

5033

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Subject Property: Royal Court, Kings Road, Reading, Berkshire RG1 4AE

Applicant: Royal Court RTM Company Limited, 40 Milton Close, Henley on Thames, Oxfordshire RG9 1UJ

Applicant's Managing Agent: Atlantis Estates Limited, 23/24 Market Place, Reading RG1 4AE

Applicant's Solicitors: SLC Solicitors, Westgate House, Dickens Court, Hills Lane, Shrewsbury SY1 1QU

Respondents: Mr F Bizzari, Flats 15, 17, 18, 33 & 35
Caley Property Limited Flats 16, 19, 20, 21, 25, 34, & 36
C/o Ben's Bar Royal Court, Kings Road, Reading Berkshire RG1 4AE

Head Lessee: Mididol Limited

Freeholder: Cavendish and Wimpole Property Limited

Case number: CAM/00MC/LSC/2009/0132

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Date of Hearing: 26th March 2010

Tribunal: Mr JR Morris LLB LLM PhD (Chairman)
Mrs S Redmond BSc (Econ) MRICS
Mr A Kapur

Attending Hearing:

Applicants Representatives: Mr NJ Vant & Mr D Feary Directors of the Applicant
Ms Tina Watkin & Mr Andrew Strong Applicant's Managing Agent
Ms Charlotte Collins & Ms Alison McLachlan Applicant's Solicitors

Respondent: Mr F Bizzari, Director and Representative for Respondents

DECISION AND STATEMENT OF REASONS

Decision

- The Tribunal determined the Estimated Service Charge for the year ending 24th June 2010 to be reasonable and payable by the Respondent to the Applicant as demanded in the reissued invoices.

- The Tribunal made an order for the Respondent to pay the Applicant's costs of £500 pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002.

Reasons

The Application

1. The Applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the costs to be incurred for the financial year ending 24th June 2009 to 23rd June 2010.

The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
3. Section 18
 - (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, improvement 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 of 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 period*
4. Section 19
 - (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.*

5. Section 27A

- (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.*

Description and Inspection of the Subject Property

6. The Subject Property is a Development comprising a 5-storey Building of 35 flats with car park and commercial premises most recently used as a restaurant at lower ground floor level. The Subject Property has two entrance foyers on each side of the Building from each of which rise stairs and a lift. At each floor between the staircases at each side of the Building there is an outside walkway.
7. Externally the Subject Property was in fair condition although the walkways were neglected. There are metal holders which originally were for plants but which are now unused. There are mineral deposits on the walkway ceilings and floors due to water seeping through the joints of the concrete floor. At the front of the Building there is a brick wall that had been re-pointed. There was a small area of raised garden beds at the front of the Subject Property. To the side of the Building there is the entrance to the commercial premises, which on the day of inspection were empty, and in a neglected condition.
8. Internally the common parts of foyer, hallways and landings were in fair condition and reasonably well maintained. Access to the underground car park was by roller shutters. The bin stores were tidy. In a separate room there is an array of electrical supply units. Several cupboards off the common parts contained items, which were said to belong to the Landlord.

The Lease

9. The Applicant is the Right to Manage Company for the Subject Property. Mididol is the Tenant under the Head Lease and the Landlord under the Sub-leases of the Subject Property. A copy of the Head Lease and a copy of one of the Sub Leases were provided. The Sub Lease was agreed to be the same as all the Leases for the flats in the Subject Property. The Head Lease is for a term of 125 years commencing

on 14th February 1986. The Sub Leases are for a term of 125 years less two days commencing on 14th February 1986. In the Sub-lease the Sub-tenants are referred to as a "Tenant" and the Landlord of the Sub-Lease is referred to as the "Lessor" and the Sub-lease is referred to as the "Lease". The relevant provisions of the Sub-lease are as follows.

