



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

Case Reference : **MAN/00BY/LSC/2016/0044
MAN/00BY/LSC/2016/0093**

Property : **Loft Nine, Concert Square Apartments
34 Wood Street
Liverpool
L1 4AQ**

Applicants : **Gary Ridgway & Mary Bridget Cunningham**

Representative : **N/A**

Respondent : **JSM Company Group Limited**

Representative : **L McDonald, Counsel
J B Leitch, Solicitors**

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

Tribunal : **Judge J Holbrook
Mr I James MRICS**

Date and venue of hearing : **14 March 2019 Liverpool**

Date of Decision : **4 April 2019**

Date of Determination : **9 April 2019**

DECISION

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- A. The amount of the service charge (referred to in the lease of the Property as Service Rent) for the service charge year which ended on 31 October 2016 is £7,787.35.**
- B. The amounts of the balancing charges for the service charge years in dispute appear in the table below paragraph 23 of the following reasons.**
- C. To the extent that those balancing charges remain unpaid, they will become payable by the Applicants forthwith upon service of compliant service charge certificates.**
- D. No part of the costs incurred by the Respondent in connection with these proceedings shall be recoverable through any service charge payable by the Applicants.**

REASONS

Introduction and issues

1. By a decision dated 29 January 2018, the Upper Tribunal (Lands Chamber) remitted a number of questions to the First-tier Tribunal concerning the reasonableness and payability of service charges and administration charges in respect of the Property. The Upper Tribunal's decision is reported under neutral citation number [2018] UKUT 0032 (LC) and resulted from an appeal against a decision of the FTT dated 18 May 2017.
2. In consequence of the Upper Tribunal's decision, a number of issues must now be regarded as having been finally determined. In particular, the amount of the service charges (referred to in the lease of the Property as "Service Rent") payable by the Applicants in respect of each of the five service charge years up to 31 October 2015 has been determined.
3. The issues which the Upper Tribunal remitted to the FTT can be summarised as follows:
 - a. For the service charge year ending in 2011, the sum (if any) which remains payable by the Applicants (after taking into account contributions already made).
 - b. For each of the service charge years ending in 2012 – 2015, whether any sums remain payable by the Applicants (after taking into account contributions already made).

- c. For the service charge year ending in 2016:
 - the amount of the Service Rent; and
 - whether any sums remain payable by the Applicants (after taking into account contributions already made).
- d. Whether the Applicants are liable to pay the administration charges listed in paragraph 87 of the Upper Tribunal's decision.
4. During the course of subsequent case management of the remitted case by the FTT, the Respondent confirmed that nothing is outstanding in relation to 3(a). Moreover, in relation to 3(d), the Respondent confirmed that it would no longer pursue a claim for the disputed administration charges. Therefore, the remitted issues are limited to two basic questions: first, what is the amount of the Service Rent for the 2015-2016 service charge year? Second, are any balancing payments due in respect of that year and/or earlier service charge years?
5. It also emerged during the case management process that, in November 2018, the original respondent to these proceedings (Urban Splash Work Limited) disposed of its reversionary interest in Concert Square Apartments to JSM Company Group Limited. The Tribunal agreed to a request to substitute that company as the respondent to the remitted proceedings.
6. A hearing was held on 14 March 2019 at the Civil & Family Justice Centre in Liverpool. Mr Gary Ridgway represented himself at the hearing and the respondent was represented by Mr Lawrence McDonald of counsel.
7. The FTT did not make a site inspection on this occasion.
8. The applicable law is apparent from the decision of the Upper Tribunal (and from the previous decision of the FTT). It is unnecessary to restate the law in this decision.

Service charges for the 2015-16 service charge year

9. The Upper Tribunal noted (at paragraph 53 of its decision) that the FTT had not previously made a determination in respect of the claim that the Service Rent payable by the Applicants for the year to 31 October 2016 amounts to £7,787.35. At paragraphs 61 and 62, the Upper Tribunal directed that – unless the parties could agree that this sum was payable – the matter should be remitted to the FTT for determination, having regard to two outstanding challenges raised by Mr Ridgway: one concerning charges for water; the other concerning the treatment of VAT.
10. In compliance with directions given by the FTT in response to the Upper Tribunal's decision, the parties provided written representations in respect of these matters. In addition, they were further explored at the remitted hearing on 14 March 2019.

