

5446

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 11 Hartsbourne Park,
180 High Road,
Bushey Heath,
Herts. WD23 1SD

Applicant : Mrs. June Singer

Respondent : Bushey Management Ltd.

Case number : CAM/26UE/LSC/2010/0094

Date of Application : 13th July 2010

Type of Application : Determination of reasonableness and
payability of service charges (Sections
19 and 27A Landlord & Tenant Act 1985
("the 1985 Act"))

The Tribunal : Bruce Edgington (Lawyer Chair)
David Brown FRICS MCI Arb
Adarsh Kapur

Date and venue of
Hearing : 27th October 2010 at Park Inn, 30/40 St.
Albans Road, Watford WD17 1RN

DECISION

1. The application to assess service charges is dismissed as being completely without merit.
2. The application for the Tribunal to consider the legality of the appointment of a director for Phase 2 is dismissed as being outside the jurisdiction of this Tribunal.
3. The application for the Tribunal to consider the legality of 2 directors giving permission to 1 or 2 ground floor flats to encroach on common land is dismissed as being outside the jurisdiction of this Tribunal.
4. The application for the Tribunal to advise as to whether a leaseholder can opt out of paying service charges for a managing agent is dismissed as being outside the jurisdiction of this Tribunal.

5. The application for an order under Section 20C of the 1985 Act preventing the Respondent from claiming the reasonable costs of representation in these proceedings from the Applicant as part of any future service charge is refused
6. The application by the Respondent for an order for wasted costs to be paid by the Applicant pursuant paragraph 10 of Schedule 12 to the **Commonhold and Leasehold Reform Act 2002** is refused.
7. All other express or implied applications are dismissed.

Reasons

Introduction

8. This is what would appear to be the 8th application to the LVT relating to the Applicant's service and administration charges in respect of the property. An attempt was made in the last application under case numbers CAM/22UE/LSC/2008/0038 and CAM/22UE/LSC/2008/0055 to help the parties draw a line under the extensive litigation before this Tribunal, the county court and the magistrates' court.
9. Extensive reasons were given for the decision ("the previous decision") in that case which urged both parties to be reasonable in future to avoid litigation. That advice appears to have been ignored. This Tribunal is not going to repeat the extensive history and discussion in that decision which should therefore be read in conjunction with this decision.
10. The application asks the Tribunal to say whether service charges for the years ending 30th June 2007, 2008 and 2009 are reasonable. When asked for more detail in the application form, Mrs. Singer lists the amounts claimed for management fees, water and salt, insurance, electricity, repairs and maintenance, lift maintenance, legal and professional fees, accountancy, miscellaneous and gardening for 2009 and adds 'similar cost for other years'.
11. There are then a series of questions asked by the Applicant. The handwriting is poor but as far as the Tribunal can see the questions are:-
 - (a) *Cost of most charges*
 - (b) *Legality of appointment of director for phase 2?*
 - (c) *The legality of 2 directors without consultation with freeholder in giving permission for 1 or 2 ground floor flats to encroach onto common land increasing those terraces by 20%*
 - (d) *Whether the lease allows certain leaseholders to opt out of paying service charges for a managing agent which then makes the cost to other leaseholders paying this cost unreasonable. This appears to be a breach of covenant of*

the lease. Payment of breaches by mangent (sic) causing interest to occur. Landlord & Tenant Act 1985

12. On the 23rd July 2010 the Tribunal chair made a directions order timetabling this application up to the final hearing. In the preamble to this order it said, in bold type, "**These directions are formal Orders and must be complied with**". Any party wanting to change the directions was then invited to make an application. It was pointed out that some questions posed by the Applicant in the application form were not within this Tribunal's jurisdiction. These questions were not withdrawn by the Applicant and have therefore been dealt with in this decision.
13. The order required each party to file and serve a statement of case. As far as the Applicant is concerned the order was that "The Applicant shall, by 4.00 pm on the 13th August 2010, file with the Tribunal office and serve on the Respondent a statement attaching the service charge demands/accounts referred to in his application and stating, in respect of each item of service charge demanded, (a) precisely why they are being challenged and (b) what the Applicant considers to be a reasonable charge".
14. The Respondent was then ordered to file and serve a statement in response justifying each challenged item of service charge.
15. It was made clear to both parties, again in bold print, that failure to serve and file documents or statements of witnesses upon which a party wished to rely may mean that the Tribunal may refuse to consider such a document or give permission for the witness to give evidence
16. The Applicant did not comply with the order and the Respondent was therefore placed in some difficulty. It did arrange for a statement to be filed which attempted to anticipate what the Applicant may be alleging.
17. The Applicant did then file a statement in reply dated 9th September 2010. This document can only really be described as a diatribe. It makes a series of general allegations. They will not all be repeated here but in the opening paragraph it gives a flavour of what is to come by saying that both the managing agent and a director of the Respondent have been:-