10. Under Clause 3 (1) (b) and Clause 4 (4) the Tenant covenants:
To pay the Service Charge at the times and in the manner provided in the Sixth Schedule.
11. Under Clause 3 (9) the Sub-tenants covenant
 - (a) *To pay to the Lessors on demand all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of the Lease under Sections 146 and 147 of the Law of Property Act 1925...*
 - (c) *To pay on demand all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees of and incidental to the recovery of the Rent and Service Charge hereby reserved and made payable if the same are not paid at the times hereby provided*
12. Under Clause 5 (5) the Lessor covenants (the main provisions only are given):
 - (a) *To maintain and keep in good and substantial repair and condition*
 - (i) *The main structure of the Building ...*
 - (ii) *all ...gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires ...enjoyed or used by the Tenant in common with the owners or tenants of the other apartments in the Building*
 - (iii) *the Common Parts*
 - (iv) *the boundary wall and fences of the Building*
 - (v) *all other parts of the Building not included in (i) to (v)*
 - (b) *As and when the Lessors shall deem necessary:*
 - (i) – (iii) *to paint... the Building*
 - (c) *To insure and keep insured the Building...*
 - (d) *To keep clean and lighted (and if and when the Lessors decide heated) the Common Parts*
 - (e) *To pay and discharge and rates*
 - (f) *...to employ on such terms and conditions as the Lessors shall think fit one or more caretakers...*
 - (g)
 - (i) *To employ at the Lessors' discretion a firm of Managing Agents...*
 - (ii) *To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building*
13. The remaining provisions in the Clause authorise the Lessor to install a communal aerial system, to maintain and renew any lift, to install and maintain a security system including an electric entry system (by roller shutters or otherwise) and to keep the

gardens and grounds of the Building generally neat and tidy. In addition there is a provision for the Lessor to set aside a reserve fund.

14. The Sixth Schedule sets out the provision for the payment of the Service Charge, which includes the levying of an interim charge payable on 24th June and 25th December in each year. The apportionment of the Service Charge is a percentage as set out in each Lease.

Identification of Issues

15. The Lease requires the Service Charge to be payable in advance to ensure that the landlord or agent, or in this case the Right to Manage Company, is in funds to carry out necessary renewals and repairs and supply essential services. If such an estimate is not a reasonable amount for the provision of the service charge items because it is too low then it will either not be possible to provide the services or a substantial balancing payment will be demanded possibly together with bank charges and interest incurred for loans to meet the costs. If on the other hand it is too high a substantial credit will be unnecessarily incurred.
16. The Respondents had made it clear to the Applicants that they were not willing to pay the estimated Service Charge. The Applicants were aware that prior to enforcing payment a court would require a determination by a Leasehold Valuation Tribunal that the estimated Service Charge was reasonable. The Applicants therefore applied for a determination of reasonableness in respect of the estimated costs of the service charge for the year ending 23rd June 2010

Evidence

17. The Applicant produced a set of accounts, which were an estimate for the year ending 23rd June 2010. In addition the actual accounts for the year ending 23rd June 2009 were produced which set out the details of expenditure for the previous year. It was stated that the current service charge is based upon those accounts.
18. It was stated in written evidence that from comparing the figures for June 2008 to June 2009 with the budgeted figures of 2009 to 2010 that the average cost per unit (based on 36 units) is reduced significantly in the current year from the average cost of £2,232.30 to an average cost of £1,299.02. This represents a cost per unit of £933.28. This was said to have been achieved by making significant efficiencies in insurance, lift and general repairs and site security.
19. The Respondents were said to owe of 37.88% of total estimated the Service Charge.
20. The Applicant stated that no dispute had been received from the Respondents save for an email received by the Applicant's solicitors on 3rd October 2009 (a copy of which was provided) in which it was stated that the Respondents refused to pay the Service Charge on the basis that the Applicant's invoices did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987 in that they did not contain the Landlord's address and that Mr Bizzari, one of the Respondents stated that he would not pay the service Charge until it had been determined as reasonable. The Applicant accepted that the invoices were defective and reissued them in amended form (a copy of which was provided). The Respondents have not paid the reissued invoices.
21. Following Directions the Respondents filed a Statement of Case, which the Applicant replied to. The Applicant's Statement of Case included a written witness statement by Ms Tina Watkin, the Accounts Manager for Atlantis Estates Limited, the Managing

Agents for the Applicant, which replied to the matters raised by the Respondents. The respective statements of case, which were confirmed orally at the Hearing together with the related items of the Service Charge and their estimated costs, are set out in the Schedule below.

22. Both parties referred to the previous proceedings relating to an Application for a determination of reasonableness concerning the Subject property (CAM/00MC/LSC/2008/0075).

