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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2014/0421**
Property	:	**43 Trinity Court, Gray's Inn Road, London WC1X 8JZ**
Applicant	:	**Trinity Court RTM Company Limited**
Representative	:	**Parkgate Aspen Property Management**
Respondents	:	**Victor Richard Stockinger** **Irma Maria Stockinger**
Representative	:	**Victor Richard Stockinger**
Type of application	:	**For the determination of the applicant's liability to pay service charges: claim transferred from the county court**

Tribunal: **Margaret Wilson**

Date of determination :

18 December 2014

DECISION

Introduction and background

1. This is a claim by an RTM company ("the company") to recover arrears of service charges which was brought in the county court and transferred to the Tribunal under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the Act"). The determination is made on the basis of the written material alone and without an oral hearing in accordance with the procedure set out in rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal having indicated that it was minded to determine the claim on the basis of the papers and neither party having asked for an oral hearing. The company, which acquired the right to manage the block in March 2008, is represented in these proceedings by Parkgate Aspen Property Management, its managing agent, and the respondents, Victor Richard Stockinger and his mother, Irma Maria Stockinger ("the tenants"), are represented by Mr Stockinger.

2. The claim is for £7195.43 and costs and was made in or about June 2014. It relates to service charges alleged to be payable by the tenants, who hold a long lease of 43 Trinity Court, a fourth floor flat in a nine storey block of 90 flats built in the 1930s. The arrears of service charges are said to relate to costs incurred in respect of the period from 29 September 2011 to 24 March 2014 and interim service charges for the period from 25 March 2014 to 28 September 2014. It is understood that all or most of the sum claimed has been paid since the claim was made, without prejudice to the question of liability.

3. Directions for the determination of the claim were made on 2 September 2014 at a case management conference which was attended by Sol Unsdorfer of Parkgate Aspen and by Mr Stockinger, who is a solicitor. At the hearing the Tribunal judge identified five categories of issues to be determined: the reserve fund, management fees, accountants' fees, asbestos, internal repairs and plumbing, and insurance excess charges in respect of repairs and maintenance. In a letter dated 9 September 2014 (page 29 of the bundle) Mr Stockinger limited the ambit of some of the disputes as set out below.

4. The parties have lodged statements in accordance with the Tribunal's directions. In his statement Mr Stockinger has sought in some respects to enlarge the ambit of the dispute as set out in the directions and explained in the letter dated 9 September, but since the issues were clarified at the case management conference and listed in the directions and the company has accordingly restricted its submissions to those issues and neither party has called for an oral hearing, in my view it would be unjust and disproportionate to extend the issues beyond those identified in the directions.

The statutory framework

5. The Tribunal's jurisdiction in relation to these service charges is derived from section 27A of the Landlord and Tenant Act 1985 which provides that an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) of the Act as *an amount payable by the 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.* Relevant costs are defined by section 18(2) and (3). By 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 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.* By section 19(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 of subsequent charges or otherwise.*

The issues

i. Reserve fund

6. Mr Stockinger disputes the company's entitlement under the lease to raise a reserve fund. The same issue was debated during the course of a lengthy hearing before the Tribunal's predecessor, the leasehold valuation tribunal, under reference LON/00AG/LSC/2012/0284, which, in its decision dated 16 May 2013, determined that the company did have such a right. Mr Stockinger says, correctly, that the leasehold valuation tribunal was not, and the First-tier Tribunal is not, a court of record and there is thus no jurisdictional barrier to the matter being reconsidered. In principle he is right, but I would normally regard it as an abuse of process to re-litigate, in the absence of new evidence or exceptional circumstances, a matter which has been previously determined. However, in any event, having considered the clear words of clause 2(2)(b)(v) of the lease which enables the landlord, its functions now exercised by the company, to raise *a sum or sums of money by way of reasonable provision for anticipated expenditure* I have no doubt whatever that the previous decision of the tribunal was correct and that the landlord, its functions now carried out by the company by virtue of its right to manage, has the contractual right under the lease to raise a reserve fund.

7. Mr Stockinger also questions the decision-making process by which sums to be paid to the reserve fund are sought. He suggests that Parkgate Aspen is not the managing agent but that is clearly incorrect, and he also suggests that Parkgate Aspen is imposing and collecting a reserve fund so that it can spend money without proper consultation but, as Parkgate Aspen point out, spending money from the reserve fund is a separate matter from the collection

of the fund and I have seen no evidence of expenditure without statutory consultation where such consultation is required. Nor is there any evidence of flaws in the decision-making process as to the amounts collected or defrayed. I have no reason to doubt the evidence from Parkgate Aspen and from Mr House, a leaseholder and director of the company whose statement is at page 152 of the bundle, to the effect that decisions are taken by the directors in the interests of the leaseholders as a whole, and I am satisfied, in the light of Mr House's statement, that the reserve fund is not excessive in the circumstances.

ii. The reasonableness of the fees of the managing agent

8. The company says that the managing agent's fees are adjusted annually by agreement between the directors of the company and the managing agent and that the agreed fees, currently £250 per year for the average flat, are reasonable by comparison with charges for comparable blocks. Mr Stockinger says that the fees are "somewhat higher" than those of the previous managing agent. That is not, however, to say that they are unreasonable and I am satisfied that they are within a reasonable range for a central London block of flats. There is no substance to Mr Stockinger's case on this issue.

