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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case Nos: CHI/00HP/LSC/2012/0052 & 0030

Re : Flat 1 & Flat 2, Logan Court, 154 Alder Road, Poole, Dorset BH12 4AX

Applicant	Sendtour Limited c/o OM Property Management Limited
Respondents	Mr & Mrs V Ayres (Flat 1) & Ms J Dube (Flat 2)
Date of Application	Transferred from Bournemouth & Poole County Court by Orders dated respectively 15 December 2011 (Flat 1 Claim No. 1BH01732) and 16 February 2012 (Flat 2 Claim No. 1NE08155)
Date of Inspection	17 August 2012
Date of Hearing	17 August 2012
Venue	Court No. 8 Bournemouth County Court, Deansleigh Road, Bournemouth BH7 7DS
Representing the parties	The Applicant was represented by Mr Rankohi solicitor on behalf of OM Property Management Limited The Respondents were represented by Mrs Ayres acting in person

Members of the Leasehold Valuation Tribunal:

P J Barber LL.B	Lawyer Chairman
T E Dickinson BSc FRICS	Valuer Member

Date of Tribunal's Decision: 31st August 2012

Decision

1. The Tribunal determines in accordance with the provisions of :-

   a. Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act), that the service charges for each of the service charge years 2010 & 2011 are reasonable save for the following sums which shall be deducted and disallowed in the case of each of Flat 1 and Flat 2 :-

General Repairs	£17.75	
Cleaning	£32.64	
Management Fees	£22.55	
Total Deductions	£72.94	(for each of Flat 1 & Flat 2)

b. Section 20C of the 1985 Act, that 50% of the landlord's costs in these proceedings are not to be regarded as relevant costs to be taken into account in determining service charges payable.

Reasons

Introduction

2. This was a consolidated hearing relating to two applications made by Sendtour Limited ("the Applicant"), the freeholder of Logan Court and Jacob Court, 154 Alder Road, Parkstone, Poole, Dorset BH12 4AX ("the Site") each transferred to the Leasehold Valuation Tribunal, respectively in the case of Flat 1 Logan Court, on 15 December 2011 by Order of Deputy District Judge Oliver (Claim No. 1BH01732) and in the case of Flat 2 Logan Court, on 16 February 2012 by Order of District Judge Hurley (Claim No. 1NE08155) for determination of the reasonable amounts of service charges – being in the case of Flat 1, the sum of £2,592.47 and Flat 2, £2,533.88. The statements of account for these respective flats showed that the above sums arose for the periods from 10 September 2010 to 5 June 2011 (Flat 1) and from 5 December 2010 to 5 June 2011 (Flat 2) in relation to the leasehold properties of which the Respondents are variously the lessees – namely in the case of Mr and Mrs Ayres, Flat 1 Logan Court, 154 Alder Road, Poole, Dorset BH12 4AX ("Flat 1") and in the case of Ms Dube, Flat 2 Logan Court, 154 Alder Road, Poole, Dorset BH12 4AX ("Flat 2").

3. Accordingly, the issues for determination by the tribunal are whether the service charges for the years ending 24 December 2010 and 24 December 2011, are reasonable. The statements of account for Flat 1 and Flat 2, covering the above period, also refer to administration charges and "pdc fees" which the tribunal considered were not within service charges, and therefore not for determination given that the Orders for transfer from the County Court were, in each case, limited to consideration only of service charges.

4. The lease of Flat 1 was granted by Holton Homes Limited to James Edward Starling and Dee Marie Tucker on 28 June 2007 ("Flat 1 Lease") and the lease of Flat 2 was granted by Holton Homes Limited to Judith Dube on 28 June 2007 ("Flat 2 Lease").

5. OM Property Management Limited ("OM") has been the managing agent at all material times during the period in which the disputed charges arise.

Inspection

6. The tribunal's inspection took place in the presence of Mr Rankohi and Mr Atkinson, for the Applicant; the Respondents Mr and Mrs Ayres and Ms Dube were present, and also Ms Shelley Hayes of Flat 4 Logan Court.

