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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 | Mr P Webb and Mrs H Webb |
| Properties | 9 & 10 Monarch Court, Cook Street, Wednesbury WS10 9FD |
| Date of application | 18 November 2011 |
| Members of the Committee | V Ward BSc Hons FRICS P Hawksworth |
| Date of determination | 22 June 2012 |

Application

- 1 On 18 November 2011, 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 District Judge Waterworth sitting at Barnstaple County Court – Case Number 1QT64371. 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 29th September 2011 and the remit of the LVT by paragraph 1 of the Order is to determine the reasonableness of the sum claimed.
- 3 By Directions issued by procedural chairman on 6 January 2012, the Tribunal directed that the application be dealt with on the basis of written submissions as neither party had requested an oral hearing. Written representations were received from both parties and these were copied to either side.

Background

- 4 The Respondents are the lessees of the properties and in each case (the lease terms appear identical) 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) Limited as lessor and Philip Webb and Helen Webb as lessees. 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 agents 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 1 April 2010. Blue Property Management’s instructions as managing agents were terminated as from 31 March 2010.
- 6 In their application the Applicant seeks determination from the Tribunal of the liability to pay and reasonableness of service charges for the following years:
 - a. 2008
 - b. 2009
 - c. 2010

Inspection

- 7 On 22 June 2012 the Tribunal inspected the development known as Monarch Court. Present at the Inspection was Anthony Howard, Area Manager for Blue Property Management Limited (“Mr Howard”).

The properties comprise two of the twelve flats at Monarch Court which are arranged at the front of the development over three floors, with two communal entrance ways. Numbers 9 and 10 are first floor flats 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 development, albeit, that these do not form part of this Decision.

The Law

8 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.

9 **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.

10 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 Representations of the Parties

11 In their submission the Applicant provided copy service charge demands as follows (per property):

| Year | Period | Date of Invoice | Amount |
|------|--------------------------|-----------------|----------|
| 2008 | 01/01/2008 to 30/06/2008 | 30/11/2007 | £ 240.00 |
| | 01/07/2008 to 31/12/2008 | 26/05/2008 | £ 240.00 |
| | 01/01/2008 to 31/12/2008 | 09/03/2009 | £ 265.77 |
| | Total for year | | £ 745.77 |
| 2009 | 01/01/2009 to 30/06/2009 | 01/12/2008 | £ 240.00 |
| | 01/07/2009 to 31/12/2009 | 01/06/2009 | £ 240.00 |
| | 01/01/2009 to 31/12/2009 | 15/02/2010 | £ 318.07 |

| | | | | |
|------|--------------------------|------------|---|--------|
| | Total for year | | £ | 798.07 |
| 2010 | 01/01/2010 to 30/06/2010 | 12/12/2009 | £ | 143.50 |
| | 01/01/2010 to 31/12/2010 | 05/07/2010 | £ | 170.92 |
| | Total for year | | £ | 314.42 |

Accounts for each year were provided which the Tribunal noted had been prepared and certified by a Chartered Accountant

12 In their submissions (to the County Court and the Tribunal), the Respondents stated the following:

- a) Shortly after the properties were purchased, Blue Property Management wrote to the Respondents advising that they were the managing agents and requesting that a standing order be set up for £40 per property per month, which the Respondents did.
- b) The Respondents considered the management of the development poor and their letting agent had difficulty getting repairs carried out and the cleaning carried out to a satisfactory standard. However they continued to pay the service charge indicated in a) above.
- c) In March 2010, the Respondents were advised by the freeholders that following discussions with dissatisfied property owners they had appointed a new company – Warwick Estates – to take over the management of the development from 1 April 2010.
- d) In July 2010, the Applicant sent invoices to the Respondent in the sum of £423.99 in respect of 9 Monarch Court and £569.14 in respect of 10 Monarch Court. By letter the Respondents requested an explanation for these amounts, to which they advise, they received no response.
- e) On 12 July 2010, Warwick Estates wrote to the Respondents advising them that there were no service charge arrears in respect of the properties. Documentation provided indicates that there was in fact a credit balance of £65.15 in respect of 9 Monarch Court.
- f) On 6 August 2010, the Respondents received a letter from Warwick Estates advising them to ignore any correspondence received from Blue Property Management and not to make any more payments to them.
- g) The Respondents received further chasing invoices from the Blue Property Management before the matter was ultimately placed before the County Court.

