service charges due under a lease acquired by R on 22 July 2010.
2. R entered an undated Defence and Counterclaim which was stamped as received at the bulk claims centre in Northampton on 22 April 2013. By that Defence R suggested that A had failed to discharge its duty of care to the residents; and, broadly, that A had not maintained or managed the complex correctly. The Counterclaim suggested consequential disrepair leading to diminution in value of R's leasehold interest amounting to £13,800.
3. In due course the matter came on before District Judge Brown sitting in the County Court at Telford. The Order dated 3 December 2013 (made on 20 November 2013) provided as follows:
 - a. The Counterclaim is dismissed on withdrawal
 - b. The Claim is transferred to the Leasehold Valuation Tribunal [i.e. the First Tier Tribunal Property Chamber (Residential Property)]
 - c. The claim in this court is adjourned generally [with] liberty to restore following the outcome of the proceedings in the Leasehold Valuation Tribunal
 - d. Costs in the case.
4. Following transfer to this jurisdiction, in a letter dated 10 January 2014, A's representatives requested an oral hearing of the matter. Accordingly, Directions leading to a hearing were given dated 16 January 2014.

The issues before this Tribunal

5. At the outset of the hearing it was necessary to clarify the matters in relation to which this Tribunal has jurisdiction.
6. This arose because of criticisms of R's case set out in A's statement (pages 738 to 741 of the bundle), namely that R was not permitted to amend his case beyond the scope of the Defence, as he had purported to do by his letter dated 6 February 2014. The Tribunal was referred to the case of **Staunton v Taylor [2010] UKUT 270 (LC)** which is authority for the proposition that cases of this type are, in effect, 'frozen' in scope at the point of transfer from the County Court, since this Tribunal cannot entertain amendment of the claim.

7. Making all allowances for the fact that the Defence was drafted by a litigant in person, it is lacking in specificity. For example, it does not identify individual components of the service charge, or the extent to which the management fee is considered by R to be unreasonable.
8. Mrs. Khan, on behalf of A, and Mr. Harrison, on behalf of R, were content with the Tribunal's interpretation of the Defence, namely that the Tribunal should look at two issues:
 - a. Is the service charge reasonable? and
 - b. Is the management fee justified in the light of R's broad criticisms?
9. What this Tribunal could not do is look at individual components of the service charge since there was no scope to do so on the basis of the Defence.

The lease

10. The document is set out at pages 621 to 656 of the hearing bundle: by reference to the Land Registry copy documents at 618-620, R is the successor in title to the Lessee identified at 622 and, on 12 July 2010, acquired the balance of the 125 year lease originally granted on 26 August 2005. A copy of the lease is appended to this decision.
11. The obligation to pay service charges is not in issue in this case, since it is admitted by R, so it is not necessary or proportionate to set out the obligations under the Lease in full.
12. In brief the obligation to pay is to be found at section 3 under the heading ***LESSEES COVENANTS*** [627]; the service charge proportions at number 12 of the Particulars [623]; enforcement of unpaid sums and indemnity at §2 (a) and (b) of the Third Schedule [638]; and Variation of Proportions and Computation of Annual Maintenance Provision in the Fourth Schedule [645-6].
13. A's obligations are also set out variously (in particular the list of services to be provided are set out under the Fifth Schedule [647-651]). Significantly the lease provides as follows at section 4 (with emphasis added):

*The Company will during the term carry out the repairs and provide the services specified in the Fifth Schedule **provided always that:***

(a) The Lessee shall have paid the Rents hereby reserved the Service Charge any Maintenance Adjustment or any Special Contribution due

(b) The Lessee shall not be in breach of any of his covenants herein contained.

14. It is also uncontroversial in this case that R has not paid the Service Charge due, he submits because of A's failure to maintain the block. The argument then becomes circular.

