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HM Courts
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Service



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION ON AN APPLICATION UNDER
SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 &
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00AL/LSC/2012/0435

Premises: 2 Sark Towers, Erebus Drive, Thamesmead,
London SE28 0GG

Applicant: Mr Henry Abraham

Respondent: Consort Property Management Limited

**Date of Paper
Determination:** 25 November 2012

**Leasehold Valuation
Tribunal:** Robert Latham (Chair)
Neil Maloney FRICS

Decisions of the tribunal

- (1) The Tribunal makes the determinations as set out at paragraphs 9 to 27 below. The Tribunal is satisfied that that both the service charges and administrative charges are payable.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The Tribunal does not make an order of costs against the Applicant under Schedule 12, paragraph 12 of the Commonhold and Leasehold Reform Act 2002.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the

service charge years 2010 to 2013 (inclusive). The Applicant also makes an application pursuant to s.20C.

2. The correct Respondent is Consort Property Management Limited who is now the "Management Company" under the lease. Until July 2009, Solitaire Property Management Limited had this responsibility. Both form part of the same group of companies.
3. The application was made on 29 June 2012. The Tribunal initially gave directions on 18 July 2012 (at p.1-6 of the Bundle). Pursuant to these Directions, the Respondent filed a detailed Statement of Case, dated 26 July 2012 (at p.22-50).
4. The next step was for the Applicant to file a schedule and supporting documentation in support of her claim by 3 August. He failed to do so. On 20 September 2012, further Directions were given. The Applicant failed to comply with these Directions. The matter was listed for hearing on 11 October. The case could not proceed because the Applicant had still failed to set out his case. He was also unable to attend due to work/child commitments. The matter proceeded as a Case Management Conference conducted by telephone. Further Directions were given which are at p.7-12. The Tribunal directed that the application should be determined on the basis of written representations, unless either party requested an oral hearing.
5. Pursuant to these directions, the Applicant has filed a Schedule, dated 25 October, setting out his case (at p.13-21). On 20 November, the Respondent filed their Supplemental Statement of Case, with a number of exhibits, R1 to R5. This is not paginated.
6. On 2 November (at p.71), the Respondent wrote to the Tribunal inviting it to dismiss the application on the basis that the schedule filed by the Applicant disclosed no reasonable case. On 14 November (at p.74), the Tribunal notified the parties that it was not minded to dismiss the application. Whilst the schedule filed by the Applicant did not strictly comply with the Directions, it was sufficient to identify his case.
7. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

8. The Applicant is the lessee of 2 Sark Tower ("the premises"). The Applicant holds it pursuant to a lease granted to him, dated 31 October 2003. This is not included in the application bundle, but a copy has been provided to the Tribunal. The premises comprise a two bedroom flat within Sark Tower, one of the blocks on Royal Artillery Quay development in Thamesmead. The Applicant currently lives in Edinburgh.

The Sums in Dispute

9. Having considered the cases filed by the parties and all the documents provided, the Tribunal has made determinations on the seven items in dispute which are set out in the Applicant's Schedule at p.14-15 of the Bundle. The Applicant cross-references these seven items to a Statement of Account, dated 25 July 2012, at p.16-17.

Items 1 (£821.94 – balance on service charge account as at 20.8.10); 2 (£143.75 – administration charge – 1.10.09) and 3 (£427.39 – interest – 20.8.10)

