



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

Case Reference : CAM/22UG/LSC/2014/0042

Property : 43 Wood Court, Propelair Way, Colchester
Essex CO4 5YR

Claimant : Tamarinds (Colchester) MCL

Defendant : Mr Gary Paul Sharpe

Application : Application, pursuant to s27 of the Landlord & Tenant
Act 1985, to determine the payability and
reasonableness of service charges and administration
charges.

Tribunal Members : Judge Reeder
Mr Roland Thomas MRICS (valuer member)
Mr David W Cox (lay member)

Date of transfer : 3 April 2014

Date of inspection : 11 July 2014

Date of hearing : 11 July 2014 (Colchester Magistrates Court)

Date of Decision : 11 July 2014

Date Written : 28 August 2014

DECISION

DECISION

The jurisdiction issue

1. Having regard to section 27A(3),(4)(a),(5) of the Landlord & Tenant Act 1985 and to arguments made by the parties the Tribunal has no hesitation in determining that it has jurisdiction to determine this matter.

The agreement issue

2. The Tribunal determines that Mr Sharpe did not conclude an agreement with the developer or with the managing agents to the effect that he was is liable to pay service charges for the years 2006-2008 inclusive because the estate works and/or communal retained parts block works had not then been completed.

The completion clause issue

3. The Tribunal determines that the language and intention of clause 8(a),(b) in the 7th Schedule to the lease is clear and unambiguous and imposes liability on Mr Sharpe to pay service charges in the manner prescribed. That liability is not conditional upon completion of the estate works and block common parts works as he contends. The clause is neither 'unreasonable' nor 'unfair' as he contends.

The reasonableness & payability of the actual charges

4. The Tribunal determines that the service charges demanded (£16.74 for 2006, £770.73 for 2007 & £749.88 for 2008) are reasonable and are payable.

Transfer back to the county court

5. This matter is now transferred back to the county court to enable either party to apply for any further order dealing with those matters which are not within the jurisdiction of this Tribunal or any other matter not covered by this decision including costs and enforcement if appropriate.

REASONS

The application, parties & premises

6. This matter comes before the Tribunal pursuant to a transfer order made on 3 April 2014 by District Judge Molle sitting in the county court. This order provides for the matter to be transferred to this Tribunal "for determination of issues within its jurisdiction".
7. The dispute relates to service charges and ground rent arising from the defendant's leasehold ownership of 43 Wood Court, Propelair Way, Colchester, Essex CO4 5YR.
8. Accordingly, the Tribunal proceeds to determine the service charges in dispute. The ground rent issue is outside of the jurisdiction of the Tribunal and remains a matter for the county court.
9. 43 Wood Court is a flat located in one of 16 blocks on a residential estate developed by George Wimpey (East London) Ltd.
10. The claimant, Tamarinds (Colchester) Management Company Limited, is the head lessee of Wood Court and holds the immediate reversionary interest in 43 Wood Court. The estate has been managed for the claimant by Messrs CPM followed in 2009 by Messrs RMG. We have been told that, in effect, CPM and RMG are the same organisation. The present managing agent is PMS Leasehold Management Ltd.
11. The defendant, Mr Gary Paul Sharpe, is the leasehold owner of 43 Wood Court pursuant to a lease granted on 21 December 2006 by George Wimpey East London Ltd, as the developer of Wood Court and the estate on which it is located. The term is 150 years (less 1 day) from 1 October 2005. By that lease the claimant covenants to provide services, and the defendant covenants to pay service charges.

The service charges in dispute

12. Following an ongoing dispute in relation to services and service charges the claimant issued a claim in the county court in May 2013. This claim alleges service charge arrears in the total sum of £1,706.47 in respect of the period 11 April 2011 to 25 April 2013. This sum relates to historical service charge demands from earlier years. The

Tribunal has considered the Particulars of Claim issued in the county court (Bundle pages 1-4), together with the Defence (Bundle pages 6-11) and the Reply to Defence filed at the direction of this Tribunal (Bundle pages 16-23) in accordance with its own Directions Order (bundle pages 24-26).

