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LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/34UF/LSC/2011/0118

Subject Property: 416, Northampton House, Wellington Street, Northampton NN1 3NB

Applicant: Northampton House RTM Company Limited, 10 Riverdown, March, Cambridgeshire PE15 8RA

Respondent: Mr Stephen John Allenby, Leaseholder of 416, Northampton House

Landlord: Palacemews Properties Limited, Princess Park Manor, Friern Barnet Road, London N11 3FL

Date of Application: 23rd September 2011

Date of Hearing: 22nd February 2012

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Tribunal: Dr JR Morris (Lawyer Chair)
Mr GRC Petty FRICS
Mr DS Reeve

Attendance:

Applicant: Ms Hazel Harman, Secretary of the Applicant
Mr Allan Calverley, Chairman of the Applicant

Respondent: Mr Stephen Allenby

DECISION & STATEMENT OF REASONS

Decision:

- The Tribunal determined that the increased second Interim Service Charge payable on the 29th September 2011 was unreasonable.
- The Tribunal determined that a reasonable increased second Interim Charge payable on the 29th September 2011 would have been £900.00.
- The Respondent having now paid the outstanding charges the Tribunal determines that the repayment of the overpayment by the Applicant should be made pursuant to the service charge balancing provisions in Paragraph 3.2 Schedule 7 Part 1 of the Lease.

A copy of this Decision is to be sent to the County Court.

Reasons

Application

1. The Application is made on a transfer from the Northampton County Court by District Judge Whitehurst of Claim Number 1MK01069 on the 23rd September 2011 for determination of reasonableness and payability of service charges by a Leasehold Valuation Tribunal.

Issues

2. The issues identified in the Witness Statement dated 7th October 2011 by Ms Hazel Harman, Secretary of the Applicant, included in the Statement of Claim is the reasonableness of the increase in the service charge for the second half of the year 1st April 2010 to 31st March; the increase being part of the second instalment of the Interim Service Charge payable on the 29th September 2010.

The Law

3. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
5. 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 provision 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 or subsequent charges or otherwise.*

6. Section 21B Notice to accompany demands for service charges
- (1) *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.*
 - (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
 - (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
 - (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
 - (5) *Regulations under subsection (2) may make different provision for different purposes.*
 - (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

7. 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 would be payable,*
 - (b) the person to whom it would be payable,*
 - (c) the amount which would be payable,*
 - (d) the date at or by which it would be payable, and*
 - (e) the manner in which it would be payable.*

Description and Inspection of the Subject Property

8. The Tribunal members had inspected the Subject Property on 2nd December 2009 and were therefore aware of the type, extent and layout of the property. No matters relating to the condition of the Subject Property were in issue, only the reasonableness of the increase in the Interim Charge.

9. At the previous inspection the Tribunal found that the Building comprised 187 flats and car parking over 11 floors plus a roof space, which the Applicant retains, and which is not part of the common parts and no access is available to the Tenants. A metal gate prevents unauthorised access to the roof. Car parking is on the lower ground floor and ground floor levels. On the ground floor there is a foyer with reception and a Leisure Centre. The Common parts comprise the foyer and Leisure Centre, the stairwells, lifts and corridors giving access to the flats and the pathways to the car parking spaces. This general description is understood to be extant.

The Lease

10. A copy of the Lease was provided which was agreed to be the same as all the Leases in the Property except for the description of the specific demise. The Lease is for a term of 125 years from 24th June 2000.
11. Clause 1 of the Lease defines the demise in general terms and refers to the specific definition of the demise in Schedule 2 of the Lease together with the easements and rights set out in Schedule 3 except and reserving the rights in Schedule 4 and subject to the matters set out in Schedule 5. The flats have designated parking spaces in the car parks.
12. Schedule 7 requires the Tenant to pay a Service Charge which is a fair proportion of the Service Costs which are the costs incurred by the Landlord in carrying out its obligations under the Lease including buildings insurance. The Tenant shall pay an Interim Charge in advance on the 29th September and 25th March each year. A negative balance is payable within 14 days of invoice whereas a positive balance is carried forward to the next year. The "fair proportion" for the years in issue has been calculated according to the area of each Apartment. There are four sizes of apartment as follows:
- | | | |
|-----|-------------------------------------|-------|
| 104 | flats with 2 bedrooms & 2 bathrooms | 0.58% |
| 31 | flats with 2 bedrooms & 1 bathroom | 0.53% |
| 51 | flats with 1 bedroom & 1 bathroom | 0.45% |
| 1 | flat with 1 bedroom & 1 bathroom | 0.48% |
13. The Landlord must keep a detailed account of the Service Costs and prepare a Service Charge statement for each accounting period ending 31st March. The statement must:
- State the Service Costs for each major category of expenditure
 - State the amount of the Service Charge
 - State the total of the Interim Charge paid by the tenant
 - State the negative or positive balance and
 - Be certified by a qualified accountant.
14. The Services to be provided and which shall be the subject of the Service Charge are set out in Part 2 of Schedule 7 and include:
- Repairing, replacing, renewing, maintaining, inspecting and cleaning the roof main structure outside and foundations of the Building
 - Repairing, replacing, renewing, maintaining, inspecting and cleaning the shared conduits and facilities and other matters including the road and footpaths of the Estate.
 - Decorating the outside of the Building.
 - Repairing and decorating the common parts.
 - Lighting and cleaning the common parts including the amenity areas and car park.