iii. The reasonableness of the fees of the accountants

9. The company says that Kybert Carroll, chartered accountants, have audited the service charge accounts each year since the formation of the company, and it produces a letter (page 39 of the bundle) which shows the scope of the work the accountants do and their charge for the most recent year's accounts, which are £3166 plus VAT. The equivalent charges in the previous relevant years are shown in the accounts produced as schedule D to the company's statement of case. Mr Stockinger says that the accountants perform only a book-keeping function and that some of the work they do duplicates work already carried out by Parkgate Aspen. However I am satisfied that the accountancy charges are well within a reasonable range for preparing comprehensive and clear service charge accounts for a block of this size and there is no substance in Mr Stockinger's challenge.

iv. Charges relating to asbestos

10. Mr Stockinger explained in his letter dated 9 September 2014 following the case management conference that the issue in relation to asbestos was simply whether "the amounts conceded [at the previous tribunal hearing] for website operation (website not needed) has been credited to the tenants". The company has produced at page 8 of the bundle a list of credits to the service charge account for Flat 43 in respect of conceded items and deductions allowed by virtue of the previous tribunal determination and I am satisfied on the basis of the evidence before me that the appropriate credits have been applied.

v. Internal repairs and plumbing

11. In his explanatory letter at page 29 Mr Stockinger explained that the only issue under this head was "whether the amounts conceded at the LVT final hearing (eg as to internal repairs and plumbing) have since been properly credited to the tenants' account". I have no reason to disbelieve the company's case, supported by the account at page 8, that they have been so credited with amounts conceded or disallowed.

vi. Insurance excess

12. In the letter at page 29 Mr Stockinger explained that the issue is "whether the insurance excess for the lift repairs in the incident where a counterweight struck the lift cabin roof were recovered from the carpet layers who caused the damage and credited to the tenants".

13. The company says in a statement in reply (page 116) to Mr Stockinger's statement that this question was "exhaustively" dealt with at the previous tribunal hearing and that a payment was made (presumably by the carpet layers' insurers) with no detriment to future premiums, as was confirmed by an email from the brokers at page 77. I have seen no evidence to suggest that the premiums or excess on the company's insurance policy were increased in consequence of the incident and I am satisfied that there is no substance in Mr Stockinger's case on this issue.

vii. Conclusion

14. The sum claimed is thus payable in full, subject to such sums as have already been paid in satisfaction of the claim.

viii. Costs

15. Mr Stockinger has asked for an order under section 20C of the Act to prevent the company from placing its costs in connection with the proceedings on the tenants' service charges. The company has asked for questions relating to costs to be determined separately and later. It must submit any representations it wishes to make in respect of costs to Mr Stockinger, copied to the Tribunal, within 21 days of the date when this decision is received and Mr Stockinger must provide any submission he wishes to make in response to the company and to the Tribunal within 14 days thereafter. The Tribunal will make a decision as to costs after such submissions have been received.

Judge: Margaret Wilson

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Type of application	:	**For the determination of the applicant's liability to pay service charges: claim transferred from the county court**

Tribunal: **Margaret Wilson**

Date of determination :

24 February 2015

DECISION

1. This decision is in respect of costs. It follows a decision dated 18 December 2014 made on a claim by an RTM company ("the company") to recover arrears of service charges from the respondent leaseholders, Victor Stockinger and his mother, Irma Stockinger, which had been transferred by the county court to the Tribunal. The transferred claim was determined on the papers alone. The company had asked that questions relating to costs should be determined after the decision on the merits of the transferred claim had been considered. I agreed to that request and directed that the company must submit any representations it wished to make in respect of costs to Mr Stockinger, copied to the Tribunal, within 21 days of the date when the decision was received and that Mr Stockinger must provide any submissions he wished to make in response to the company and to the Tribunal within 14 days thereafter. The company has made written submissions dated 12 January 2015, a copy of which it sent to Mr Stockinger, but Mr Stockinger has not responded.

2. Mr Stockinger had, in his submissions on the merits of the claim, asked for an order under section 20C of the Landlord and Tenant Act 1985 ("the Act") to prevent the company from placing its costs in connection with the proceedings on the tenants' service charges. The company resists such an order and also asks for an order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the respondents pay the company's costs incurred in connection with the proceedings.

Section 20C

3. In view of the conclusions I reached in the decision as to the merits of the tenants' case I am satisfied that the making of an order under section 20C of the Act would not be just and equitable. The claim was justified in its entirety and the company, which has I assume, no assets, had no choice but to bring it.

Rule 13

4. The Tribunal may make an order that a party must pay the whole or part of another party's costs by virtue of rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules") on the ground that a party has *acted unreasonably in bringing, defending or conducting proceedings*. It must be remembered that this rule does not mean that costs follow the event. Respondents are entitled to defend proceedings if they have grounds to do so and, even if they lose, it may well be that that they have not acted unreasonably in defending or conducting he proceedings and

ought not to be ordered to pay the successful party's costs. However, in the present case I am satisfied that the tenants did not have any reasonable grounds for defending the proceedings. They raised matters relating to the interpretation of the lease which had already been determined in previous proceedings before the Tribunal and in respect of which their argument was entirely without merit. They raised no matters of substance in relation to any of the service chargeable costs and did not put forward a positive case that any of those costs had been unreasonably incurred. In my view they also acted unreasonably in conducting the proceedings in that they asked for the claim to be transferred to the Tribunal when they had nothing of merit to say. In my view it is relevant that the applicant is an RTM company, formed by leaseholders and with no assets. It would be unjust in the circumstances for the company, the members of which are leaseholders, to bear any of the costs it has incurred in connection with the proceedings to recover this substantial debt and I order the respondent tenants to pay the whole of the company's costs which, according to the company's undisputed statement, amount to £1831.30 plus VAT. I assume that VAT of 20% is payable on the whole of this amount, but that must be clarified by letter to the tenants. On receipt of that clarification the tenants must pay the costs, inclusive of VAT, in full.

Judge: Margaret Wilson