

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/00HB/LSC/2009/0095

In the matter of 4 Julian Court, Julian Road, Sneyd Park, Bristol, BS9 1LA

And in the matter of an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges.

Between:

Julian Court (Management) Limited Applicant

and

John Charles Holliday Respondent

Date of issue of claim: 16 December 2008

Date of hearing: 16 November 2009

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)

Mrs. M. Hodge BSc (Hons) MRICS (Chartered
Surveyor member)

Mr. M. Ayres FRICS (Chartered Surveyor member)

Date of decision: 23 November 2009

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that the service charge payable by John Charles Holliday to Julian Court (Management) Limited in respect of 4 Julian Court, Julian Road, Bristol, BS9 1LA is as follows:

For the year ended 31 December 2007, the sum of £202.69;

For the year ended 31 December 2008, the sum of £308.69.

As John Charles Holliday has paid £803.20 on account of service charge for the year ended 31 December 2007, no further sum is due to be paid by him to the Applicants for either year.

Reasons

The Application

1. On 16 December 2008, Julian Court (Management) Limited ("the Applicant") (incorrectly described in the claim form as Julian Court

Management Company Limited) issued a claim in the Northampton County Court under case number 8QZ44892 against John Charles Holliday ("the Respondent") claiming outstanding service charges in respect of 4 Julian Court, Julian Road, Bristol, BS9 1LA ("the Flat").

The claim was made up as follows:

Service charge for period 01.07.07 to 31.12.07	£ 219.20
Service charge for period 01.01.08 to 30.06.08	£ 576.00
Service charge for period 01.07.08 to 31.12.08	£ 576.00
Late payment fee	£ 25.00
Land Registry search	£ 6.00
Managing agent's fee	£ 94.00
Interest under County Courts Act 1984	£ 103.07
Total claimed	£1,599.27

There was a claim for continuing interest and costs.

2. On 18 January 2009, the Respondent filed a defence in which he denied the claim saying that the Applicant was not entitled to recover the sums claimed because it had not followed statutory consultation procedures. He asked for the matter to be determined by a leasehold valuation tribunal.
3. On 22 April 2009, judgment was entered against the Respondent following his failure to file an allocation questionnaire. On 29 June 2009 that judgment was set aside by an order of the Bristol County Court and the proceedings were transferred to the leasehold valuation tribunal for determination.
4. A pre-trial review was held on 7 September 2009. The Respondent did not attend that hearing. The Tribunal made directions for both parties to file statements of case and to file copies of all relevant documents. Following a variation of the timetable, both parties have filed statements of case in accordance with those directions.

The Law

5. The statutory provisions primarily relevant to matters of this nature are to be found in sections 18, 19 and 27A of the Landlord and Tenant Act 1985 ("the Act").
6. Section 18 provides:
 - 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.

7. Section 19 provides:-

- 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 on 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.

8. Section 27A provides:-

- 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.

Subsections 3 to 7 of section 27A are not relevant in this application.

The Lease

9. The Respondent holds the Flat by virtue of an underlease dated 16 May 1968 made between the Applicant as lessor and John Bradbury as lessee ("the Lease"). The Lease demises the Flat for a term of 999 years (less 10 days) from 25 March 1967 at a yearly rent of 12 pounds and 12 shillings.

10. The Lease contains a covenant by the Respondent to observe and perform the obligations set out in the 6th schedule and a covenant by the Applicant to observe and perform the obligations set out in the 7th schedule.