7. The Site comprises two blocks; Logan Court is located at the front of the Site and contains 5 flats; Jacob Court is located at the rear of the Site and contains 4 flats – consequently each of the 9 lessees is obliged to pay one-ninth of the total service charge for the Site. Logan Court is constructed mainly of face brickwork with a small area of coloured rendering, under mainly pitched concrete tiled roofs with a small area of flat felted roofing. Windows, gutters, downpipes and fascias are all UPVC; there are various strips and sections of garden around the Site comprising shrubs, trees and grassed areas and the gardens were in a reasonably well maintained condition. A tarmac drive leads from Alder Road at the front of the Site to 2 visitor parking spaces in front of Logan Court; the drive then leads to further resident and visitor parking spaces, as well as 5 open car ports, all located between Logan Court and Jacob Court. It was noted that one of the short post mounted lights by the parking area was on its' side with cables exposed and the concrete bases of certain of the other lights appeared to be insecure. There is also a timber cycle store towards the rear of the Site and a timber enclosed bin store towards the front. The 2 garden areas to the rear of Jacob Court are included within the demises of 2 of the flats in that block.

There is a sloping grassed area located to the north side of Logan Court on which there are 2 large trees. There are various paving slab pathways around the Site; at least one slab was broken. Jacob Court is of broadly similar, but not identical construction to Logan Court. An internal inspection of the common areas of each of Logan Court and Jacob Court, revealed that each has generally similar white painted staircases, with carpeted floors and emulsion painted walls; the lock on the front door at Logan Court appeared not to be working. There were meter cupboards located in the ground floor of each block, but no lift in either block. There was evidence of minor shrinkage cracking within the common areas, scuff marks on some areas of walling and in places the carpet was marked. Flat 1 and Flat 2 are the 2 flats located on the ground floor of Logan Court; Flats 3 & 4 occupy the first / mezzanine floors and there is a single flat, known as Flat 5 at the top of Logan Court.

Hearing & representations

8. The hearing was attended by those referred to above, and also Mr Stratton, the lessee of Flat 3 Logan Court. The tribunal suggested that the parties should address, one by one, the various sub-headings of service charge expenditure, as listed for the years ended 24 December 2010 and 24 December 2011, and as shown on Page 142 of the main bundle.

9. (A) Insurance : Mr Rankohi referred to Pages 118-122 in the smaller bundle, pointing out that the insurance year and service charge year do not precisely coincide; adjusted figures were provided. Mr Rankohi submitted that the sums for annual premiums, being £1,217.10 for 2010 and £1,300.00 for 2011, were reasonable and included commission of 12.6%. The insurance had according to Mr Rankohi been arranged on the open market, via reputable brokers and he added that OM have no interest in the commission which is paid to Estates & Management who arrange insurance. Mrs Ayres for the Respondents, made the point that the premium had doubled in 2010, compared to the 2009 figure and she referred to a previous LVT decision which she said provided that no more than 10% commission should be regarded as reasonable. Mrs Ayres also said that the residents had obtained an insurance quotation of £439.00 although no full details as to the exact level of cover were given. Mr Rankohi pointed to other LVT decisions cited in Pages 412-419 of the main bundle, which included reference to a 25% commission being acceptable.

   (B) General repairs : Mr Rankohi referred to Pages 151 (2010) and 196 (2011) of the main bundle; there was some dispute as to the Careline facility. Mr Rankohi submitted that Careline provide an out of hours telephone contact service for emergency repairs and that the annual premium of £3.52 per leaseholder for this Site was reasonable. Mrs Ayres said the lessees had never been aware of this facility but Mr Rankohi later advised that there had in fact been 4 calls logged from the Site in respect of this service. Mr Rankohi submitted that the arrangements operated by OM for general repairs were not a Qualifying Long Term Agreement (QLTA) within the meaning of relevant legislation, but were in reality an ad hoc arrangement with no formal agreement or contract in place, for provision of services, for a period or periods exceeding 12 months. There were charges being made for rubbish removal; Mr Rankohi submitted that the local authority would only empty the wheelie bins and would not remove either bulky items or overloaded bins; he added that the lights around the Site and the door entry mechanism had become damaged, apparently necessitating multiple visits. It was submitted that R T Johns had been used on a variable hourly rate basis between £26.00ph and £34.00ph, depending on the nature of the work involved; OM are in course of obtaining up to date tenders for ad hoc services nationally – in certain instances these have resulted in tenders in the region of £55.00ph for the first hour, reduced for subsequent hours. Mrs Ayres submitted that the hourly rate charged by R T Johns seemed to lessees to be high and also that the main entrance door mechanism had been broken permanently since or about 2009 when Mr and Mrs Ayres purchased Flat 1. Mr Rankohi agreed that there did seem to be a recurring problem with the door entry mechanism for Logan Court.

