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HM COURTS & TRIBUNALS SEVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 27A of the Landlord & Tenant Act 1985 (Service Charges)

Case No.	**CHI/29UH/LSC/2011/0009**
Property:	**Coral Park Maidstone Kent ME14 5HQ**
Between:	
	Mr. S. Stockley (32 Pearl House) Mr. C. Hayes (28 Pearl House) Mrs. H. Sutton (27 and 39 Sapphire House) ("the Applicants")
	And
	The Sittingbourne Road, Maidstone Management Company Limited ("the Company")
Dates of Hearing:	**15th April 2011 9th December 2011**
Members of the Tribunal:	**Mr. R. Norman Mr. R. Athow FRICS MIRPM**
Date Decision Issued:	**10th January 2012**

CORAL PARK, MAIDSTONE, KENT ME14 5HQ

Decision

1. The Tribunal made the following determinations:

(a) Service charges which have been demanded in respect of the years 2007 to 2010, including the charges in respect of the arrears charged by Southern Water and the estimates for water charges, are payable.

(b) No order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act").

(c) Mr. C. Hayes is ordered to pay costs of £500 to The Sittingbourne Road, Maidstone Management Company Limited ("the Company").

Background

2. Mr. S. Stockley is the lessee of 32 Pearl House, Coral Park, Maidstone Kent ME14 5HQ. He made an application under Section 27A of the Act for determination of liability to pay service charges and reasonableness of service charges in respect of the years 2007 to 2010 and an application under Section 20C of the Act for limitation of costs.

3. Mr. C. Hayes, the lessee of 28 Pearl House, Coral Park and Mrs. H. Sutton the lessee of 27 and 39 Sapphire House, Coral Park have, at their request been joined as Applicants in these proceedings.

4. The Company is responsible for the management of Coral Park and the lessees are liable to pay service charges to the Company. DMG Property Management are the managing agents appointed to carry out the management.

5. Before the hearing on 15th April 2011 the Tribunal received statements and documents from Mr. Stockley and from Messrs. Cooper Burnett Solicitors representing the Company.

6. The application was made because there had been an increase in the service charges to pay a backdated bill from Southern Water for the removal of waste water and sewage from Coral Park. The bill arose because Southern Water had in error undercharged for a number of years.

Inspection

7. On 15th April 2011 The Tribunal inspected Coral Park in the presence of Mr. Stockley, Mr. Nicholls of Counsel instructed by Messrs. Cooper Burnet Solicitors representing the Company and Mr. McGill, Secretary of the Company and a Director of DMG Property Management.

8. The Tribunal was shown on the landing outside No. 26 Pearl House a water leak in the space above the ceiling tiles.

9. Mr. Stockley said that the external water connection outside Sapphire House had been leaking for two years, that the water pressure at that tap is high and that he had tried unsuccessfully to turn off the tap. However, the leak had now been remedied.

10. He also pointed out a section of fencing which had been replaced by the occupier of the football pitch adjoining Coral Park. He believed that the fence had been damaged by some of the residents of Coral Park.

11. He also mentioned that the window cleaning was not done very often and that the cleaners used only a high pressure hose which he considered was not the best way to do the work.

12. Mr. McGill stated that Coral Park comprises 60 flats and indicated one of the blocks which he said contained 15 flats operated by the Housing Association of which 3 are part ownership and 3 are privately owned. The only thing the Housing Association do not pay for is the buildings insurance. Therefore the other lessees each pay 1/45th of the cost of insurance and 1/60th of everything else.

13. The buildings and grounds appeared to be maintained to a reasonable standard.

Hearing 15th April 2011

14. The hearing was attended by Mr. Stockley, Mr. Nicholls and Mr. McGill and it was confirmed that the parties had received copies of the documents supplied by the other parties. Mrs. Logan of 20 Pearl House, a ground floor flat, attended shortly after the start of the hearing. Evidence and submissions were received from all those present.

15. Mr. McGill explained that the lessees are each charged 1/60th of the cost of the supply of water and removal of waste water and sewage from Coral Park. The wording of the leases envisaged that the flats held by the Housing Association which are part of Crystal House would be charged separately from the rest of Coral Park for these services but the way in which water meters had been installed prevented this from being done. To deal with the charges as envisaged in the leases would necessitate the installation of further water meters and some re-routing of the supply pipes. This would be very costly and that cost would fall upon the lessees. Charging all lessees 1/60th of the cost was cheaper, to the benefit of the lessees and the Housing Association had agreed to it. Mr. Nicholls suggested that it could even be cheaper to amend all the leases than to change the water supply but again if that were done the cost would fall upon the lessees.