11. The 6th schedule contains the following relevant paragraphs:
- 15. The Lessee shall comply with and observe any reasonable regulations which the Lessor may consistently with the provisions of this Deed make to govern the use of the Flats and the Reserved Property. Such regulations may be restrictive of acts done on the property detrimental to its character or amenities. Any costs charges or expenses incurred by the Lessor in preparing or supplying copies of such regulations or in doing works for the improvement of the Property providing services or employing gardeners or other employees shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the Seventh Schedule hereto notwithstanding the absence of any specific covenant by the Lessor to incur the same and the Lessee shall keep the Lessor indemnified from and against his due proportion thereof under Clause 17 of this Schedule accordingly.*
- 17. The Lessee shall keep the Lessor indemnified from and against one sixteenth of all costs charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule hereto.*
- 18. The Lessor shall be entitled to apply to the Lessee for and to receive from the Lessee any advances required (taken between the usual quarter days) on account of the Lessee's obligations under the last preceding clause.*
- 19. The Lessee shall within twenty one days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 10 of the Seventh Schedule hereto) due from the Lessee to the Lessor pursuant to Clause 17 of this Schedule for the period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which the said proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during the said period.*
12. The 7th schedule contains the following relevant covenants on the part of the Applicant:
- Paragraph 1 – to pay all rates and taxes;
 - Paragraph 2 – to insure the Property against loss or damage by fire, aircraft impact and explosion and to insure against third party liability.
 - Paragraph 4 – to keep the common parts and fixtures and fittings in a good and tenable state of repair decoration and condition.
 - Paragraph 6 – to keep the stairs, landings, passages and the lift in good order and adequately lit.
 - Paragraph 9 – to keep proper books of account and to take an account on the 5th April in each year.
 - Paragraph 10 – to have the account prepared and audited by a

Chartered Accountant who shall certify the total amount of the costs, charges and expenses (including audit fee) for the period to which the account relates and the proportionate amount due from the Respondent pursuant to clause 17 of the 6th schedule.

Paragraph 11 – to serve on the Respondent, within 2 months of the date to which the account is taken, a notice in writing stating the total amount of the costs, charges and expenses and the proportionate amount certified in accordance with paragraph 10.

Inspection.

13. The Tribunal carried out an inspection of the Property prior to the hearing on 16 November 2009 in the presence of Mr. Arthur Jenner and Mr. Dean Banfield, representatives of Hillcrest Estate Management Limited, the managing agents appointed to act on behalf of the Applicant. The Respondent was not present at the inspection.
14. Julian Court is a block of purpose built flats constructed in the late 1960's. It contains 16 flats with 4 flats on each of 4 floors arranged around a communal area which gives access to a single lift and a stair case. In the basement there is a car parking area and a locked room containing individual storage areas for each flat and a bin area. According to the lease plan, the car parking area provides 16 spaces but various alterations have been made which appear to have reduced the number of spaces available. Externally there is an area of communal garden laid to lawn and shrubberies.
15. Overall, the communal areas appeared dated but in good condition and were clean and tidy. The lift is basic but appears to be in reasonable condition. The carpets in the communal areas are showing some signs of wear but appear acceptable. The walls of the communal areas are brick with plastered and painted ceilings. The windows are all single glazed in varnished wood frames. The state of decorations was generally good.
16. The car parking area appeared to be in good condition. The storage and bin area was clean and tidy. The gardens appeared to be well maintained. Externally, the building appeared to be well maintained. There was evidence of blistering in some of the concrete panels below windows in the flats. Elsewhere, some of the paint had peeled from areas of concrete.
17. The Tribunal was not able to inspect the flat roof over the building. Mr. Banfield informed the Tribunal that it was watertight but would need recovering in 3 to 5 years. He also said that the electric wiring in the communal areas would need to be replaced shortly.

The Hearing and the Issues

18. The hearing took place at Whitefriars, Lewins Mead, Bristol on 16 November 2009. The Applicant was represented by Mr. Jenner and Mr. Banfield. The Respondent appeared in person.
19. The Respondent had filed a statement of case in which he raised a number of issues as follows:
 - 1) He had received only the accounts with no breakdown of costs or supporting documentation;
 - 2) He disputed liability to pay any legal costs whether under the lease or a judgment;
 - 3) He disputed his liability to pay for certain items under the lease;
 - 4) Moneys in a bank account had not been transferred to the managing agents and had not been utilised;
 - 5) He disputed his liability to contribute to a reserve fund;
 - 6) The Applicant had failed to follow consultation procedures in relation to the contracts for lift maintenance and repair, management services, legal and professional fees and external repairs;
 - 7) A contract with a company called Bagnalls had been poorly managed;
 - 8) Due to alterations in some flats making them 3 bedroom flats, the proportion in which the service charge was shared should be changed;
 - 9) As the occupier of a ground floor flat, his contribution to lift maintenance and repair should be reduced.