11. As far as charges for water are concerned, the service charge accounts for 2016 indicate that the total service charge expenditure includes an element of £5,716 for the communal supply of water to the building. The Applicants are asked to contribute 5.555% of this sum as part of their Service Rent. In other words, water charges are divided equally between the 18 residential apartments in the building. Mr Ridgway objected to this apportionment on the basis that it excluded the commercial occupiers of the building. He also queried why the amount charged for water had remained constant for a number of years.
12. In response, it was asserted that the charges in question relate to a metered water supply which serves the residential parts of the building only. It would therefore be inappropriate to ask the commercial occupiers to contribute towards the relevant costs. Mr Ridgway did not dispute the truth of this assertion, and we also accept it as true. As far as variations in the cost of the water supply are concerned, it was demonstrated that, whilst the annual budget for this expense has remained at a constant £4,000, the actual cost (which is reflected in the accounts) has varied.
13. In relation to VAT, Mr Ridgway submitted (correctly) that service charges relating to the upkeep of the residential common parts of the building should be exempt from VAT. However, he was concerned that VAT was being charged as part of the Service Rent and that VAT has been incorrectly levied for services provided by VAT registered suppliers. He was also concerned that the landlord (or its managing agents) might be charging the lessees for VAT which they had in fact reclaimed.
14. In response, it was asserted that the landlord does not levy VAT on service charges payable by lessees of the residential parts of the building. However, where suppliers charge VAT in respect of the services they provide to the landlord, the landlord passes on that VAT to the lessees via the service charge. In the absence of evidence to the contrary, we accept this assertion to be true. We also find that the manner in which VAT has been dealt with in connection with the service charge is appropriate.
15. Mr Ridgway was asked at the remitted hearing whether he wished to revive any other aspects of his challenge to the reasonableness of the 2016 service charge. He declined to do so.
16. We therefore find that the amount of the Applicants' Service Rent for the 2015-16 service charge year is the amount claimed by the Respondent: £7,787.35.

Certification and balancing charges

17. At paragraph 79 of its decision, the Upper Tribunal held that the Applicants' obligation to pay any shortfall between the service charge contributions they make in advance and the total Service Rent for any given service charge year depends upon the certificate which is required to be served under paragraph 4 of the fifth schedule to the lease. It also held (at paragraph 82) that the certificates which were then available failed to comply with the requirements of the lease and that, as a result, none of the balancing charges for the years in dispute had yet become due from the Applicants. The Upper Tribunal noted that it should be possible, without too much difficulty, for compliant certificates to be produced, certifying the sums paid on account and showing the net position for each year. However, it directed that, if the parties were unable to agree the amounts in question, the FTT should make the necessary determination.
18. We note that, following the Upper Tribunal's decision, fresh certificates (dated 30 May 2018) were served on the Applicants in respect of each service charge year from 2010-11 to 2015-16. The certificates indicated that a balancing charge was due for 2011-12 and for each of the following four service charge years. The Respondent argues that, in accordance with the Upper Tribunal's decision, these balancing charges became payable by the Applicants upon service of the certificates.
19. The material provisions of paragraphs 4 and 5 of the fifth schedule to the lease are reproduced at paragraphs 21 and 22 of the Upper Tribunal's decision, and it is clear that, in order to comply with the lease, a certificate must satisfy each of the following conditions:
 - a. It must be signed by an independent qualified accountant.
 - b. It must give credit for any payments received and for any advance payments made in respect of the service charge year to which it relates.
 - c. It must contain a summary of the service charge costs for that year.
 - d. It must also contain a summary of the relevant details and figures forming the basis of the Service Rent.
20. The certificates dated 30 May 2018 comply with conditions (a) and (d). However, they do not comply with condition (c): none of the certificates contains a summary of the service charge costs for the year to which it relates (they merely state the total service charge expenditure for the year). Although such a summary is to be found in the annual service charge accounts, that is not sufficient to comply with the provisions in the lease about certification – the lease requires that a summary of the relevant costs be included in the certificate itself.