"...acting in what I consider a criminal manner and in being in contempt of Court and perverting the course of justice. This has continued since the 7th July 2010 with no let up. I have had to make numerous applications to court and to write to Bushey's barrister, the Judges involved, the Sheriff's office and others."
18. There are some general comments about the level of fees and legal costs incurred but nothing remotely approaching the detail ordered to

be supplied. As to the service charges complained of, the statement simply says "*Mr. Mire (the managing agent) is fully aware of the concerns one has...*" but does not set out what those concerns are.

19. The bundle of documents supplied for the Tribunal contains these statements, some correspondence, the previous decision of this Tribunal referred to above, some company documents relating to the Respondent and then the service charge accounts for the 3 years in question with bundles of vouchers relating to each year. The accounts and vouchers are about 2 inches thick.
20. It bears recording here that in the case giving rise to the previous decision, the Applicant was told, quite clearly, that it was a vital part of the English justice system that there must be a 'cards on the table' approach to hearings with prior disclosure so that no-one is taken by surprise. The Applicant now has a great deal of experience before tribunals and courts and knows both the importance of complying with directions given and the possible consequences of failing to comply.

The Law and terms of the lease

21. These are set out in the previous decision and will not be repeated here.

The Inspection

22. There was an inspection of the development at the request of Mr. Singer. This was also attended by Mr. Philip Sissons, counsel for the Respondent and Mr. Benjamin Mire BSc (Est Man) FRICS from the managing agents, Trust Property Management Ltd. Mr. Singer took the Tribunal members around the perimeter of the development and pointed out several matters which he considered relevant as to whether the managing agents were doing a good job.
23. These matters included some pipework allegedly allowed by Mr. Mire which he, Mr. Singer, considered was a breach of the terms of the leases. He said that this was relevant because he was now being told to remove a small length of pipework which was necessary for his new heating system. This was also pointed out. Others examples were fencing around a bin area which Mr. Singer thought was unnecessary, an alleged encroachment of some paving from a ground floor flat and some mulching under a large tree which Mr. Singer said was unnecessary.
24. At the end of the inspection, he pointed out some new health and safety signwork on the entrance gate which he said was unnecessary and unsightly.

The hearing

25. The hearing was attended by Mr. Singer. Mr. Mire, Mr. Sissons and a number of other lessees.

26. After formal introductions, the Tribunal chair went through the application form and asked the Applicant whether he accepted that the service charges for years ending 30th June 2007 and 2008 had been the subject of a judgment against Mrs. Singer by order of District Judge Sethi sitting at Watford County Court on the 24th March 2009. He accepted this but said that there was no trial looking at the reasonableness of the subject charges.
27. It was pointed out to Mr. Singer that this did not matter. For whatever reason a county court Judge had determined that these service charges were payable and therefore Section 27A(4)(c) of the 1985 Act precluded any application being made to this Tribunal for a determination in respect of those charges.
28. As far as the 2009 charges were concerned, the chair asked Mr. Singer why he had not prepared a statement in accordance with the directions. He explained that his daughter had been diagnosed with terminal cancer in December 2009 and required full time care from Mrs. Singer. He had to look after his young grandson and it was only at 8.00 pm that he was able to sit down and deal with his paperwork.
29. It was then pointed out to him that he had prepared a lengthy statement in reply to the Respondent's statement which did not set out any detail about what service charges Mrs. Singer was disputing. He apologised for this. He said that he was not now challenging all the service charges mentioned in the application but did not indicate which he was now challenging.
30. There was then a discussion about the documentation supplied to the Tribunal from which it transpired that the way in which the bundle had come about was that the managing agent had supplied the copy statements and the bundle numbered 200 onwards. They had written to the Applicant and the Tribunal on the 10th September 2010 enclosing copies of that bundle. On the 16th September they wrote again to the Applicant enclosing a draft index. They pointed out, as was the case, that it was the Applicant's responsibility to prepare the bundle and that she should complete the index with her documents in the first part. These should include, as had been ordered, a copy of the application and the directions order. Her numbered part of the bundle should then be sent to the Tribunal office.
31. Mr. Singer said that he had sent his documents to the Respondent some time ago and expected them to be in the bundle. He then said that he had sent in a copy of his statement in reply together with the documents he relied upon. The Tribunal went through the documents and it transpired that it had all the documents even though the bundle had not been prepared by the Applicant or with all the documents as ordered.

