



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

Case Reference : **MAN/30UF/LSC/2018/0061**

Property : **25 Pintail Way, Cypress Point, Lytham St Annes, FY8 4FG**

Applicant : **Cypress Point Management Company Ltd.**

Represented by : **PM Legal Services**

Respondent : **Warren John Parkinson (1)
Denise Patricia Parkinson (2)**

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

Tribunal Member : **Judge P Forster
Mr W Reynolds MRICS**

Date of Decision : **15 April 2019**

DECISION

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Decision

1. The respondents are liable to pay the applicant the total sum of £1,381.53 in respect of years 2015 to 2018 inclusive.

Introduction

2. This is an application under s.27A of the Landlord and Tenant Act 1985 to determine whether a service charge is payable, and the reasonableness of the charges that have been made from 1 July 2015.
3. 25 Pintail Way, Lytham St Anne's, FY8 4FG ("the property") is held under a lease dated 22 October 2001 ("the lease") made between Cypress Point Developments Ltd. and Cypress Point Management Company Ltd. and Warren John Parkinson and Denise Patricia Parkinson ("the respondents"). The property is comprised of 576 dwellings, including leasehold flats and freehold houses.
4. Cypress Point Management Company Ltd. ("the applicant") is the management company that is responsible under the lease to provide services for the benefit of those who occupy the properties within Cypress Point. It does so by collecting service charges from the leaseholders who contribute by means of a service charge and from the freeholders who contribute by means of a variable estate rent charge. The membership of the applicant management company is comprised of the leaseholders and the freeholders of the dwellings on the estate.
5. The applicant's obligations are set out in the management company lease dated 10 May 1999 made between Cypress Point Developments Company Ltd. and the applicant.
6. The respondents are the leasehold owners and registered proprietors of the property, registered at HM Land Registry under title number LA900364.
7. The Tribunal received the application on 1 November 2018. Directions were given on 7 January 2019 that required the applicant within 21 days to provide a statement of case setting out the grounds for the application and to produce any documents on which it intended to rely. On receipt of the applicant's statement of case, within 21 days, the respondents were required to provide a statement of case in response setting out the reasons for opposing the application and to produce any documents on which they intended to rely. The applicant complied with those directions, but the respondents failed to do so. On 13 March 2019, the Tribunal informed the respondents that unless by 27 March 2019 they

complied with the directions and provided their statement of case, they might be debarred from taking any further part in the proceedings (rule 8 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) and that the Tribunal would then proceed to determine the application on the basis of the applicant's submissions. The respondents failed to respond to that notice.

8. The Tribunal determined the application on 15 April 2019 without an inspection and without a hearing.

The Application

9. The applicant's alleged that the respondents had failed to pay the service charge due under the lease in the sum of £1,676.53. A statement of account was produced showing how that figure had been calculated, together with copies of service charge demands for the periods commencing on 1 July 2015, 1 July 2016, 1 July 2017 and 1 July 2018. The statement of account incorporates charges for an 'admin fee' of £35, 'Mortgage admin fee' of £200 and 'Court fee' of £60. Attached to the service charge demands was a summary of the tenants' rights and obligations. The applicant also produced copies of the service charge accounts for the periods 2015, 2016 & 2017 and budgets for 2018 and 2019. It was alleged that the respondents had not made any payments.

The Law

10. S.18 of the Act defines "service charges" and "relevant costs":
 - (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.

11. S.19 of the 1985 Act deals with limitation of service charges:
 - (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 provision 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.

12. S.27A of the 1985 Act deals with the liability to pay service charges:
 - (1) An application may be made to the appropriate 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.

Decision

13. Under clause 5(i) of the lease, the respondents covenanted to pay a service charge to the applicant. That is described in the lease as a “Maintenance Payment”. Further and in addition, under the same clause, the respondents are required to pay a “Landscaping Charge”. Under clauses 2(i) and (ii) of the lease, such sums are payable in advance by 1 July in each year at the rate demanded. Such sums are defrayed against the actual expenditure incurred by the applicant in complying with its obligations which are set out in the management company lease.

14. The respondents are liable under the lease to pay 1/431 of the overall cost to the applicant of complying with its covenants in the management company lease and the cost of employing managing agents. There is provision for this share to be recalculated if there is any re-planning or change in layout on an equitable basis and the charge is now based on a 1/576.
15. Neither the lease nor the management company lease requires the accounts to be audited or certified. The Maintenance Payment that has been demanded includes for costs in respect of accountancy fees, bank charges, external decoration, insurance, landscaping, management and professional fees and repairs and renewals as shown in the accounts for the relevant years.
16. Clause (ii) in Part 1 of the Third Schedule reads 'to pay and discharge all rates taxes assessments and outgoings whatsoever which are now or at any time during the said term shall be charged assessed or imposed upon or be payable in respect of the Property or any part thereof or any erections thereon or additions thereto'. The applicant relies upon this provision with respect to certain of the costs demanded by the Maintenance Payment.
17. At Clause 3 of the Fourth schedule the lessee covenants 'to pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the lessor in connection with the recovery of arrears of rent or for the purposes of or incidental to the preparation and service of any notices under Sections 146 & 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court'.
18. The Tribunal notes that the lease does not reserve the landscaping Charge or the Maintenance Payment as rent nor does the Tribunal find any provision for administration charges to be recoverable under the terms of the lease in respect of service charge items. The Tribunal therefore disallows the admin fee' of £35, 'Mortgage admin fee' of £200 and 'Court fee' of £60.

Conclusion

19. From the evidence provide and in the absence of any representation by the Respondent, the Tribunal found that under the terms of the lease a service charge was payable by the respondents to the applicant. Subject to paragraph 18 above, on the evidence presented, the amounts claimed by the applicant were reasonable in amount and properly incurred.

20. The Tribunal determines that the total amount to be paid by the respondents for the years 2015 to 2018 inclusive is £1,381.53.

Dated 15 April 2019

Judge P Forster