16. Mr. Stockley considered what had been said and stated that as long as the cost was divided fairly he could not see a problem.

17. It was accepted that water is supplied to Coral Park via a number of meters and that a charge is made by South East Water on the basis of the water supplied. There is no way of metering the waste water and sewage removed from Coral Park and the charge for removal is made by Southern Water on the basis of a percentage of the water supplied.

18. Southern Water made a mistake and used the readings from only some of the meters on which to base the percentage charge for removal. This meant that there had been an undercharge for a number of years which, when it was discovered, Southern Water was entitled to charge to the Company and the Company was entitled to charge to the lessees as part of the service charge.

19. When the error was discovered Southern Water sent a bill for the full amount to be paid immediately but Mr. McGill negotiated both a 15% reduction in the amount

and payment over a two year period so that the lessees had a smaller sum to pay and longer to pay it.

20. Mr. Stockley had made enquiries of Southern Water and it had been confirmed to him that the water meter to his block, Pearl House, had been used to calculate the charges for removal and no additional charge was being sought from Pearl House. He therefore questioned why he should have anything more to pay. It seemed to him that he had paid for the removal of waste water and sewage from his flat. He also wondered whether in fact waste water and sewage had been removed by Southern Water or whether it had perhaps been dealt with my means of a soakaway.

21. The Company's evidence was that each flat does not pay for its own water meter based charges. All the meter readings are added together and then each lessee pays $1/60^{th}$ of the total. This means that each of the lessees has to pay $1/60^{th}$ of the backdated bill.

22. Mr. McGill stated that £10,232 had been paid to South East Water and Southern Water for the period November 2009 to October 2010. Mr. Stockley considered that meant the lessees were paying enough already.

23. Mr. Stockley said he did not have all the water bills for every block. He had only got 6 months water charges but a full year drainage charges and he did not see where the sum of £10, 232 quoted by the Company had come from. He produced company accounts which he had received. The Tribunal noted that those accounts were not service charge accounts and, as such, did not comply with Landlord and Tenant legislation or the lease. However, if the accounts were prepared and audited by a qualified accountant as required by the lease the charges for the preparation and auditing would form part of the service charges and be an additional sum to be paid by the lessees.

24. Mr. Nicholls submitted that if the accounts were not prepared in accordance with the lease then that was a breach of covenant but it did not prevent the service charges being demanded.

25. Mr. Nicholls referred to p. 53 of the Company's bundle of documents where the calculations are set out. This shows the invoiced amount of £21,985.81 (the sum undercharged), the discounted amount of £18,687.94 and the cost per lessee per month over 24 months. Had the discount not been negotiated then the cost per lessee per month would have been £15.27 but with the discount was reduced to £12.98. Also shown on p 53 are estimates for the charges for waste water and sewage removal for 2010/2011 and 2011/2012. These figures are based on the charges for 2010 with an addition of 8.4% each year. The figures are the best attempt at forecasting the money which will be needed to pay these bills. There is also a contingency amount. It may be that in the end less than the sum estimated will be required but the contingency sum is intended to cover the possibility of having to pursue lessees who do not pay their service charges. This has to be provided for. The Company has to pay the charges and those charges are then shared by everybody but the Company retains the right to pursue the debtor. Mr. McGill explained that the contingency is to allow for the short term if outstanding charges cannot be recovered immediately. For

example there were three lessees who at the date of the hearing on 15th April 2011 had not paid their service charges. The only way to recover those charges is by commencing proceedings in the County Court. In the short term while the process of recovering the service charges is in progress, money is needed to pay the bills and the contingency sum is there to offset that.

26. Mr. McGill produced a summary which indicated that a total of £10,232 had been paid in 2010 in respect of water supplied to and waste water and sewage taken away from Coral Park. With the summary there were a number of bills from South East Water and Southern Water but the total of the bills did not equal £10,232.

