

**HM COURTS & TRIBUNALS SERVICE****MIDLAND LEASEHOLD VALUATION TRIBUNAL****DECISION****LANDLORD AND TENANT ACT 1985
SECTION 27A (AND 19)****APPLICATION FOR THE DETERMINATION OF LIABILITY TO PAY
AND REASONABLENESS OF SERVICE CHARGES**

Applicant	Blue Property Management UK Ltd
Respondent	Leslie Michael Eccleshall
Property	4 Monarch Court, Cook Street, Wednesbury WS10 9FD
Date of application	22 February 2012
Members of the Committee	V Ward BSc Hons FRICS P Hawksworth
Date of determination	22 June 2012

Application

- 1 On 22 February 2012, the Applicant, Blue Property Management UK Ltd, applied to the Leasehold Valuation Tribunal ("the Tribunal") for a determination under Section 27A (and 19) of the Landlord and Tenant Act 1985 ("the Act") of liability to pay and for reasonableness of a service charge levied in the years 2008, 2009, and 2010 by Blue Property Management (UK) Ltd in respect of 4 Monarch Court, Cook Street, Wednesbury WS10 9FD ("the Property"). The actual application form identified the Applicant as Provide and Prosper Limited but the case papers in the County Court (see below) states the Claimant as Blue Property Management (UK) Limited and the Tribunal treats the Applicant as being Blue Property Management UK Ltd.

- 2 This matter had been transferred to the Leasehold Valuation Tribunal by Walsall County Court on the instructions of District Judge Crowe – Case Number 1QT64355. The action in the County Court was brought by Blue Property Management Limited who were the management agents of the development for the years in question against the Respondent in respect of unpaid service charges. The Order transferring is dated 5 December 2011 simply transferred the claim to the LVT without identifying the issue to be determined. The LVT, therefore, determine that its remit is to determine the liability to pay and the reasonableness of service charges.
- 3 By Directions issued by procedural chairman on 27 April 2012, the Tribunal directed that the application be dealt with on the basis of an oral hearing, as one had been requested by the Respondent. Written representations were received from both parties and these were copied to either side.

Background

- 4 The Respondent is the lessee of the property and holds the residue of a 125 year term from 1 April 2007 granted by a Lease ("The Lease") dated 16 August 2007 made between Kingswater Homes (Wednesbury) as lessor and Leslie Michael Eccleshall as lessee. The initial rent under the Lease is £449 per annum.
- 5 Provide and Prosper Limited were the freeholders for the years covering the disputed service charge and the Applicant was the managing agent during Provide and Prosper's ownership. The freehold interest was sold by Provide and Prosper Limited in February 2010 to Messrs Grizzard and Coates and Warwick Estates were appointed as new managing agents from 31 March 2010.
- 6 In its application form the Applicant seeks determination from the Tribunal of the liability to pay and reasonableness of service charges for the following years:
 - a. Excess Charge 2008
 - b. Service Charge 2009
 - c. Excess Charge 2009
 - d. Service Charge 2010
 - e. Excess Charge 2010
- 7 In his Statement of Case, the Respondent contended that no invoices or correspondence of any kind were received from Blue Property Management until September 2010. Blue Property Management's instructions as managing agents were terminated in March 2010.

Inspection

- 8 On 22 June 2012 the Tribunal inspected the development known as Monarch Court. Present at the Inspection, although not simultaneously, were Carole Greensill

(Letting Agent on behalf of the Respondent) and Anthony Howard, Area Manager for Blue Property Management Limited.

The property is one of twelve flats at Monarch Court which are arranged at the front of the development over three floors, with two communal entrance ways. The property is a first floor flat which unfortunately the Tribunal were unable to inspect internally.

The development known as Monarch Court also includes maisonettes and houses as part of the overall scheme, albeit, that these do not form part of this Decision.

The Law

9 The Act provides:

Section 19 Limitation of service charges: reasonableness

(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 provisions 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 of subsequent charges or otherwise.

10 **Section 27A Liability to pay service charges: Jurisdiction**

(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 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

- (a) has been agreed or admitted by the tenant;
- (b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

11 Section 20B Limitation of service charges: time limits on making demands

- (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 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.

The Hearing

12 A Hearing was held at the Tribunal's offices in Birmingham on 22 June 2012. Present at the Hearing were, Peter Evans, Managing Director of Blue Property Management Ltd ("Mr Evans"), Anthony Howard, Area Manager for Blue Property Management Ltd ("Mr Howard") and the Respondent, Leslie Michael Eccleshall ("Mr Eccleshall").

