9673

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOBY/LSC/2013/0112**
Property	:	**322 The Colonnades, Albert Dock, Liverpool L3 4AA**
Applicant	:	**Albert Dock Residential Limited**
Representative	:	**Mr Matthew Hall (Counsel) instructed by Shakespeares solicitors**
Respondent	:	**Roberto Ferraro**
Representative	:	**In person**
Type of Application	:	**Application under section 27A (and 19) of the Landlord and Tenant Act 1985 and section 20C**
Tribunal Members	:	**Mr Geoffrey Freeman** **Mr Ian James MRICS** **Mrs Hillary Clayton**
Date and venue of Hearing	:	**29 November 2013 and 9 January 2014** **Civil and Family Court, Vernon Street, Liverpool L2 2BX**
Date of Decision	:	**29 January 2014**

DECISION

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DECISION

The amount payable for service charge in respect of Apartment 322 The Colonnades Albert Dock Liverpool L3 4 AA by Roberto Ferraro for the period 1 January 2012 to 31st December 2012 is £2,606.24.

Introduction

1. Albert Dock is the largest group of Grade One listed buildings outside London in the UK. It was constructed under the design and supervision of Jesse Hartley and Philip Hardwick and opened in 1846. At the time, it was revolutionary, being constructed of fire resistant brick, stone and cast iron. It was enclosed, secure, and enabled cargoes to be unloaded and loaded whatever the state of the tide.

2. Over the years the buildings fell into disrepair until, in the late twentieth century, developers produced a scheme of re-development which has resulted in the refurbishment of the buildings for use as shops, offices, bars, an hotel, an art gallery and residential apartments. The apartments are known as The Colonnades. They are situated in the building overlooking the River Mersey on the westerly side of the dock. They boast underground car-parking, a large reception area and a 24 hour concierge service. There are 115 apartments of various sizes. The lease of each apartment provides for each owner to pay a service charge to cover maintenance and repair of the common parts.

3. For the sake of simplicity, in the following decision the Applicant will be referred to as "the Company" and the Respondent as "Mr Ferraro". The Landlord and Tenant Act 1985 is referred to as "the 1985 Act".

4. Both parties supplied voluminous documentation. Mr Ferraro provided a statement of case in the form of a letter dated 15th November 2013 with six attachments, numerous emails to the Tribunal offices and copies of various judgements in relation to litigation which has been conducted between the parties over a number of years aside from this application. These costs will be referred to later in this decision. Mr Ferraro asked that the letter and emails be considered for another application brought by him and other flat owners in respect of other years which has yet to be decided upon. The Company produced a statement of case, a witness statement from Julie Ward, who was employed by the managing agents at the relevant time, copies of the various documents required to be produced by the directions and a witness statement from the Company's solicitor, Mr A Hamblett. Counsel also helpfully produced a skeleton argument, as did Mr Ferraro. The Tribunal considered all the documentation carefully before reaching its conclusions.

The Management Scheme

5. In view of the mixture of commercial and residential units at Albert Dock it may be helpful to set out the scheme of management and how the service charge for the apartments is calculated. Each apartment is demised by a lease made between Arrowcroft Limited (the original developer) of the one part and the respective apartment owner of the other part. The owner of the reversion to each lease is now the Company. In turn, the Company holds a lease of the whole of The Colonnades from Gower Street Estates Limited ("GSE") a company owning a leasehold interest in the whole of Albert Dock. Fortunately, for the purpose of this decision, it is not necessary to delve into the relationship between this company and the owners of leases of commercial units. It was stated at the hearing that an apartment owner was a director of GSE until her recent death and this enabled the opinions of apartment owners to be heard in relation to matters affecting Albert Dock as a whole.

6. The service charge reserved by the lease of an apartment is divided into four parts, namely, the estate service charge, referred to in the lease as the "Village Services Contribution", the car park service charge, the storeroom service charge and the apartment service charge. The Village Services Contribution is a share of all the expenses attributable to the common parts of Albert Dock, payable by all businesses and occupiers. It is payable to the head landlord GSE. The car park service charge, storeroom service charge and the apartment service charge are payable to the Company and cover the maintenance of the common parts of the building in which the apartments are situated. Payment of a share of the car park service charge is dependent upon an apartment owner having the use of a car parking space in the lease. The storeroom service charge is payable by those having a storeroom.