27. Some figures did not at first sight appear to be correct but explanations were given for some apparent discrepancies including the fact that a direct debit had been set up and that some figures appeared on more than one account because a revised bill had been produced. Also, there had been included a bill from Cinders Plumbing and Heating. Although the charge made by that company was recoverable from the lessees under the terms of their leases, it was suggested that it should have been included under the heading of repair and maintenance.

28. Those present were given time to discuss the figures produced but complete agreement could not be reached and even after taking into account the explanations it was not possible to completely reconcile the summary with the bills.

29. The Tribunal decided that further written evidence should be produced to clarify the position and that directions would be issued. The parties would submit written evidence which the Tribunal would consider in addition to the documentary evidence submitted before and during the hearing and the evidence received and submissions made at the hearing. This was explained and those present agreed to that course of action. It was appreciated that the next water bill was expected within the next few days and that could well assist. To take account of that the directions would be delayed for a few days

30. The following directions were issued:

"1. Mr. McGill is to contact South East Water and Southern Water and obtain from those companies details of the actual charges paid in respect of water supplied to and waste water and sewage removed from the property during 2010 and an estimate for those services for 2011.

2. By 12th May 2011 Mr. McGill to provide to the Tribunal and to the Applicants:
(a) A summary setting out the sums paid to South East Water and Southern Water for water supplied to and water and sewage removed from the property during 2010 together with copies of paid bills in support of that summary.
(b) The estimate in respect of those services for 2011.

3. By 26th May 2011 the Applicants are to send to Mr. McGill and to the Tribunal any written comments on the documents produced by Mr. McGill in accordance with direction 2.

4. The application will be further considered by the Tribunal on or about 7th June 2011 and the parties will be informed of its determination."

31. At the request of Mr. McGill those directions were later revised on two occasions to allow further time for compliance with them as difficulty was being experienced in obtaining information from South East Water and Southern Water.

32. As a result further documents were received from Messrs. Cooper Burnett and Mr. Hayes and were considered by the Tribunal.

33. At the hearing on 15th April 2011 the Tribunal heard from those present on the matter of the application for a limitation of costs order. The application is for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by the Company in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

34. Mr. Nicholls submitted that there should be no Section 20C order because, at the hearing, having discussed the figures with Mr. Stockley and Mrs. Logan, the vast majority of the charges were accepted as being properly charged and only the sum of £12.98 per month in respect of the payment for the undercharging was still disputed. Also there had been no criticism of the behaviour of the Company or the managing agents.

35. Mr. Stockley accepted that he had to pay his own costs of the application but he did not think that the Company needed a solicitor or a barrister. They had all the information in their office and it could have been dealt with by Mr. McGill.

36. Mr. Nicholls submitted that the Company was entitled to take advice and to consider the other lessees. The Company was entitled to exercise its rights which the lessees had agreed to in signing their leases.

37. After considerable delay, which apparently was caused by difficulty in obtaining information from South East Water and Southern Water, further documentary evidence was received from Cooper Burnett on behalf of the Company and from Mr. Hayes. Nothing was received from Mr. Stockley or Mrs. Sutton.

38. Mr. Hayes in a letter dated 4th July 2011 raised the following matters:

(a) The documentation received from Cooper Burnett still did not indicate the exact water usage for 28 Pearl House and it was still unclear how DMG Property Management had arrived at their monthly water bill figure of £25.56 which had been added to his monthly management bill since September 2010.

(b) That despite frequent requests he had still not had any direct correspondence from either Southern Water or South East Water concerning the matter and he found that appalling.

(c) He considered DMG Property Management's total management charges of £96.56 for 28 Pearl House to be grossly unfair based on the documentary evidence provided

and that he still had not had a satisfactory answer to what the £9,715 "environmental costs" in their annual accounts referred to. He maintained that DMG Property Management appeared to have entered into a financial agreement with the water companies without first agreeing it with the tenants of the properties which he felt was grossly unfair.

(d) He enclosed copies of his letters dated 26th November 2010, 12th January 2011, 17th March 2011 and 26th April 2011.

(e) He pointed out that under the terms of his tenancy agreement with his tenants who had rented the property from day one they are liable for all domestic bills including water. He had never lived at the property and therefore never used any water and maintained that any water bills should be directed to his tenants. He added that his lettings company Regal could supply a list of names and addresses if required.

39. The Tribunal decided that in view of the contents of Mr. Hayes' letter it would be necessary to resume the hearing so that he could have the opportunity to challenge the further documentary evidence produced by the Company.