13 The Tribunal initially asked the Applicant to confirm the amounts for which determination is sought. These are as follows:

a.	Excess Charge 2008	£265.77
b.	Service Charge 2009	£480.00
c.	Excess Charge 2009	£318.07

d.	Service Charge 2010	£287.00
e.	Excess Charge 2010	£27.42

- 14 On behalf of the Applicant, Mr Evans said that the parties were unable to reach an agreement at the County Court, hence the Court had referred the matter to the Tribunal for determination.
- 15 When questioned by the Tribunal, Mr Evans said that services at Monarch Court were carried out by a mixture of contractors employed by a subsidiary of Blue Property Management, Blue Property Maintenance Limited, and also third party external contractors.
- 16 Evidence was presented by Mr Evans in the form of the Witness Statement of Barry Leonard, Caretaker for Monarch Court for the period of the Blue Property Management contract. Mr Leonard confirmed that he visited the development on a weekly basis to clean the communal areas and maintain the grounds and on occasion attended to the electric gates. In respect of the gates, he stated most repairs were carried out. Further he said that the gates were repeatedly vandalised and misused.
- 17 Mr Howard then gave evidence relating to the period Blue Property Management administered the site, when he was the Area Manager with direct responsibility for the development. He outlined the services carried out by Blue Property Management and the inter-relation of the flats and other parts of the development. Mr Howard said that the issues were not with the building itself but were with residents and the general area. Further he stated the following:
- a) The electric gates were regularly vandalised and the mechanism forced.
 - b) The pedestrian access gates to the development were also vandalised.
 - c) There was graffiti in the communal areas:
 - d) A fire was set to one of the communal areas and
 - e) The block entrance doors were continually left open.
- He confirmed that internal cleaning was carried out weekly with 21 gardening/site maintenance visits a year.
- 18 In connection with invoicing and accounting, Mr Howard said that he liaised on a regular basis with many leaseholders and also the owners of the maisonettes and houses that formed part of the development.
- 19 In his submissions, Mr Eccleshall said that the management had failed on three bases; performance, cost control and communication.
- a) Performance - Mr Eccleshall said that there was no documentary evidence that the services on site had actually been provided. The Respondent continued, that his agent said that in late 2008 the communal areas were not

being maintained. Whilst he accepted that it was a difficult site, his impression from his agent was that the site was not being managed effectively by Blue Property Management. He said evidence of that was when the freehold was sold to Messrs Grizzard & Coates, the instructions of Blue Property Management to manage were terminated on the basis that their service was inadequate. Mr Evans did not accept these comments.

- b) Cost Control – Mr Eccleshall asked the Applicant why a clearly inadequate service charge budget of £480 per annum was set in the first place and additionally why was it not increased for the second and subsequent years. In his opinion, if the budget had been set more accurately this would have either significantly reduced or eliminated an excess charge payment. In response Mr Evans said that the original budget was prepared by the developer and that whilst he now acknowledges the budget appeared low, they had hoped “matters would improve”. Mr Eccleshall also queried why the accounts were undated which Mr Evans was unable to explain, although the Tribunal noted that the Accounts had been prepared and certified by a Chartered Accountant
- c) Communication – Mr Eccleshall said that he had received no communication from Blue Property Management until September 2010. He had been advised by the developer, Honey Badger, of Blue Property Management’s bank details and as requested he had begun to pay the monthly service charge of £40 per month on his purchase of the property in 2007. In April 2009, after concerns that no services were being carried out, he stopped the standing order payment. He said that he thought at the time that Blue Property Management would contact him to discuss his concerns and organise for the payment to be re-instated, however he received no correspondence from them whatsoever. Mr Evans denied this, stating that there would have been chasing letters, which would have been correctly addressed and posted.
- 20 Mr Eccleshall was asked by the Tribunal if there was a mechanism for post to be forwarded from his UK address in Gloucestershire to where he currently resides in Spain. Mr Eccleshall confirmed that there was.
- 21 The Tribunal asked Mr Evans why the new managing agents, Warwick Estates, had advised all Monarch Court leaseholders not to pay Blue Property Management any more monies and further confirmed to Mr Eccleshall that his arrears at handover in March 2010 were £320, not the amount stated above. In response, Mr Evans said that the leaseholders had been told not to pay any more money to Blue Property Management so as not to confuse matters between themselves and the new agents and it was intended that any arrears would be paid over to Blue Property Management by Warwick Estates, although this had not happened. When questioned in connection with the amount of £320 that Warwick Estates had said was the arrears on handover, he said this figure was wrong and that he had had problems with Warwick Estates quoting incorrect figures to Leaseholders in other

matters. Mr Eccleshall conceded that Warwick Estates had been unable to provide confirmation of how they had arrived at the sum of £320.

- 22 In summary, Mr Evans said that he did not accept that Blue Property Management were difficult to contact. He said that even from Spain, their details could be obtained from the Internet and they could be contacted by post, e-mail or telephone. He said that their signage details were in the communal areas and further that the leaseholders had Mr Howard's mobile number.
- 23 He said that he believed that the development had been well managed and that all accounts were submitted within three months of the year end. He confirmed that chase-up letters would have been sent as part of standard procedure from their Nottingham office.

