

12335



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

Case Reference : **MAN/OOCX/LSC/2017/0018**

Property : **3 Kellett Drive Thornton Bradford BD13 3GN**

Applicant : **Grace (Thornton) Management Company Ltd**

Respondent : **Mr Howard Coffey and Mrs Heather Coffey**

Type of Application : **Landlord and Tenant Act 1985 - s27A
Commonhold and Leasehold Reform Act 2002
- Sch 11 para 5**

Tribunal Members : **Mr J Murray LLB
Mr W Reynolds
Ms J Jacobs**

Date of Decision : **18 August 2017**

REASONS FOR DECISION

DECISION

The Tribunal determines that the Service Charges for the years under review are as follows:-

- (a) £31.28 for the year ending 31.12.13
- (b) £155.23 for the year ending 31.12.14
- (c) £ 1134.80 for the year ending 31.12.15
- (d) £ 10 for the year ending 31.12.16
- (e) Totalling £1331.31

The Applicant is not entitled to recover Administration Fees under the terms of the lease.

This matter be transferred back to the County Court at Bradford for determination of outstanding matters.

INTRODUCTION

1. This matter was referred to the Tribunal by an Order of the Bradford County Court made on 27 March 2017 to determine liability of the Respondent to pay and the reasonableness of both service charges and administration charges under s27A Landlord and Tenant Act 1985 and Schedule 11 paragraph 5 of the Commonhold and Leasehold Reform Act 2002 respectively.
2. The charges were sought by the Applicant from the Respondent in respect of 3 Kellett Drive Thornton Bradford BD13 3GN ("the Property") for the service charge years 2013 - 2016.

THE PROCEEDINGS

3. Directions were made by a Procedural Judge on 28 April 2017 for the parties to sequentially exchange statements of their respective cases.
4. A Tribunal was appointed and an external inspection of the Property and the Estate where it is located took place on the morning of 18 August 2017 at 10.45 am. Representatives of the Applicant and Respondent attended the inspection. Neither party requested a hearing, and the Tribunal convened following the inspection for deliberations and to make this determination.
5. The Applicant was represented at the inspection by their managing agent from Inspired Property Management Ltd ('Inspired'), Ms. Andrea Barnard. The Second Respondent appeared in person.

THE INSPECTION

6. The Tribunal were shown around the estate in its entirety, and were shown the block paving around dwellings, the grassed area alongside the beck, various car parking areas with shrubbery, and other grassed areas and sloping grassed areas. The Tribunal noted that the areas to be maintained were fairly extensive and disparate for the 121 dwellings on the Estate.

THE PROPERTY

7. The Property is a dwelling house built in or around 2010, on a Development developed by McInerny Homes and Miller Homes, comprising of 121 flats and houses in a semi-rural setting in Thornton. The Development is defined as the land and buildings and works described in the First Schedule, comprised in Title Number WYK850432
8. The Development had a number of areas of grass, planting and block paving. Some grassed areas were quite steeply sloping. A number of car parks served various aspects of the Development, again with planting and shrubs. A beck bordered one edge of the development, bordered by a grass verge and a low boundary rail

THE LEASE

9. The Property was let to the Respondents originally by McInerny Homes by a lease dated 1 November 2010 for a term of 999 years less one day from 16 March 2007. A superior lease exists between McInerny Homes Limited and Woodford Land Limited, for a term of 999 years from 16 March 2007.
10. The Applicant Management Company is a third party to the lease. Pursuant to the lease the Respondents are or would become a member of the Management Company.
11. The Respondents covenanted in Schedules Six and Seven of the lease to pay a fair and equitable proportion of the maintenance expenses to the Management Company quarterly in advance on the usual quarter days an amount estimated by the Management Company or its Managing Agents as the Maintenance Expenses. The Respondents further covenant to pay interest on demand at 4% above the base lending rate of HSBC Bank plc for any unpaid Maintenance Expenses.

12. The Maintenance expenses are defined in Schedule Five, and are for moneys expended or reserved for the following expenses:
- (a) Inspecting maintaining cleaning altering renewing repairing rebuilding improving or otherwise treating as necessary and keeping the Maintained Property in repair.
 - (b) Keeping the landscaped areas and open space of the Maintained Property in a neat and tidy and well-tended condition and maintaining repairing and where necessary reinstating boundary wall hedges or fences
 - (c) Electricity to heaters, lights within the communal areas of the Development and any electronic door/gate entry systems.
 - (d) Keeping the access ways and footpaths of the Maintained Property in good repair and clean and tidy and edged where necessary
 - (e) Insuring the Maintained Property
 - (f) Generally managing and administering the Development and protecting the amenities of the Development and for these purposes employing a firm of managing agents and enforcing covenants.
 - (g) Preparing and supplying to the tenants copies of any regulations made
 - (h) Employing an accountant to audit accounts for Maintenance Expenses and certifying the total amount
 - (i) Administering the Management Company itself

THE LEGISLATION

The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

- (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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Common hold and Leasehold Reform Act 2002 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.

