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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LIS/2011/0062

REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended ("the 1985 Act")

Applicant/Leaseholder : Ms Marie Hopp

Respondent/Landlord : 7 McKinley Road Bournemouth Limited

Building : 7 McKinley Road, Bournemouth, BH4 8AG

Premises : 7A McKinley Road, Bournemouth, BH4 8AG

Date of Application : 25 August 2011

Date of Initial Directions : 8 September 2011

Date of Directions Hearing : 4 October 2011

Date of Substantial Hearing : 4 January 2012

Venue : Bay View Suite, Royal Bath Hotel, Bath Road, Bournemouth, BH1 2EW

Appearances for Applicant/Leaseholder: Ms Hopp

Appearances for Respondent/Landlord: Mr Owen Jones, Ms Ruth Davis, Mrs Ilse Prince, and Mr John Farnhill

Observing : Mrs J White and Mrs S Macey

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr N P Jutton, and Mr A J Mellery-Pratt FRICS

Date of Tribunal's Reasons : 6 January 2012

Introduction

1. This is an application by the Applicant/Leaseholder for a determination about service charges

2. At the directions hearing on 4 October 2011 the following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, namely,:
- a. in relation to the items in the service charge accounts for the period ending March 2011, whether each of the sums referred to had been reasonably incurred
 - b. in relation to the items claimed by Ms Hopp to have been carried at her expense as a result of a breach of covenant to do so by the Respondent/Landlord, namely repairs to a wall and gate, hedge cutting, and weeding and raking of a gravel path :
 - whether the Tribunal had jurisdiction to hear and decide such a claim
 - if so, whether the claim should be taken into account in determining the payability of the service charge for the period ending March 2011
 - c. whether any expenditure in that respect by Ms Hopp should be taken into account in determining the payability of the service charge for the period ending March 2011
 - d. in relation to the references in the application to a claim about a payment of £581.63 by Royal Insurance :
 - whether the Tribunal had jurisdiction to hear and decide such a claim
 - if so, whether the claim should be taken into account in determining the payability of the service charge for the period ending March 2011
 - e. in relation to the references in the application to claim about pruning a lime tree :
 - whether the Tribunal had jurisdiction to hear and decide such a claim
 - if so, whether the claim should be taken into account in determining the payability of the service charge for the period ending March 2011
 - f. whether, and, if so, to what extent, the costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder

The lease of the Premises

3. The material parts of the lease are as follows :

Clause 3 (Tenant's obligations)

3.2 to pay the service charge calculated in accordance with the Third Schedule on the dates stated there

Clause 4 (Landlord's obligations)

4.2 [to insure the Building]

4.2(c) to note the interest of the Tenant... on the policy and to provide a copy of it at the Tenant's expense

4.4 to provide the services listed in the Fourth Schedule for all the occupiers of the Building and in doing so

(i) the Landlord may engage the services of whatever employees, agents, contractors, consultants and advisers the Landlord considers necessary

4.5 to maintain a reserve fund in accordance with the Fifth Schedule

**Third Schedule
Service Charge**

1 "Service Costs" means the amount the Landlord spends in carrying out all the obligations imposed by this lease.....and not reimbursed in any other way including the cost of borrowing money for that purpose

"final service charge" means one-fifth of the Service Costs

"interim service charge instalment" means a half-yearly payment on account of the final service charge which is half of the final service charge on the latest service charge statement

2 The Landlord must

- (a) Keep detailed account of Service Costs
- (b) Have a service charge statement prepared for each period ending on 25th March and 29th September during the Lease period which
 - (i) states the service costs for that period with sufficient particulars to show the amount spent on each major category of expenditure
 - (ii) states the amount of the final service charge
 - (iii) states the interim service charge instalment paid by the Tenant
 - (iv) states the amount by which the final service charge exceeds the interim service charge instalment ("negative balance") or vice versa

3 On each day on which rent is due under this Lease the Tenant is to pay the Landlord an interim service charge instalment

