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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
case no: CAM/22UD/LSC/2012/0078

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| **Property** | : | **Flat C & D Osprey Court, 10 London Road, Brentwood, Essex CM14 4QG** |
| **Applicant** | : | **Osprey Court Management Co. Ltd.** |
| **Respondent** | : | **(1) Jacqueline Preece (2) Diana Bohee** |
| **Date of Application** | : | **13th June 2012** |
| **Type of Application** | : | **to determine reasonableness and payability of service charges and administration charges (Sections 19, 27A and respectively of the Landlord and Tenant Act 1985 as amended ("the 1985 Act") and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))** |
| **The Tribunal** | : | **Bruce Edgington (Lawyer Chair) Evelyn Flint DMS FRICS IRRV Peter Tunley** |
| **Date and place of Hearing** | : | **11th September 2012 at Marygreen Manor Hotel, London Road, Brentwood, CM14 4NR** |

# DECISION

1. The Tribunal determines that reasonable and payable amounts on account of service charges for the year commencing 1st January 2012 are £1,449.17 for each lessee.

2. The Tribunal further determines that the reasonable costs of the Applicant's representation before the Leasehold Valuation Tribunal in September 2011 are £2,279.05 payable by the Respondent Jacqueline Preece.

## Reasons

**Introduction**

3. The Applicant owns Osprey Court, 10 London Road, Brentwood, Essex which was erected as a purpose built block of 6 flats in 1983. The long leases of the building are in modern form with the landlord/lessor, a management company responsible for maintaining the property and collecting service charges and the tenant/lessee.

4. The Applicant had been just the management company but it acquired the freehold title in December 1984. The lessees are the shareholders. The Respondents were directors but appear to have resigned some time ago.

5. The reasonableness and payability of service charges for 2010 and 2011 were the subject of a previous tribunal decision which is under case number CAM/22UD/LSC/2011/0079. A copy of this decision ("the 2011 decision") is in the bundle prepared for the Tribunal commencing at page 106. The 2011 decision sets out, in detail, the history of the parties, a description of the property, the lease terms and the law relating to the reasonableness and payability of service charges.

6. This decision must be read in conjunction with the 2011 decision and the matters referred to in the previous paragraph will not be repeated here.

7. As far as this case is concerned, there are 2 applications. The first is for the Tribunal to consider the reasonableness and payability of service charges for the year commencing 1st January 2012. In fact the application simply lists the service charges and asks "*are the service charges detailed reasonable and so payable?*" The list is as follows:-

| | £ |
|---|---|
| Accounts | 120.00 |
| Annual return AGM | 6.67 |
| D & O insurance | 40.00 |
| Buildings insurance | 163.33 |
| Gardening | 373.33 |
| Cleaning | 145.00 |
| Electricity | 19.17 |
| Windows | 38.33 |
| Refuse | 20.00 |
| Repairs & maintenance | 166.67 |
| Health & safety | 116.67 |
| Management fee | 176.67 |
| Reserve fund | 250.00 |
| | 1,635.83 |

8. These are simply an estimate of the costs to be incurred in 2012 as set out in the company accounts at page 122 in the hearing bundle. The

Tribunal bears in mind, of course, that the lease provides for 4 payments on account to be claimed in each year.

9. The second application is more problematic. The only Respondent to that application is Mrs.Preece. It is an application to determine the reasonableness and payability of administration charges. However, from the body of the application, it appears to be an application for the Tribunal to assess the reasonableness and payability of the costs of representation before the Tribunal when it reached its 2011 decision. It relies on clause 2(15) of the lease and the case of **Freeholders of 69 Marina, St. Leonards v Oram and another** [2011] EWCA Civ 1258. The application itself does not say what those costs are but they are set out in the hearing bundle and are claimed to be £6,801.05.

10. Directions were given by the Tribunal chair to timetable the applications to a final hearing. In particular, the Respondents were ordered to file a statement stating, in respect of each claim for service charges, whether and why they are being challenged. If they are being challenged, then they are ordered to say what they think a reasonable charge would be.

11. The 2nd Respondent, Diana Bohee has produced a statement dated 3rd July 2012 at page 28 in the bundle making it absolutely clear that she does not dispute the reasonableness of the service charges set out in the application. She merely makes the point, which is self-evident, that some of the service charges have not yet been incurred. That effectively brings to an end the 1st application in so far as it relates to the 2nd Respondent for reasons which will be made clear from the relevant part of the 1985 Act set out below.

12. As far as the 1st Respondent is concerned, what appears to be her first statement is at pages 17-27 in the bundle. This concentrates on the claim for costs and goes over past history. It does not deal with the present claim for service charges. There is a further undated statement commencing at page 132 in the bundle which appears to go on for 56 pages although it includes and is succeeded by other documents. Of relevance to the question raised in the Tribunal's directions order, she says, at page 187 in the bundle, "*I most certainly find the service charges unreasonable and Mrs. Jakes is fully aware of this. I would like the tribunal to make a ruling on these charges. I have looked at the amounts lessees are asked for from similar blocks and ours are far higher.*" That is all she appears to say on the subject.