Schedule of Evidence		
	Item	Estimated Amount
1	Accountancy	£350
	<u>Respondent:</u> It was argued that there was no provision in the Lease for a tax or company return.	
	<u>Applicant:</u> The accounts do no more than comply with the statutory requirements which the lease allows and requires	
3	Bin Store Maintenance	£2,320
	<u>Respondent:</u> It was submitted by the Respondent that this amount was excessive for what was just an external solid concrete structure of four walls, a light and wooden doors. If the sum was to include the cost of emptying the bins then the Applicant as Tenant had previously argued that this would only take 30 minutes a day therefore the charge is submitted to be excessive.	
	<u>Applicant:</u> The item includes the cost of a caretaker who is loaned to the Subject Property for the purpose of emptying the bins and keeping the area tidy. The caretaker attends the development 6 days per week for half an hour each day for £5.00 per visit. Additional charges are made for additional work.	
4	Buildings Insurance	£4,000
	<u>Respondent:</u> The amount was too low	
	<u>Applicant:</u> The policy is submitted to be adequate for the Subject Property.	
5	General Cleaning	£5,200
	<u>Respondent:</u> It was stated that previously a porter had been retained to carry out cleaning, night security, managing the bin stores, supervising tradesmen and carrying out minor repairs for £6,000 per annum. It is now submitted by the Applicant that a monthly charge of approximately £240 is made giving an average of £20 per hour when the Tribunal in previous proceedings said that £10 per hour was reasonable.	
	<u>Applicant:</u> The Cleaner is contracted to attend 6 hours every two weeks and also carries out basic maintenance such as changing light bulbs.	
6	Car Park Gate Maintenance	£500
	Agreed	

7	Carpet Cleaning	£1,000
	<u>Respondent:</u> This is too high and should be included in general cleaning	
	<u>Applicant:</u> The budget includes an allowance for carpet cleaning which is based on two quotes received. The carpet cleaning is overdue as the carpets are very dirty.	
8	Communal Electricity	£3,500
	Agreed	
9	Director's Liability Insurance	£250
	<u>Respondent:</u> There is no provision in the Lease for this	
	<u>Applicant:</u> This has been allowed by previous LVTs (Rodney Court (Gosport) Management Company Limited v Balfour) decisions. It was also stated orally that it was part of the administration of the Building as the Applicant was an RTM Company	
10	Communal Gas Usage	£1,000
	<u>Respondent:</u> There is no safe boiler on the premises and the previous LVT proceedings relating to the Subject Property did not allow the cost of heating the Communal Area	
	<u>Applicant:</u> There is a working gas system although this is not in use and all the radiators are turned off. There have been complaints from some of the Tenants that the Subject property has been very cold. The budget figure has been included to allow for the heating to be put on.	
11	Fire Alarm Maintenance & Annual Extinguisher Checks	£600
	<u>Respondent:</u> There is no fire alarm and the average cost of fire extinguisher checks for the last 3 years is £203.	
	<u>Applicant:</u> An allowance was made for fire equipment. The expenditure under this heading has currently been for new signage to comply with current fire regulations. Invoices were provided.	
12	Fire Health and Safety Checks	£250
	<u>Respondent:</u> This should be included within service provide by the managing agent	
	<u>Applicant:</u> It was stated that an assessment has taken place and a copy was provided.	
13	General Exterior Maintenance	£2,500
	<u>Respondent:</u> It was submitted that there was a lack of detail other than 4 year external decoration and year 5 re-pointing of the ground floor brick work	
	<u>Applicant:</u> To date the expenditure under this heading had included window cleaning, repairs to broken windows and snow removal. Copies of invoices were provided for a range of works including repair to rainwater gulley and repairing leak in the bin store.	

14	Gardening	£750
	<u>Respondent:</u> Too high a cost for the removal of shrubs. Schedule 1 to the budget describe garden clearance only.	
	<u>Applicant:</u> A caretaker who is 'borrowed' from another development in order to keep the costs to a minimum carries out gardening. Copies of time sheets and invoices were provided.	
15	General Maintenance	£2,500
	<u>Respondent:</u> There should not be any need for general maintenance	
	<u>Applicant:</u> Copies of invoices for work carried out to date under this heading were provided	
16	Graffiti Removal	£500
	<u>Respondent:</u> The local council provides this service for free	
	<u>Applicant:</u> It was refuted that the local council carried out the service for free in respect of privately owned buildings.	
17	Ground Floor Internal Redecoration	£750
	<u>Respondent:</u> The cost is too high for a very small area	
	<u>Applicant:</u> It was stated that it was hoped to be able to carry out this work in the current financial year in order to keep the costs down when the rest of the building is redecorated. This area has been highlighted as being in need of urgent redecoration.	
18	Intercom Maintenance	£500
	<u>Respondent:</u> This has never required maintenance before	
	<u>Applicant:</u> This was included in the budget as there have been some reports concerning the intercom not working properly. It is hoped to replace the intercom system in the future.	
19	Lift Maintenance	£5,200
	Agreed	
20	Lift Telephone Line	£360
	Agreed	
21	Management Fee	£5,535
	<u>Respondent:</u> This is too high for derisory services. Previous years the fee was £4,100 including VAT	
	<u>Applicant:</u> The cost per unit is £153.75 and is based on the Managing Agents quotation, which is below the industry average and recommendations of the The Office of Fair Trading and ARMA guidelines.	
22	Miscellaneous Expenses	£500
	<u>Respondent:</u> No explanation given	
	<u>Applicant:</u> Invoices to date for this heading were provided including provision of door keys.	