13. Before the Tribunal Mr Sharpe has made clear that he raises no dispute in relation to the service charges demanded since December 2008. He accepts that they are reasonable and are payable in the sums demanded during the accounting years 2009-2013 inclusive. Accordingly, the Tribunal has restricted its consideration to the accounting years 2006-2008.

14. At the request of the Tribunal Mr Greene, the claimant's solicitor, has very helpfully 'stripped out' the ground rents and confirmed that the service and administration charges demanded in the accounting years 2006-2008 are as follows -

2006	£ 16.74
2007	£ 770.73
2008	£ 749.88

15. In relation to the disputed period of December 2006 to December 2008 Mr Sharpe states that estate grounds (including bin stores, paving & surfaces, allocated and guest car parking demarcation, and planting) were incomplete until in or around late 2008/early 2009, and further that the ground floor lobby to the internal communal parts of Wood Court remained unfinished until late 2007.

16. Mr Sharpe argues that no liability to pay service charges arises or should arise under the lease until these common parts have been completed.

17. Mr Sharpe also argues that, in such circumstances, even if the service charges demanded are payable then they are not reasonable.

18. Mr Sharpe further argues that he reached a concluded agreement with the developer George Wimpey (East London) Ltd, and subsequently with the managing agents CPM and later RMG, to the effect that he would not be required to pay any service charges for the years 2006-2008 inclusive because of the 'completion' issue.

19. The claimant disputes Mr Sharpe's arguments, and in any event contends that, in respect of the service charges demanded for the accounting years 2006-2008, Mr Sharpe has in fact paid them without dispute. It is argued that the Tribunal therefore has no jurisdiction to determine the payability and reasonableness of the same as section 27A(4) of the Landlord & Tenant Act 1985 provides that the jurisdiction does not arise where the charges have been agreed or admitted by the tenant.

The lease

20. The Tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. The Tribunal has considered this lease carefully. The parties were invited to and have addressed the Tribunal on the covenants relevant to the dispute.

21. Accordingly, the Tribunal has given particularly careful consideration to the section 2 definitions, to the maintenance charge liability covenant in the 3rd Schedule at clause 1(a), to the maintenance charge administration covenant in the 6th Schedule at clauses 1-4 & 1-12, to the expenses clause in the 3rd Schedule at clause 12, to the management company obligations set out in the 5th Schedule at clauses 1-7, and to the completion clause in the 7th Schedule at clause 8(a),(b).

22. The terms and effect of the lease are not disputed by the parties save that Mr Sharpe seeks to challenge the completion clause in the 7th Schedule on the ground that it is unreasonable to impose a liability to pay maintenance charges until the common and external estate parts have been completed, and that the covenant should be read to that effect.

23. Clause 8(a),(b) provides -

(a) The proportion of the maintenance charge applicable to the property in relation to the buildings and the common parts shall apply only as from the date of construction by the company of the final flat or dwelling within the development.

(b) Prior to the date specified in paragraph 8(a) of this Schedule the proportion of the maintenance charge applicable to the property in relation to the buildings and the common parts shall be the amount of such maintenance charge as is attributed by

the company or the management company to the block divided by the number of flats within the block.

24. The terms 'maintenance charge', 'buildings', 'common parts', and 'development' are all defined in section 2 of the lease.

The law

25. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges. *Section 27A(1)* of 1985 Act provides as follows -

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 amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which is payable.*

26. *Section 18* sets out the meanings of 'service charge' and 'relevant costs'.

27. *Section 19* sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

28. *Section 20C* sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.

29. *Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. *Section 5(1) of Part 1 to Schedule 11* provides -

An application may be made to a leasehold valuation 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.*

30. *Section 1* provides a definition of 'administration charge'. *Sections 2 & 3* provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

The inspection by the Tribunal

31. The Tribunal has inspected the external parts and internal retained common parts of Wood Court, together with the immediate estate grounds surrounding Wood Court.