4 If a service charge statement shows a negative balance the Tenant must pay that sum to the Landlord within fourteen days after being given that statement

**Fourth Schedule
Services to be provided**

1 Repairing the outside, roof, main structure and foundations of the Building

3 Decorating the outside of the Buildingno less frequently than every five years

7 Maintaining the grounds of the Building.....

15 Keeping accounts of Service Costs preparing and rendering service charge statements and retaining accountants to certify those accounts

**Fifth Schedule
Reserve Funds**

1 The Landlord maintains a reserve fund to accumulate in advance the expected cost of works to the Building the Common Parts and the grounds.....("Reserve Fund works")

3 The Landlord estimates the contribution needed by the Reserve Fund each year and that sum is a Service Cost when calculating the service charge

Inspection

4. The Tribunal inspected the exterior of the building on the morning of the hearing on 4 January 2012. Also present were Ms Hopp and Mr Jones. The Building was a large detached house divided into three flats. It had brick walls which were partly tile hung, under a pitched tiled roof with the top flat in the roof space. There was a gravel path on the left (west side) of the Building, flanked on each side by hedges, which led to Ms Hopp's rear garden. The front door of the Premises was on the left side of the Building, and was accessed from the gravel path. There was evidence of water staining on the wall to the left of the front door below a downpipe hopper. The front gate to the gravel path showed some signs of disrepair near the latch. There was a paved driveway on the right (east side) of the Building which was wide enough for cars to park. There was a bin area to the right of the tiled driveway, next to the front boundary
5. The exterior of the Building and the grounds were generally in good condition

The Applicant/Leaseholder's statement of case

6. The Applicant/Leaseholder stated that the Respondent/Landlord had failed to repair the Applicant/Leaseholder's side of the Building. The lime tree in the Applicant/Leaseholder's garden should have been pruned, but the Respondent/Landlord had stopped the work being done. The gate should have been painted. The gutters should have been cleared. When it rained, water poured down the wall by the Applicant/Leaseholder's front door
7. Attached to the Applicant/Leaseholder's statement were copies of correspondence with the Respondent/Landlord in 2003, 2006, and 2007, and planning documents relating to crown lifting of a sycamore tree and a lime tree
8. In a separate bundle, the Applicant/Leaseholder stated that the Respondent/Landlord should have put a Royal Sun Alliance cheque for £581.63 (following a claim by the Applicant/Leaseholder in relation to a break-in) towards the Applicant/Leaseholder's 2007 insurance premium. When the Respondent/Landlord refused to do so the Applicant/Leaseholder realised that she was not covered at all and therefore had not paid any building insurance premiums since 2007. At that time the Applicant/Leaseholder looked after the north and west side of the house as the Applicant/Leaseholder shared the use of the pathways and never had a car to park in the drive. The Applicant/Leaseholder paid the workmen, and everyone paid their share. The Applicant/Leaseholder had looked after the house successfully for 50 years. Blocks of flats needed property managers; a house did not. In relation to the Respondent/Landlord's estimated service charge, there was no need to pay into a reserve fund for decorations and repairs five years before the job was done. The regular house painter simply billed respective flat owners for the appropriate

proportions of work done. Lighting and the cleaning of the common path on the North and West side of the Building was carried out by the Applicant/Leaseholder at her expense. The antique oak gate was washed and oiled monthly. It was due for repair now. There was no communal garden area. The 100-year-old privet/holly hedges were in excellent condition because the Applicant/Leaseholder had pruned and looked after them for 50 years. The council provided the Applicant/Leaseholder with two green waste bins

9. Attached to the bundle were a service charge budget, various invoices for work done at the Building between 2007 and 2010, and a cheque from Royal and SunAlliance dated 6 November 2007 for £581.63 made payable to "Miss I Prince and Mr O Jones"