7. For the year 2012 which is the subject of the application, the Company delegated day to day management to CBRE, a firm of Chartered Surveyors and Property Managers with an office in Liverpool. The manager having direct responsibility for management was Julie Ward who supplied a witness statement. In setting a service charge and deciding on the level of services required, Ms Ward consulted Albert Dock Residents Association ("ADRA"), an informal tenants' association consisting of flat owners within the development. It was stated at the hearing that the chairperson of this informal body was the same person who was a director of GSE. During the period covered by the application, CBRE also managed the common parts of the whole of Albert Dock on behalf of GSE. These arrangements were not contradicted by Mr Ferraro, and will be referred to later in this decision when the question of consultation arises. For the sake of completeness it should be mentioned that it was not disputed that the lease reserves a service charge payable by each apartment owner.

8. According to Ms Ward's statement, she would prepare a budget each year, based on the previous year's expenditure. Once that budget was approved by ADRA, she transferred the amounts, apportioned under ten schedules, to a spreadsheet which further apportioned the service charge between the respective apartments, car parking spaces and storerooms. Not every apartment has a car park space or a storeroom, so account has to be taken of this fact in order to produce a fair service charge. Service charge is then collected quarterly. The budgets, spreadsheets and demands for 2012 were attached to her statement.

9. Following the end of each service charge year, Ms Ward produced a reconciliation spreadsheet showing the actual expenditure together with an explanation of the discrepancies. Finally her figures were audited by a firm of accountants. CBRE also managed the Village Services Contribution on behalf of GSE. Ms Ward had direct responsibility for this at the relevant time.

The Lease

10. The Company supplied a copy of the lease of the Property. It is dated 18th October 1991 and is made between Arrowcroft Limited of the one part and Victoria Smith-Crallan of the other part. It demises Apartment 322 for the term of 150 years, less the last three days, from 1st October 1985 and reserves an escalating ground rent; initially twenty five pounds for the first twenty five years. The service charge is also payable as rent. The service charge year is defined as a calendar year, which is from 1st January to 31st December.

11. The Sixth Schedule of the lease sets out the maintenance expenses, that is, the services to be provided by the Company. The Seventh Schedule sets out the basis of calculation of the proportion payable by each flat owner. The proportion is to be "a fair and reasonable proportion". Because of the different sizes of the apartments, in order to be fair to the owner of each apartment, the Company has decided to apportion the service charge in proportion to the size of the apartment according to its floor area. The Property is one of the smaller apartments, having only one bedroom.

12. One of the contentions by Mr Ferraro related to the recovery of legal costs under the lease. As this will be referred to later it is useful at this point to refer to the provisions of the lease relating to costs.

13. The Sixth Schedule of the lease sets out those expenses covered by the service charge (referred to as "Maintenance Expenses" in the lease). Clause 23 of this schedule includes:

". . . any legal or other costs bona fide incurred by the Lessor and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any part of

the Development or any claim by or against any lessee or tenant thereof..."

Inspection

14. The Tribunal inspected the common parts of The Colonnades in the presence of Mr Ferraro, Mr Cook a director of the Company, and Counsel on the morning of the hearing. Its location is described above. According to the Company, the flats were constructed in stages. Phase one comprises 37 flats; phase two added 34 more; phase three added three; phase four added twelve and phase five added 29. Thus there are 115 flats in total. The entrance is from either the Dock itself or from a service road on the westerly side of the building which leads to the underground car park. Both entrances lead to a concierge desk which controls access to the apartments by non keyholders. The accommodation is on three floors which are accessible by numerous lifts. The common parts which are monitored by closed circuit television from the concierge desk, have smoke alarms.

Hearings

15. Hearings took place on 29th November 2013 and 9th January 2014 at the Family and Civil Law Courts, Vernon Street, Liverpool L2 2BX at which Mr Ferraro represented himself. The Company was represented by Mr M. Hall of Counsel and Mr G. Cook.