Determination

- 24 Having considered the provisions of the Lease, the Tribunal notes that the obligation for the tenant to pay a service charge is contained within Clause 3.1 of the Lease. The scope and basis for charging the service charge are laid out in Schedule 4 to the Lease.
- 25 Upon the Tribunal's inspection of the development it was found that the communal areas were generally reasonable although some internal areas might be considered unkempt and some carpets would benefit from cleaning. The Tribunal also noted that the entrance doors to the communal areas were propped open and further the electric car parking gates were not working. When questioned at the inspection, Mrs Greensill, for the Respondent said that, in her opinion, there had been a very marginal improvement in the appearance of the property and the services provided since Warwick Estates had taken over from Blue Property Management. She also indicated that vandalism was a problem with the development, not just due to those within the development, but also from parties within the surrounding area.
- 26 Initially, the Tribunal had to consider whether or not the service charges were recoverable as a matter of contract. From the Tribunal's interpretation, the service charges are due under the Lease and from the information provided the demands appear to have been sent in the correct format with proper accounts for each service charge year.
- 27 Secondly, the Tribunal had to consider whether the service charge costs were reasonably incurred or whether services were of a reasonable standard. Mr Eccleshall did not have a complaint about a specific aspect of the service charge but rather made a general comment that it was reported to him that the service was inadequate and poor. In the absence of any direct evidence the Tribunal cannot find that any particular aspect of the service was substandard and found it noteworthy that the onsite services had not improved significantly after the change in management. Further some of the specific points mentioned as being deficient under Blue Property Management, i.e. the electric gates and doors being propped open, were in fact still inoperable at the time of the Tribunal's inspection.

28 Mr Eccleshall contended that he had not received any correspondence, whatsoever, from the Applicant. He was unable to adduce evidence that other leaseholders had similarly received no communications. The Applicant rebutted the allegation above by producing evidence of demands in the correct form and stated that such demands had been issued and sent on the dates stated on them. The Tribunal, faced with the evidence, submitted by the Applicant, finds as an issue of fact that the probability is that demands were sent. Thus, section 20B has no application in this case.

29 The Tribunal then considered the annual service charges which are as follows:

2008 £745.77
2009 £798.07
2010 £314.42 (Part year)

In the experience of the Tribunal these charges are not unreasonable for a development such as Monarch Court, subject to the comments below.

30 Considering the charges detailed within the service charge accounts, the Tribunal considers that the Management fees appear to equate to approximately £150 plus VAT per property per annum and considers that a reasonable charge would be £130 plus VAT per property per annum and accordingly has made a £20 plus VAT per annum deduction for the years in question (apportioned for 2010 where approximately a third of the annual fee appears to have been charged).

31 The adjusted charges based on the reasonability of the service charges claimed are, therefore, as follows:

Year	Total Charge	Deduction	Adjusted Amount
2008	£745.77	£23.50	£722.27
2009	£798.07	£23.00	£775.07
2010	£314.42	£7.84	£306.58

VAT adjusted depending on the date of invoice.

32 The Respondent is on the face of it, liable to pay the amounts above but produced evidence that the Applicant's successor agents Warwick Estates, acting on behalf of the successor freeholder told the Respondent that there were no service charge arrears or at the very least the same were £320.00. In his Defence in the County Court (which following the principle established in *Staunton v. Taylor* (2010) UKUT270(LC) the LVT must have regard to) the Respondent states that the written advice received from Warwick Estates justifies him in not making any payment.

33. The Tribunal is unconvinced by the statements of Mr Evans relating to his dealings with Warwick Estates. It prefers the evidence given by Mr Eccleshall on this matter and as such, it considers that issues arise as to what, if any, amount is

actually due from the Respondent to the Applicant and this decision is deferred to the County Court.

34. The application is, therefore, transferred back to Walsall County Court Case no IQT64355 to decide:-
- (a) What is the effect on recoverability by the Applicant, of the assurances given by Warwick Estates to the Respondent? Do they relieve the Respondent from all liability to make further payment;
 - (b) What amounts (if any) are recoverable and capable of being incorporated in a County Court Judgement.

Summary of Decision

35 In respect of Section 27A application the Tribunal finds that:

- a. Services charges for the year 2008 should be adjusted to £722.27.
- b. Services charges for the year 2009 should be adjusted to £775.07
- c. Services charges for the year 2010 should be adjusted to £306.58

Issues above relating to recoverability are deferred to the County Court

- 36 In reaching their Determination the Tribunal have had regard to the evidence of the submission of the parties, the relevant law and their own knowledge and experiences as an expert Tribunal but not any special or secret knowledge.
- 37 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal you must apply, in writing, to this Tribunal for permission to appeal within twenty one days of the date of issue of this decision which is given below stating the grounds upon which you intend to rely on in the appeal.

V WARD BSc Hons FRICS



DATE 20 AUG 2012