The Respondent/Landlord's statement of case

10. The Respondent/Landlord stated that the Respondent/Landlord had purchased the freehold from Cooper Dean Estates Ltd and the head leasehold from Ms Hopp in 2002. New leases had then been granted to each occupier namely Ms Hopp (the Premises, on the top floor), Mrs Prince and Mr Farnhill (first floor flat), and Ms Davis and Mr Jones (ground floor flat). Although the leases granted in 2002 contained obligations for the Respondent/Landlord to establish a service charge for building maintenance and creation of a reserve fund it was decided instead to continue with the previous informal arrangement which involved the owners of the three flats sharing any building related costs as they arose. Relationships with Ms Hopp deteriorated and mediators suggested that the Respondent/Landlord should engage a property management company. The Respondent/Landlord engaged Panorama Property Management, who issued the first service charge invoice to all three flats on 25 March 2011 and a second six-month invoice on 29 September 2011. Ms Hopp did not make any payment and Panorama engaged their solicitors, Dutton Gregory, to pursue the matter. Ms Hopp then applied to the Tribunal
11. The service charge had been determined on the basis of an annual budget. Ms Hopp's share had been set at 1/5, with each of the other flats bearing 2/5, despite a more equitable proportion being 1/3 each. The first service charge on 25 March 2011 was an estimate based on recent and anticipated expenses. Accounts were to be issued annually, with the budget being adjusted on the basis of actual charges incurred. The budget included a contribution to a reserve fund of £1400 a year for the whole building. The Respondent/Landlord set out the basis upon which each element of the annual budget had been calculated. The Respondent/Landlord also commented on each element of the Applicant/Leaseholder's statement of case
12. Attached to the bundle were service charge demands dated 25 March 2011 and 29 September 2011, correspondence between Dutton Gregory and the Applicant/Leaseholder, various insurance documents, invoices and quotes from accountants and various contractors, Land Registry entries for the freehold ownership of the Building and the leasehold ownership of each flat, and correspondence from 2002 to 2011

The Applicant/Leaseholder's statement in response

13. The Applicant/Leaseholder set out her response and attached further correspondence dated November and December 2011

The hearing on 4 January 2012

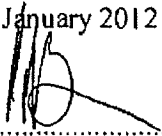
14. At the request of the Tribunal, Mr Jones explained the contents of the service charge statements and said that he had been advised by Panorama that the statements complied with the terms of the third schedule to the lease. However, in answer to questions from the Tribunal about the precise wording of the third schedule, and following a 15 minute adjournment of the hearing to enable Mr Jones, Ms Davis, Mrs Prince, and Mr Farnhill to consider the matter further, Mr Jones very fairly and properly conceded that
- a. under the terms of the third schedule to the lease, there was no provision for the Respondent/Landlord to demand an interim service charge payment based on estimated future costs
 - b. the only provision for the Respondent/Landlord to demand an interim service charge payment was to demand one half of the final service charge on the latest service charge statement
 - c. the March 2011 service charge demand had been based solely on estimated future costs as there had been no previous service charge statement
 - d. the March 2011 service charge demand did not itself amount to a service charge statement for the purposes of the third schedule to the lease
 - e. the March 2011 service charge demand was therefore not payable by the Applicant/Leaseholder
 - f. the September 2011 service charge demand was, again, based on estimated future costs, and was therefore not payable by the Applicant/Leaseholder either
15. The Tribunal indicated that the Tribunal's jurisdiction in relation to this application was therefore strictly speaking at an end, but asked the parties whether it would be helpful for the Tribunal to comment on the reasonableness or otherwise of the various elements of the service charge documents in the light of the respective claims by the parties. All parties agreed that it would indeed be helpful and requested the Tribunal to make comments accordingly
16. Having considered all the evidence and submissions from the parties in writing and at the hearing the Tribunal makes the following comments about the various elements of the service charge documents:
- a. reserve fund contribution £1400 a year : it is appropriate under clause 4.5 and the fifth schedule to the lease for the Respondent/Landlord to maintain a reserve fund, and to demand a reasonable contribution from the Applicant/Leaseholder in that respect by way of service charge, and the suggested figure of £1400 a year for the whole Building, of which the Applicant/Leaseholder's proportion of 1/5 would be £280 a year, is a reasonable sum
 - b. Panorama Property Management management charge £240 a year : it is appropriate under clause 4.4(i) and the fourth schedule to the lease for the Respondent/Landlord to engage the services of a managing agent and to demand a reasonable contribution from the Applicant/Leaseholder in that respect by way of service charge, and the suggested figure of