- Maintaining a fire protection system and providing security arrangements
- Maintaining, repairing, replacing, renewing, surveying, insuring, inspecting and cleaning any lifts.
- Obtaining insurance valuations.
- Maintaining, insuring, staffing, running, repairing and replacing the Leisure Centre
- Paying the reasonable salaries, fees and expenses of any employees.
- Maintaining and preparing Service Charge accounts.
- Repairing fences, walls, hedges and other boundary structures
- Maintaining a common facility for television reception and an entry phone system
- Paying the reasonable and proper fees and disbursements of any managing agent.
- Maintaining a reserve fund

Applicant's Case

15. Included in the written statement of case was a witness Statement dated 7th October 2011 by Ms Hazel Harman, Secretary of the Applicant the contents of which were confirmed at the hearing and were as follows.
16. The Applicant is a Right to Manage Company, which was formed in February 2009 and took over the management of Northampton House, which includes the Subject Property from the 1st April 2010. Canonbury Management was appointed as the Managing Agents for the Applicant. On taking over as Agents a budget based on the 2009 estimate of charges prepared under the auspices of the Landlord was set. It was stated that Canonbury Management did not consult with the Directors of the Applicant. In her statement Ms Harman said that:
- “Canonbury Management worked on their own agenda and it soon became abundantly clear that they would go their own way and not heed the opinion of the Directors or the Leaseholders.”
17. It was said that a meeting was held on 19th May 2010 at which it was apparent that the Directors and Leaseholders did not have any faith in Canonbury Management and at the end of May the Chairman of the Applicant sent a directive to Canonbury Management asking it not to expend any more money than that which it had collected in without express sanction from the Applicant, Ms Jennifer Middleton, Canonbury Management's Manager of the Subject Property gave an undertaking to comply with this directive. However, she was replaced and Canonbury Management did not comply with the undertaking. By September 2010, it was said that the Canonbury Management had spent £90,000 more than had been collected.
18. It was said that because Canonbury Management's spending was so high it issued a second Interim Service Charge payable on 29th September 2010 that was significantly higher than its estimate at the beginning of the financial year. It appeared to the Directors of the Applicant that Canonbury Management did not intend to curb its expenditure and therefore it was informed that its contract would be terminated. M & C Property Management UK Ltd were appointed from the 1st November 2010 although it was agreed that Canonbury Management could draw its fees up to the 31st March 2012 from the service charges it had already collected but the balance of the sums were to be returned to the Applicant.

19. The Applicant said that it has repeatedly requested from Canonbury Management a breakdown of the Leaseholder Service Charges, including an account of the sums received and the costs paid together with invoices. No information has been given and the accounts for the year ending 31st March 2011 have been carried out from such information as could be obtained from Canonbury Management for the first 6 months and from M & C Property Management UK Ltd for the second 6 months.
20. Because a substantial number of Leaseholders had paid Canonbury Management the inflated second Interim Service Charge the Directors of the Applicant decided that to maintain equality between all leaseholders those Leaseholders who had not yet paid the second Interim Charge before the termination of Canonbury Management' contract should be required to pay it to M & C Property Management UK Ltd. It was anticipated that with better management the second Interim Service Charge invoiced by Canonbury Management would be found to lead to an excess payment and in fact as at 31st March 2012 a surplus of nearly £27,000 was carried forward. However, it was said that this excess is needed to pay for costs to be incurred for the following year.

