

9257



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00/BK/LAC/2013/0019

**Property** : Flat 5, 2 Little Portland Street, St Marylebone, London W1W 7JA

**Applicant** : Denise Freda Pearlman

**Representative** : Pearlmans LLP

**Respondents** :  
1. Calshot Investments Limited  
2. Mount Eden Land Limited

**Representative** : Stephenson Harwood LLP

**Type of Application** : Application under Schedule 11  
Commonhold and Leasehold Reform Act  
2002

**Tribunal Members** :  
1. Mr A Vance LLB (Hons)  
2. Mr M Taylor, FRICS

**Date of Decision** : 03.09.13

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**DECISION**

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## **Decision of the Tribunal**

1. The tribunal determines that the sum of £910 plus VAT of £182, totalling £1092 is reasonable and payable by the Applicant to the Respondents by way of a variable administration charge in respect of a licence to sub-underlet.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

## **Introduction**

3. This is an application made under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount that it is reasonable for the Applicant to pay by way of a variable administration charge.
4. The administration charge in question was demanded by the Respondents' solicitors in respect of a licence to sub-underlet premises at Flat 5, 2 Little Portland Street, St Marylebone, London W1W 7JA ("the Property").
5. The Applicant is the leasehold proprietor of the Property. The First Respondent is the leasehold proprietor of the building at 2 Little Portland Street, St Marylebone, London W1W 7JA ("the Building"). The Second Respondent is the freehold proprietor of the Building.

## **The Lease**

6. The Applicant is the First Respondent's tenant pursuant to a lease dated 03.09.76 made between EMI Cinema Properties Limited and Robin Henry Lawton for a term of 66 years from 25.12.71 (less 3 days).
7. Under Clause 2(15)(ii) of the lease the consent of the First Respondent is required in respect of any sub-underletting of the Property by the Applicant.

8. It appears that the consent of the Second Respondent is also required under the terms of the head lease apparently dated 17.03.72. That head lease is not before the Tribunal.

### **Directions**

9. Directions were issued by the Tribunal on 19.07.13 allocating the application to the paper track unless any of the parties requested an oral hearing. None of the parties made such a request.

### **Inspection**

10. Neither party requested that the Tribunal inspect the Property and we did not consider this to be necessary.

### **The Law**

11. Under the provisions of Schedule 11 of the 2002 Act a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
12. An application may be made to the tribunal (whether or not any payment has been made) for a determination as to whether or not an administration 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 amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.

### **Background**

13. On 24.05.13 the Applicant's solicitor wrote to the Respondents' solicitor requesting a draft licence to sub-underlet the Property under a 12-month assured shorthold tenancy.
14. A draft licence was sent to the Applicant's solicitors, by email, on 29.05.13 in which the Respondents' solicitor stressed that the draft licence was "in my client's standard form and it will not accept

substantial amendments to the same". An undertaking to pay legal costs incurred by the Respondents in the sum of £1,250 plus VAT and disbursements was requested before the matter could proceed to completion.

15. In a response sent the same day, the Applicant's solicitor offered the sum of £750 plus VAT as it considered the sum demanded to be unreasonable bearing in mind that this was for a 12-month assured shorthold tenancy. It also offered to pay up to an additional £500 plus VAT if, in a subsequent application to the Tribunal, the Tribunal determined that a sum in excess of £750 plus VAT was reasonable.
16. That proposal was rejected by the Respondents' solicitor by email the same day on the basis that the sum sought was reasonable for the work involved which included drafting the licence, corresponding with the Applicant's solicitor and their clients, reviewing the lease and head lease and other associated matters relating to the application. The Respondents' solicitor stated that if agreement was not forthcoming he considered it likely that the requested licence would be refused by his clients.
17. In reply, by email that evening, the Applicant's solicitor stated that the Respondents' position gave their client "no viable option" but to provide the undertaking sought.
18. The matter then proceeded to completion and payment of the £1,250 plus VAT was made by the Applicant's solicitor to the Respondents' solicitor.

### **The Respondents' Case**

19. The Respondents contend that the fees are reasonable and that:
  - 19.1. The Respondents were entitled to choose the legal representation they wished and were not obliged to choose solicitors with the lowest hourly rates;
  - 19.2. The work was carried out at an appropriate level by two associate solicitors with no direct partner involvement;

- 19.3. The hourly rates applied are heavily discounted from Stephenson Harwood's standard rates; and
- 19.4. As can be seen from the computer printout attached to the Respondents' Statement of Case, the actual time spent had a value of £1551 and therefore exceeded the quote. It followed that the quote was reasonable.

