



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

Case Reference : BIR/47UD/LAC/2014/0001

Property : 66 & 91 Gloucester Close, Enfield, Redditch, Worcs., B97 6AH

Applicant : Stephen Michael Parker

Representative : Not represented

Respondent : Freehold Managers plc

Representative : Sharelle Harris, Solicitor, Freehold Managers plc

Type of Application : An Application to determine the liability to pay and reasonableness of administration charges under schedule 11 to the Commonhold and Leasehold Reform Act 2002

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
P.J. Hawksworth (Lawyer)

Type of Decision : Decision on written representations

Date of Decision : **30 SEP 2014**

DECISION

REASONS

Introduction

1. The Application is made under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to the liability to pay and reasonableness of an administration charge. The charges are made in respect of the grant of consents to sublet and the subsequent registration of the sub-tenancies.
2. The Applicant is the leaseholder of both of the subject properties and holds the residue of 155 year leases granted 1 January 2006.
3. In paragraph 25 of the Eighth Schedule to both leases the Applicant covenants:
“25. Not at any time during the Term:
25.1 sub-let the whole or any part of the Demised Premises save that an under-letting of the whole of the Demised premises is permitted in the case of an assured shorthold tenancy agreement (or any other form of agreement which does not create any rights of security for the tenant) with the prior written consent of the Lessor or its agents (such consent not to be unreasonably withheld or delayed)”
4. By a letter dated 15 July 2013 the Respondent alleged that the Applicant was sub-letting number 91 Gloucester Close and invited the Applicant to make an application to the Respondent for consent to sub-let in accordance with the Respondent's standard conditions. A copy of these conditions was enclosed with their letter. The Respondent offered two types of licence; a licence for a year for £210 comprising £120 for the 'notice' (i.e. registration of the sub-tenancy) and £90 for the landlord's consent to sub-let, or a five year 'global' licence for £400. In each case the costs included VAT.
5. In response to the Respondent's letter the Applicant offered to pay £40 for the registration but disputed the Respondent's right to charge for consent to sub-let and applied to the Tribunal for a determination in respect of both the liability to pay the charge and the reasonableness of the charge.
6. The Tribunal's jurisdiction in respect of reasonableness is restricted to the charge demanded in respect of 91 Gloucester Close as there is no evidence of any demand or request for payment of a charge in respect of 66 Gloucester Close.

The Application

7. The Tribunal issued directions on 14 February 2014 requiring the parties to exchange and lodge with the Tribunal by 17 March 2014 a paginated bundle of documents which was to include their principal case and supporting documents.
8. In breach of these directions the Respondent missed the first deadline and was granted an extension of time by the Tribunal until 28 March 2014 to serve its bundle on the Applicant and to lodge a copy with the Tribunal. However, the new deadline was missed, albeit by only by three days, with the Tribunal receiving the Respondent's bundle on 31 March 2014 and it is part of the Applicant's case that the Respondent's representations should be disregarded due to the failure to comply with the Tribunal's directions.
9. In the circumstances, the Tribunal decided to consider the Respondent's failure to comply with directions as a Preliminary Issue and directed that the parties should make written submissions to the Tribunal on the matter.

The Preliminary Issue

10. The Applicant objected to the Respondent's failure to comply within the original and revised time limits. He submitted that the Tribunal's timetable and directions should be strictly adhered to and asked the Tribunal to dismiss the Respondent's case as being out of time.
11. The Tribunal then invited the parties to make further submissions with particular reference to *Groarke v Fontaine* [2014] EWHC 1676 (QB) a case which concerned, in part, the overriding objective of dealing with cases fairly and justly.
12. In response, the Applicant re-emphasised his view that the Respondent was out of time. By contrast, Mrs Harris for the Respondent referred to the comments of Sir David Eady in *Groarke* that:

"the requirements of fairness and justice do not need to be valued any the less or to be compromised merely for the sake of discipline or the marking of disapproval".

13. The Tribunal considered the point and the competing requirements for cases to be dealt with in accordance with the overriding objective which is summarised at paragraph 6 of *Groarke* by Sir David Eady:

"In particular, it is necessary over a whole range of case management decisions for judges to bear in mind not only the need to determine issues justly and fairly, as between the parties themselves, but also in doing so the imperatives that litigation should be conducted efficiently, economically and with due regard to the potential impact on court resources ..."

and at paragraph 22 in respect of dealing with compliance with court orders and directions when Sir David Eady states:

'I must be careful to avoid discipline for discipline's sake and to consider the application strictly, against the public policy objectives identified in Mitchell and similar cases, in order to see whether they would in any way be advanced (or alternatively refused) by refusing it.'

