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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

(Southern Rent Assessment Panel)

In an application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002
and under section 20C of the Landlord and Tenant Act 1985

Case Number: CHI/00HB/LVA/2012/0002
Properties: 52, 55 & 60 Talavera Close, Bristol BS2 0EF
Applicant: Mr U Hassan
Respondent: QDIME Limited
Tribunal: Alan Johns MA (Lawyer Chairman)
Robert Wilson LLB (Lawyer Member)

PAPER DETERMINATION

Introduction

1. In this case Mr Hassan, the applicant tenant, seeks to challenge the reasonableness of a fee of £65 charged for registration of subletting under long leases held by him and his wife of flats at 52, 55 & 60 Talavera Close, Bristol BS2 0EF.
2. At the request of QDIME Ltd, the respondent landlord, the Tribunal has considered as a preliminary point whether it has jurisdiction to entertain such a challenge.

The leases

4. The leases of these flats in Talavera Close are dated 29 August 2008. They incorporate by reference a "Leasebook" which in plain English sets out, amongst other things, the obligations of the tenant.
5. Those obligations include the following:
 - 5.1 By clause 10.6, "You must not grant a sublease or tenancy of just part of your apartment. You may grant a sublease of the whole of your apartment so long as it lasts at least 90 days and is not in breach of current Legal Obligations".
 - 5.2 By clause 10.7, "...if you have granted a sublease or tenancy you must within one month of the event – give us and the management company notice of it, including a copy of all relevant documents – pay each of us and the management company £25 or such other reasonable registration fee as we and the management company then charge plus VAT".
6. The leases do not therefore require consent for subletting. They require simply that notice of subletting be given.

Statutory provisions

7. The statutory control of administration charges is found in Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
8. The relevant provisions for the purposes of this application are as follows:
 - 1
 - (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - ...
 - (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
 - ...

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...
5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.

Procedure and submissions

9. By directions given on 12 June 2012 the Tribunal gave notice that it intended to proceed to determine this case without a hearing. Neither party requested a hearing.

10. By its statement of case (submitted by Hazelvine Ltd as managing agent) QDIME Ltd contended that the Tribunal did not have jurisdiction to determine the reasonableness of the charge made for registration of subletting; pointing out that the leases do not contain any requirement for consent to subletting.

11. By way of response, Mr Hassan in a letter dated 6 September 2012 complained that QDIME Ltd was trying to avoid jurisdiction as the fee was not justified and contended that the Tribunal did have jurisdiction. He referred to two LVT decisions where such jurisdiction had been exercised, namely CAM/42UD/LAC/2008/0001 and CAM/22UD/LSC/2010/0114.

Determination

12. The Tribunal determines that it does not have jurisdiction to determine the reasonableness of the £65 registration fee.

13. In a case where the lease includes a requirement for consent to subletting and the landlord registers the details of the subletting as part and parcel of the process of giving consent then any fee for such registration may be seen 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 for or in connection with the grant of approvals under his lease, or applications for such approvals” and so be an administration charge.

14. But that is not this case. Here, there is no requirement for consent to subletting as QDIME Ltd points out. The fee of £65 cannot therefore be regarded as payable in connection with any approval or application for approval.

15. No other limb of the definition of administration charge in para.1 of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is in point.

16. It follows that the fee is not an administration charge within the meaning of the legislation and therefore the legislation gives the Tribunal no jurisdiction to determine the reasonableness of the fee.

17. The Tribunal notes the two decisions relied upon by Mr Hassan but gets no assistance from them. Whilst they are cases in which the Tribunal determined the reasonableness of registration fees, in neither case was the issue of jurisdiction raised.

18. Our determination does not mean that the fee cannot be challenged, merely that the LVT is not the right place for any challenge. The fee could be challenged in the county court. The outcome of that challenge would be a decision for the judge. But the onus would be likely to be on QDIME Ltd to justify a change in fee from the figure specified in the leases, being £25, given that the leases are so recent.

Section 20C application

19. Mr Hassan made an application under s.20C of the Landlord and Tenant Act 1985 for an order that any costs incurred in connection with these proceedings are not to be recoverable as service charge.

20. The Tribunal determines that no such order should be made in this case. QDIME Ltd has successfully resisted the application. And no criticism can be made of QDIME Ltd's conduct in the proceedings.

Signed 

Dated 26/10/12

Alan Johns (Lawyer Chairman)