(C) Communal Cleaning : Mr Rankohi referred to Page 123 onwards, in the bundle for 2010, and Page 179 onwards for 2011, adding that the charges were mostly in the region of £147.00 per month, reflecting payments of £60.00 for fortnightly visits. A cleaning specification was included at Page 204 of the bundle. Mr Rankohi agreed it may be possible to obtain cleaning on a cheaper basis from a local contractor but OM dealt with reputable contractors, who have suitable health and safety policies and procedures, together with suitable public liability and other appropriate insurance, and local contractors may not necessarily do so. Mrs Ayres questioned the use of Formation Cleaning, based in Essex and also asserted that the arrangement is a QLTA for which Section 20 consultation with lessees would be required. Mrs Ayres also pointed to Pages 171; 187 & 188 of the bundle, being extracts were OM`s inspection report referring to cleaning being "improved" and otherwise. Mr Rankohi submitted that Formation Cleaning have locally based operatives and that the arrangement is not a QLTA but ad hoc only. Mrs Ayres referred to 2009 and certain invoices not having been made available, adding that the lessees were of the view that OM may be falsifying certain documents.

(D) Landscape Maintenance : Mr Rankohi referred to the bundle and Pages 136 (2010) and 185 (2011); a specification appeared at Page 206; he again denied the existence of any QLTA with the contractors, Norris & Gardiner and submitted that the costs are reasonable in the context of larger, accredited and properly insured contractors. Mrs Ayres questioned the use of a contractor based in Woking, but Mr Rankohi said that this contractor does nevertheless have a local presence. Mrs Ayres submitted that OM could easily have falsified the Norris & Gardiner ad hoc quotation rate at Page 208 of the bundle, and further that in the view of the lessees, no cutting back work in respect of the two large trees on the northern side boundary of the Site, had taken place. Mr Rankohi vehemently denied that OM had falsified records or documents and pointed out that tree pruning was likely to have taken place during the day when lessees may have been at work. Ms Hayes of Flat 4 Logan Court said she was experienced in the gardening business and had not been aware of the tree works having taken place.

(E) Door Entry System : Mr Rankohi said that this charge is applicable only for 2011 and referred to Page 195 in the smaller bundle. Mrs Ayres submitted that the door locking mechanism has been broken to her knowledge since 2009 allowing anyone to walk in; Ms Hayes added that to her knowledge the lock had been broken since 2010. Mr Rankohi however, countered that the invoice would simply not have been raised unless the work had been done.

(F) Health & Safety : Mr Rankohi said that this charge too, is only applicable for 2011 and referred to Page 132 in the main bundle and Page 204 in the smaller bundle; he added that this item relates to an inspection report from Quantum, dealing with statutory issues such as health and safety and fire safety, and was obtained as a matter of prudence in the course of good management. The report was contained at Page 220 onwards in the main bundle. Mrs Ayres said that the lessees had only received the invoice 2 weeks ago but will leave the decision as to reasonableness to the tribunal to consider.

(G) Fire Equipment Maintenance : Mr Rankohi said that regular half yearly inspections were necessary for both blocks. Mrs Ayres said the 2010 figure is agreed; the 2011 invoice had only been received 2 weeks ago and, once again the lessees thought it was expensive but would leave it to the tribunal to decide.

(H) Aerial System : Mr Rankohi said that were no actual charges in either of 2010 or 2011 and this was accepted by Mrs Ayres.