23	Pest Control	£500
	<u>Respondent:</u> Too high, a typical call out charge is £50	
	<u>Applicant:</u> It was stated that there a contractor had been engaged for this service rather than a contractor attending on an as needed basis when a "call out" fee would be incurred. The contractor attends once a month for an annual fee of £275.00	
24	Water	£6,000
	Agreed	
25	General Reserve	£2,000
	<u>Respondent:</u> No explanation	
	<u>Applicant:</u> It was explained that his was a fund to cover major expenditure and repairs on a non-recurring items. A Schedule of budgeted future expenditure was provided attached to the Estimated Service Charge Account.	
Total		£46,765.00

Tribunal's Determination for Estimated Service Charge

23. The Determination only relates to the reasonableness of the estimated service charge for the year i.e. the costs to be incurred. It does not relate to the costs already incurred. Where evidence of costs already incurred was submitted this was only considered with a view to justifying the type and likely amount of the expenditure for which the estimate was made. The reasonableness of the costs actually incurred was not determined and it remains open to the Parties to make an Application for such determination in the future.
24. In determining the reasonableness of the estimated Service Charge the Tribunal took into account the following matters:
1. The items included in the estimated Service Charge must be allowable under the terms of the Lease
 2. The items listed must be reasonable e.g. if there is an estimate for the cost of renewal or repair or supply of a service the tribunal will first consider whether it is reasonable to undertake the renewal repair or supply.
 3. If the renewal, repair or supply is found to be reasonable then the estimated cost of undertaking the renewal, repair or supply will be considered to determine whether it is reasonable.
 4. The estimated cost will be determined by reference to:
 - a) Evidence adduced such as
 - The actual cost of supplying the service the previous year or
 - Invoices for the actual cost for the year in question if at the time of the Hearing the cost has in fact been incurred
 - The cost of providing the service or repair in the market place to indicate that the estimated cost is more or less than might be anticipated
 - b) The knowledge and experience of the members of the Tribunal

25. When evaluating the estimated cost of items the Tribunal is aware that the charge is an estimate and not an exact science. Therefore an amount might be determined to be reasonable notwithstanding that based on the evidence or the Tribunal's experience the actual cost of one item might be less than anticipated but will be balanced against an item that is likely to be more. The total amount demanded is reasonable in that any balancing payment or credit is likely to be small.
26. The Tribunal noted the items that had been included in the Service Charge for previous years had included:
 Water rates
 Lift Maintenance
 Heat and Light
 Repairs/Renewals
 Insurance
 Accountancy Fees
 Management Charge
 Caretaking and Cleaning Services
 Fire Extinguisher Rental/Maintenance
 Decorating
 Pest Control
 Sundry
 The Tribunal found that these items were the same or similar to the items included in the Estimated Service Charge.
27. The Tribunal considered the costs actually incurred in previous years and in particular noted the total charge as follows:
 Year to 24th June 2007 £49,533.56
 Year to 24th June 2008 £40,732.11
 Year to 24th June 2009 £43,752.72
 The Tribunal found that both the individual and total costs were similar to the Estimated Service Charge for the year in issue, which is £46,765.00.
28. The Tribunal considered the Respondents' Representative's view that the Directors' Insurance was not within the Lease and accepted that it was not specifically referred to however it agreed with the Applicant's Representative that as the Applicant was a RTM Company the cost was part of the administration of the Building.
29. The Tribunal found as follows:
- The items included in the estimated Service Charge were allowable under the terms of the Lease
 - The items for which an estimated costs had been allowed for in the Service Charge were reasonable as being the type of expenditure that would be incurred taking in to account the Subject Property's age, condition etc.
 - The reissued invoices were complied with the legislation
30. Based on the evidence of:
- the actual costs incurred in the previous year,
 - the invoices for costs already incurred and,
 - the current costs of the items listed in the Estimated Service Charge Account from the knowledge and experience of the members of the Tribunal
- The Tribunal determined the Estimated Service Charge for the year ending 23rd June 2010 to be reasonable and payable by the Respondent to the Applicant as demanded in the reissued invoices.

