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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/42UD/LSC/2010/0062

Colchester County Court Claim No 9CM 04057

Property	:	172 Alnesbourn Crescent, Ravenswood, Ipswich IP3 9GD
Application	:	For determination of liability to pay service charges for the years 2007–2010 [LTA 1985, S.27A]
Applicant	:	T Calthorpe & Miss J Bullard, 172 Alnesbourn Crescent
Respondent	:	Countrywide Property Management

DECISION

Handed down 30th November 2010

Tribunal : G K Sinclair (chairman), R W Marshall FRICS FAAV, D S Reeve

Hearing date : Thursday 30th September 2010, at Ipswich Town Football Club

Representation *Applicant* — Mr Calthorpe & Miss Bullard
Countrywide — Mr Lee Herod (Property Manager) & Daniel Harrison (Leasehold Legal Services, the in-house legal department of CPM)

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Summary

1. This application concerns a block of flats on a newish development occupying the former Ipswich airport site on high ground to the southeast of the town. Built by developer, Bellway Homes Ltd, the lease provides that responsibility for managing the block should devolve upon Beaufort Place Management Company Ltd (supposedly controlled by the relevant leaseholders, but in fact the sole director of which was until sometime in 2008 a director of Bellway Homes). In fact, by a separate agreement of which the tribunal has seen only an undated and unsigned copy, Bellway Homes Essex Ltd (as client) purported to enter into an agreement for the appointment of Countrywide Residential Lettings Ltd trading as Countrywide Management (as its agent) for a fixed annual fee of £135 per unit (excluding VAT). By letter dated 21st August 2006 addressed to relevant leaseholders

Countrywide announced its appointment as from 16th August.

2. Since 2006, when the Applicants came onto the scene, the block has been subject to a regular turnover of Countrywide property managers responsible for the development. To date there have now been six, with the latest – Mr Herod – taking over in summer 2010. This has led to a dysfunctional management of the block by Countrywide, with leaseholders becoming increasingly frustrated at the failure of new managers to follow up on what had been reported to or agreed with their predecessors.

3. For the reasons which follow the tribunal reduces the annual service charges claimed for each year in question and determines under section 20C of the Landlord and Tenant Act 1985 that any costs which the Respondent has incurred in dealing with this application shall not be taken into account when assessing this year's or any future service charge accounts. Further, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 the tribunal orders that the Respondent shall reimburse the application and hearing fees paid by the Applicants.

Relevant lease provisions

4. As mentioned in paragraph 1 above, the lease – seen only as an undated copy – provides that responsibility for managing the block devolves upon Beaufort Place Management Company Ltd (supposedly controlled by the relevant leaseholders). Beaufort Place (the estate) is described as the property "now or formerly registered under title number SK263033", and the Applicants' flat is on the second floor. Clause 2 (definitions) refers to a "management company lease" to be granted by the landlord to the management company of the phase upon completion of the grant of leases of all the flats in the phase. The tribunal has heard no more about any such lease.

5. The following lease provisions are material to a consideration of the service charge :
   a. In clause 1 (Particulars) the term "specified proportion" is rather unhelpfully defined as "a fair and reasonable proportion of the service charge in any given account period (as such terms are defined in Schedule 4)" [1]
   b. In clause 2 "rents" is defined as the rent firstly and thirdly reserved in clause 3, viz the ground rent plus any expenses incurred in connection with or in procuring the remedying of any breach of the tenant's covenants, and the service charge
   c. The "service charge" comprises the sums payable by the tenant in respect of the provision of the "services, supplies and functions"referred to and ascertained in accordance with Schedule 4
   d. By clause 2.1.11 references to the costs of the landlord or management company shall include all costs, fees, charges, etc (including legal, surveyors' or bailiff's fees) incurred by the landlord or management company
   e. By clause 4.1 the tenant covenants to pay the rents reserved in clause 3 without any deduction
   f. By clause 5 the management company covenants with the tenant and separately with the landlord to use all reasonable endeavours to provide the services
   g. By clause 6.3 the landlord covenants that it will for the period that any flat is unlet pay the equivalent of the service charge that would be payable if that flat were let

[1] In the service charge account for 2006, at page 581, the Applicants' share for number 172 is set at 6.5140%, or just over one sixteenth.

h. By clause 6.4 the landlord further covenants that prior to the grant, or following the termination, of the management company lease it will carry out the services subject to receipt of the service charge

i. By paragraph 3 of Schedule 4 the tenant covenants to pay an annual service charge payment by four equal quarterly payments in advance, and as soon as practicable after an account date (31st December) the management company shall submit to the tenant an account statement for the account period ending on that account date.

j. Paragraph 2.9 of Schedule 4 implies that such service charge account shall be audited.