13. A 3rd statement or letter dated 6th August 2012 appears at page 330 in the bundle and goes on to page 444. Once again, this seems to concentrate only on the costs of representation before the tribunal for the 2011 decision and matters which were decided at that hearing.

**The Inspection**

14. Although the issues raised in the documents may not have normally warranted an inspection, the valuer member of the Tribunal in the 2011 decision was not available for these applications and the Tribunal inspected the property in the presence of Mrs. Jakes, Mrs. Preece and

some of the other lessees. It should be recorded that one of the Tribunal members i.e. the lay member was caught in traffic following a road accident and was unable to attend the inspection although he was the same lay member as in the 2011 decision and was familiar with the property.

**The Law**

15. The 2011 decision sets out the law relating to service charges and is not repeated here save to say that Section 27A of the 1985 Act says that no application may be made in respect of a matter which has been agreed or admitted by the tenant. As Ms. Bohee has agreed that the 2012 service charge claim is reasonable and does not challenge the payability of such charges, the Tribunal no longer has jurisdiction to deal with the application in so far as it relates to her.

16. Schedule 11, Part I of the 2002 Act defines administration charges as "*an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly...in respect of a failure by the tenant to make a payment by the due date to the landlord...or in connection with a breach (or alleged breach) of a covenant or condition in his lease*".

17. As the applicants have rightly pointed out, the case of **69 Marina** has established a principle that the costs of representation before an LVT can now be considered to be expenses incurred in contemplation of proceedings for forfeiture under Section 146 of the **Law of Property Act 1925** ("the 1925 Act").

**The Lease**

18. Once again, the relevant terms of the lease are in the 2011 decision. In addition clause 2(15) of the lease does contain a covenant on the part of each lessee to pay "*all costs charges and expenses (including legal costs and Surveyors' fees) which may have been incurred by the lessor....under or in contemplation of any proceedings...under Section 146...of the Law of Property Act 1925 or in the preparation or service of any notice thereunder...*".

**The Hearing**

19. The hearing was attended by those who had attended the inspection and some others including Martin Pye, Jeanne Defries and Mrs. Jakes to represent the Applicant and Diana Bohee, Jacqueline Preece, Jerry Stagg and Ian Daniels. James Nutman from Flat E attended as an observer.

20. The Chair reminded those attending that despite a bundle of 445 pages, the hearing would be concentrating on the 2 applications i.e. the reasonableness and payability of the service charge budget for 2012 and the assessment of costs of representation before the Tribunal in September 2011. Very few documents within the bundle were relevant to those issues.

21. The Tribunal was disappointed to hear from Mrs. Preece that the first she knew of a breakdown in the service charge budget was when she received the bundle. Mrs. Jakes was asked about that and she said that the Applicant had received legal advice on this and had been told that after the service of the Section 146 Notice they should not send anything to Mrs.Preece as this could be seen to be admitting the continuance of the lease.

22. With respect to those who gave this advice, it would appear to be wrong. The budget is contained in the audited accounts of the landlord company of which the Respondents are shareholders. They are therefore entitled to see these accounts in that capacity. In any event, the Tribunal Chair expressed the view that it was perfectly possible to continue to give important information to a lessee after a Section 146 Notice had been served with appropriately worded letters reserving the landlord's position. In this case, the failure to provide information had only served to increase tensions unnecessarily, particularly when the evidence showed that the breach in the Section 146 notice had been remedied and the solicitor's costs paid.

23. Having now received the information, Mrs. Preece wanted to question the reserve fund payment, management fees, health and safety fees and the gardening charges. She was told that the gardening at the moment was being undertaken by the directors without charge to the lessees in view of the lack of funds. She produced estimates from 4 companies dealing with asbestos surveys which were passed to Mrs. Jakes.

24. As far as the reserve fund was concerned, Mrs. Jakes said that at the end of 2010 there was £3,003 in the reserve which had been earmarked for the windows to flat F and some handrails. The new monies requested were for the cost of repairing 'blown' plaster in the stairwell and internal decorations. An estimate had been received for about £5,000 for this work although Mrs.Jakes was to obtain other estimates and felt that she could do better than that.

25. As far as the management charge was concerned, Mrs. Jakes said that she charged £140/150 or thereabouts plus VAT per flat per annum which was less than it cost her firm. She referred to receiving many communications from Mrs. Preece including several e-mails a day at times. On the question of health and safety, she said that there was asbestos in the tiles which, she claimed had to be monitored plus a health, safety and fire risk assessment.

26. The Tribunal express some surprise about the asbestos question. By 1983, when this property was said to be built, the dangers posed by asbestos were well know, and the Tribunal would be surprised if the local authority had allowed any construction material to include asbestos. Obviously, it is not privy to any existing report, but this matter should be looked at.

27. It is right to record here that for and on behalf of Mrs.Bohee, a complaint was made that she should never have been a Respondent to this application.

28. Turning to the other application, Mrs. Preece explained that a vital page from her documentation had not been included in the bundle which was handed to the Tribunal and given page number 189a. This together with page 189 were considered carefully by the Tribunal. The parties said that they did not need to expand on the arguments set out in their documentation.