Application for Costs

31. The Applicant's Representatives applied for an Order for Costs pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002. They stated that the proceedings were unnecessary for the following reasons:

- Mr Bizzari was a Leaseholder of five flats and as the Director of Caley Property Limited who hold a further seven flats well aware of the items and costs of previous Service Charges
- Mr Bizzari was also the Director of Mididol Limited who is the Landlord of the Subject Property and had been responsible for the preparation of the Service Charge for the Subject Property for a number of years. He was also the Representative of Mididol in respect of previous proceedings before the Leasehold Valuation Tribunal in respect of Service Charges.

Therefore it was stated that he knew firstly, that the items and Estimated Service Charge in issue was the same as or similar to previous Service Charges and therefore was likely to be found to be reasonable. Secondly, many of the issues he had raised had been with reference to the reasonableness of the actual Service Charges, which he knew, or ought to have known could not be the subject of the Application in respect of the Estimated Costs. Thirdly he knew of the state of the Service Charge Account and that a prolonged failure to make the contributions demanded from the leaseholders in default for whom he was responsible would place unnecessary strain on the financial position of the RTM Company.

32. It was submitted that Mr Bizzari had precipitated the proceedings by his failure to pay the contributions to the Estimated Service Charge following the re-issuing of the invoices. The refusal to pay was unjustified and his conduct vexatious.

33. The Applicant's Representatives stated that they had incurred costs in excess of £500 for these proceedings. Ms Collins, for the Applicant's solicitors stated that her hourly rate was £125.00 and her colleague was £190.00 and that between them they had spent at least 20 hours on the case at a cost of £2,500.00

34. The Respondent's Representative stated that there had been a marked increase in the total Estimated Service Charge for the year in issue compared with previous years, which had remained constant at around £40,000 to £42,000. He did not consider the increase justified when he had previously provided a good service. He said that it appeared that a less good service was being provided at a higher cost. He said that the invoices had not been issued correctly and still considered that they did not comply with the legislation in that although the Landlord's address appeared to the invoice it did not specifically state that this was the address for service.

Tribunal's Decision on Costs

35. The Tribunal found that there were potentially two stages to determining the issue of costs. First it needed to be decided whether the Respondent had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. Secondly if it were found that the Respondent had so acted then the amount of costs would have to be determined with a maximum of £500 pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002.

36. The Tribunal had determined that the previous items and amounts corresponded to the Estimated Service Charge for the year in issue. The Tribunal considered the Respondent's behaviour and found that he knew of the items and amounts of previous estimated and actual Service Charge Accounts and of the financial position of the Service Charge Accounts as a Director of the Landlord who had prepared

previous Service Charge Accounts and as an experienced leaseholder of flats in the Subject Property. The Tribunal therefore found that Mr Bizzari was aware that on comparing the estimated and actual charges of previous years with the estimated service charge for the year in issue the Tribunal was likely to determine the estimated charge for the year in issue to be reasonable.

37. The Tribunal found that as an experienced leaseholder and landlord and having already been involved in proceedings before a Leasehold Valuation Tribunal in relation to service charges Mr Bizzari was aware of the difference between questioning the reasonableness of the *estimated* costs of service (costs to be incurred) and the *actual* costs (costs incurred). His refusal to pay the estimated charge resulted in pre-emptive proceedings when it was apparent from the evidence he sought to adduce that he should have applied for a determination of costs incurred following production of the accounts for the year ending 23rd June 2010. The Tribunal was of the opinion that he was aware of this.
38. The Tribunal also found that Mr Bizzari's knowledge of the Service Charge Accounts would have made him aware that his withholding of service charge contributions would place an undue strain on the finances of the RTM Company.
39. The Tribunal found that Mr Bizzari had acted vexatiously.
40. The Tribunal determined that the Ms Collins's hourly rate was reasonable and that the appearance and preparation of the papers for the Hearing alone accounted for some 4 hours.
41. The Tribunal made an order for the Respondent to pay the Applicant's costs of £500 pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002.

JR Morris (Chair)