Material statutory provisions

6. The method of calculation and overall amount payable by tenants for works of repair and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :
   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.

7. By section 20, where the cost of any qualifying long term agreement shall exceed £100 for any liable tenant then the relevant contributions of tenants are limited to that amount unless the consultation requirements imposed by the Service Charges (Consultation Requirements) (England) Regulations 2003[2] have been either complied with in relation to the long term agreement or dispensed with under section 20ZA by (or on appeal from) a leasehold valuation tribunal. The consultation procedure includes, *inter alia*, the preparation of at least two proposals by the landlord in respect of the relevant matters.

8. In order that leaseholders can keep track of what they may owe, and to discourage tardiness by freeholders or their managing agents, section 20B provides that :
   (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
   (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

9. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a

[2] SI 2003/1987 (as amended)

dwelling (other than a post-dispute arbitration agreement)[3] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A

10. Section 47 of the Landlord and Tenant Act 1987 provides that any written demand for payment of rent or other sums payable to the landlord under the terms of the tenancy must contain the name and address of the landlord and that, where a demand is given which does not contain such information, then any part of the amount demanded which consists of a service or administration charge shall be treated for all purposes as not being due from the tenant at any time before that information is furnished by the landlord by notice given to the tenant.

11. Since 1st October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.[4] The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.[5] If this is not complied with then a tenant may withhold payment of a service charge which has been demanded from him.

Inspection and hearing

12. The tribunal inspected the development at Alnesbourne Crescent at around 10:15 on the morning of the hearing. Also present were Mr Calthorpe for the Applicants and Messrs Herod and Harrison for Countrywide. At the time of the inspection the weather was warm, sunny and dry. The block is situate towards the southwestern corner of the current Ravenswood development and is of London brick construction, the ground floor having a stucco finish. There is one vehicular entrance through a ground floor passage to a large communal car park to the rear. There are no garages but two communal sheds, one for storage of refuse bins and the other for bicycles, etc. Located in the bin store is a cold water tap for connection to a hose, for gardening or perhaps car washing use. Insufficiently protected, it has been struck too often by the large wheelie bins when being taken out for emptying, and as a result the screws fixing it to the wall have been pulled out, leaving the tap and connecting copper pipe to dangle free.

13. The driving surface of paviour bricks was generally sound, save that where traffic had to follow the same entrance or exit route two parallel ruts were seen to be developing, leaving a metal inspection cover standing proud. The garden largely comprised large ornamental shrubs, some planted altogether far too close to the buildings, making access on foot to the externally sited mailboxes awkward, especially when large spiky leaves may be wet. The tribunal left the site by a pedestrian gateway at the opposite end of the building to the vehicular entrance and walked around the perimeter. A low metal fence separated the public footpath from a narrow garden area to the front of the building.

[3] Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

[4] SI 2007/1257

[5] *Op cit*, reg 3

This garden comprised a narrow grassed area plus some shrubs. At high level a section of guttering to the rear was observed to be missing, and the same was true to the front.

14. Internally, the block has three separate entrance doors leading to carpeted staircases leading directly to the internal flats. The staircases are lit, and there is at least one power point for cleaning purposes, but the internal communal parts are extremely limited in scope.. This became relevant when the tribunal had later to consider the alleged level of electricity consumption. There are apparently four separate meters, but the tribunal was not shown where they are.