The Applicant's Evidence

20. Mr. Jenner had filed a statement in which he responded to the points raised by the Respondent. He filed some documents with the statement.
21. In evidence to the Tribunal, Mr. Jenner said that Hillcrest had been appointed as managing agents with effect from 1 April 2008 and he had limited information about what had happened at Julian Court prior to that date. He did not think that there had been any previous managing agents.
22. Mr. Jenner produced estimated service charge budgets for 2008 and 2009. He did not know whether a budget existed for 2007. He produced copies of the statutory financial statements for the Applicant for the years ended 31 December 2007 and 2008. He said that there were no other service charge accounts, no accountant's certificates and no notices to lessees under paragraph 11 of the 7th schedule.
23. Attached to the financial statements were profit and loss accounts. Mr. Jenner said that these were the only available evidence of the sums expended by way of service charge in the years 2007 and 2008. He did not produce any invoices to support any of the

expenditure. He said that the invoices may be in his office. Mr. Jenner was then taken through the various items of expenditure.

24. Mr. Jenner's evidence on the 2007 expenditure was:
- 1) Water rates – he accepted the Respondent's comment that this was for supply of water to the whole of Julian Court.
 - 2) Light and heat – this was for lighting the communal areas. There was no heating system in the communal areas.
 - 3) Insurance – this was for insuring the whole block. He had no details of the policy.
 - 4) Repairs and maintenance – he had no information as to what work had been done.
 - 5) External repairs on concrete – he knew that the Applicant had instructed Bagnalls to carry out some work but he did not know what work had been done and he did not have a copy of the specification or details of the cost.
 - 6) Roof repairs – he did not know what work had been done.
 - 7) Lift maintenance and repair – he did not know what work had been done.
 - 8) Sundry – he did not know what this referred to.
 - 9) Gardening – this was for garden maintenance over the year but he had neither details of the work done nor the cost.
 - 10) Cleaning – this was for internal cleaning and window cleaning in the communal areas but he had neither details of the work done nor the cost.
 - 11) Annual return and filing fee – this was for filing the Applicant's statutory financial statements.
 - 12) Accountancy fees – this was for producing the company's financial statements.
25. Mr. Jenner's evidence on the 2008 expenditure was:
- 1) Water rates – this was the supply of water to Julian Court.
 - 2) Light and heat – this was lighting the communal areas.
 - 3) Insurance – Hillcrest had arranged the insurance in 2008. The amount charged was less than in 2007 but he did not know whether that was because Hillcrest had been able to negotiate a better premium or whether there was a different renewal date.
 - 4) Repairs and maintenance – he had no details of the work done.
 - 5) Asbestos survey – this was the cost of a survey of the communal areas to meet legal requirements.
 - 6) Roof repairs – he had no details of the work done.
 - 7) Lift maintenance and repair – he said that there was an annual maintenance contract with WA Parry which was renewable every year. The charge was £540.50 including VAT. He did not know what other work had been done.
 - 8) Fire extinguisher – this was for servicing of the fire extinguishers.
 - 9) Sundry – he did not know what this credit sum related to.
 - 10) Gardening – the Applicant employs a gardener on an annual contract which is renewable each year. He is paid a monthly sum. His duties are to mow the grass, prune the shrubs and

weed the beds. The shrubs had required a hard prune in 2008. He knew neither how many visits were made by the gardener each year nor how his charges were calculated.

- 11) Cleaning – the cleaning company is employed on an annual contract which is renewed each year. The cleaners attend on a weekly basis to vacuum and dust the communal areas and to clean the windows quarterly. He did not have details of their charges.
- 12) Bank charges – he did not know what this was for.
- 13) Annual return and filing fee – this was the same as for 2007.
- 14) Director's liability insurance – this had been taken out on the instructions of the directors. He said that the Applicant was probably not entitled to recover it as service charge under the terms of the lease.
- 15) Legal and professional fees – he did not know what this item related to and he did not know if it was recoverable under the lease.
- 16) Management fees – this was Hillcrest's fee. It was recoverable under paragraph 15 of the 6th schedule. He referred to a copy of the management agreement in the Applicant's bundle which was a continuing agreement terminable by either party on 3 month's notice. He provided no details as to how the charges were calculated.
- 17) Accountancy fee – as for 2007.