The Law

16. The relevant law is set out in Appendix One of this decision.

The Company's Application

17. The Company relies on the relevant provisions of the Lease, chiefly the sixth and seventh schedules, which provide for the payment of service charge and for its calculation as set out in paragraphs 11 and 13 above.

18. For the year 2012 the Company produced a budget of £442,408.40 for The Colonnades. It alleges that this was produced after consultation with ADRA. Based on a floor area of 751 square feet for the Property Mr Ferraro's share of this sum was £2385.00, being 0.501% of the total floor area of The Colonnades. This was payable by four quarterly payments of £596.25. This sum takes into account Mr Ferraro's service charge for the right to use a car parking space. Following the end of this year, Ms Ward produced a reconciliation statement (see paragraph 8). This produced an excess of expenditure over the budget of £37,317.00. Taking this into account Ms Ward

calculated the amount due for the year 2012 was £2,606.24 in respect of the Property using the proportions set out above.

Mr Ferraro's Response

19. Mr Ferraro did not supply a formal response. Instead he wrote a letter dated 6th September setting out various points on which he stated he intended to rely. He wrote a number of emails to the Tribunal office and the Company's solicitor both before and after the initial hearing on the 29th November 2013. He also wrote to the Tribunal on the 15th November 2013 alleging lack of consultation and asking some "basic questions" which had not been answered. In that letter he also stated that this was his statement in connection with a further application made by him and other apartment owners, in relating to other years. This has yet to be dealt with by the Tribunal.

20. The Tribunal explained to Mr Ferraro at the outset of the hearing that the questions to be decided by the Tribunal were solely the amount payable by him for the service charge year 2012 and whether such amount was reasonable. Thus the Tribunal were unable to take into account sums expended outside this period, or answer questions raised by him such as who appointed the Company's solicitors and why he was not consulted on their appointment.

The Tribunal's Findings

General Findings

21. From its inspection of The Colonnades the Tribunal found it to be generally well managed. The car park was, on the whole, clean and tidy, apart from an apparently abandoned bicycle and a number of discarded shopping trolleys, which no doubt are used to convey shopping from the car park to the apartments above. The Tribunal did not accept Mr Ferraro's contention that the Company had failed to maintain it in a tidy condition (see paragraph 63).

22. The Tribunal find that the remaining services appear to have been carried out to a good standard. In particular the Tribunal noted that a twenty four hour concierge service is provided. That being the case, the service charge costs will reflect the expense of providing manned security, uniforms, holiday cover and national insurance payments round the clock.

23. The Tribunal were particularly impressed by the standard of service charge accounting provided by Ms Ward of the managing agents, CBRE. The budget for 2012 was prepared following consultation with a tenants association and following the end of the service charge year, reconciliation statements were prepared with explanations for any overspending. The accounts were then audited by a firm of chartered accountants. If all managing agents were to undertake

such accountability the work of the Tribunal would, in their opinion, diminish rapidly. Again, however, such standards come at a cost.

Particular Findings

24. In coming to its conclusions the Tribunal must take into account the decision in Regent Management Limited and Mr Thomas Jones, a case concerning Waterloo Warehouse in Liverpool, [2010] UKUT 369 (LC)LT Case Number: LRX/14/2009], in which HH Judge Mole Q.C. stated:

"The law is that where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The LVT then decides on the basis of the evidence put before it".

25. The Tribunal found it difficult to particularise Mr Ferraro's complaints because they were not presented in any cogent order. It must be said the Company suffered likewise in responding to Mr Ferraro's allegations. Some complaints were not enunciated until the hearing itself. The Tribunal is grateful to Counsel for his assistance in attempting to collate Mr Ferraro's case. The Tribunal found that in many of Mr Ferraro's complaints, he simply failed to produce any evidence to show that the question of reasonableness was arguable. The Tribunal decided to deal with Mr Ferraro's case by dividing it into the following headings:

25.1 Mr Ferraro's comments on the Company's case dated 6th September 2013.

25.2 The allegations contained in Mr Ferraro's letter of 15th November insofar as they relate to the service charge year 2012 and within the constraints set out in paragraph 20 above.