(I) Accountancy Fees : Mr Rankohi said that the charges were £275.74 for 2010 and £300.00 for 2011 although he was unable to produce invoices, but submitted that the amounts were in any event reasonable and that there was provision to incur such costs, contained at Clause 4.1.2(p) of

the Leases. Mrs Ayres agreed the 2010 figure, but was concerned at the absence of any invoice for 2011.

(J) Management Fees : Mr Rankohi denied the existence of any QLTA and said that a charge equating to approximately £92.00 per unit was reasonable in any event; he said the slight variation in cost as between the 2 years might reflect the VAT rate change at that time. Mrs Ayres submitted that the lessees believed the arrangement with OM was a QLTA for which advance Section 20 consultation with lessees should have been conducted, in default of which recovery of such costs would be statutorily limited; she added that the entry door had been repeatedly broken, repairs to lights and paving slabs had not been carried out, and accordingly sought a reduction of management fees by 50% for 2010 and 100% for 2011, during which latter year OM had largely ceased to provide a number of services at the Site. Mr Rankohi did not agree that a poor service had been provided and pointed to lengthy correspondence between Mr Atkinson and the lessees as contained at Page 455 onwards of the bundle, when he said, OM were attempting to address concerns. Mrs Ayres added that work on the Site had stopped in May 2011; Mr Rankohi accepted that gardening and cleaning had stopped about then owing to non payment of service charges, but added that OM had carried on other work such as credit control chasing of arrears, as well as the correspondence by Mr Atkinson, all of which took a considerable time to deal with.

(K) Reserve Fund : Mr Rankohi said that in many ways this had been the most contentious aspect; the reserve fund transfer for 2010 was £1,050.00 but in 2011 it was £10,550.00; he referred to evidence in his statement of case about redecoration being necessary and insufficient moneys being held in the reserve fund. Mr Rankohi added that initial section 20 consultation notices had been served although the intended work has never in fact been carried out, so no costs have been incurred. Mr Rankohi pointed to the lessees concern about the reserve fund becoming lost in some way had OM gone into liquidation; Mr Rankohi said that OM were in any event obliged under the leases to hold such money on trust for the lessees, adding that the original developer had collected no reserves for the first couple of years, resulting in very little reserve fund provision being available. Mrs Ayres submitted that there was a discrepancy regarding the date of the initial section 20 notice allegedly served on Ms Hayes, at a date prior to her purchasing her flat and that this was further evidence of OM falsifying documents at will. Mr Rankohi again denied any deliberate falsification and could only suggest that computer regeneration of copies of earlier letters, might inadvertently have resulted in an incorrect date appearing. Mrs Ayres said the residents had obtained their own quotation for internal and external redecorations in a sum of £5,900.00 although no copy was produced to enable a full comparison of what may have been covered.

10. Before the parties made their closing statements, the tribunal pointed out that Mr Rankohi had in his statement of case, at Paragraph 89 on Page 138 of the bundle, made reference to any application for an order in respect of costs under Section 20C of the 1985 Act being opposed by the Applicant, should it be made. Given that the Respondent was unrepresented, the tribunal felt it proper to ascertain whether the Respondent would in the circumstances wish to make a Section 20C application; Mrs Ayres confirmed that the Respondent did indeed wish to do so. Accordingly the parties were invited to address the tribunal in their closing statements on the Section 20C issue.

11. Mrs Ayres submitted in closing, that the lessees believed that certain documents had been forged by OM; that OM were seeking to frustrate the lessees, and as professionals, should have known better. Mrs Ayres added that had all the documentation and copy invoices been provided by OM to the lessees much earlier, the hearing today may not have been necessary; consequently the lessees considered that a Section 20C order, providing that the Applicant's costs in this matter, be disregarded for service charge purposes, should be made. Mr Rankohi said that OM could not

concede to all lessees' requests and aspirations all the time and that OM had been open and honest in using reputable trusted contractors; he added that little clear comparable evidence had been provided by the Respondent in regard to alternative contractors; OM had incurred costs in this matter and considered that these should be met and that a Section 20C order would not be appropriate.