32. On behalf of the claimant we have been assisted during that inspection by Mr Tarttelin of the managing agents Messrs PMS, Mr Green as solicitor for the claimant, and Mr Malone who is the present site manager for the estate. The defendant Mr Sharpe and his solicitor Mr Harman have similarly assisted the inspection process. We have not been asked to and have not viewed the demised internal parts of 43 Wood Court. The Tribunal has been accompanied during this inspection by its clerk Ms Luck.

33. During the inspection the parties have endeavoured to identify the locations of the photos included in the bundle by Mr Sharpe (Bundles pages 150-153). Photos A-C are said to show the area immediately outside of Wood Court, photos D-F the estate somewhere although not necessarily adjacent to Wood Court, photos G-I car parking areas adjacent to Wood Court, and photos J-K some unidentified part of the estate.

34. During the inspection we have been directed to those areas of the estate grounds which Mr Sharpe identifies as relevant to his account of incomplete estate grounds until late 2008/early 2009 including bin stores, paving, car parking, and planting. We have viewed the internal communal parts of Wood Court to enable Mr Sharpe to identify what is meant when he refers to the internal communal ground floor lobby remaining unfinished until late 2007.

The hearing before the Tribunal

35. The claimant company has been ably represented by Mr Green assisted by Mr Tarttelin. Mr Malone has not attended the hearing due to other professional commitments but has made himself available to his colleagues by telephone.

36. The defendant Mr Sharpe and his solicitor Mr Harman have combined to comprehensively address all of the issues raised in his Defence filed in the county court proceedings and detailed further in his witness statement and documentary exhibits dated 4 June 2014, all of which are included in the hearing bundle before us.

37. The Tribunal has been provided with a 187 page hearing bundle which it has considered with care. The core documents have been explored and analysed during the hearing with the assistance of both parties.

38. During the hearing the claimant has produced three photos which it is suggested depict the exterior of flat 43 in February 2008, the exterior of flat 54 in February 2008, and the exterior of flat 44 and bin store in December 2008. Mr Sharpe disputes that the locations ascribed to the respective photos are accurate. The Tribunal has inquired as to the provenance of these photos and been told that they have been sent by email by Mr Malone who is the present site manager for the estate, but that the locations and dates ascribed to them have not been provided by Mr Malone and in fact the source of the same is unknown. It follows that they have been of some but not great assistance to the Tribunal.

Determinations

Does the Tribunal lack jurisdiction to determine payability & reasonableness as a result of Mr Sharpe having admitted and paid the service charges demanded ?

39. The claimant contends that, in respect of the service charges demanded for the accounting years 2006-2008, Mr Sharpe has in fact paid them without dispute. It is argued that the Tribunal therefore has no jurisdiction to determine the payability and reasonableness of the same as section 27A(4) of the Landlord & Tenant Act 1985 provides that the jurisdiction does not arise where the charges have been agreed or admitted by the tenant.
40. Mr Sharpe response is simple and straightforward ; that such payments as were made were of such sums as he elected to pay rather than such sums as were demanded and were all paid within the context of an express ongoing dispute. He made such payments until 2012 but then ceased any payments as he did not feel that the claimant was providing any adequate response to the issues he had raised with them.
41. The Tribunal has reminded itself of section 27A(4)(a) which is relied upon by the claimant, and has regard also to section 27A(5) which provides that "the tenant is not be taken to have agreed or admitted any matter by reason only of having made any payment".
42. Any cursory reading of the pleadings and the documents in the hearing bundle bears out Mr Sharpe's response. For the purposes of section 27A(4)(a) it is clear that he has neither agreed nor admitted a matter having regard to the component parts of the jurisdiction provided by section 27A(3) of the 1985 Act. Further, the Tribunal notes that no application was made within the county court proceedings to seek to set aside or vary the order of District Judge Molle on 3 April 2014 which transferred the matter for determination by the Tribunal.
43. As was stated at the hearing the Tribunal has no hesitation in determining that it has jurisdiction to determine this matter. Written reasons for that decision are now provided.