25.3 The individual heads of charge set out in the Income and Expenditure Account for the year 2012 (page 57 of the Company's bundle)

26. The Tribunal decided not to consider Mr Ferraro's emails to the Tribunal office because they were not in accordance with the Tribunal's directions. The Tribunal refers the parties to the warning contained in the paragraph at the end of the directions dated 5th August 2013 which states:

"NON COMPLIANCE WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN PREJUDICE TO A PARTY'S CASE . . ."

27. The following are a summary of Mr Ferraro's complaints with, for convenience, the Tribunal findings in respect of that complaint:-

Letter of 6th September 2013.

28. "Did the Company carry out the statutory consultation procedures before making the application?"

Finding

The Tribunal first considered whether Mr Ferraro is here referring to any consultation procedures required by the lease or the statutory consultation procedures. (see Appendix 1) The Company denied that any consultation was carried out. The Tribunal was unable to find any provision in the lease requiring consultation before expenditure is incurred.

29. Under Section 20 of the 1985 Act the duty to consult owners applies to either "Qualifying Works" or a Long Term Qualifying Agreement ("QLTA"). For the purpose of this decision, "Qualifying Works" may be ignored since there have been no major works It is an essential characteristic of a QLTA, that it is an agreement entered into, by or on behalf of the landlord or superior landlord, for term of more than twelve months. Thus, for example, an agreement for the supply of services for a period of twenty four months would, potentially, be such an agreement. The other essential characteristic is that, if the amount of service charge payable by any apartment holder would increase by more than £100 per year (£250 in respect of qualifying works) as a result of such an agreement, it would be a QLTA. If the landlord had failed to carry out the statutory consultation procedures before entering into the QLTA, then, subject to certain exceptions, the amount recoverable by way of service charge for that expense would be limited to £100 per year.

30. If, on the other hand, an agreement were limited to twelve months duration which then continued from month to month, determinable on three months' notice, such an agreement cannot be a QLTA and thus subject to the statutory consultation provisions. See *Paddington Walk Management Limited v the Governors of the Peabody Trust* (2010 L & TR 6).

31. Unfortunately, Mr Ferraro's case does not refer to any particular contract which might require statutory consultation. The Tribunal noted that, at paragraph 6 of her witness statement, Ms Ward states that she looked at *"all the standard contracts (for security, cleaning, mechanical and electrical work, lift maintenance etc). They are all rolling contracts terminable on three months' notice"*. The Tribunal decided Ms Ward's evidence was credible and accepted it. She had no direct interest in the payment of service charge. In the light of the above the Tribunal concluded that no statutory consultation was necessary, since there were no QLTAs.

32. "What is the square footage is the overall floor area [sic] of each apartment and how much per square foot the current service charge is based on to my apartment and others?"

Finding

This is a request for information and does not require a finding by the Tribunal. The Company responded on 12th September 2013.

33. "What Applicant provided in their bundle under "Service Charge Appointment" [sic] and Service Charge Transaction List" pages- which they have never showed me before means nothing at this stage. In other word. The Applicant is trying to run before it can walk. They are just creating more costs, so they can make money on the on the legal costs again . . . "

Finding

The Tribunal found it difficult to understand Mr Ferraro's contention. However, it is not the Company's obligation to ensure Mr Ferraro's understanding of the documents supplied. If Mr Ferraro wishes to have the documents explained he should take professional advice.

34. "According to headlease and agreement in September 1988 the legal costs was set at £1000 per annum maximum, or £50-multiplied by the number of apartments. But the Applicant ignored that too. Why?"

Finding

No headlease or agreement were produced by Mr Ferraro in support of his contention that legal costs were so limited. In the absence of such documents the Tribunal did not see the relevance of the allegation to the service charges in dispute and did not consider that this had any impact on the service charge for 2012.

35. "Taking a tenant through the Courts and to the LVT is an expensive exercise and is a cost that needs consultation with all the lessees. This has not occurred when the Applicant first took me to Court in 2000. Nor in 2005, nor in 2007. Why not?"

Finding

The Company's succinct reply to this was that it does not relate to the service charge year 2012, a remark with which the Tribunal agrees.

36. "There is also the problem of who pays in the event that I as a tenant am successful in my appeal, and counterclaim – quite clearly its through the service charge mechanism – thus I pay legal costs if I lose and similarly a proportion if I win through my service charge – this is unacceptable. If I instruct a lawyer and barrister and if the LVT rules in my favour, who is going to pay my legal costs and the Shakespeares' costs?"

Finding

This is not strictly a claim by Mr Ferraro, but more a question on which he should seek advice. The Tribunal observed however that Mr Ferraro must have some knowledge of the position on costs since he has made an application under section 20C of the 1985 Act, seeking to disallow the Company's costs of this application when his service charge falls to be determined – see paragraph 67.

37. "In the same talking the Applicant took £15752- from our service charge accounts in 2011 ...."

Finding

This amount does not appear in the service charge accounts for 2012 which is the year under consideration. The Tribunal have therefore ignored this claim in coming to its conclusions.

38. "I need clarification as to whether my service charge % has reduced as a result of the number of apartments increasing from that within my original lease"

Finding

Again this is more a request for information. The Company responded by stating that the charge had reduced.

39. "My windows have never been cleaned in 2012 . . . Further the cost of maintaining my car parking space has increased from £225.22 in year 2000 to £620- in 2012, without any justification whatsoever despite my numerous requests in 2012 and other issues in December 2002 which LVT and Shakespeares have a copy of. Therefore I am entitled to a rebate.

Finding

The Tribunal noted the Company's reply that the windows were cleaned quarterly in 2012. There was a partial clean in December due to bad weather. The budget cost was £26,400 but the actual spend was £10,081. This was taken into account in the year end reconciliation as shown at pages 103 and 108 of the Company's bundle.

40. The Company's response states that the car parking charge was £520 for 2012, not as alleged by Mr Ferraro. The car park costs were in the agreed budget at £62,900. Mr Ferraro's share was 0.8264% of this sum, which is the percentage allocated to all residents per car parking space. The actual costs for the year were £72,306 which is also explained at pages 103 and 108.

41. "I have not been given the same freedom and enjoyment for my car parking space that other lessees have had . . . Why?

"Can the Applicant confirm that its predecessor, Arrowcroft Limited, sold the apartments and parking spaces separately when the Colonnades apartments were built and obtained separate monies for them . . ."

Finding

Neither of these questions are within the Tribunal's jurisdiction to determine for the reasons given at paragraph 20 above.

42. "In year 2000 overall Car Parking area service charge costs were £29,335 divided between 70 lessees. But that amount has increased to staggering £72,306 in 2012 despite number of lessees are also increased, to 116 lessees. So how can you justify that? If not I'm entitled to a rebate from parking charges too"

Finding

The Tribunal accepted the Company's argument that the increase in costs over the twelve year period reflected the increase in costs over the same period.

43. "Head Lease states parking spaces only to be used by owners of flats for parking of private vehicles. The applicant contravenes lease, do not live in Colonnades and up to this day he still parks there . . . Why?

Finding

This is not a matter over which the Tribunal has jurisdiction, and so it did not consider it. See Paragraph 20 above.

44. "Head Lease between Merseyside Development Corporation and Arrowcroft was assigned by MDC on its demise, to Gower Estates – GSE ..... for £1- (one pound) who is controlled by Arrowcroft and its connections such as the Applicant charged us....and they increased that amount to £23,599 in 2012. Despite more shops opened in Albert Dock Complex since that year [2000] So is more bars and the night clubs. So how the

Applicant can justify those increases. And where is the GSE accounts and how come we haven't seen one for the past 15 years?"

"How much Arrowcroft, Albert Dock Company and the albert Dock Residential Limited contribute to GSE charges and how many voting allocations they have in GSE company. If the Applicant cannot explain this and don't provide GSE accounts, then i am entitle to a rebate on GSE charges as well"

Finding

The scheme of management for Albert Dock has been explained at paragraphs 5 to 9 above. The Tribunal accepted Ms Ward's statement confirming this at pages 98 – 100 of the Company's bundle and the reconciliation report at pages 107 – 108.

45. "Where is the sinking fund accounts and why the managing agent never showed it to me despite my request?"

Finding

The Tribunal accepted the Company's response that no "sinking fund accounts" are produced. The lease provides for a "reserve fund" made up of disposition fees paid on the assignment of a lease. The current balance of the fund is £66,143. There was no payment out of the fund in 2012. The Tribunal's jurisdiction is to consider whether the service charge for 2012 is reasonable. The Tribunal concluded that sums paid to the company by virtue of Schedule Eight amounted to a service charge within the meaning of clause 18 of the 1985 Act, since they were both variable and indirectly payable for services. However the reserve fund did not include any sums payable by Mr Ferraro during the period in question. The Tribunal did not consider that the overall amount of the service charge should be reduced by a payment out of the reserve fund, since the Company may want to use this fund, as its name suggests, for reserves.

46. "What do the Applicants pay for the sprinkler system?"

Finding

This is another request for information which has been provided by the Company.

47. "Can you please confirm the make up of the committee administering the association? And why put the name of Dolly Crone in the page three of the application?"

Finding

This is irrelevant to the application.

48. "When were the interior common parts last decorated?"

Finding

This is also a request for information and irrelevant to the application.

49. "Why have my requests to the Applicant to receive copies of invoices and receipts been refused to date?"

Finding

The answer to this question is not within the Tribunal's jurisdiction.

50. "Has electrical charges been tendered?"

Finding

The answer to this question is not within the Tribunal's jurisdiction.

<u>Income and Expenditure Account for 2012</u>

Management Charges £34,793.00

51. In support of his application that these were unreasonable, Mr Ferraro produced a letter from Peter Kenny Property Management dated 6th December 2013, offering to manage the Colonnades for the sum of £11,500 plus VAT per year. The Tribunal noted that the letter consisted of two lines only and more particularly did not state what services this company would carry out for that sum. The Tribunal were therefore unable to compare on a like for like basis whether the services offered would be the same as those provided by CBRE. In addition, it was submitted that CBRE had recently resigned from management of the Colonnades. Another management company has taken over, presumably at a different cost, but this was not during the year in question, and therefore was not considered by the Tribunal.

Security Staff £87,418

52. As noted above, The Colonnades enjoys a 24/7 concierge service. The Company explained that staff were paid £7.00 per hour resulting in a cost for labour alone of £61320.00. To this must be added the cost of uniform and other overheads as noted in

paragraph 22 above. Mr Ferraro contended that the 2013 accounts had not been produced to show this item. He could not therefore accept the 2012 sum. The Tribunal decided that in the absence of evidence to the contrary, the cost of security staff was reasonable. (see paragraph 24 above)

Electricity £48,070

53. Mr Ferraro suggested that £30,000 was a reasonable sum. The Tribunal disagreed. Consumption of electricity is metered. Page 103 of the Company's bundle contains a reconciliation of the figure as provided by Ms Ward. The Tribunal accepts the sum claimed as reasonable. (paragraph 24 above)

GES Estate Charge £23,599

54. Ms Ward's statement at page 98 of the Company's bundle explains how this sum is calculated. The management scheme is set out at paragraphs 5 to 9 above. The Tribunal accepted this explanation. (paragraph 24 above)

Common Parts Maintenance £19,992

55. Mr Ferraro alleged that these sums had not been spent. He also disputed the appointment of the cleaning firm appointed by the Company, alleging that the contract had been let without consultation. As has been considered above, at paragraphs 32 and 33, there was not necessarily a duty to consult. Certainly there is no provision in the lease to do so. The Tribunal considered this sum to be reasonable. (paragraph 24 above)

Legal Fees £5,940

56. Mr Ferraro was adamant that these should not be included and that they were "falsely claimed". There appears to be a history of litigation between the parties since 2002, involving recovery of service charges and possession of the Property. Fortunately, for the purposes of this decision the Tribunal did not have to consider this litigation in detail. Mr Ferraro did produce an order of the Liverpool County Court dated 16 December 2013 (postdating the first day of the hearing) that *"... the Claimant Roberto Ferraro is not **personally** liable for the sum of £21692.00 appearing on his statement of account dated 13th September 2013 from Premium Estates."* [Emphasis added]

57. No evidence was produced by Mr Ferraro as to what litigation this order refers, and more particularly whether the sum of £5,940 is included within it, but in any event the Tribunal did not have to consider this for reasons which will become apparent.