26. Mr. Jenner confirmed that the Applicant was claiming £219.20 for 2007. He did not know how that was calculated nor whether the Respondent had made any other payments in that year. The Applicant was claiming 2 installments of £576 for 2008. There had been no claim for a balancing charge.
27. Mr. Jenner said that when Hillcrest was appointed, a new bank account was opened. He assumed that funds were transferred from the Applicant but he had no details.
28. On consultation procedures, Mr. Jenner said that they were not needed for the lift maintenance contract and accountancy fees because the cost per flat was less than £100 per year. The management agreement was not an agreement for more than 12 months. He had no evidence that consultation procedures were followed in relation to the contract with Bagnalls. In cross examination, he accepted that there were no written contracts for the lift maintenance, gardener or cleaner.
29. Mr. Jenner accepted that there was no provision in the lease entitling the Applicant to maintain a reserve fund.
30. Mr. Jenner had no knowledge of any consent which may have been given for alterations to the flats although he confirmed that Hillcrest

had not granted any. He said that the various costs had to be apportioned between the flats in accordance with the lease.

31. Mr. Jenner accepted that there was no provision in the lease entitling the Applicant to claim the late payment fee, land registry fee, the manager's fee or interest.

The Respondent's evidence

32. The Respondent was asked by the Tribunal to identify the items in the accounts which he agreed were payable. For 2007, he agreed the costs for water rates, light and heat, roof repairs and gardening. For 2008, he agreed the costs for water rates, light and heat, repairs and maintenance, roof repairs, fire extinguishers and accountancy fees. He challenged the remaining items in the accounts on the basis that he had no detail of the work done or the cost.

33. In relation to lift maintenance, he said that the contract was merely a retainer. The contractor would arrive to do a service, find something wrong, carry out repairs and then charge the Applicant. He accepted that the cost was recoverable under the lease but he did not know what work had been done, whether alternative quotes were obtained, whether consultation procedures were applicable or whether the cost was reasonable.

34. He believed that the contracts for cleaning, gardening and lift maintenance were all oral contracts on implied terms. All had been in place for many years and they would have to be terminated on reasonable notice. For this reason he said that the consultation provisions apply to the contracts. In relation to the management agreement, he said that this had already been in place for more than 12 months and therefore the consultation provisions should have applied. He thought that there was a decision of a leasehold valuation tribunal which said that such a contract would amount to a term of more than 12 months but he was unable to identify the case.

35. On looking at the statement of account produced by the Applicant, the Respondent confirmed that he had been asked to pay 2 installments of £511.20 on account of service charge for 2007. He had paid the first installment and £292 towards the second installment leaving a balance of £219.20 unpaid. He had not paid any service charge in 2008.

Conclusions

36. It is apparent from Mr. Jenner's evidence that the Applicant has failed to observe the terms of the lease in several important respects. It has produced no service charge accounts to 5 April in each year, the accounts have not been audited, there are no certificates from an accountant as to the total expenditure in each year or the proportion payable by the Respondent and the Applicant

has not served notice on the Respondent as required by paragraph 11 of the 7th schedule.

37. The claim is for sums on account of service charge for 2007 and 2008. Section 19(2) of the Act provides that where sums are claimed on account of service charge, no greater amount than is reasonable is so payable. The only evidence before the Tribunal as to whether the amounts claimed were reasonable is the profit and loss accounts attached to the Applicant's statutory financial statements which show the actual expenditure incurred. The Applicant has produced no invoices or other documentary evidence in support of those accounts and the Applicant's representative had no knowledge of expenditure in 2007.
38. As both 2007 and 2008 are now complete the best evidence of what was reasonable to claim on account of service charge is the evidence of the actual expenditure. The Tribunal, with considerable reluctance, accepts the profit and loss accounts as evidence of the actual expenditure but they are not evidence that expenditure was reasonably incurred nor that the work was done to a reasonable standard.
39. It was open to the Applicant to produce evidence of the actual expenditure for both years. The Tribunal's directions provided for the Applicant's statement of case to be accompanied by copies of relevant documents including *"the audited year end accounts for the relevant years, any service charge certificates prepared in accordance with the terms of the lease for the relevant years and invoices for any costs or expenses actually incurred."* Notwithstanding that direction, the Applicant has failed to produce evidence sufficient to satisfy the Tribunal that the expenditure in the 2 years was reasonably incurred. Further, by failing to produce details of the work done, the Applicant has not given the Respondent a chance to say whether or not the work was done to a reasonable standard.
40. The Respondent has agreed that certain items of expenditure were properly incurred and the Tribunal accepts those admissions. For the remaining items in the profit and loss accounts, there was insufficient evidence before the Tribunal to show that the expenditure was reasonably incurred and the Tribunal finds that those items were not reasonably incurred and determines that those items are not recoverable for that reason.
41. In relation to the accountancy fees for 2007 and the annual return and filing fees in both years, the evidence before the Tribunal is that the fees were for preparation and filing of the statutory accounts in order to comply with the Applicant's statutory obligations as a company. The fees were neither for preparation of service charge accounts nor for preparing certificates as required by the 7th