32. It was pointed out to Mr. Singer that none of these documents gave either the Tribunal or the Respondent any real idea of what was in dispute in respect of individual service charges. They simply made it clear that Mr. Singer did not agree with the way in which the Respondent or Trust Property Management Ltd. were dealing with the management of the estate.
33. The chair asked Mr. Singer why he had made this application. He said "I brought the application because I thought that various things needed clarifying and whether the company was being run properly and efficiently cost wise." He made no mention of his wife's intention to challenge any particular service charges. In those circumstances, the chair said that in the absence of any application to adjourn, the Tribunal was minded to bring the hearing to an end.
34. Mr. Singer then said that he wanted to go through the 2 inch thick bundle of invoices to challenge various items. It was pointed out to him that this was effectively going to amount to "trial by ambush" which was not fair or reasonable. The only real issue which arose on his case was, in effect, the last question on the application form. In essence, Mr. Singer was arguing that the leases did not allow the Respondent to appoint a managing agent for Block B without appointing one for Block A.
35. He was asked why he made this point. His answer was that he thought Block A should share the cost of a managing agent. It was pointed out to him that such agents charged by the unit and there would be no saving for him. He seemed to understand and accept this. His question therefore appeared to be "if I have to pay for a managing agent, why should the lessees in Block A get away with not paying for one?" In other words this was not a challenge to the reasonableness of his charges.
36. In any event, it was pointed out to Mr. Singer that clause 2.8 on page 7 of the lease says that the Applicant shall pay to the Respondent anything incurred by the Respondent in relation to "the Apartment Block". That term is not defined in Schedule 1 but is clearly singular i.e. Block B in Mrs. Singer's case.
37. In what is presumed to be clause 9 (the number is obscured in photocopying of the bundle seen by the Tribunal) on page 22 of the lease the Respondent is allowed to charge the service charge account with the cost of "...any Managing Agent". Thus there does not appear to be any restriction on the Respondent appointing a managing agent for one block and not the other.
38. It was pointed out to Mr. Singer that the Tribunal is not an advice agency and he should have sought his own legal advice. He said he had sought advice from a lease advisory service with the added words

"but I can read!". He insisted that the Respondent could not instruct a managing agent for one block and not the other.

39. The Respondent's counsel was then asked what calculation of additional costs arising from the alleged behaviour of the Applicant was available. It was pointed out that the Tribunal's expectations in this regard were in paragraph 61 of the previous decision. No calculation had been made but counsel did ask for his brief fee plus something towards Mr. Mire's time in copying the bundle. They were asking for £500.

Conclusions

40. The Tribunal clearly has no jurisdiction to make any ruling on the appointment of a director or on the legality or otherwise of people being allowed to encroach on common land if indeed that has happened.

41. The terms of the leases do now allow anyone to 'opt out' of paying a particular item of service charge. If a service charge or administration charge is reasonable and payable under the terms of the lease then the lease terms are that each leaseholder must pay his or her share in accordance with the proportions set out in the lease. As was pointed out in the previous decision, the Tribunal considers that with the present level of litigation created by the Applicant, the charges of the managing agent in this case are not unreasonable.