58. It will not be surprising to note that the recovery of costs incurred in the recovery of service charges has occupied many tribunals. For the reasons set out at paragraph 4 above it may assist if the Tribunal considers the question in greater detail.

59. In _Christoforou and others v Standard Apartments Ltd_ [2013] UKUT 586 (LC) the Upper Tribunal considered this. The upshot of this case is as follows:

- If a party seeks to recover the costs payable under the lease wholly from the tenant, there must be an explicit covenant on the part of the tenant to pay these.

- Such costs will be an administration charge within the meaning of Schedule 11 of the Commonhold and Leasehold 2002. Before the party may recover these, they must be certified as reasonable by the First Tier Tribunal (Property Chamber)

- If a party seeks to recover costs by way of service charge, there must be an explicit provision within the lease for the recovery of these.

- Such service charge costs are subject to the reasonableness test under section 27A of the 1985 Act.

60. Paragraph 13 above clearly shows that the lease permits the recovery of legal costs as a service charge item. There is no provision in the lease for the recovery of the entire legal costs from a defaulting tenant. This is reinforced by the order referred to in paragraph 56 above. The Tribunal considered that the legal charges were reasonable.

Window Cleaning £10,082.

61. The Tribunal has dealt with this at paragraph 39.

Cleaning Common Parts £40,196

62. Mr Ferraro referred to the appointment of a cleaning contractor noted at paragraph 53 above, where the issue is dealt with. The Tribunal found this item to be reasonable in the absence of further evidence from Mr Ferraro.

Car Park £72,306

63. Mr Ferraro queried the amount and claimed the car park was untidy and that the Company had not carried out its obligations under the lease. The Tribunal has found that the car park is generally tidy (paragraph 21 above). Ms Ward's statement contains, at paragraphs

8 and 9 (pages 94 and 95 of the Company's bundle), an explanation of the car park service charge. The notes to the audited accounts (page 56) state that the car park and storage room costs have been computed taking certain direct costs plus a fixed percentage of other overheads allocated to car park and storage. Mr Ferraro's proportion is set out at paragraph 40 above.

Insurance £8,287

64. Again Mr Ferraro alleged that there had been no consultation. Prior to the hearing this point had not previously been raised by him. The Tribunal has already dealt with consultation at paragraphs 29 and 30 above. In the absence of evidence from Mr Ferraro that the sum was unreasonable (see paragraph 24 above) the Tribunal rejected Mr Ferraro's complaint and considered the amount reasonable.

65. The Tribunal has considered and dealt with all issues raised in the letter dated 15th November in the above decision. It would be superfluous to repeat them at length.

66. The Tribunal find that the reasonable service charge for 2012 payable by Mr Ferraro is £2,606.24 as claimed.

Section 20C of the Landlord and Tenant Act 1985

67. Section 20C provides that

(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 or the First-tier Tribunal (Property Chamber) 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

(2) The application shall be made-

(a) in the case of court proceedings to the court before which the proceedings are taking place, or, if the application is made after the proceedings are concluded, to the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) ....

(d)....

(3) 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.

68. The Tribunal has found the service charges claimed to be reasonable. It has decided that as the Company has been successful, no order under section 20C should be made.

Appendix One

The Law

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.

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Consultation

Section 20 of the 1985 Act (inserted by section 151 of the Commonhold and Leasehold Reform Act 2002) provides that service charges are to be limited under sub sections (6) and (7) unless certain consultations requirements are met. These requirements are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations") which came into force on 31 October 2003. Section 20 and the regulations apply to "qualifying works", and qualifying long term agreements if the relevant costs exceed the "appropriate amount".

Broadly, the appropriate amount is fixed by reference to the service charge payable by any one owner, in respect of the work in question. It is triggered if this amount exceeds £250. For agreements, it is triggered if this amount exceeds £100.