



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

Reference : CAM/22UH/LSC/2021/0045

Property : 1-33 Brooklyn Court, IG101AQ

Applicants : Anita Higginson and Gordon Hadwin

Respondent : Brooklyn Court Limited

Type of Application : Application for a determination as to
reasonableness and payability of service
charges

Tribunal Members : Judge Shepherd
Marina Krisko FRICS

Date : 10th August 2022

DETERMINATION

1. In this case Anita Higginbson and Gordon Hadwin (“The Applicants”) are seeking a determination of the payability and reasonableness of service charges sought by Brooklyn Court Limited (“The Respondent”). The application is brought pursuant to section 27A of The Landlord and Tenant Act 1985. The service charges challenged span the years between 2014-2021.
2. The case has been hampered by the fact that the Respondent became voluntarily liquidated in the middle of it. The Tribunal has satisfied itself that notwithstanding the liquidation it is entitled to make a determination in relation to service charges. In this regard the case of *Cook v Mortgage Debenture* [2016] EWCA Civ 103 is instructive as it recognised that the liquidator can apply for a stay but otherwise there is no automatic moratorium to stop further proceedings taking place. No application to stay was made in these proceedings. Indeed, it is not clear whether the Respondent has kept the liquidator up to speed with developments in the Tribunal. The proceedings are patently relevant as they involve the Respondent’s obligations and liabilities.
3. The Respondent is the head lessee of 1-33 Brooklyn court, Loughten, IG101AQ (“The building”). Derek Gale the Director of the Respondent company purchased the headlease for £1 in 2013 following the insolvency of the previous owner. The Freeholder (Metropolitan & City Properties (Loughton) Ltd) remain responsible for insuring the building and maintaining the exterior and the structure of the building. The Respondent was responsible for maintaining the interior of the building and charges were passed on to the individual leaseholders save for the insurance charges which were collected directly by the freeholder.
4. A previous dispute between the freeholder and the Respondent heard by the Tribunal under case reference CAM/22UH/LSC/2018/0066. This resulted in the Respondent having to meet a costs bill. He sought to recover these sums from the leaseholders (see below).

5. There are 33 flats in the building. Derek Gale is a leaseholder as are the Applicants. The Applicants are very concerned about the way in which the building has been managed. Sums have been removed from the service charge account to pay for Mr Gale's legal costs in the previous proceedings. Mr Gale accepted that this was not appropriate and told the Judge hearing the Case Management Hearing that he would refund these monies. There was no evidence that this had taken place at the date of the substantive hearing.
6. Warwick Estates took over management of the building in April 2019 and were able to evidence service charges from that date. Prior to then Mr Gale used previous managing agents Houston Lawrence and Mark Taylor. Neither of which managed the building properly. The records kept during this period are generally poor. The Tribunal were not impressed by Mr Gale's conduct in relation to the provision of evidence. He told the Judge that heard the Case Management Hearing that he would request documents from the previous managing agents. There was no evidence that this took place. Mr Gale appeared to have given up on the case generally when the matter came on for hearing on 5th May 2022. He did instruct Counsel to act for him but at times there was a disconnect between the two of them. There is no doubt that his Counsel was attempting to assist the Tribunal but his client was not assisting him.
7. Mr Gale appeared deliberately evasive and uncooperative – effectively holding his hands in the air and saying what can I do? He should not have taken on the head lease if he was not able to manage it and it will be seen that there appeared to be some serious financial irregularities some of which the Tribunal are unable to address unfortunately. In particular, the Reserve Fund accounts don't add up. Sums have apparently been removed from these accounts and used for purposes which are unrelated to the service charges. This is of course a breach of Trust and could be pursued as an action in the County Court but the Tribunal have no power to deal with it.
8. Meanwhile the Respondent's voluntary liquidation appears to have been used to avoid liability as is often the case. The Tribunal can do no more than highlight the fact that there is a "hole" in the reserve fund. The Liquidators should ensure

that what remains of the reserve fund is not used to pay off other debts. The sum is held on Trust for the leaseholders. Somebody needs to prepare a proper account in relation to the Reserve Fund and identify what withdrawn sums have been used for.

9. At the hearing on 5th May 2022 the Tribunal were asked to adjourn mainly so that the Respondent could investigate surrendering the Head Lease. The Tribunal were not told that there was an imminent risk of Insolvency. Instead of surrendering the Respondent became voluntarily insolvent. Mr Gale and his solicitors were uncooperative thereafter. They were invited to make representations so that the Tribunal could complete its determination. They provided none. In contrast the Applicants, who have conducted themselves with grace and professionalism, provided some very useful submissions. These assisted the Tribunal in making the following determination. Following the order in the Scott Schedule:

2014

Minor repairs - £6957.06

10. The Respondent provided no evidence at all of incurring these costs. Mr Gale didn't appear to have made any inquiries with the previous agents. The Tribunal disallows the sum in full.

2015

General repairs and maintenance - £5844

11. In the bundle the Tribunal were provided evidence of invoices which totalled £ **4912.72**. This is the sum allowed. The Tribunal is unwilling to give the Respondent the benefit of the doubt in relation to the remaining unevidenced sums.

Major works reserve fund – see below.

2016 – the parties did not make submissions in relation to this year. It seems therefore that there is no issue in relation to the sums owed.

2017

Repairs and Maintenance - £11396.39

12. In the bundle The Tribunal were provided with invoices which exceeded the amount claimed therefore the full amount is allowed.

Waste Collection - £2550

13. In the bundle the Tribunal were provided with invoices which justified this amount therefore the full amount is allowed.

Pest control - £612

14. There was no evidence that this sum had been incurred therefore it is disallowed.

2018

Repairs and Maintenance - £4666.32

15. In the bundle the Tribunal were provided with invoices which justified this amount therefore the amount is allowed in full. It's appreciated that the Applicants believe that they have been charged twice for the same works - once by the Respondent on their own behalf and once on behalf of the Freeholder. The Tribunal could find no evidence of this. On occasions the Respondent may have carried out works which were actually the responsibility of the Freeholder in these circumstances he was not precluded from recovering the sums from the leaseholders. If the work needed to be done, it needed to be done.

Waste Collection - £810

16. The Tribunal had no evidence in relation to this sum and it is therefore disallowed.

Insurance - £3386.58

17. This sum was an additional insurance payment. No evidence was provided to support it therefore it is disallowed.

Legal and professional - £3600

18. This sum is not recoverable from the leaseholders. It relates to costs incurred in the previous Tribunal. Mr Gale accepted at the Case Management Hearing that it was not recoverable therefore it should not have been included in the Scott Schedule.

2019

Accountancy fees - £900

19. This was a double charge and it is disallowed.

Accounts certificate - £235

20. This sum is allowed as reasonable.

Electrical testing - £264

21. This sum is allowed as reasonable.

General minor repairs - £3696

22. In the bundle the Tribunal were provided with invoices which justified total sums of £2071. This is therefore the amount allowed.

Insurance claim - £90

23. No evidence was provided for this therefore the sum is not allowed.

Legal fees - £7767

24. This sum is not recoverable from the leaseholders. It relates to costs incurred in the previous Tribunal. Mr Gale accepted at the Case Management Hearing that it was not recoverable therefore it should not have been included in the Scott Schedule.

Out of hours emergency - £347

25. This sum is allowed as reasonable.

Risk Management - £325

26. This sum is allowed as reasonable

Sundries - £203

27. This sum is allowed as reasonable.

Court fee relating to previous Tribunal - £875

28. Disallowed for reasons given above.

Claim E5OYX832 - £3520

29. Disallowed for reasons given above.

FH's service charge - £6618.77

30. This sum was not included in the certified accounts. It is disallowed.

FH's service charge - £7256.27

31. This sum was not included in the certified accounts. It is disallowed.

FH's service charge - £4015.53

32. This sum was not included in the certified accounts. It is disallowed.

Misc service Taylor's - £1700

33. This sum was not included in the certified accounts . It is disallowed.

FH service charge - £11289.26

34. This sum was not evidenced and was not in the certified accounts. It is disallowed.

Interest - £1670.75

35. This sum was not in the certified accounts. It is disallowed.

General reserve fund - see below.

2020

Management fee - £1818

36. This sum is reasonable and is allowed.

Repairs - £3405

37. The evidence in the bundle substantiated costs of £2546.38- this is the sum allowed.

Sundries - £296

38. This sum is reasonable and is allowed

Insurance - £18015

39. The increase in the insurance is unjustified. There is no evidence of a high claims history. An inflationary increase would equate to around £12000 which is the sum allowed.

Insurance claims - £250

40. This is a reasonable sum and is allowed.

Electrical testing - £1020

41. This is a reasonable sum and is allowed.

Reserve fund – see below.

Water tank cleaning - £1255

42. This sum is reasonable and is allowed.

Accounts certificate- £100

43. This sum is not evidenced and is not allowed.

PPM - £1500

44. This sum is not allowed as it is not evidenced.

Out of hours emergency - £237.60

45. This sum is allowed.

Legal and Professional fees - £2411

46. This sum is not allowed as there is no provision allowing recovery in the lease.

2021 – these are budget amounts and they will need to be justified by actuals.

Management Fee- £8587.11

47. The sum is payable in the lease under clause 5(6)(c) and is reasonable.

General minor repairs = £3000

48. This is a reasonable estimate.

Sundries- £200

49. This is a reasonable estimate.

Insurance - £19000

50. The estimate is not substantiated. £13000 is allowed as a reasonable sum.

Electricity costs- £500

51. This is a reasonable estimate

Accountancy fees - £927

52. This is a reasonable estimate

Risk management - £629

53. This is a reasonable estimate

Cleaning - £3000

54. This is a reasonable estimate although the increase from the previous year is substantial

Reserve fund – see below

Water testing - £500

55. This is a reasonable estimate

Water tank cleaning - £1500

56. This is a reasonable estimate

Accounts certification - £100

57. This is a reasonable estimate

Out of hours emergency - £238

58. This is a reasonable estimate

Supplementary service charge demand- £8412

59. This sum is not explained or justified and it is disallowed.

Community contribution- £10500

60. This sum has not been charged before and is unjustified – it is disallowed.

EG Hadwin previously paid major works costs - £4196.45

61. This is not a service charge issue but the Respondent appear to have accepted that Mr Hadwin needs to be refunded.

S/C Demand – this is not an issue for the Tribunal

Bank statements- this is not an issue for the Tribunal

Reserve Fund

62. The Tribunal have already expressed concern about the reserve fund. Sums appear to have been removed from the fund and not used for service charge purposes. This is potentially a breach of Trust. The Tribunal was unable to reconcile the Reserve Fund figures. The Applicants have provided information which strongly suggests that the reserve fund sums have been used for other purposes because the service charge expenditure does not match the deduction in the reserve fund. Unfortunately, this is the most that can be said. If there has been a breach of Trust this is within the jurisdiction of the County Court or High Court. The Tribunal repeats that the Liquidators should be made aware that the remaining reserve funds should be kept on Trust and should not be used to pay other debts owed by the Respondent.

Judge Shepherd

9th August 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.