### **The Applicant's Case**

**20.** The Applicant submits that:

- 20.1. The breakdown of costs attached to the Respondents' Statement of Case does not accord with a telephone conversation (as evidenced by an attendance note attached to the Applicant's Statement of Case) between the respective solicitors on 29.05.13 during which it is alleged that the Respondents' solicitor stated that his costs were based on "4 hours work at £300 per hour". The breakdown now provided amounted to a total of 6 hours' work charged at £260 per hour. Hence, the information provided by the Respondents was unreliable.
- 20.2. This was a straightforward matter that should not have taken more than two to three hours at a charging rate of no more than £250 per hour plus VAT.
- 20.3. The breakdown provided indicated that three different persons were involved in the matter meaning that unnecessary extra work is likely to have taken place. Also, time has been charged in respect of a handover of the matter that should not be borne by the Applicant.
- 20.4. The fee demanded was not proportionate to the value of the transaction and amounted to the equivalent of a month's rent.

### **Decision and Reasons**

**21.** Firstly, we do not consider any significant weight can be placed on the telephone attendance note relied upon by the Applicant given that this

matter is being dealt with on the papers and without the benefit of oral evidence.

22. Whilst it may be a discounted rate, we consider that the hourly rate sought of £260 per hour is high and on the cusp of what could be considered to be an unreasonable hourly rate for a transaction of this nature. Nevertheless, we accept that the Respondents were, within reason, entitled to elect the solicitors of their choice. In light of this, and given that the sum is not much higher than the £250 per hour the Applicant accepts would be reasonable, we are of the view that the hourly rate is reasonable.
23. We do not, however, accept that this is a matter that should have taken an Associate charged out at £260 per hour six hours to deal with. We accept that the Respondents' solicitor would have needed to consider both the lease and head lease. We also bear in mind that this solicitor would need to seek instructions and report to two clients. We also note that there were a few exchanges between the two solicitors concerning the fees sought that would have incurred costs.
24. Nevertheless, this appears to us to be a very straightforward matter. As pointed out by the Applicant's solicitor the draft licence was in standard form, a form that the Respondents' solicitor asserted was not open to substantial amendment. The terms of the under tenancy are standard terms of an assured shorthold tenancy and there do not appear to be any amendments to those standard terms as far as this licence is concerned. There was no significant negotiation between the parties concerning the terms of the licence.
25. Whilst both the lease and head lease would need to be checked by the Respondents' solicitor there is no evidence to indicate that this would have been a time consuming exercise or that detailed consideration was needed. There is no reference or cross-reference to the provisions of either lease in the licence.
26. We agree with the Applicant that there appears to be no justification for charging a handover fee but this appears to be no more than one or two

units in any event. Nor is there any evidence to indicate why there needed to be internal discussions between associates or why there needed to be a discussion with Stephenson Harwood's real estate team (as indicated in the costs breakdown).

27. In our determination this matter should have taken no more than three and a half hours from inception to conclusion. We therefore determine that the amount that it is reasonable for the Applicant to pay towards this administration charge is £910 plus VAT of £182, totalling £1092. There is no indication that any disbursements have been incurred.

**Section 20C Application**

28. The Applicant seeks an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondents incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicant.
29. The Tribunal considers it just and equitable to make an order under s.20C limiting the costs the Respondents can recover as relevant costs given that the Applicant has, to a very significant degree, been successfully in pursuing this application.

Dated: 05.09.13

**Amran Vance**

**Judge of the First-Tier Tribunal**

**Annex**  
**Appendix of relevant legislation**

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11 - Administration Charges**

**Part 1 Reasonableness of Administration Charges**

*Meaning of “administration charge”*

- 1 (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (1) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (2) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor



- (b) calculated in accordance with a formula specified in his lease.
- (3) [.....]

*Reasonableness of administration charges*

- 2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 3. (1) Any party to a lease of a dwelling may apply to the appropriate tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
  - (a) any administration charge specified in the lease is unreasonable, or
  - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
  - (a) the variation specified in the application, or
  - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

*Notice in connection with demands for administration charges*

4. (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

*Liability to pay administration charges*

5. (1) An application may be made to the appropriate tribunal for a determination whether an administration 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 amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

6. [...]