14. Following *Groarke* it is clear that compliance with strict timetables should be secondary to the overriding objective for a tribunal to consider a case justly and fairly. In the circumstances, the Tribunal considered whether either party might be prejudiced by failing to comply with the timetable; a point emphasised by Sir David Eady at paragraph 25 of *Groarke*.
15. In this case the Tribunal determines that neither party has been disadvantaged by the failure to comply. Both parties were able to submit their cases and given ample opportunity to make further submissions. Furthermore, this was an application relating to fees for retrospective consent with no immediate urgency affecting the sub-tenancy. Therefore, having considered the point, and taken account of *Groarke*, the Tribunal finds that it would be reasonable to relax the Directions timetable in the interests of justice in this case and admit both parties' evidence. Accordingly, the Applicant's request fails.

The Substantive Issues

16. Having disposed of the preliminary issue the Tribunal embarked upon its consideration and determination of the following issues:
- 1 Registration Fee -liability to pay and reasonableness of the proposed fee
 - 2 Consent Fee - liability to pay and reasonableness of the proposed fee
 - 3 Global Consent - liability to pay and reasonableness

Issue 1 - Registration Fee

17. The Respondent was seeking a fee of £210.00 that comprised two elements; a notice fee of £120 (otherwise known as a 'registration fee') and £90 to consider the request to grant landlord's consent to the sub-letting. The 'registration fee' of £120 is therefore £100 for registration plus 20% VAT at current rates.
18. The Applicant offered £40 for registration that had not been accepted by the Respondent which argued that the Tribunal had no jurisdiction to determine the matter as the fee is not an administration charge as defined by the Act.
19. The Tribunal notes that the lease contains a provision in Schedule 8, Part II, clause 27, requiring the lessee:

'to pay or cause to be paid at the same time to the Lessor such reasonable fee which shall not exceed 0.03% of the value of the Demised Premises ...'

However, the Tribunal only has jurisdiction to determine the liability to pay and reasonableness of a 'variable administration fee' defined in paragraph 3 of Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 as:

'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.'

20. The calculation of the registration fee in Schedule 8 of the lease is based on a formula tied to the value of the premises and accordingly the Tribunal finds it has no jurisdiction to determine the issue of that fee. Any dispute on the formula applied in this case would need to be determined by the County Court.

Issue 2 - Consent to sub-let Fee

21. The Respondent provided the Tribunal with a copy of a decision of the Upper Tribunal that had been issued since this application was made to the Tribunal and where similar issues had been considered; *Proxima GR Properties Ltd. v Dr Thomas McGhee* [2014] UKUT 0059(LC).
22. In *Proxima* the Deputy President of the Upper Tribunal (Lands Chamber), considered whether a landlord could charge a fee to grant consent for a sub-letting and held that it could do so, providing it was a reasonable sum, even though it may not have been specifically referred to in the lease. However, if the sum demanded was 'unreasonable', the landlord could be in breach of section 19(1)(a) of the Landlord and Tenant Act 1927 which provides:

'(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, under-letting, charging or parting with possession, of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express condition to the contrary, be deemed to be subject -

- (a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent.'

It follows that if a landlord requests an unreasonable sum it could be construed as unreasonably withholding consent and a tenant would then be free to sub-let without consent.

23. In this case the £90 fee comprises £75 for the landlord to consider whether to consent to the sub-letting and £15 VAT at 20%. The Applicant submitted that this sum was unreasonable, primarily because there is no reference to a fee being paid in the lease and secondly because the amount requested was too high for the work required.
24. However, the Respondent submitted that £90 was reasonable and, in response to further directions from the Tribunal, it explained the administrative procedure to consider a request to sub-let.
25. Having considered the parties' submissions the Tribunal determines that, in the light of *Proxima*, the Applicant is liable to pay the sub-let fee. The Tribunal also determined that £90 including VAT was reasonable taking into account the work involved. The Tribunal also had regard to *Proxima*, where a fee of £95 including VAT was held to be reasonable and where the appellant had referred to other tribunal decisions where sums of £135, £150 and £180 had been held to be reasonable.

Issue 3 - Global consent

26. This is included for completeness as an option offered by the landlord but as it is not referred to in the lease and would be a new contractual arrangement between the parties the Tribunal has no jurisdiction to determine such a matter.

Appeal Procedure

27. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Chairman

Date: **30 SEP 2014**