Did Mr Sharpe reach an agreement with the developer and/or managing agents to the effect that he was not liable to pay service charges for the years 2006-2008 which the Tribunal should give effect to ?

44. Mr Sharpe argues that he reached a concluded agreement with the developer George Wimpey (East London) Ltd, and subsequently with the managing agents CPM and

later RMG, to the effect that he would not be required to pay any service charges for the years 2006-2008 inclusive.

45. His pleaded case in the Defence filed is that "[he] understood that he would not be charged a service charge or a ground rent until such time as the works/the estate had been completed". His evidence is that "it was left by CPM" that no service charges or ground rent would be "made" until the estate works had been completed. He also states that at some time in or around 2009 when RMG has taken over management he had a telephone conversation with a "Gary" of their Colchester office who assured him that he would not have to pay service charges or ground rent for any period before the estate works were completed.

46. The claimant simply states that it instructed no such agreement with either managing agent, it knows of no such agreement, and that there is no written evidence whatsoever of such an agreement.

47. The Tribunal determines that there was no such agreement. The sole evidence of any such agreement is Mr Sharpe's recollection of an agreement with the developer, with CPM prior to 2009 and a single telephone call with "Gary" of RMG in or around 2009. There is no documentary record of such agreement by the developer, or by either management company at either point in time. There is no landlord or agent acknowledgement of any such agreement by anyone in any form at any time. The claimant is clear that it has never instructed any management company to make such an agreement. We are forced to the conclusion that Mr Sharpe's recollection is incorrect on this issue.

Does or should the 'completion' clause in the lease operate so that Mr Sharpe is not liable to pay any service charges for the years 2006-2008 inclusive ?

48. Mr Sharpe argues that he has no liability to pay service charges for the years 2006-2008 on the basis that no liability to pay service charges arises under the lease until the external estate works and the common parts to the block have been completed.

49. Clause 8(a),(b) in the 7th Schedule of the lease provides -

(a) The proportion of the maintenance charge applicable to the property in relation

to the buildings and the common parts shall apply only as from the date of construction by the company of the final flat or dwelling within the development.

(b) Prior to the date specified in paragraph 8(a) of this Schedule the proportion of the maintenance charge applicable to the property in relation to the buildings and the common parts shall be the amount of such maintenance charge as is attributed by the company or the management company to the block divided by the number of flats within the block.

50. The terms 'maintenance charge', 'buildings', 'common parts', and 'development' are all defined in section 2 of the lease.

51. The Tribunal takes the view that the wording and intention of this clause is clear. It does not make liability to pay service charges in relation to the buildings and common parts conditional upon completion of the estate works and common parts works as Mr Sharpe contends. It provides that the individual lessee proportion due under the lease predicated on division between all of the flats or dwellings within the development is only due when the final flat or dwelling in the development has been constructed. It provides that, prior to such completion' being achieved, the individual lessee proportion due is to be arrived at by the landlord or management company attributing a proportion of the whole to the block and then dividing between the flats in the block.

52. The Tribunal determines that the lease does impose liability on Mr Sharpe to pay his individual lessee proportion of the service charges for the accounting years 2006-2008 inclusive. This is the lease that Mr Sharpe entered into. The terms of and intention of the clause were and are clear and reasonable. His argument which seeks to avoid the liability for service charges imposed by this clause on the ground that it is "unreasonable" and "unfair" fails.

Even if payable pursuant to the lease, are the service charges demanded for the years 2006-2008 reasonable in the circumstances?

53. Mr Sharpe further argues that, in such circumstances, even if the service charges demanded are payable then they are not reasonable.