Consideration

12. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

13. In regard to insurance, the tribunal noted that higher percentage commissions than in this instance, have been upheld by previous tribunals. The annual adjusted premiums of £1,217.10 and £1,300.00 for 2010 and 2011, for insuring 2 blocks of 9 flats seemed not unreasonable. Expert evidence had been submitted for the Applicant at Page 265 of the bundle which the tribunal found no reason to disbelieve. There was no means of ascertaining whether the quote of £439.00 obtained by the Respondents was on similar or truly comparable terms. Accordingly the tribunal found the premiums for both years to be reasonable.

14. For general repairs, it appeared that the Careline facility had been used and the cost was low. The tribunal accepted the evidence provided by the Applicant that there was no QLTA and all work was commissioned on an ad hoc basis. There was evidence given about variations in hourly rates and the tribunal noted significant differences between rates for fully compliant and insured contractors, as opposed to those which might be offered by small local firms. The Respondents presented no clear written evidence to show that lower rates for a truly comparable service could be obtained. There had only been 2 rubbish removal incidents over 2 years which seemed plausible and not exceptional. The faulty door locking and entry system had resulted in multiple visits and the tribunal considered that the Applicant should have dealt with that matter more effectively. Accordingly the last 2 invoices for door repair of £79.90 each, will both be disallowed in a total of £159.80. The one-ninth proportion of this sum to be deducted from the service charge for each of Flat 1 and Flat 2 is £17.75.

15. As regards cleaning, Formation Management were based in Essex but had a local presence; they were a fully compliant and insured firm and a specification was exhibited. However there were references in the Applicant's inspection notes to certain issues and shortcomings regarding cleaning mentioned at Pages 171, 187 & 188 of the bundle. Accordingly 2 of the invoices for £146.88 each will be disallowed in a total of £293.76. The one-ninth proportion of this sum to be deducted from the service charge for each of Flat 1 and Flat 2 is £32.64.

16. On landscaping, the specification at Page 206 indicated a significant number of work categories. In the absence of clear and compelling evidence to the contrary it was accepted that the arrangement for landscaping work does not amount to being a QLTA. Little clear evidence was provided by the Respondents to demonstrate that trees had not been pruned. Accordingly these invoices are reasonable and will be allowed.

17. The Door Entry invoice appeared not unreasonable and will be allowed.

18. The Health & Safety inspection report was lengthy and contained substantial guidance on various relevant aspects. The tribunal take the view that the report is worthwhile and may well be beneficial in future to the Respondents; it will be allowed.

19. As regards fire equipment, there was no dispute for 2010 and the tribunal accepts the evidence set out in Paragraph 51 of Mr Rankohi's statement of case on Page 132 of the bundle. This item is allowed.

20. There were no actual costs incurred for aerial work in either 2010 or 2011.

21. As regards Accountancy Fees, 2010 was agreed; 2011 showed a small increase which seemed not unreasonable taking account of any RPI and/or VAT rate change.

22. For management fees, although some services were not provided in the second half of 2011, other work was being done including credit control chasing of arrears and dealing with correspondence; the tribunal noted the lengthy correspondence at Pages 455- 490 of the bundle. The rate of £92.00 per unit, seemed generally not unreasonable and there was no clearly demonstrated basis for the claim by the Respondents for reduction of the charges by 50% in 2010 and 100% in 2011. However the door repair issue had not been managed and monitored as effectively as it should have been, and accordingly 100% will be allowed for the charges in 2010 but only 80% in 2011. Thus, 20% of the charge in 2011 of £1,015.00, being £203..00 will be disallowed, resulting in a one-ninth deduction of £22.55 for each of Flat 1 and Flat 2 in 2011.

23. As regards reserve funds, Part 9 of the Second Edition to the RICS Service Charge Residential Management Code, provides that it is reasonably prudent for a development of this nature to hold reserves and in general terms, good management practice would also require the same. The Applicants are obliged to hold such moneys in trust and accordingly the Respondents` fear of loss, is not well founded. Given that the proposed decoration works have never been carried out and no cost incurred, Section 20 consultation is not relevant. The tribunal does not accept the allegation as to falsification of initial Section 20 notices in any event. Accordingly the tribunal considers the reserve fund charges to be reasonable.

24. We made our decisions accordingly.

[Signed] P J Barber

Chairman

A member of the Tribunal
appointed by the Lord Chancellor