SUBMISSIONS

THE APPLICANT

13. The Applicant had issued proceedings against the Respondents in the County Court for a total of £1,350.42 together with the Court fee of £70 and Solicitors costs of £80.
14. However the Applicant's statement of case contained a statement of account showing that to the 10 October 2016, an amount of £675.15 was outstanding on the account. £220.75 had been paid on the 1 August 2012, and £166.74 on the 14 August 2014.
15. Administration charges of £36 and £180 had been added to the account, on 8 September 2016, and 10 October 2016 respectively.
16. The Applicant provided a statement of case dated 18 May 2017 signed by James McHugh, Litigation Executive.
17. The statement of case itemised the charges made, being
 - (a) £31.28 for the year ending 31.12.13
 - (b) £155.23 for the year ending 31.12.14
 - (c) £ 1134.80 for the year ending 31.12.15
 - (d) £ 1137.84 for the year ending 31.12.16
 - (e) Totalling £2459.15
 - (f) Administration Fees £216
 - (g) Grand Total £2675.15

18. The statement of case stated that the Tenant's Proportion of the overall service charges had declined each year as more units of the estate were completed, from 1.4725% in 2013, to 0.9174% in 2014, 0.9091% in 2015 and 0.8850% in 2016.
19. The Respondent's contribution was only to Schedule C of the Maintenance Expenses, which was with respect to expenses incurred for the external maintenance of the Estate, predominantly landscaping.
20. Service Charge budgets and accounts were provided for the years 2013, 2014 and 2015, and the budget only for 2016, accounts not having been completed. Invoices were provided in respect of expenditure. The Applicants also produced statutory demands and summaries of rights and obligations served on the Respondents
21. A breakdown showed that the maintenance fees due from the Respondent were for
 - (a) Management Fees
 - (b) Landscaping
 - (c) Sundries
 - (d) Company Charges
 - (e) Directors/Officers Insurance
 - (f) Audit fees
 - (g) Bank charges
 - (h) Repairs
 - (i) Pump maintenance
 - (j) Sinking fund
22. The Applicant also sought administration fees relying upon paragraph 12 of the Seventh Schedule to the lease whereby the Respondents covenant: "To indemnify and keep indemnified the Landlord or Management Company ... from and against all actions claims costs proceedings and demands whatsoever arising out of the use of the Property or any part or parts thereof"
23. By a supplementary statement of case dated 22 June 2017 the Applicant responded to the Respondents' statement of case.
24. In that statement it was asserted that the Respondents were obliged to contribute to maintenance expenses of the upkeep of the Estate, and that the costs were reasonable. The Applicant asked the Tribunal to refer the matter back to the County Court for remaining issues to be attended to.

25. A witness statement by the Managing Agent from Inspired Ms. Andrea Barnard confirmed that additional gardening works had been tendered for and procured, at an additional cost, following requests by the property owners who in turn are members of the Applicant Managing Company.

THE RESPONDENT

26. In her defence to the County Court claim, the Second Respondent did not dispute the amounts demanded had not been paid; she said that the works charged for had not been undertaken to the confines of the Property, and so she had withheld payment. She said that the adjacent stream had been neglected and overgrown. She referred to block paving, and provided photographs. She said that concrete had encroached onto her garden. She said that the claim should have been against her alone, as her former husband had not resided in the Property since November 2012.
27. The Second Respondent filed a statement of case dated 9 May 2017. She reiterated that the work was never undertaken in close proximity to the Property. She enclosed photographs of her area, when other zones close by to her had been attended to. She said that there was disdain amongst several residents regarding the service offered by the managing agents, Inspired. She produced a note from Ms Andrea Barnard, the Property Manager; confirming awareness that the time spent at the development had not been sufficient, and that they, Inspired, were tendering to increase hours, and admitting an awareness of a "considerable amount of discontent with the gardening". Ms. Barnard confirmed in that note that Inspired intended to change the gardening contractor at the end of December 2016. She provided colour photographs showing block paving around her fenced area which at the time of the photographs was weed covered, and other overgrowth.
28. The Second Respondent did not produce any evidence of complaints that she had made.

THE DETERMINATION

Service Charges

29. The Applicant sought management costs and other associated costs of providing essentially a landscaping service to the Property.
30. The Tribunal was satisfied that the Estate was looked after, certainly on the day of the inspection, and the costs in general were reasonable for the amount of land to be looked after taking into account the expanse of, and disparate elements of the landscaping required. The Tribunal determined that the service charges sought should be allowed for the years ending 2013, 2014 and 2015.

31. The Statutory demands served upon the Respondent from 2016 onwards do not contain the Landlord's name and address as required by s48 Landlord and Tenant Act 1987, rendering them invalid; no service charges are payable until a correct notice is served.
32. The Tribunal determined therefore that the Service Charges for the years under review are as follows:-
 - (a) £31.28 for the year ending 31.12.13
 - (b) £155.23 for the year ending 31.12.14
 - (c) £ 1134.80 for the year ending 31.12.15
 - (d) £ 10 for the year ending 31.12.16
 - (e) Totalling £1331.31

Administration Costs

33. The Tribunal found no clause that enabled the Applicant to recover administration (or legal costs) from the Respondents under the terms of the lease, in relation to Tribunal proceedings in accordance with the decision in **St Mary's Mansions Ltd v Limegate Investment Co Ltd & Sarruf [2003] 05 EG 146**. This case approved the earlier decision in **Sella House v Mears (1989) 21 H.L.R. 147** where Taylor LJ said: "For my part, I should require to see a clause in clear and unambiguous terms before being persuaded that that result was intended by the parties". The clause the Applicant proposed to rely upon was not considered by the Tribunal to be clear and unambiguous.
34. Whilst it is an unfortunate situation to be in, it is not in the Tribunal's experience unusual. The Contra Proferentum rule must be applied in these circumstances. It is open to the Applicant to add these costs to the service charge under Paragraph 5 of the Fifth Schedule in relation to the Administration Fees sought.