21. Although, at first glance, the certificates appear to comply with condition (b) – because they include a figure for “On Account Charges Paid” – in reality they fail to do so because the figure stated does not accurately reflect service charge contributions made by the Applicants during the service charge year in question. Instead, receipts have been allocated retrospectively across the various service charge years in a manner which fails to reflect the true payment position at the time.
22. The parties agree that, between 3 March 2014 and 30 May 2018 (the date the certificates were issued), the Applicants paid a total of £14,448.83 in service charge contributions. This was paid in numerous instalments of differing amounts, some of which post-dated the end of the 2015-16 service charge year, but none of which fell within the 2011-12 or 2012-13 service charge years. As at 31 October 2016, the Applicants had paid contributions totaling £12,021.21.
23. For the purposes of the certificates required by the lease, it is necessary to allocate service charge contributions paid by the Applicants to the period in which they were received. If the total received in any given year (plus any credit due to the Applicants in respect of previous years) is less than the Service Rent for the year in question, then a balancing charge equal to the amount of the difference becomes payable upon service of a valid certificate. The position in respect of the Applicants’ payment history is illustrated in the following table:

Service charge period	Service Rent	Service charge contributions paid in period	Balancing Charge	Account Balance outstanding at end of period
2011-12	£3,073.45	£0	£3,073.45	£3,073.45
2012-13	£2,630.02	£0	£2,630.02	£5,703.47
2013-14	£2,564.80	£5,084.39	£0	£3,183.88
2014-15	£2,119.15	£2,550.93	£0	£2,752.10
2015-16	£7,787.35	£4,385.89	£3,401.46	£6,153.56

24. It can thus be seen that, subject to the service of compliant certificates, balancing charges were due from the Applicants in respect of three out of the five service charge years in question. In practice, by 30 May 2018, the Applicants had paid £14,448.83 against a total service charge liability of £18,174.77 for 2011-12 to 2015-16. Disregarding any liability in respect of subsequent years, the balance outstanding on their service charge account as at 30 May 2018 was therefore £3,725.94. That outstanding balance was attributable to the balancing charge for 2015-16 (and to part of the balancing charge for 2012-13). As such, that balance will become payable by the Applicants if and when further-revised service charge certificates – complying with the conditions described in paragraph 19 above – are issued.

Order under section 20C of the Landlord and Tenant Act 1985

25. At the conclusion of the remitted hearing, Mr McDonald invited us to consider our jurisdiction to make an order (or to refrain from doing so) under section 20C of the Landlord and Tenant Act 1985. He submitted that, whilst the orders made previously by the FTT and by the Upper Tribunal prevent the Respondent from recovering any costs incurred up to the conclusion of the appeal to the Upper Tribunal, those orders do not apply to costs incurred subsequently in respect of the remitted proceedings.
26. We agree with Mr McDonald's view that the FTT now has discretion to decide whether such costs should be made the subject of an order under section 20C. However, we disagree with his submission that it would be inappropriate to make such an order in the present circumstances. On the contrary, we are satisfied that it would be just and equitable to do so. Mr McDonald argued that the remitted proceedings had been prolonged unnecessarily by Mr Ridgway's unreasonable refusal to agree the outstanding matters concerning his service charge liability. However, this is to ignore the fact, first, that the landlord has still not managed to issue service charge certificates which comply with the requirements of the lease; and, second, that it was the Respondent that required the remitted issues to be determined at an oral hearing. Mr Ridgway had made it clear that he would have been content for the matter to be determined on the papers: the fact that the Respondent chose to incur the additional costs of a hearing is not Mr Ridgway's fault. Moreover, had he been provided with compliant service charge certificates, the parties might have found it easier to reach an agreement without further recourse to the FTT.
27. Accordingly, we order that no part of the costs incurred by the Respondent in connection with these proceedings shall be recoverable through any service charge payable by the Applicants.