£240 a year for the whole Building, of which the Applicant/Leaseholder's proportion of 1/5 would be £45 a year, is a reasonable sum

- c. Motor and Home Direct insurance premium £721 (£737.25 less refund £16.25) :
- the Respondent/Landlord is required under clause 4.2 of the lease to insure the Building and to ensure that the interest of the Applicant/Leaseholder is noted on the policy; it is appropriate under the third schedule to the lease for the Respondent/Landlord to demand a reasonable contribution from the Applicant/Leaseholder in that respect by way of service charge, and the figure of £721 for the whole Building for one year, of which the Applicant/Leaseholder's proportion of 1/5 would be £144.20, is a reasonable sum
 - the Tribunal is persuaded on the evidence that the whole Building, including the Premises, has been insured throughout the period to which the premium of £721 relates; however, the Tribunal notes the assurance given by Mr Jones at the hearing that the Respondent/Landlord will ensure that the policy shows the Respondent/Landlord as the insured, the Building as the insured property, and the interest of the Applicant/Leaseholder as noted, and that a copy of the policy will be provided to the Applicant/Leaseholder
- d. Hydro Gas Services clearance of blocked drain gully £70 : it is appropriate under clause 4.4 and the fourth schedule to the lease for the Respondent/Landlord to arrange for this work to be carried out, and to demand a reasonable contribution from the Applicant/Leaseholder in that respect by way of service charge, and the figure of £70, of which the Applicant/Leaseholder's proportion of 1/5 would be £14, is a reasonable sum
- e. Acer Motley sweeping of drive and gardening services £30 : it is appropriate under clause 4.4 and the fourth schedule to the lease for the Respondent/Landlord to arrange for this work to be carried out, whether or not, as alleged by the Applicant/Leaseholder, the work did not include work to the Applicant/Leaseholder's side of the Building, and to demand a reasonable contribution from the Applicant/Leaseholder in that respect by way of service charge, and the figure of £30, of which the Applicant/Leaseholder's proportion of 1/5 would be £6, is a reasonable sum
- f. Dutton Gregory legal costs for unpaid service charges £120 : there is no provision in the lease entitling the Respondent/Landlord to include this item in the service charge
- g. the Tribunal is not persuaded that any of the items mentioned by the Applicant/Leaseholder affect her liability to pay future service charges, namely :
- the items claimed by Ms Hopp to have been carried at her expense as a result of a breach of covenant to do so by the Respondent/Landlord, namely repairs to a wall and gate, hedge cutting, and weeding and raking of a gravel path
 - the pruning of the lime tree
 - the payment of £581.63 in 2007 in relation to an insurance claim
- h. the Respondent/Landlord may well wish to take legal advice about the information to be included in any rent and service charge demands in the light of sections 47 and 48 of the Landlord and Tenant Act 1987
- i. the Respondent/Landlord may well also wish to take legal advice about :
- the procedure for making future service charge demands in the light of the third schedule to the lease
 - the items which can be included in any future service charge demands in the light of clause 4 of, and the fourth and fifth schedules to, the lease

17. In relation to section 20C of the 1985 Act, the Tribunal notes Mr Jones's very fair and proper concession at the hearing that the Respondent/Landlord would not be seeking to include any costs of these proceedings in any future service charge and the Tribunal therefore orders that any costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder

Dated 6 January 2012



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor