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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/00HG/LAC/2012/0012
Properties: 4 Echo Crescent, Manadon Park, Plymouth PL5 3UQ
Applicant: Ian Anderson
Respondent: Holding and Management (Solitaire) Ltd

Tribunal: Alan Johns MA (Lawyer Chairman)
Robert Wilson LLB (Lawyer Member)

PAPER DETERMINATION

Introduction

1. In this case Mr Anderson, the applicant tenant, seeks to challenge the reasonableness of a fee of £330 charged for consent to sublet his flat at 4 Echo Crescent, Plymouth, Devon PL5 3UQ.
2. The fee is charged by Holding & Management (Solitaire) Ltd ("H&M") and is called a "Global Licence" fee; "Global" because it amounts to a licence for all sublettings for a period of five years.

Lease and background facts

3. Mr Anderson's lease of the flat is dated 28 September 2006 and is made between Westbury Homes (Holdings) Ltd as landlord, a John & Danielle Mallard as tenant, and H&M as a further party referred to in the lease as "the Company".
4. There is a tenant's covenant at paragraph 10(c) of the Third Schedule to the lease "Not to underlet the Property as a whole (but not separately) without the consent of the Company (such consent not to be unreasonably withheld)".
5. There is also at paragraph 17 of that schedule a tenant's covenant to pay "the reasonable costs and expenses of the Company" incurred in giving any consent.
6. Mr Anderson paid the fee of £330 on receipt of an invoice from Estates and Management Ltd ("E&M"). E&M appears to be the managing agent for H&M. On learning later that other tenants in his development had refused to pay that fee he questioned it. Not being satisfied with the response he now challenges the reasonableness of that fee by this application to the Tribunal.

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.

...

2

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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 to have agreed or admitted any matter by reason only of having made any payment.

...

Procedure and submissions

9. By directions given on 5 July 2012 the Tribunal gave notice that it intended to proceed to determine this case without a hearing. Neither party requested a hearing. Both have submitted statements of case, H&M doing so by E&M.

10. H&M's case was that the Tribunal did not have jurisdiction to determine the reasonableness of the fee of £330 as it was "a voluntary contract", being an alternative to a fee for consent to and registration of one subletting totalling £220 (made of £135 plus a further registration fee of £85). Alternatively, H&M submitted that the figure of £330 was reasonable.

11. In support of its case as to reasonableness, H&M's statement included "A description of some of the possible stages of the consent application procedure" and "a list of common complications". It estimated that applications take between 3 and 10 hours of work and that the average time for an application was 6.5 hours. E&M calculated an hourly rate for such work of £55. E&M also included an estimate of the time actually spent on this case so far totalling 3 hours 25 minutes.

12. Mr Anderson's case was that the charge was at least presented to him as due under the lease. He considered the fee unreasonable. In his view that the consent would cost very little to produce.

13. Both sides referred to previous LVT decisions. The Tribunal has had regard to them. Those relied on by Mr Anderson included reference to four appeals including Holding & Management (Solitaire) Ltd v Norton [2012] UKUT 1 (LC) recently determined by George Bartlett QC, President of the Upper Tribunal (Lands Chamber) concerning reasonableness of charges for consent to subletting.

Determination

14. For the reasons set out below, the Tribunal determines:

14.1 That the Tribunal does have jurisdiction to determine the reasonableness of the Global Licence fee.

14.2 That the Global Licence fee of £330 is unreasonable. A reasonable fee is £125.

15. As to jurisdiction, the Tribunal is satisfied that the Global Licence fee is a variable administration charge.

16. First, it is an amount payable directly or indirectly for or in connection with the grant of approvals under the lease, or applications for such approvals which is neither specified in the lease nor calculated in accordance with a formula in the lease. It is therefore within the statutory definition of a variable administration charge.

17. Second, to say that it is a voluntary contract is really to say no more than either that the tenant has paid the fee or that it is an alternative fee. That the tenant has paid the fee is no bar to jurisdiction under the 2002 Act as Schedule 11 to the Act makes clear at paragraphs 5(2) and (5). And that E&M has two charging structures from which tenants are invited to choose does not make either fee structure any less a variable administration charge.

18. As to the question of the extent to which the sum of £330 is reasonable, the nature of the Global Licence means that is not an easy question.

