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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : **CAM/00KG/LVA/2013/0001**

Property : **29 Coniston Avenue,
Purfleet,
Essex RM19 1PG**

Applicant : **Jacqueline and Veronica Daley**

Respondents : **(1) Freehold Portfolios GR Ltd
(2) The Haven (Purfleet) Residents Co. Ltd.
(through its agents Warwick Estates
Property & Management Services Ltd.)**

Date of Application : **26th March 2013**

Type of Application : **To determine reasonableness and
payability of variable administration charges**

The Tribunal : **Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb**

DECISION
Pursuant to Rule 51 of
The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013 (“the rules”)

1. Paragraph 3 of the Decision of the Leasehold Valuation Tribunal (“LVT”) dated 12th June 2013 is hereby set aside.
2. The Tribunal’s has re-made its decision in respect of the administration charges claimed by the 2nd Respondent from the Applicants as follows:-

<u>Charge</u>	<u>Claim(£)</u>	<u>Determination</u>
30/8/12 Debt referral fee	120.00	payable
1/11/12 court fee	175.00	not reasonable
28/1/13 Legal cost	75.00	not reasonable
1/3/13 court fees	<u>175.00</u>	not reasonable
Total cost	545.00	

Accordingly, the Tribunal finds that only £120 is payable and reasonable. If that sum has not been paid by the Applicants, it should be paid within 28 days from the date of this decision. If the total of £545 has been paid, the 2nd Respondent, or Warwick Estates Property Management Ltd. on its behalf, shall refund £425 to the Applicants by the same date.

3. The remaining parts of the said Decision of the 12th June 2013 are confirmed so that they remain in full force and effect

Reasons

Introduction

4. When this application was received on 5th April 2013, the Applicants sought to challenge a total of £545 paid to Warwick Estates ("Warwick") on behalf of the 2nd Respondent for late payment of service charges. There was no copy of the lease with the application. Strictly speaking, an application of this nature received without a copy of the lease is not a complete application. However it was accepted and a Directions Order was made on the 20th April 2013 timetabling this case to determination.
5. The directions started with a requirement on the part of the Applicants to file a copy of the lease by 10th May 2013 and it was said, in bold letters, "***if a copy of the original is not filed, the Tribunal will not be able to deal with this application***". A further letter was written to the Applicants on 14th May asking for a copy of the lease but there was no reply. The 2nd Respondent was then ordered to file a statement of case justifying the administration charges they were making by the 10th May. They failed to do so.
6. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in the directions order in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 10th June 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
7. The Tribunal did determine the issues it was able to determine. It was not possible to determine the issue relating to the administration fees claimed on behalf of the 2nd Respondent because it did not have a copy of the lease. The Applicants claim that they never received either the directions order or the letter of the 14th May. Be that as it may, a copy of the lease must be filed with any application of this nature and it wasn't. It is trite law to say that 'ignorance of the law is no excuse'.
8. On the 17th June 2013, the Applicants lodged a request for permission to appeal against the decision made under paragraph 3 i.e. that decision which has now

been set aside. It was said that a copy of the lease was being sought from the Land Registry.

9. On the 1st July 2013, the LVT became part of the First-tier Tribunal, Property Chamber, with new procedural rules. The transitional provisions are that any proceedings before an LVT pending before 1st July 2013 shall continue on and after that date as proceedings before the First-tier Tribunal. In this case, there was a pending application for permission to appeal on the 1st July 2013.
10. Thus the rules apply and, in particular Rule 51 which says that a Tribunal "*may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it if the Tribunal considers that it is in the interests of justice to do so and...a document relating to the proceedings was not sent to or was not received by the Tribunal at an appropriate time*".
11. On the 10th July 2013, a copy of the lease was filed with the Tribunal and it considers that it is in the interests of justice to set aside that part of its original decision and to re-make the relevant part of it. The application for permission to appeal against paragraph 3 of the original decision is now *otiose* and is deemed to have been withdrawn with the permission of the Tribunal.

The Law

12. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with a breach (or alleged breach) of a covenant or condition in his lease."

13. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

14. Paragraph 4 states that any demand for an administration fee must be accompanied by a summary of the rights and obligations of tenants in the form prescribed by the appropriate Regulations. There is no suggestion in this case that the appropriate notice was not served.
15. Finally, paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the LVT, for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The lease terms

16. The lease is dated 18th January 2005 and is for a term of 155 years from 1st January 2004 with an increasing ground rent. It is in modern form with a

landlord, a management company and a lessee. The management company has to keep the structure of the building in repair and to insure it. It collects a proportionate part of the cost or 'service charge' from each lessee.

17. Clause 14.1.1 allows the landlord (not the management company) to recover certain costs and expenses "*incurred by the landlord in connection with any notice served under Section 146 of the Law of Property Act 1925*". As the claim for administration charges is from the 2nd Respondent management company, this provision is irrelevant.
18. The 4th Schedule contains a section setting out what the management company can claim from lessees (which includes being able to delegate any of its powers to a managing agent) "*as it considers necessary or desirable from time to time for the performance of its obligations...or for the exercise of any of its powers contained in the leases of the flats...and shall pay and discharge all such wages commissions fees and charges as shall be thereby incurred*". In the Tribunal's view, this would include any expense incurred in chasing a lessee for non payment of a service charge because such non payment is a breach of the terms of the lease.

The Applicants' case

19. In their application, the Applicants say "*Property Debt Collection was only involved in September 2012, yet two payments of £175.00 have been levied on the account. Legal fees were charged but no court action has ever been taken against us. No explanation has ever been provided by Warwick Estates of these charges*".
20. There is no copy invoice from Property Debt Collection Ltd. but there is a copy of a letter from the managing agents dated 21st February 2012 threatening to instruct 'an external debt collection company' and there is a copy of a letter from that particular company dated 27th September 2012 to the Northern Rock, the Applicants' mortgagees, seeking to recover outstanding service charges of £1,498.89.

The 2nd Respondent's case

21. Despite being ordered to file a statement justifying its charges, the 2nd Respondent failed to do so.

Conclusions

22. In *Schilling v Canary Riverside Development PTD Ltd* LRX/26/2005; LRX/31/2005 & LRX/47/2005 (6th December 2005) His Honour Judge Rich QC had to consider upon whom lay the burden of proof in service charge disputes. It seems to this Tribunal that the same basic principle applies to variable administration charges.
23. At paragraph 15 in his decision, HHJ Rich said:

"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but

also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.”

24. In this case, the Applicants have put their case as clearly as they can. The 2nd Respondent has been given every opportunity to provide an explanation. Indeed, it was ordered so to do and has failed to provide any assistance to the Tribunal.
25. The 2nd Respondent gave warning that if arrears remained, a debt collection company would be instructed. Arrears did remain and a debt collection company was clearly instructed. These companies tend to charge a fixed fee for accepting instructions and the knowledge and experience of this Tribunal's members is that £120 is a reasonable fee for such a company. The Claimants have discharged their burden of proof in respect of the balance of the claim and the 2nd Respondent has not produced any information to assist the tribunal.
26. The Tribunal therefore considers that as there has been no evidence of any legal proceedings or legal advice being taken, the balance of the claim for administration charges is unreasonable and, therefore, not payable.

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Bruce Edgington
Regional Judge
15th July 2013