schedule. In the circumstances, the Tribunal finds that those fees are not recoverable under the terms of the lease. Accountancy fees for preparing service charge accounts would be recoverable under the terms of paragraph 15 of the 6th schedule but the fees claimed are not such fees.

42. The Tribunal finds that the Applicant is not entitled to recover for director's liability insurance under the terms of the lease. In the absence of detail about the legal and professional fees in the 2008 accounts, the Tribunal is unable to determine whether such fees are recoverable under the terms of the lease.
43. In relation to the managing agent's fee in 2008, the Tribunal finds that although such fees are recoverable under paragraph 15 of the 6th schedule, no evidence was given of the work done by the agents to show that the fee was reasonable and as the managing agents failed to produce accounts in accordance with the terms of the lease, the Tribunal finds that those fees were not reasonably incurred.
44. The Tribunal accepts the evidence of the Respondent that the contracts for cleaning, gardening and lift maintenance are oral contracts. Although they may be terminable on reasonable notice, there is no evidence before the Tribunal that those contracts were for a term of more than 12 months. It is open to the Applicant to review those contracts at its AGM and to terminate them if it so decides. The Tribunal is satisfied that the consultation requirements would not have applied to those contracts. The Tribunal has seen the management agreement and is satisfied that the consultation provisions did not apply to that agreement as it was not for a term of more than 12 months. The Tribunal has insufficient evidence before it to decide whether the contracts with Bagnalls and any contract for repair work on the lift were subject to consultation provisions.
45. Although the Applicant may demand payments on account of service charge, the Tribunal is satisfied that there is no provision in the lease entitling the Applicant to build up a reserve fund within the service charge. The Tribunal refers to note 6 to the 2007 financial statements which records an agreement by the members of the company to contribute to a maintenance fund. The Tribunal has no jurisdiction to deal with agreements which may have been made between the members. It has jurisdiction only to deal with the service charge raised under the terms of the lease.
46. The Tribunal finds as a fact that there is no provision in the lease allowing the Applicant to claim from the Respondent the late payment fee, the land registry fee or the managing agent's fee. Those items are not recoverable from the Respondent as a service charge. Further, there is no provision in the lease entitling the

Applicant to claim interest from the Respondent. Interest was claimed under the provisions of the County Court Act 1984. The award of such interest is in the discretion of the Court.

47. Although it is possible to apply to vary the terms of a lease under Sections 35 and 37 of the Landlord and Tenant Act 1987, the Tribunal has no jurisdiction to make such an order in this application. The Respondent's liability is as set out in paragraph 17 of the 6th schedule.

48. The Tribunal does not find it necessary to make any findings of fact in relation to the transfer of money between the bank accounts as it does not affect the amount of service charge payable by the Respondent.

49. For the year 2007, the Respondent admitted liability to contribute towards:

Water rates	£1420.00
Light and heat	£ 498.00
Roof repairs	£ 585.00
Gardening	<u>£ 740.00</u>
Total	£3243.00

One sixteenth share of that is £202.69. The Respondent has already paid £803.20 in 2007 so he has overpaid by £600.51.

50. For the year 2008, the Respondent admitted liability to contribute towards:

Water rates	£2903.00
Light and heat	£ 584.00
Repairs and maintenance	£ 823.00
Roof repairs	£ 71.00
Fire extinguishers	£ 58.00
Accountancy fees	<u>£ 500.00</u>
Total	£4939.00

One sixteenth share of that is £308.69 which is less than the amount overpaid by the Respondent in 2007.

51. In the circumstances, the Tribunal finds that no further sums are due from the Respondent in respect of service charge for the years 2007 and 2008.



Mr. J G Orme
Chairman

Dated 23 November 2009