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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/LSC/2013/0116**
Property	:	**Flat 1, Parkview Court, Haslemere Road, Wickford, Essex SS11 7LA**
Applicant	:	**Baljit Kaur Boparai and Parminder Kaur Boparai**
Respondent	:	**PSG Investment Group Ltd.**
Date of Application	:	**12th September 2013**
Type of Application	:	**to determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (Lawyer Chair) Evelyn Flint DMS FRICS IRRV David Cox**
Date and place of Hearing	:	**3rd December 2013 at Holiday Inn, Cranes Farm Road, Waterfront Walk, Festival Leisure Pk., Basildon SS14 3DG**

DECISION

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1. In view of the Land Registry evidence produced by the Applicants that PSG Investment Group Ltd. is the owner of the freehold title to the property, that company is substituted as Respondent in place of PSG Investment Group.

2. The Tribunal determines the Respondent's claim of £1,516.09, as follows:-

Item	Date	Claim(£)	Decision(£)
Insurance	06.12.10	172.03	not payable
Invoice for arrears coll.	25.04.11	65.00	"
Interest	24.06.	7.76	"
Invoice for notice	17.08.11	85.00	"
Section 146 Notice		385.00	"
Invoice for arrears coll.	25.10.11	65.00	"

Interest		28.20	"
Invoice for arrears coll.	25.04.12	65.00	"
Interest		31.88	"
Invoice for arrears coll.	25.10.12	65.00	"
Interest		35.70	"
Invoice for arrears coll.	25.04.13	65.00	"
Interest		39.67	"
Interest	31.07.13	23.60	"
Legal proceedings		247.25	"
Closing admin fee		85.00	"
Ground rent	25.12.13	50.00	"
		1,516.09	nil is payable

Ground rent is not within the jurisdiction of this Tribunal but as the appropriate statutory notice has not been served then the ground rent is not payable.

3. An order is made pursuant to Section 20C of the **Landlord and Tenant Act 1985** preventing the Respondent from recovering its costs of representation within these proceedings from the Applicants as part of any future service charge demand.

4. The Respondent shall reimburse the Applicants for the fees paid to this Tribunal in the total sum of £315.00 on or before 10th January 2014.

Reasons

Introduction

5. The Applicants are the current leaseholders of the property. They say that it was purchased on 2nd February 2007. Their 2 applications ask the Tribunal to consider the reasonableness and payability of service charges and administration charges. Unfortunately these applications do not make it absolutely clear what service charges and administration charges are actually being challenged and why. It is only when one reads the papers that one understands the dispute.

6. In essence, the Respondent, through its agent Parkfield Marketing Ltd. ("Parkfield"), has claimed an insurance premium for the year commencing 6th December 2010 in the sum of £172.03. The demand is at page A80 in the bundle of documents provided for the Tribunal and the insurance certificate is at page A98. There is a further demand for only £89.48 at page A97 but this seems to have been ignored in subsequent demands.

7. At pages A126 and A127 in the bundle is what appears to be the last 'Statement of Arrears' submitted by Parkfield which repeats the demand for the £172.03 insurance premium and then seeks to add administration charges and claims for fees and ground rent making a grand total of £1,516.09 as set out in the decision above.

The Respondent

8. By a directions order dated 26th September 2013, this case was timetabled for this hearing with various orders being made for the filing and service of statements of evidence and any documents

required for the parties and the Tribunal. The Respondent has not filed any evidence.

9. On the 28th October 2013, Parkfield sent an e-mail to the Tribunal office saying "*We do not know why you continue to write to our company. We are not representing P.S.G. Investment Group in this matter. We formerly acted for P.S.G. Investment Group Ltd. on this block but were de-instructed late September 2013. You will need to serve the correct legal notices on the Freeholder as registered at H.M. Land Registry. P.S.G. Investment Group is not the correct respondent or legal owner of this property, neither are the applicants the correct lessees of the property as registered at Hm land registry*".

10. It was pointed out to them that it was not for the Tribunal to make investigations and they were asked for an address in England for service on the Respondent. No such address was given although the Tribunal has seen a copy of the Land Registry title up to date as at 28th October 2013 which provides only 1 address for the Respondent i.e. PO Box 49, Hertford SG14 1XP. All documents have been sent to the Respondent both to the address of Parkfield at 1 Millbridge, Hertford, Herts SG14 1PY (the address on their latest demand to the Applicants dated 7th November 2013 at page A125 in the bundle) and PO Box 49, Hertford SG14 1XP. Envelopes to the latter address have been returned marked "addressee unknown".

11. The Tribunal is satisfied that the Respondent knows of this application and of this hearing. Parkfield were clearly in contact with the Respondent company in late September 2013 and they must have been receiving instructions up to at least 7th November 2013 when the last ground rent demand was sent. Furthermore, Tania Hughes from flat 3 attended the hearing and volunteered that she had received a demand from Parkfield for £6,104.55 for 'Arrears and latest ground rent'. She produced a copy of a document dated 1st November 2013, which had been sent to her mortgagee, Godiva Mortgages Ltd. and which threatened to put a caution over the land and issue court proceedings on the 1st December 2013 if payment was not made.

12. On the balance of probabilities, the Tribunal is satisfied that Respondent has been given information about the case and the hearing. Indeed, the fact that Parkfield has sent out demands for ground rent and other charges in November 2013 i.e. at least a month after claiming to have been 'de-instructed', leads the Tribunal to conclude that they continue to be instructed 'on this block' as they put it.

13. Further, the Tribunal has been given information that the Respondent, through Parkfield, has been threatening to 'blight' any sales of leasehold interests by lodging some sort of entry at the Land Registry which has clearly worried the Applicants. The issues in this case need to be sorted out.

14. As to whether the Applicants are the owners of the leasehold interest, they have informed the Tribunal that they are sisters. At the time of their purchase, Parminder Kaur Boparai was married and had the last

name of Coffey. She divorced in 2009 and reverted to her maiden name. The Tribunal is satisfied that the Applicants and the Respondent are, respectively, the owners of the long leasehold and the freehold titles.

The Lease and Associated Matters

15. The Tribunal was shown a copy of what appears to be the original lease dated 25th October 1990 which is for 125 years from 24th June 1990 at an increasing ground rent. It is in what is often described as 'modern form' with a landlord freehold owner, a management company and the leaseholder. The management company is Parkview Court Wickford (Management Company) Ltd.

16. The leaseholder covenants with the freeholder to pay the ground rent and then to pay service charges. The covenant is to pay service charges to the management company but if the landlord takes over management, then payment is to the landlord.

17. As far as the management company is concerned, it is clear from the signatures in the lease that the original landlord and management company had a common director and the same company secretary. It is part of the leaseholder's covenants (clause 4(7)) that when a leaseholder sells his or her interest in the property he or she must "*procure that the assignee shall become a member of the company*".

18. Clause 5(4) is a covenant by the landlord which is particularly relevant in this case because the management company was dissolved on the 14th April 2009. It provides that in the event that the management company goes into liquidation – which would include being dissolved – the landlord "*may undertake....the obligations herein contained to be undertaken by the* "management company and, in that event, the leaseholder must pay service charges to the landlord. In other words, the option for the landlord is either not to become involved or to take over the management.

19. The management company covenants to insure the building for the usual risks in the joint names of the landlord and the management company. Upon each assignment, it is necessary for a deed of covenant to be executed and a sample is annexed to the lease.

20. It is clear from the correspondence that the Respondent's agent blames the leaseholders for allowing the management company to go into liquidation but, apart from purporting to arrange insurance cover, the Respondent clearly took no subsequent steps to manage the building.

21. The final relevant matter to be recorded as part of the history of this case is told by the Applicants. It is said that Parkview Court (Wickford) Residents Company Ltd. was formed on the 29th October 2008, changed its name to Parkview Court (Wickford) RTM Co. Ltd. on 27th October 2010 and "*obtained RTM status on 18th April 2011*" whatever that may mean. The Tribunal was given no information as to how that was achieved but the Respondent, through its agent, seems to accept that position. The Applicants say that Management Company,

Essex Properties Ltd., has undertaken the actual management which has been satisfactory.

The Law

22. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

23. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

24. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") 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."*

25. 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"*

26. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

27. Paragraph 4 states that each demand for administration charges must be accompanied by a summary of the rights and obligations of tenants. Section 21B of the 1985 Act makes similar provisions with regard to service charge demands. Section 166 of the 2002 Act and the applicable regulations make similar provisions with regard to ground rent demands.

28. Finally, on the matter of notices, all demands for money sent to tenants must contain the name and address of the landlord and an address in England and Wales where the tenant may service notices, including notices in proceedings (Section 47 of the **Landlord and Tenant Act 1987**). Failure to comply with this section renders the amount claimed not to be payable by the tenant to the landlord. As has been said, the Applicant tenants in this case are taking this technical point. The demand at pages A126 and 127 only gives the address of Parkfield in England. As reference is made to section 47, it is to be assumed that this is the landlord's address for service. Having given such address for 'service', it cannot just be withdrawn without a substitute being given. The demand at page A125 does not even give the name of the

landlord although it still, on 7th November 2013, gives 1 Millbridge, Hertford, Herts. SG14 1PY as the only address in England and Wales.

The Inspection

29. The members of the Tribunal attended at the premises for an inspection on a dull but dry winter's morning. Both applicants were present. The property is a 2 storey block of 8 flats built in the late 1980's and surrounded by a small garden which appeared to be communal and reasonable well presented. It is of brick construction under pitched roofs of interlocking concrete tiles with UPVc window frames. The Tribunal saw 2 internal staircases from the ground floor. Everything appeared to be clean, in a reasonable condition and state of decor. No-one from the Respondent was present.

The Hearing

30. The hearing was attended by those who had attended the inspection plus Tania Hughes from flat 3. She was able to tell the Tribunal that she had received a demand from Parkfield for over £6,000.00 in November. A copy of a demand was produced which is mentioned above.

31. One tactic which the Applicants told the Tribunal about was for the Respondent and/or Parkfield to refuse to execute the deed of covenant required by the lease on assignment until monies were paid. They had already lost a purchaser because of this.

Conclusions

32. The way in which the original management company was dissolved demonstrates how these modern tripartite agreements can often go wrong. The problem is that when a leasehold interest is sold, it is up to the person selling to ensure that the new owner becomes a member of the management company. If that does not happen, then it is the outgoing owner of the leasehold title who is in breach of the terms of the lease, not the incoming owner, which usually means that there is no-one for the freeholder to pursue. It is a *fait accompli.*

33. Thus, it is quite wrong for the Respondent, through its agent, to start blaming the present leaseholders for what happened to the original management company. They may have acquiesced in the problem by not running the management company properly or, more likely, by not ensuring that they became members of the company. Again, this may have been because they or their conveyancers did not read the lease properly.

34. In fact, one would have thought that the freehold owner would want to protect its interest in the property by ensuring that it was maintained and repaired. That did not happen in this case. The leaseholders tried to deal with matters with the help of a managing agent. That just brought further criticism from the Respondent's agents.

35. What Parkfield did was to arrange insurance. However, judging from the copy insurance certificate at page A98, the insurance was in the name of Parkfield who have no insurable interest in the building. They

are not the freehold owner. Thus the probability is that if there had been a fire and the insurance company realised that the insurer had no insurable interest, liability under the policy could have been successfully avoided. It is unreasonable to expect leaseholders to contribute to the premium when there is this obvious risk to the cover.

36. On the other hand, the insurance arranged on behalf of the leaseholders for the relevant period seems to have been in accordance with the terms of the lease i.e. in the joint names of the freeholder and the management company. Indeed, in a situation where there was double insurance and one policy was in the name of someone without an insurable interest, the Parkfield policy was almost bound to have been avoided by the insurer.

37. None of the demands for service charges, administration charges or ground rent appear to have been accompanied by the statutory information required which means that they are not payable. This point has been taken by the Applicants in this case. There is also no opportunity in the lease for the Respondent to pick and choose which function of the management company it wants to take over. If it wanted to insure the building, it had to take over management which it did not do.

38. Thus, the end result of this determination is that none of the claims are reasonable or payable because (a) the insurance premium is not reasonable or payable and, in those circumstances, (b) no interest or administration charge is payable even if the lease provided for such charges because there is no liability to pay the original service charge.

39. Furthermore, the behaviour of Parkfield has been reprehensible, to say the least. Failing to comply with the law, demanding monies which are not payable, adding administration charges which are not payable and then threatening to add cautions, take court proceedings and impede sales of flats are activities which should not and cannot be condoned.

40. For these reasons, the Tribunal considers that it is reasonable to make a formal order preventing the Respondent from recovering any costs of representation which may have been incurred within these proceedings as part of any future service charge demand. It is also reasonable to order that the Respondent reimburse the Applicants for the fees they have paid i.e. £125 to issue the application plus £190 hearing fee.

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Bruce Edgington
Regional Judge
5th December 2013