15. The hearing, held in a suite at Ipswich Town Football Club, began at 11:40. The tribunal had before it two lever arch files comprising approximately 800 pages, viz the application, the tribunal's directions, statements, accounts, invoices and other documents. Witness statements for the Applicants were provided by Claire & Daniel Cooper, Margaret Button and the Applicants themselves. In opposition was a single statement by Hannah Cole, fifth of the six property managers employed by Countrywide who were involved with this site since 2006. She was not present at the hearing.

16. Apart from the constant turnover of staff, their lack of attendance on site or contact with residents, and the general inability or unwillingness of Countrywide to respond to requests or complaints, the principal concerns advanced in the statements, numerous e-mails in the bundles, and the Applicants' oral evidence were :
    a. A lack of adequate communal cleaning
    b. Poor and over-expensive external landscaping, and the prevention of parking on planted areas instead of the hardstanding
    c. Non-cleaning of bicycle and bin stores and failure to repair broken doors
    d. Failure to supply cleaners and the local authority's refuse contractors with the access codes to the bin and cycle stores, with the result that rubbish was not collected as part of the normal collection rounds and separate charges were levied for removal of waste on later occasions
    e. Informing leaseholders that there was an emergency out-of-hours service when in fact it had not been provided
    f. A failure to investigate and challenge extortionate communal electricity bills, or to check on the quality of the service actually being performed by a contractor; instead paying each invoice presented without question
    g. A general delay in the provision of service charge accounts
    h. A strange synchronicity between budgets and actual accounts, despite elements being different
    i. The managing agents' refusal to honour a promise by one property manager (Miss Moon) to reduce the management fee in view of past problems
    j. A refusal by the managing agents' solicitors (Dickinson Dees) to respond at all to challenges to amounts claimed when attempting to recover service charge arrears
    k. Failure by the managing agents to issue service charge demands in 2009 and 2010 (until July 2010).

17. The tenor of these complaints can perhaps be summed up by a letter written by Claire Williams (as she then was) and Daniel Cooper to Countrywide on 13th September 2008. The material parts read :

> Thank you for your letter dated the 10th September. We are aware of the outstanding debt of £519.20 however we are still awaiting a response to our letter dated 23rd July 2008 (a copy is enclosed). Within this letter we requested information regarding the service we are receiving and a copy of the audited accounts. We have only received one set of accounts year ending 2006. These issues have been raised continually since completing on the property by ourselves and the other occupants of Beaufort Place. At a meeting organised by our neighbours on 5th March 2008 Sarah Moon stated that some of the services had been suspended. Window cleaning has also been added to the budget (without consultation with ourselves) in year 2 at a cost of £600 however Sarah also stated this has never been implemented. We have not received a refund for these services we have paid for but not received.

18. Although present throughout the hearing, neither Mr Herod (the current property manager) nor Mr Harrison had any direct knowledge of the issues in dispute, and nor could they explain the meaning in the S/C Budget Reports [see for example that for 2010 at page 353] of the columns headed "Cross Sum Totals". However, they did accept that Miss Moon's statement that Countrywide's management fee for 2009 would be reduced had been given in writing, although the company's later refusal to honour it was justified on the ground that she had not sought authority from her superiors and could not bind the company to any such promise. They therefore held out for the total amount claimed as being in arrears, viz the £3,649.57 set out on page 16 in the bundle.

Discussion and findings

19. The management of this block has a questionable legal basis. Countrywide's appointment was by Bellway Homes Essex Ltd (not even the landlord named in the lease – although it may have changed its name), and yet Countrywide has purported to act on behalf of Beaufort despite no evidence being produced that this allegedly leaseholder-controlled company has ever been granted a management company lease.

20. *Water supply* – For reasons not satisfactorily explained the Anglian Water bills levied for this estate are not simply for the communal tap in the bin store but also for each flat's own domestic supply. Why separate metered supplies for each flat have not been put in place is unknown. As a result the cost is included within the service charge and shared by all.

21. *Gardening/cleaning* – The tribunal notes the Applicants' evidence about seeing contractors sitting around in vans in the early period and not spending as long on site as charged for. Later, from studying the 2009 cleaning/gardening invoices from CSG and Qualia, it seems that sometimes they were attending weekly, and Qualia sometimes charging £101.04 or £85 per visit. The tribunal considers that of the amount of gardening and cleaning actually involved it should allow only £100 per visit, and that this should be only fortnightly for alternately gardening and cleaning, ie £100 in total per week for both activities.