19. Further, E&M's submissions on reasonableness focussed on the work involved in giving consent to one subletting for which the fee is £135, being a Standard Licence.

20. Given the nature of a Global Licence and those submissions the Tribunal has approached the question by considering the appropriate fee for one subletting and then assessing the reasonableness of the Global Licence by reference to such appropriate fee. The Tribunal is helped at that latter stage by the fact that the Global Licence fee sought by E&M is less than double the fee for one transaction of £220. In the absence of any other material, the Tribunal takes that as a guide to the right relationship between the two fees.

21. In four appeals including Holding & Management (Solitaire) Ltd v Norton [2012] UKUT 1 (LC) George Bartlett QC, President of the Upper Tribunal (Lands Chamber) considered whether the sums of £135 and £105 charged for consent to underletting were reasonable. He noted that in each case the work involved was claimed to be extensive and that it was estimated that an administrator would spend approximately two hours dealing with an application for consent and the legal department about one hour. He was not satisfied that the fees of £135 or £105 were justified. He described the list of work as "a list of all the things that could conceivably be done in connection with the grant of consent rather than the

things that would need to be done in a typical case or that were in fact done in the cases under consideration". He said that he was "wholly unpersuaded" by the assertion that it was necessary for an administrator to spend approximately two hours dealing with an application and the legal department about one hour. Doing the best that he could on the information before him he determined the amount payable in each case to be just £40.

22. The Tribunal has reached the conclusion that a fee of £135 for consent to one subletting is not justified on the evidence.

22.1 As in the appeals before the Upper Tribunal, the descriptions of work relied upon by E&M were lists of things that may possibly be done; not that were done typically or in this case. Neither is the further estimate of the work actually done in this case a reliable guide. Much of it relates to communications after the giving of the licence and is concerned with this application to the Tribunal. The remainder seems to us overstated or inappropriate; for example, 20 minutes for a further letter being sent to correct E&M's error in a previous letter.

22.2 The Upper Tribunal was wholly unpersuaded by the assertion that typically three hours were involved in dealing with an application for consent. This Tribunal is faced with an assertion that 6.5 hours is the average time spent. We simply cannot see how such an assessment could have any reasonable basis.

22.3 On the evidence, dealing with an application for consent is an administrative task only. It is notable that there is no suggestion in E&M's lists that any checks are done on the subtenant. That leaves just three things to be done: (1) the simple task of confirming that the subtenancy is within the terms of the lease and perhaps checking whether the account is in arrears, (2) issuing a standard letter of consent, and (3) updating the records. There is no complex documentation and no need for a legal fee earner.

22.4 That the task is a limited administrative one is reflected in the existence of the "Global Licence" which the Tribunal is having to consider in this case. If substantial work was done assessing whether to give consent and, if so, on what terms it would not be possible to give a blanket consent to all underlettings in a period of five years as E&M does.

23. Given the limited nature of the task as carried out by E&M, being one that can be performed by an administrator, the Tribunal's view is that no more than £75 is appropriate and reasonable as a fee for one transaction.

24. We have reached our own view as to that sum rather than adopting the £40 figure from the Upper Tribunal decisions. We do not read those decisions as giving general guidance as to a figure for consents to sublet. Indeed, George Bartlett QC made clear that such sum was the product of him doing the best he could on the limited material before him. Further, it is clear from the decisions that such figure was on top of a sum paid for registering the subletting. Here, the Tribunal's figure of £75 includes registration; it being clear that updating the records was part of the consent application process for which £135 was charged.

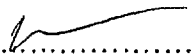
25. As noted above, the only guide that the Tribunal has to the relationship between fees is that the Global Licence fee should be less than double the appropriate fee for one transaction.

26. Accordingly, having concluded that no more than £75 is appropriate and reasonable as a fee for one transaction, the Tribunal determines that no more than £125 is reasonable for a Global Licence.

Section 20C application

27. Mr Anderson 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.

28. The Tribunal makes such an order. H&M has failed on both questions, namely jurisdiction and reasonableness. And no criticism can be made of Mr Anderson's conduct in the proceedings.

Signed

Dated 24/10/12

Alan Johns (Lawyer Chairman)