Respondent's Case

21. The Respondent stated that he had received an invoice from Canonbury Management of £711.00 for the first Interim Charge payment due on the 1st April 2010. He said he had not received a Service Charge Budget Statement by post or e-mail. He had always paid by monthly instalments and so set up an order with his bank for the appropriate amount. He subsequently received an invoice of £1,088.00 for the second Interim Charge payable on 29th September 2010.
22. The Respondent considered this excessive. Firstly because in the past the first and second charges had been the same namely half of the budget estimated at the beginning of the financial year. Secondly he calculated that this would significantly increase the estimated service charge to well above that of previous years. He referred to the estimated service charge of £250,225.08 for the year ending 31st March 2009 determined to be reasonable by a Leasehold Valuation Tribunal. He also felt that services had declined in the first six months of the year and therefore could not see how the increase was justified.
23. He continued to make his original monthly payments but refused to increase them to cover the new amount until he had received a written explanation. He telephoned the Managing Agent who by that time had changed from Canonbury Management to M & C Property Management UK Ltd. He found M & C Property Management UK Ltd very unhelpful on the matter and they refused to give him an explanation in writing. They informed him that Canonbury Management had levied the charge and that M & C Property Management UK Ltd was required to collect it. When he attempted to contact Canonbury Management he was told they were no longer the Agents. He contacted Directors of the Applicant who he considered did not explain the situation to him but told him that he must pay, and later he was told that enforcement action would be taken. At that time he said that he had requested the matter be referred to a Leasehold Valuation Tribunal but instead County Court proceedings were commenced and the Court transferred the case to the Tribunal. He said that he had felt very frustrated at the lack of explanation for, what was to him, a very significant increase and there were some heated exchanges between himself and the Secretary of the Applicant.
24. The Respondent stated that he had now paid the outstanding amount on the increased second Interim Service Charge.

Discussion

25. In response to the Tribunal's questions the Applicant's Representatives stated that Canonbury Management had produced a budget at the beginning of financial year, which had estimated costs as being £245,138.00 (a copy was provided). It was said that Canonbury Management sent Service Charge Statements by e-mail unless leaseholders specifically requested a hard copy by post. It was calculated that the increased second Interim Service Charge raised the estimate and hence the payments to about £310,000.00. The Applicant's Representatives referred the Tribunal to a copy in the bundle of the Service Charge Accounts for the year ending 31st March 2011, which stated that the actual costs were £280,480.00. The Applicant's Representatives submitted that some increase was justified but it was agreed that a rise from £711.00 for the first Interim Service Charge to £900.00 for the second Interim Service Charge would have been sufficient.
26. The Applicant's Representatives stated that the Applicant had not authorised the second Interim Service Charge increase and had only enforced it to maintain equality between the Leaseholders. It was intended that any overpayment by the leaseholders could be addressed through the service charge balancing provisions of the Lease. The Respondent's frustration was appreciated as the Directors and Secretary of the Applicant at the time also felt at a disadvantage.

Decision

27. The Tribunal considered Schedule 7 Part 1 of the Lease, which set out the provisions for payment of the service charge. It was noted that Paragraph 3 only states that:
- "The Tenant shall pay to the Landlord and Interim Charge on 29th September and 25 March in advance in each year."
- It does not state that the Interim Charges were to be equal payments and therefore the Tribunal found that the payments might be of different amounts.
28. The Tribunal found that the increased second Interim Charge produced a significantly higher overall estimated service charge of £310,000.00 than the actual service charge of: £268,293.42 for the year ending 31st March 2008, £270,472.86 for the year ending 31st March 2009 or the estimated service charge of £250,225.08 for the year ending 31st March 2009 or the original estimated service charge for the year ending 31st March 2011 or the actual service charge of £280,480.00 for that year. The Tribunal found that the Respondent had not received a written explanation, which he could reasonably have expected.
29. It was apparent to the Tribunal that the relationship between the Applicant and Canonbury Management had broken down during the period 1st April 2010 to 29th September 2010 and that the second Interim Service Charge was calculated by the Applicant's Agent without the agreement of all the Directors of the Applicant. The Tribunal accepted that the Directors of the Applicant acted with the intention of ensuring equality between the Leaseholders with a view to addressing any overpayment by the leaseholders through the service charge balancing provisions of the Lease. These are found in Paragraph 3.2, which states that:
- "3.2 If a service charge statement shows a positive balance the Landlord shall carry forward that sum to the next financial period on behalf of the Tenant when giving the statement"

30. Therefore the Tribunal determined that the increased second Interim Charge payable on the 29th September 2011 was unreasonable. The Tribunal determined that a reasonable Interim Charge to be paid on the 29th September 2010 would have been £900.00. However, the Respondent having now paid the outstanding charges the Tribunal determines that the repayment of the overpayment should be made pursuant to the service charge balancing provisions in Paragraph 3 Schedule 7 Part 1 of the Lease.

JR Morris (Chair)

22nd March 2012