The inspection

15. On the morning of 8 September 2014 the Tribunal members met with representatives of both parties at the premises which are the subject of this application. With the permission of the current tenant the Members of the Tribunal were able to inspect the interior of the flat owned by R; and with the assistance of Mr. Neil Taylor, the previous manager of the premises on behalf of A, also able to view the locked bin store.
16. It is right to point out that the premises are now maintained by a Right to Manage organisation and so, at the date of the inspection, A no longer had any control over the condition of the premises.
17. There were one or two issues to which the Tribunal's attention was drawn: the state of external and internal decoration; the tidiness of the bin store; issues with lighting; the damage/repair/ replacement of low level lighting columns; and slates having slipped on the roof.
18. Insofar as it is necessary to make a finding, the Tribunal unanimously concluded that the external decoration appeared unchanged from R's photographs and the general tenor of his evidence to the effect that the block appeared not to have been re-decorated since he acquired the property (and probably not since the block's construction); internal decoration was fair; the bin store was tidy; there was a single loose slate in evidence; and the lighting columns appeared to have been repaired and/or made safe. However, by reason of what follows, those are merely observations.

The hearing and reasoning on the administration/management charge

19. As already set out above, in the light of the agreed limited nature of the Tribunal's jurisdiction, the application was confined to a broad consideration of the service charge but not its component parts.
20. The Tribunal heard evidence from Mr. Neil Taylor, already referred to above, and Mr. Docherty, who is employed as an accountant by A. In turn A's witnesses were questioned by R and Ms. Frost.
21. Given the limited scope of the Tribunal's jurisdiction, and the limitation that had to be placed upon R's desire to broaden the scope of the enquiry to deal with individual components of the service charge, R's questioning of A's witnesses was confined to the broad issue of reasonableness of the service charge and the management charge.
22. The Tribunal members also had a number of questions for the witnesses on behalf of A regarding the management of the premises/ finances. It transpired that A kept all funds received in the same bank account. This was because, according to Mr. Docherty, A was so short of service charge funds that it was unable to maintain a reserve fund. Accordingly, the accounts required some explanation: for example the accounts for 31 March 2013 [688] appear to indicate a positive balance of £17,146.90 as a reserve fund. In fact it is nothing of the sort since it was Mr. Docherty's evidence that the actual positive balance

is only shown by reference to the entry '*Bank Account*' in the sum of £2,939.31.

23. There was some consideration of the RICS Code of Good Practice and, although it would appear there is no absolute bar to the method adopted by A, it is the Tribunal's view that the presentation of the accounts in this manner is prone to confuse as is demonstrated by the time taken to deal with this issue during the course of the hearing. Ideally, the reserve fund ought to be accurately identified and preserved in a single account in order to demonstrate good management/practice.
24. The explanation was that A had had a substantial default of service charge payments and had to practice hand to mouth financial management in order to ensure fundamentals such as insurance continued to be paid. Hence: insufficient funds with which to discharge its maintenance obligations.
25. The one item of expenditure that was, however, always extracted from the funds recovered was the management charge: a flat fee of £195 per property according to Mr. Taylor.
26. The Tribunal was unimpressed by this since it is the Tribunal's view that A did not perform its management functions well: service charges went unpaid and unenforced by as much as 10% per year; consequently, maintenance was not affordable; the reserve fund became depleted and had to be managed in such a way that only a modest positive balance was maintained in the bank account/reserve fund, capable only of discharging such items as buildings insurance, cleaning and small matters such as light bulb replacement. Although A only escapes any line by line assessment of the reasonableness of the service charges from the windfall of the inadequacy of R's case, it is the Tribunal's judgment that the failure to maintain is further evidence of a failure to manage.
27. It is the Tribunal's judgment that, in the light of the evidence summarised above and Mr. Harrison's submission of mismanagement, this Tribunal is justified in reducing the management charge of £195 per property to £100 per property.

Service Charges

28. Ultimately, so far as the case under section 27A Landlord and Tenant Act 1987 for a determination of liability to pay and the reasonableness of service charges was concerned, the Tribunal was unable to make an assessment:
 - a. R's case before the County Court (transferred in its suspended state to this Tribunal) was too vague and lacking in specificity;
 - b. the scope of the claim could not be amended;
 - c. the Tribunal was unable to permit questions and/or submissions which sought to broaden the scope of the Tribunal's enquiry; and, in any event
 - d. the obligation to pay was admitted by R.
29. Accordingly it is the Tribunal's judgment that the outstanding service charges are not capable of being challenged and are due in full to A.

30. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). First, within 28 days of the date of this decision, an application for permission to appeal must be made in writing to this Tribunal setting out the grounds upon which the Appellant relies.

Andrew McNamara
Judge of the First Tier Tribunal (Property Chamber)
3 October 2014