



11390
**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00EW/LSC/2014/0130**

Property : **Oakmere Country Estate, Chester Road,
Oakmere CW8 2EG**

Applicant : **Mr & Mrs. P Keeler. Mr & Mrs Barnes.
Mrs.R Storey**

Respondent : **Oakmere Management Company**

Representative : **HML Gutherie Ltd**

Type of Application : **Landlord and Tenant Act 1985 – s 27A
Landlord and Tenant Act 1985 – s 20C**

Tribunal Member : **Judge M. Simpson**

Date of Directions : **14th April 2015**

DIRECTIONS

PRELIMINARY

Upon hearing the parties listed below at a Case Management Conference held at Crewe Courthouse on Tuesday 14th April 2015 and considering the application, papers filed therewith and the sample Leases.

It is recorded that:-

1. The CMC was attended by Mr & Mrs Keeler, Mr & Mrs Barnes and Mrs Storey (Applicants); Messrs. Colbeck, Firth and Newman (Leaseholders and Directors of the Respondent Company); Mr & Mrs McDonough & Mrs Channon & Mr Taylor (Freeholders; Grange, Lodge and Manor House respectively); Mr Tony Scott (Respondent's managing agent).
2. The absence of jurisdiction to enable the Tribunal to deal with any of the issues between the Freeholders and the Management Company were explained, confirmed and understood.
3. The jurisdiction of the Tribunal to determine the amount of service charge payable and by whom, and to whom, was explained, confirmed and understood. The inability of the Tribunal to enforce the consequences of such a determination was also explained, confirmed and understood.
4. A determination that the service charge proportion for the Courtyard properties was 1/25th (not/20th) would entitle the applicant Leaseholders, if they were minded to fully enforce the determination, to a refund of the overpayment, subject to the appropriate limitation period. (Currently said to be [per Doc 10a filed with the application] a total of £39,533 for 10 non Hall properties from November 1997 to y/e March 2014).
5. A determination that the service charge proportion for the service charge for the Hall leaseholders was 14/225th (1/9th X 14/25th) would leave and underpayment (currently said to be £44,916.03). It is unlikely that, even if minded to do so, the Management Company could recover most of this amount because of Limitation generally, but especially the limitation of 18 months set out in Section 20B Landlord & Tenant Act 1985.
6. All parties were reminded that they owned and controlled, via shareholding, the self managing Respondent Management Company and that they were in effect litigating themselves.

7. The Courtyard Leases clearly define, in the Tenth Schedule, the Lessee's Proportion of the service charge (Estate Maintenance Expenses) as "one twenty fifth part" and in the absence of cogent evidence to the contrary it is likely that the Tribunal would be bound to so determine.
8. The Directors of the Management are minded to consider the above and to take such advice as is appropriate, and reasonably require time to do so.
9. There does not appear to be a provision in the leases to enable the Management Company to add, as a discrete item over and above the Lessee's Proportion, an amount to apportion any non contribution from the manor House.
10. The issue re Insurance costs is firstly whether the scope of the insurance of the Hall is authorised by the Leases (Reading Clause 1.6 of the Ninth Schedule together with the definition of "retained parts" set out in the Second Schedule), so as to include the internal walls and divisions of the now converted Hall.
11. If not within scope, what would be the reasonable cost of limiting the insurance to the "structural parts of the hall including the roofs foundations gutters all walls bounding the individual flats therein and all external parts of the Hall etc.... ", as per Second Schedule 'The Retained Parts'.
12. The parties were informed that the basic test applied by the Tribunal is whether the Insurance costs have been 'reasonably incurred', within a band of reasonableness.
13. The Applicants are not concerned to pursue any adjustment to past years insurance premiums, but seek a determination for 2015/16 and the future.
14. The parties have made significant progress in attempting to settle the disputes by negotiation. The wisdom of investing in a qualified mediator to assist in concluding those negotiations was fully canvassed. The timetable set out below takes account of the need to afford a full opportunity for such a course of action.

DIRECTIONS

The following directions are given to enable the Tribunal to deal with the case fairly and justly. The parties must help the Tribunal achieve this by complying with them.

15. Unless the Respondent Management Company, by Wednesday 27th May 2015, sends to the Tribunal, with a copy to each applicant, a statement of case setting out why, and on what basis, the Lessee's Proportion should be other than 1/25th, the Respondent will be debarred from adducing evidence to the contrary.
16. In any event, the management company shall by 27th May 2015 indicate in writing to the Tribunal, with a copy to each applicant, whether the figures set out in enclosure 10a of the Application (schedule of overpayments/underpayments) are accepted arithmetically, and if not, why not and setting out the figures for which the Management Company contends.
17. The Application in respect of the Insurance Premiums shall be limited to the year 2015/16.
18. The Applicants shall, by 27th May 2015, send to the Tribunal with a copy to the Respondent Management Company, their Statement of Case on the issues of the scope and cost of Insurance, including such documentary evidence upon which they seek to rely.
19. The Respondent Management Company shall, by 8th July 2015, send to the Tribunal, with a copy to the Applicants, its reply to the Applicants' Statement of case.
20. In the event that the Respondent Management Company has served a statement under paragraph 1 above, the Applicants shall send to the Tribunal, and send a copy to the Respondent, their statement in Reply by 8th July 2015.
21. The applicants (jointly) and the respondent each have permission to adduce the report of one expert on the issues of insurance costs, insurance practice and premiums structure. Such reports, if any shall be mutually served on the other party by 12 August 2015.
22. There will be a case review on a date convenient to the Tribunal (parties not to attend unless so notified) after 24th August 2015. The parties may, if so advised, write to the Tribunal by Wednesday 19th August with suggested (and agreed if possible) further Directions to a Final hearing.

General

21. Documents must be sent by post or by hand delivery only. Documents sent by fax or by email will not be accepted.
22. No documents, letters or emails may be sent to the Tribunal unless also sent to the other parties) to these proceedings. Confirmation that this has been done must be clearly marked on all correspondence.
23. A party may apply for another direction amending, suspending or setting aside these directions. Unless made orally during the course of a hearing, any such application must be made in writing and must state the reason for making it.

FAILURE TO COMPLY WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN DETRIMENT TO A PARTY'S CASE. FOR EXAMPLE, IT MAY LEAD TO THE TRIBUNAL REFUSING TO HEAR LATE EVIDENCE; TO A PARTY'S CASE BEING STRUCK OUT; AND/OR TO AN ORDER FOR COSTS BEING MADE.