Hearing 9th December 2011

40. The hearing resumed on 9th December 2011 and was attended by Mr. Nicholls and Mr. McGill and by Miss Vraagom who stated that she was Mr. Hayes' partner and was there to represent him. Mr. Stockley had informed the Tribunal office that he would not be attending.

41. Miss Vraagom had not brought with her Mr. Hayes' copy of the additional documents supplied since the previous hearing but a further copy was lent to her. Asked by the Tribunal what Mr. Hayes wished to say about the additional documents supplied on behalf of the Company, Miss Vraagom stated that the management fee of £71 per month was too high. It was extortionate. Mr. Hayes questioned the charge for grass cutting and pointed out that decorating was needed. He also understood from his tenant that Mr. McGill had told her that Southern Water and South East Water are very expensive.

42. Mr. McGill explained that the charges for the supply of water and for the removal of waste water and sewage are the charges made by those two companies and confirmed that it was not possible to shop around and look for cheaper quotes for those services. Because there are two companies rather than one providing those services it means that there are two sets of administration and residents of Coral Park had no alternative but to have those services provided by those two companies and to pay their charges.

43. Mr. Nicholls pointed out that the additional bills provided do not focus on the year the landlord is concerned with so they are not of such great assistance.

44. Miss Vraagom said that Mr. Hayes' tenant had been told by the water companies that the monthly charge for a single person living alone should be a lot less than was being charged and that she should be paying £11.30 per month for the

supply of water but that there would be an additional charge for waste removal. Mr. Hayes felt it was very unfair.

45. Mr. McGill gave to Miss Vraagom a further copy of figures which had been referred to at the previous hearing (p 53 of the Company's bundle of documents).

46. Miss Vraagom said there was nothing else Mr. Hayes wanted to say except that the £25.26 being charged, which included £12.98 for the arrears, was too much.

47. Mr. Nicholls submitted that for 2009 and 2010 the charges made were shown to be correct from the bills, to within 16p. Of the £25.26, £12.98 was in respect of historic arrears. It was a reasonable charge for the Company to levy and Mr. McGill had negotiated a discount and payment over two years which was to the benefit of the lessees. It was fair to the lessees. Another element of the charge is the Company's estimate of water charges moving forward with an estimated 8.4% annual increase. This is based on the Company's own calculations and the water companies are not able to assist. If this turns out to be an over estimate, the lessees will receive a credit; if an underestimate there will need to be a levy. It would be possible to tinker with the estimated percentage increase but if that were done the difference for each lessee would be very slight. The third element is for contingency as explained by Mr. McGill as set out in paragraph 25 above.

48. Mr. Nicholls made an application for an order for costs of £500 (the maximum which the Tribunal can order) against Mr. Hayes on the basis that he had acted unreasonably and that had necessitated this further hearing. His letter of 4th July 2011 contained no serious criticism and he had exacerbated the situation by not attending the hearing himself and sending a representative.

49. The Tribunal asked Miss Vraagom if she had anything to say about that application but she stated she had nothing to say.

Reasons

50. The Tribunal considered all the documentary evidence which had been produced and all the evidence which had been given and the submissions which had been made at the hearings and made findings of fact on a balance of probabilities.

51. Whether or not the charges made by South East Water and Southern Water are high, they are the charges which they make and the Company is obliged to pay them in order to have a supply of water to Coral Park and to have the waste water and sewage removed from Coral Park. It is not possible to have those services provided by any other company.

52. Mr. Stockley had wondered whether waste water and sewage had in fact been removed by Southern Water or whether it had perhaps been dealt with by means of a soakaway. However, there was no evidence to suggest that the waste water and sewage had not been taken away by Southern Water and the waste water and sewage could not be dealt with my means of a soakaway.

53. It may be that a single person living alone in a property where the occupier pays for the water used at that property and the waste water and sewage removed from it without reference to any other property would be paying less than a single person living alone at Coral Park. However, the leases at Coral Park do not deal with those services in that individual way. The water is supplied to Coral Park, the Company has to pay for that and by the terms of the leases the lessees are obliged to pay a percentage of that total cost irrespective of how much water is used by the individual lessee or the lessee's tenant. The removal of waste water and sewage is charged as a proportion of the water supplied to Coral Park and again the Company has to pay for that and by the terms of the leases the lessees are obliged to pay a percentage of that total cost irrespective of how much waste water and sewage is removed from the individual lessee's property.

