

12116



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

Case Reference : **CHI/29UG/LIS/2016/0026**

Property : **93 The Maltings, Clifton Road,
Gravesend, Kent, DA11 0AH**

Applicant : **The Maltings TRM Co. Ltd.**

Representative : **Mr Green, Solicitors Agent**

Respondent : **Adesola Jamiu Shittu**

Representative : **In person**

Type of Application : **For the determination of the
liability and/or the reasonableness
of service and administration
charges**

Tribunal Members : **Judge I Mohabir
Mr C Harbridge FRICS**

Date of determination : **19 October 2016**

Date of Decision : **15 November 2016**

DECISION

Introduction

1. The Respondent is the long leaseholder of the premises known as 93 The Maltings, Clifton Road, Gravesend, Kent, DA11 0AH (“the property”) pursuant to a lease made between (1) Pinecraven Developments plc (2) Jeremy Vaughan and (3) Gravesend Maltings Management Ltd, as the management company, dated 21 November 1999 for a term of 125 years from 25 March 1989 (“the lease”).
2. The property forms part of a large development that was completed in phases by Pinecraven Developments plc. On 16 July 2007, the Applicant acquired the right to manage the estate generally.
3. The Applicant commenced proceedings in the County Court to recover service and administration charge arrears from the Respondent totalling £1000.13.
4. This figure can be broken down as follows:

(a) Balance carried forward from previous managing agent	£419.22
(b) Estimated service charges for the period 25.03.15 -29.09.15	£505.91
(c) Administration fee	£75
5. In the Particulars of Claim, the Applicant also claimed statutory interest under section 69 of the County Courts Act 1984 and *inter partes* costs on a contractual basis against the Respondent.
6. The Defence filed by the Respondent in the County Court contended generally that he was not liable for the service and administration charges and counterclaimed for damages for breach of covenant on the part of the Applicant.

7. By an order dated 9 March 2016, the proceedings were transferred to the Tribunal for a determination of the Respondent's liability to pay and/or the reasonableness of the service and administration charges in issue.
8. It was agreed with the parties that the claims for statutory interest, *inter partes* costs and the counterclaim fell outside the Tribunal's jurisdiction and were presently stayed in the County Court proceedings. They would have to be determined there once the Tribunal had made its determination in relation to the service and administration costs set out above.
9. The Tribunal's determination is made under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") and Schedule 11, paragraph 1 of the Commonhold and Leasehold Reform Act 2002 (as amended) below.
10. The Respondent does not dispute his contractual liability to pay the service and administration charges in issue. It is, therefore, not necessary to set out in any detail the contractual provisions in the lease that give rise to that liability. It is sufficient to note that clause 2 of the lease requires the Respondent to pay service charges in advance by equal half yearly payments on 25 March and 29 September in each year. The Respondent's contractual liability for estate and block costs is 0.77% and 1.54% respectively of the overall estimated expenditure in any given year.

Relevant Law

11. This is set out in the Appendix annexed hereto.

Decision

12. The hearing in this case took place on 19 October 2016 following an external and internal inspection of the property. The Applicant was represented by Mr Green, a solicitor's agent. The Respondent appeared in person.

Accrued Service Charges - £419.22

13. It transpired that the figure of £419.22 was comprised of the sum of £144.28 with the remainder being accrued service charges brought forward from the previous managing agent¹. The Tribunal was told that the sum of £144.28 represented contractual interest applied by the previous managing agent in 2012 as a result of the Respondent's late payment of service charges. This sum was agreed and admitted by the Respondent and, therefore, by reason of section 27A(4) of the Act, the Tribunal had no jurisdiction to make any determination in relation to this amount.
14. The Respondent submitted that he had no liability for the remainder of the accrued service charges of £274.94 because it was disallowed in a previous Tribunal decision (see: CHI/29UG/LIS/2009/0048 & CHI/29UG/LUS/2009/0002) ("the earlier proceedings") and it had not been credited to his service charge account by the Applicant.
15. Mr Green for the Applicant submitted that the accrued service charges had in fact been admitted by the Respondent at paragraph 10 of his County Court Defence and, therefore, the Tribunal no longer had jurisdiction to make any determination on the amount. Moreover, the Respondent had not challenged the service charges until now.
16. Having carefully considered the earlier decision above, it is not clear that the Respondent was a party to those proceedings. To the extent that he was, the Tribunal in that case simply decided that no service charges were payable by the Applicant lessees for the period 26 March to 16 July 2007. The accrued service charges of £274.94 claimed in these proceedings in fact for the period 1 March 2011 to 30 March 2015.
17. What the Respondent appears to be saying is that the credit, if any, in respect of the earlier proceedings had not been applied to his service charge account to either extinguish or defray this liability. Proceeding on

¹ see page 145 of the bundle

the assumption that the Respondent was a party in the earlier proceedings, there was no evidence here of the amount, if any, that had to be credited to the Respondent's service charge account as a result of the decision in the earlier proceedings and whether this had been done by the Applicant. The Tribunal, therefore, made no findings on these matters. Accordingly, the Tribunal found that the Respondent was liable to pay the accrued service charge arrears in the sum of £419.22 for the period 1 March 2011 to 30 March 2015.

Estimated service charges for the period 25.03.15-29.09.15 - £505.91

18. The Respondent submitted that he was either not liable to pay these service charges and/or that they were not reasonable because the Respondent had failed to provide a breakdown of the heads of expenditure. In particular, he submitted that the management fees were not reasonable because of the historic mismanagement on the part of the Applicant.

19. The Tribunal did not accept the Respondent's submissions for the following reasons. It was satisfied that the Respondent had certainly been provided with a copy of the annual service charge budget for 2015/16² in the course of these proceedings and, in any event, the lease did not make his contractual liability to pay these estimated service charges in advance contingent upon being provided with the budget estimate. In addition, the Tribunal did not understand how historic mismanagement, if correct, could render future estimated management fees unreasonable. That conclusion could only properly be reached in hindsight. This amount was estimated future expenditure and did not represent the actual expenditure incurred by the Applicant.

20. Accordingly, the Tribunal found that the Respondent was liable to pay the sum of £505.91 and that it was reasonable in amount.

² see
pages 129-130 of the bundle

Administration fee - £75

21. There was no evidence before the Tribunal that this amount had either been demanded from the Respondent or how the expenditure had been incurred. Mr Green accepted that he was in some evidential difficulty on this point. Accordingly, the Tribunal found that the amount of £75 as an administration charge was not reasonable and, therefore, not payable by the Respondent.

Section 20C & Fees

22. It is not clear from the Tribunal's Directions if the Respondent had made an application under section 20C of the Act in relation to the Applicant's costs incurred in the Tribunal proceedings. Neither party made submissions on this matter in their respective statements of case. It was also agreed at the hearing that the application for *inter partes* costs made by the Applicant in the Particulars of Claim should be dealt with by the County Court.
23. For the avoidance of doubt, the Tribunal makes no order under section 20C of the Act because the Respondent had not succeeded on the substantive issues in this case and it would, therefore, not be just or equitable to make an order preventing the Applicant from recovering all or part of its costs incurred here.
24. For the same reasons, the Tribunal orders the Respondent to reimburse the Applicant the fees of £20 it has paid to have this case heard. Payment is to be made within 28 days of service of this decision on the parties.
25. This case is now remitted back to the County Court for any outstanding matters in those proceedings to be dealt with.

Judge I Mohabir

15 November 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) 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 it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.
- (2) 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.

- (3) 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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation 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).