42. Mr. Singer is an educated man who is experienced in representing his wife in a court and a tribunal setting. He knows or should know what is expected of him in terms of complying with directions and providing full information at an early stage as to his case and the evidence he relies upon. Whilst the Tribunal obviously has sympathy with his family circumstances, he clearly had time to prepare a lengthy statement well before the hearing and was given clear and unequivocal guidance about how he should prepare the documents and statements to support his wife's case.

43. The fact that he clearly chose not to give any detail about a challenge to individual items of service charge is important and leads this Tribunal to the view that the application has no merit. Mr. Singer does talk about the cost of litigation but the figures he uses are costs calculations assessed by judges.

44. The Tribunal is of the view that Mr. Singer's behaviour is very close to being vexatious and an abuse of process. In the previous decision, the Tribunal urged both parties to be more moderate. Since then Mr. Singer:-

- (a) Made the allegations in his statement that the managing agent has acted criminally, has been in contempt of court and has perverted the course of justice

- (b) Accused Mrs. Bard, a director of the Respondent, in a letter of the 7th September of being dishonest and in contempt of court
- (c) Wrote to the Respondent's counsel, Philip Sissons on the 12th July 2010 accusing him of acting in a "devious and immoral way"
- (d) Wrote to the Sheriff's Office in Croydon on the 8th August 2010 saying that its methods are "tantamount to a car clamping cowboy outfit".
- (e) Wrote to Mr. Mire on the 16th April 2010 accusing him and the other directors of the Respondent of being "totally corrupt"
- (f) At the hearing he accused Mr. Sissons and Mr. Mire of preventing documents being shown to a judge and, in addition, that Mr. Sissons had perverted the course of justice.

45. In simple terms, it seems to this Tribunal that Mr. Singer and probably his wife have adopted the 'conspiracy theory' and believe that almost everything which is done by the board of the Respondent, by its duly appointed managing agent or by anyone who agrees with them is wrong.
46. At the hearing, it was suggested to Mr. Singer that one way to try to resolve matters would be to call a meeting of the residents so that he could try to obtain some support for his position. His response was telling. He said "They don't have their own minds. This is why I don't call a meeting". In other words, Mr. Singer just can't accept that he lives in a community and that the wishes and feelings of everyone else in the community seem to be contrary to his.
47. This is costing the other residents a great deal of money. The lessees of Block A, which does not have this problem, can manage their building themselves whilst Block B has decided to have a managing agent to try to protect its other lessees from this litigation. Thus Block B lessees have the additional cost of the managing agent as well as the substantial costs of litigation.
48. At the end of the hearing, Mr. Singer did indicate that he would be making another application in respect of these matters. No doubt the Tribunal will want to consider Regulation 12 of the Tribunal's procedural regulations on that occasion which deals with applications to dismiss cases which are vexatious etc. otherwise unreasonable.
49. Having said that Mr. Singer then produced a copy of a letter written by Mr. Mire to the Applicant dated 22nd October 2010 alleging a defective boiler installation and saying that the pipe shown to the Tribunal by Mr. Singer would be removed and the cost charged to the Applicant.

50. The pipe in question is very short and if it was in the same colour as the wall and the other plastic pipework shown to the Tribunal, it would be in keeping and would hardly notice.
51. It may be that the Respondent has commissioned an expert's report to advise as to the safety of this pipe and, as Mr. Singer suggests, whether it is now possible with new regulations to install a new boiler without this sort of extraction. In view of the terms of the letter, it would seem not. In which case, perhaps such a course would be better than just issuing a threat to undertake work which will ensure that Mr. and Mrs. Singer have no operable heating boiler during the winter.
52. As far as costs are concerned, the Tribunal does not consider that an order under Section 20C of the 1985 Act is appropriate. The Respondent has not acted unreasonably as far as these proceedings are concerned – far from it.
53. The Respondent has asked for an order for costs of £500 to be paid by the Applicant without giving the Tribunal any assistance by trying to assess what costs would have been incurred if the Applicant had complied with directions as opposed to the extra costs of copying for the largely unnecessary bundles. The Tribunal took the view that if the case had been fully presented with evidence and documentation, the time taken by the Respondent's representatives would have been longer, as would the hearing. Thus, in a perverse sort of way, the Applicant's behaviour probably saved them money.

.....
Bruce Edgington
Chair
1st November 2010