54. There is no doubt that Southern Water made a mistake and as a result undercharged the Company and in turn the lessees were undercharged. It was suggested that Mr. McGill should have realised that there was an undercharge and should have alerted Southern Water but the Tribunal is not satisfied that he should have done that. The bills came in, they were not excessive and they were paid. When the underpayment was discovered Southern Water, as they were entitled to do, demanded that the amount by which they had undercharged be paid immediately. Mr. McGill, to his credit and to the benefit of the lessees, negotiated a discount and for that discounted sum to be paid over two years.

55. Mr. Hayes in his letter suggested that it was unfair of DMG Property Management to enter into a financial agreement with the water companies without first agreeing it with the tenants of the properties. There was no obligation to seek agreement from the lessees or from the occupiers of the flats at Coral Park and no advantage would have been gained from doing so. Although it was the mistake of Southern Water which caused the problem, Southern Water was entitled to demand immediate payment but Mr. McGill negotiated a discount and 2 years to pay. This was to the benefit of the lessees.

56. Mr. Hayes in his letter stated that his tenant is responsible for all domestic bills including water and appeared to be under the impression that these charges were not his concern. However, as the Tribunal explained to Miss Vraagom, under the terms of the lease Mr. Hayes is responsible for payment to the Company for the supply of water and the removal of waste water and sewage. Whatever arrangement he has with his tenant for payment for those services is between him and his tenant and does not alter his responsibility under his lease.

57. The original application concerned the payment of the arrears brought about by the mistake made by Southern Water and nothing more of any substance was raised by Mr. Stockley, Mrs. Hayes or Mrs. Sutton.

58. The Tribunal was satisfied on a balance of probabilities that the service charges for 2007 to 2010, including the unavoidable arrears payment and the estimated charges, were payable.

59. There is before the Tribunal an application for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by the Company in

connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. The Tribunal finds that it is just and equitable in the circumstances not to make such an order because the Applicants having brought these proceedings, the Company was obliged to deal with them and to contest them and was entitled to be represented. Neither the Company nor DMG Property Management were at fault. Therefore no order is made under Section 20C of the Act.

60. There is before the Tribunal an application that Mr. Hayes be ordered to pay £500 towards the Company's costs of these proceedings.

61. Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in certain circumstances. One of those circumstances is where the party has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount ordered to be paid cannot exceed £500.

62. The application was made on the basis that Mr. Hayes acted unreasonably in connection with these proceedings. Miss Vraagom had nothing to say in response to the application.

63. The Tribunal came to the conclusion that Mr. Hayes had acted unreasonably in connection with the proceedings and should be ordered to pay £500 towards the Company's costs of preparing for and being represented at the hearing on 9th December 2011 for the following reasons:

(a) At his request, Mr. Hayes was joined as an Applicant in these proceedings but did not attend the hearing on 15th April 2011. Later, when he received a letter and further documents from Cooper Burnett, he wrote a letter dated 4th July 2011 setting out a number of points which he wished to raise. Neither Mr. Stockley nor Mrs. Sutton made any comment on the letter and documents from Cooper Burnett. It was as a result of Mr. Hayes' letter that it was necessary for the hearing on 9th December 2011 to take place and additional costs were incurred by the Company. In the absence of that letter the Tribunal would have considered the additional documents supplied and made a decision without the need for a further hearing.

(b) In correspondence Mr. Hayes stated that he had spoken to his lawyer and his lettings company about the matter but he could have found the answer to many of the points raised in his letter of 4th July 2011 by reading his lease and if there were still some points requiring clarification he could have raised them at the hearing on 15th April 2011 and a further hearing would not have been required. However, he did not attend or arrange for someone to represent him at that hearing.

(c) At the hearing on 9th December 2011, Mr. Hayes did not attend but was represented by Miss Vraagom. As neither she not Mr. Hayes had been present at the hearing on 15th April 2011 it was necessary to provide her with information about that hearing and to lend her a copy of the additional documents provided by Cooper Burnett as she had not brought a copy with her. In the event she had little to add.

64. The Tribunal made the determinations set out in paragraph 1 above.

Signed

R. Norman

Chairman