22. Further, in the accounts there shall be deleted all reference to the cost of cleaning or clearing away rubbish from the cycle or bin stores : access by the refuse collectors to the external door lock codes should have been provided.

23. *Electricity : 2008 & 2009* – The different zones and meters are unhelpful, but the total for heating and lighting of extremely limited internal common parts (plus the occasional use of a vacuum cleaner on the stairs) is excessive. This should have set off alarm bells and ought to have been investigated, yet it seems that no interest was shown by Countrywide or its staff. The tribunal shall therefore rely upon Countrywide's own budget estimates for 2008 and 2009 of £750.

24. *Management fees* – The tribunal is satisfied from the evidence put before it, and not really challenged, that management was consistently poor. Although Ms Moon attempted to do more the Applicants' issues and queries were still not resolved, attempts were made to obtain payment behind their backs from their mortgagee, and the matter was referred to solicitors for recovery, but still their points in dispute and offer of settlement were not responded to. The tribunal is therefor prepared to allow only £100 per unit, or £1,600 per year. In 2007 the tribunal accepts that the block was without an active property manager for around six months (starting in late 2006), and despite Miss Moon's efforts while briefly in charge, the situation never really got any better. In 2009, with a broken promise to reduce it to the budgeted figure of £2,450, the amount claimed by the section 20B notice for this year was even higher than before – at £3,450 – despite continued dismal performance. The same discounted rate shall apply.

25. *Audit fees* – Although the preparation of accounts has been persistently late, the tribunal considers that this is more likely to have been the responsibility of the management company and not the auditors. Based on the evidence of a general lack of response to enquiries, etc. the audit fees are therefore allowed, as the delay was most likely caused by Countrywide. By ensuring that section 20B notices were served on the Applicants Countrywide has managed to avoid a complete failure to recover service charges due in respect of some of the more recent years in dispute.

26. *Health & Safety report* – This is allowed, but should not be repeated annually. This is a modern building with no asbestos or any serious fire risk.

27. The result of the tribunal's determination appears in the Schedule annexed. However, to date no demand has been served upon the Applicants in respect of either the 2009 or 2010 accounting periods. No sum is therefore payable in respect of those years unless or until proper demand is served upon them.

28. As the Applicants have succeeded in their application the tribunal also accedes to their request that an order be made under section 20C. Costs incurred by the Respondent in connection with these proceedings shall be ignored when calculating the service charge payable by any of the Applicants for this or any future service charge accounting period. The Respondent shall also be required to reimburse the Applicants for the amounts overpaid by them in past years and for the tribunal fees which they were required to pay for this application and hearing.

Dated 30th November 2010

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

SCHEDULE OF AMOUNTS DETERMINED AS PAYABLE

	Page 49	*Page 134*	*Page 275 #*	¶
Expenditure item	***2007***	***2008***	***2009***	***2010***
Water	£2,557	£3,077	£2,859	
Electricity	£550	*£750*	*£750*	
Repairs/renewals/maintenance	£1,271	£2,327	£476	
Sundry expenses	£29			
Cleaning	*£2,600*	*£2,600*	£1,919	
Garden maintenance	*£2,600*	*£2,600*		
Landscaping & external maint.			*£2,600*	
Insurance claims		£200		
Refuse/rubbish removal	*£0*		*£0*	
Management fees	*£1,600*	*£1,600*	*£1,600*	
Health & safety report		£294		
Secretarial & related fees	£305	£110	£80	
Auditors' remuneration	£646	£871	£114	
Directors' & officers' insurance			£276	
Total :	**£12,158**	**£14,429**	**£10,674**	**£10,674**
Appellants' share @ 6.5140%	**£791.97**	**£939.91**	**£695.30**	**£695.30**

Figures in *italics* have been reduced by the tribunal and otherwise are as claimed

Details taken from section 20B notice, as no accounts were produced for this year and no valid demand has yet been made for payment

¶ Quarterly payments of advance service charge are due, based on a reasonable estimate of the year's expenditure, taken from that for 2009