29. On being questioned by the Tribunal, Mrs. Jakes said that she was assisted in her company by Donna Jacobs who had 10 years' experience in property management. She estimated that she had 1 LVT case to prepare in each year. Her time records were odd sheets of paper where she would record when she started a task and when she finished it. These pieces of paper then became marked with other notes. She would transfer the times spent to a spreadsheet and then destroy the notes. She said that she was not a solicitor and did not have sophisticated time recording equipment.

**Conclusions**

30. On the question of the service charge budget for 2012, the decision of the Tribunal is that this is based on the budget figures contained in the last accounts and, save for one item, they would appear to be reasonable budget items. That is not to say that the Tribunal will necessarily approve the final figures.

31. The one item is for gardening. The Tribunal would want to know a good deal more about the gardening charges because they do appear to be rather a lot for a garden which would appear to be fairly easy to maintain. However, with the admission that no gardening charges are actually being incurred at the moment, for whatever reason, the budget figure would seem to be unreasonable.

32. Taking a broad brush approach the Tribunal reduces the gardening budget figure by half to £1,120 or £186.67 each.

33. On the question of costs for the LVT hearing, it is agreed that a notice under Section 146 of the 1925 Act was served on 20th December 2011. The Tribunal therefore considers it to be a reasonable inference that the 2011 decision was made because the Applicant was contemplating the service of such notice.

34. The 2011 decision did, effectively, show that the 1st Respondent was in breach of the terms of her lease as she had failed to pay service charges. Thus, at the time the costs were incurred she was allegedly in breach of covenant which would bring such expenses within the definition of an administration charge because of the effect of the **69 Marina** case.

35. This Tribunal can therefore consider the reasonableness of the charge being claimed by Jakes Property Services Ltd. for representation. The spreadsheet from Mrs. Jakes set out the figures for time spent and the hourly rate, which is calculated to include all overheads. It is considered by the Tribunal that although Mrs. Jakes did the best she could in the circumstances, she readily admits that she is not a lawyer and is not very experienced in the role of representing parties at tribunal hearings.

36. The important element of any claim for time spent is a consideration of what an experienced advocate would do. One must consider proportionality and relevance. For example, spending 34.25 hours on statements is excessive. Spending 20 hours on the hearing bundle is excessive. What should be done is to consider your case and what is relevant, in law, to such case. One must obviously look through documents provided by the Respondent but if they are completely irrelevant, there is no need to spend any more time on them. An experienced advocate would know this.

37. In this case, the Tribunal noted in the 2011 decision that much of the hearing bundle was irrelevant to the issues to be determined and the same thing has happened for this hearing. That is not to say that the person who provided all these irrelevant documents should not have to pay for them to be copied.

38. The only way that the Tribunal can begin the task of assessing the costs is to decide what would be a reasonable amount of time to spend. In this case, for example, Mrs. Jakes should have considered what she wanted to go in the bundle to establish her case. Once the time came for preparing the hearing bundles, she should have put her documents in one section, added the Respondent's documents, prepared an index, numbered the pages and then asked the copying company to just photocopy the number of bundles required. In other words, they would come back from the copying company already in bundles which just then had to be put in ring binders. If the Respondent then decided to continue adding documents after the bundles had been prepared in accordance with the directions, she should have been told that she would have to prepare bundles of these additional documents herself.

39. Thus, and again taking a broad brush approach, the Tribunal finds that a reasonable amount of time to spend would be 2½ hours to take instructions, 1½ hours to prepare the application, 3 hours to prepare statements, 2 hours to consider the Respondent's documents, prepare an index and page number the documents, 3 hours to prepare for the hearing and 3 hours for attending the inspection and hearing itself.

40. This would add up to 15 hours. At the original charging rate of £100 per hour, which the Tribunal considers to be reasonable, this equates to £1,500 plus VAT. As to the disbursements claimed, the 2011 decision was that the tribunal fees could not be recovered and that decision has not been appealed. Although Mrs. Preece produced an

alternative quote for the copying, the Tribunal considered that the voucher produced by Mrs. Jakes was within the range of reasonableness and is allowed in full. The other disbursements do not appear to be disputed and appear reasonable.

41. All these figures total up to £2,279.05 which is the amount allowed by the Tribunal as being a reasonable administration charge.

42. As to the costs of today's hearing, the Tribunal considers that the application in respect of service charges was somewhat premature because it now leaves the door open for another challenge to the 2012 expenditure. As far as the assessment of costs is concerned, Mrs. Preece appears to have been justified in objecting to the amount claimed. Thus, if the Tribunal had been asked, it would probably have made an order under Section 20C of the 1985 Act preventing the costs of representation from being recovered as part of any future service charge, save for one important item. The Tribunal does consider that the costs of copying the hearing bundle can form part of a future service charge demand from Mrs. Preece because, once again, she has sought to rely on large numbers of irrelevant documents.

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**Bruce Edgington**
**Chair**
**13th September 2012**