-
54. Mr Sharpe gives a cogent account of incomplete external estate works and incomplete block common parts works until the end of December 2008. The claimant, very fairly, acknowledges that it cannot now in 2014 positively contradict his account.
55. In relation to the period December 2006 to December 2008 Mr Sharpe states that estate grounds (including bin stores, paving & surfaces, allocated and guest car parking demarcation, and planting) was incomplete until in or around late 2008/early 2009, and further that the ground floor lobby to the internal communal parts of Wood Court remained unfinished until late 2007. He details the individual 'component' common parts items unfinished at paragraph 17 of his Defence (Bundle page 8).
56. The service charge accounts for 2006 and 2007 have not been provided to the Tribunal. The hearing bundle does include the account for 2008 (Bundle pages 82-87).
57. The Tribunal has directed the parties to the component charges specified in the 2008 account and invited them to address each item.
58. In relation to 'Repairs & Maintenance' (being general, cleaning & refuse, door entry system & security, fire equipment & alarms charge, pet control') Mr Sharpe has not pursued any substantive challenge in any detail. The claimant has confirmed that these are recharges of the actual costs incurred in each regard. This is accepted by Mr Sharpe. The Tribunal is of the view that those charges are not unusual in nature or sum. Accordingly, the Tribunal determines that the 'Repairs & Maintenance' charge is reasonable and payable in the sum claimed.
59. In relation to 'Utilities' the claimant has confirmed that this is a recharge of the actual communal block and estate electricity charges. This is accepted by Mr Sharpe. The Tribunal is of the view that charge is not unusual in nature or sum. Accordingly, the Tribunal determines that the 'Utilities' charge is reasonable and payable in the sum claimed.
60. In relation to 'Professional Fees' (being managing agent fees, accountancy fees, directorship fees, company secretarial fees, health & safety fees, 10 year cyclical maintenance report and sundry expenses) the claimant has confirmed that these are recharges of the actual costs incurred in each regard. This is accepted by Mr Sharpe.

The Tribunal is of the view that charges are not unusual in nature or sum. Accordingly, the Tribunal determines that the 'Professional Fees' charge is reasonable and payable in the sum claimed.

61. In relation to 'Insurance' the claimant has confirmed that this is a recharge of the actual insurance cost incurred. This is accepted by Mr Sharpe. The Tribunal is of the view that the charge is not unusual in nature or sum. Accordingly, the Tribunal determines that the 'Insurance' charge is reasonable and payable in the sum claimed.
62. In relation to the 'Grounds Maintenance' the claimant has confirmed that this is a recharge of the actual cost incurred to maintain the estate grounds as they existed and in the form they took at that time. This is borne out by the later higher total cost incurred as the grounds were completed and so extended. The Tribunal is of the view that the charge is not unusual in nature or sum. Accordingly, the Tribunal determines that the 'Grounds Maintenance' charge is reasonable and payable in the sum claimed.
63. The claimant argues that this actual cost accounting is replicated for the service charge account years 2006 and 2007. Mr Sharpe has not pursued any substantive challenge to this in any detail. The Tribunal accepts that this is the case.
64. It follows from these determinations that the service charges are reasonable and are payable in the sums demanded, being -

2006 £ 16.74
2007 £ 770.73
2008 £ 749.88

Recovering the costs of the proceedings before the Tribunal

65. The parties have indicated that each seeks to recover from the other the costs respectively incurred in relation to these proceedings. The parties are agreed that the only lease covenant relevant to the issue of costs is clause 12 of the 3rd Schedule titled 'expenses'. The Tribunal is mindful that it may only determine those matters within its prescribed jurisdiction and only does so as a result of the matter being transferred from the county court as extant proceedings and for that purpose. Further, the Tribunal's determinations in relation to the service charges for the accounting years

2006-2008 are only a part of the dispute between the parties as pleaded in the county court proceedings. In the circumstances the Tribunal determines that the parties' costs of the tribunal proceedings should be left to be considered as part of the overall costs of the entire proceedings by the district judge in the county court.

Stephen Reeder
Judge of the First Tier Tribunal