- h) On 4 January 2011, Warwick Estates wrote to the Respondents advising that they had been in contact with Blue Property Management regarding arrears and they had been assured that they would not be pursuing any service charge debts.
 - i) In their submission, the Respondents make reference to a spreadsheet summary supplied by Blue Property Management to Warwick Estates which due to data protection and confidentiality issues is only partially reproduced. This purportedly shows balances at handover as indicated in e) above.
- 13 In their submissions (to the County Court and the Tribunal), the Applicant made the following comments in respect of the Respondents' submission:
- a) It considers that the Respondents claim to have received no demands or accounts between September 2007 and December 2009, is simply an attempt to avoid payment.
 - b) It stated that it had never provided final accounts to Warwick Estates and further that it considered that the latter "decided" the figures for themselves. There were also submissions to the effect that The Applicant considers Warwick Estates unprofessional and uncooperative.
 - c) It does not consider the new freeholders' decision to change agents as evidence of poor management, as upon the disposal of freehold interests, many purchasers simply appoint their retained agents.
 - d) It state that the invoices submitted are in accordance with the terms of the lease.
- 14 At the inspection, Mr Howard 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. He also 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 scheme.

Determination

- 15 As this is a referral from the County Court, *Staunton v. Taylor* (2010 UKUT270(LC)) and *John Lennon v. Ground Rents (Regisport Limited)* [2011] UKUT330(LC) apply. The Tribunal must confine itself to the issue remitted to it for determination namely the reasonableness of the sums claimed by the Applicant.
- 16 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.
- 17 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.
- 18 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.
- 19 Secondly, the Tribunal had to consider whether the service charge costs were reasonably incurred or whether services were of a reasonable standard. The Respondents did not have a complaint about a specific aspect of the service charge but rather made a general comment 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.
- 20 The Tribunal then moved on to determine whether or not there are any statutory provisions preventing the recoverability of the service charges, i.e. Section 20B of the Act. The Respondents claim to have received no correspondence (including accounts) whatsoever from Blue Property Management between September 2007 and December 2009. Further when they did receive invoices, there was no supporting information provided even after requests for the same. Unfortunately no evidence was provided in this case that other leaseholders similarly received no correspondence. The Applicant rebutted that allegation 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. On the balance of probabilities and in the absence of other evidence the Tribunal has to assume that the demands were sent on the dates indicated on the same. The Tribunal, faced with the evidence submitted by the Applicant, finds as an issue of fact that the probability is that the demands were sent. Thus, Section 20B has no application in this case.
- 21 The Tribunal then considered the annual service charges levied by Blue Property Management as indicated in 11 above and also noted that the charges levied by Warwick Estates are £744.81 per property.

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

22 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).

23 The adjusted charges based on the reasonability of the service charges claimed are therefore as follows (per property):

| 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.

24 The Respondents have, however, produced evidence, which the Tribunal accepts, that the Applicant's successor agents Warwick Estates acting on behalf of the successor freeholder, had told the Respondents not to make further payments to the Applicant and to ignore invoices. The Respondent's Defence in the County Court action refers to the correspondence from Warwick Estates to this effect.

25 The Tribunal considers that this evidence submitted by the Respondent raises issues as to whether any amount is actually due from the Respondents to the Applicant and the decision on this is deferred to the County Court.

26 The application is, therefore, transferred back to Barnstaple County court – Case no IQT64371 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 payments;

(b) What amounts (if any) are recoverable and capable of being incorporated in a County Court Judgement.

Summary of Decision

27 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.

These are per property. Issues as to recoverability are deferred to the County Court.

- 28 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 of secret knowledge.
- 29 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