10. The Applicant challenges these three sums and questions whether they are chargeable under the lease; whether they are reasonable; and whether they have been correctly demanded.
11. The background to this aspect of the dispute centres on a claim brought by the Respondent in the Northampton County Court for arrears of service charges and ground rent (0QT13501). The relevant papers are at R1. A total of £7,429.82 was claimed, together with costs. On 2 March 2010, judgment was entered in the sum of £7,810.46. On 2 August 2010, the Applicant's mortgage lender made a payment of £8,508.96 comprising arrears pre-dating 1 April 2010 in the sum of £6,038.66, interest totalling £427.39 and costs of £2,042.90.
12. The Service Charge Account is at p.16. This records a credit of £6,466.05 received by J.B.Leach on 20 August 2010. It is apparent that this sum represents the following sums paid by the mortgage lender: £6,038.66 in respect of the arrears and £427.39 in respect of interest on the judgment debt. The Respondent state that the administration charge of sum of £143.75 was included in the judgment debt of £6,038.66. This appears to be correct. Thus we are satisfied that two of these sums, £143.75 and £427.39 were determined by the County Court. This Tribunal now has no jurisdiction in respect of these sums.
13. The balance of £821.94 on the Service Charge Account as at 20 August 2010 represents three sums:
- (i) Ground rent of £50 (1.4.10) – a matter in which this Tribunal has no jurisdiction;
 - (ii) Estate Service Charge of £309.00 (1.4.12);
 - (iii) Half Year Service Charge in Advance of £462.94 (1.4.10).
14. The Applicant has raised no substantive case as to why these two service charges are not payable. In these circumstances, the Tribunal is satisfied that they are payable.

Item 4 (58.75 – administration charge – 23.9.10)

15. The relevant papers are at R2. On 24 August 2010, a letter was sent in respect of arrears of £821.94. The letter warned the Applicant that an administration fee of £50 + VAT would be charged if the sum is not paid within 14 days. On 23 September 2010, a Notice before Legal Proceedings was sent which included a demand for the administration charge. This was accompanied by a Summary of Rights and Obligations.
16. The Applicant questions whether this sum is chargeable under the lease; whether it is reasonable; and whether it has been correctly demanded.
17. We are satisfied that this sum is payable under the lease (see Paragraph 2(b) of the Third Schedule). We are also satisfied that this sum is reasonable. This was the second letter. It was a pre-action letter which needed to be drafted with some care.

Item 5 (£146.88 – administration charge – 21.10.10)

18. The relevant papers at R3. This is an administration charge representing the costs incurred by the Respondent in using a debt collection agency, Property Debt Collection Limited (PDC). The agency was instructed because the Applicant had refused to accept his liability for the outstanding charges of £821.94. It is apparent that there was a telephone conversation on 23 November 2010. There were thereafter a number of further letters. On 16 March 2011, PDC demanded the payment of £1,702.63 + their fee of £146.88. On 22 March, the Applicant disputed that this sum was payable, only accepting a liability in the sum of £818.94. The service charge account at p.16 confirms that this debt of £1,702.63 became due on 1 October 2010. Rather than pay the sum due, on 24 April 2011, the Applicant referred the matter to the Financial Services Authority.
19. The Applicant questions whether this sum is chargeable under the lease; whether it is reasonable; and whether it has been correctly demanded.
20. We are satisfied that this sum is payable under the lease (see Paragraph 2(b) of the Third Schedule). We are also satisfied that this sum is reasonable. There had been previous correspondence relating to the arrears, before the matter was referred to PDC. Subject to the appropriate Summary of Tenants Rights and Obligations having been served, we are satisfied that the sum is payable.

Item 6 (£598.50 – 2009 Year End Adjustment – 5.3.12)

21. On 23 September 2009, Solitaire sent the Applicant notifying him that he would be liable to contribute £697.92 in respect of service charge expenditure for this financial year. This letter was sent to comply with the requirements of

s.20B(2) of the Act. We have a template for this letter at p.87 of the Accounts Bundle. A demand for the balancing charge was held back whilst the Respondent's new managing agents reviewed the expenditure with the Resident's Association. A demand for payment was made for the balancing charge of £598.50 on 6 March 2012 (at p.85).

22. The Applicant questions whether this sum is chargeable under the lease; whether it is reasonable; and whether it has been correctly demanded.
23. We are satisfied that this sum is payable under the lease. Parts I, II and III of the Fourth Schedule of the lease sets out how the Service Charge and the Estate Charge are to be computed, estimated and accounted for. The Applicant has raised no substantive case as to why these two service charges are not reasonable. We are therefore satisfied that they are. Subject to the appropriate Summary of Tenants Rights and Obligations having been served, we are satisfied that the sum is payable.

Item 7 (£466.45 – half year service charge in advance – 1.10.11)

24. On 7 September, the Respondent sent the Applicant a demand for this sum (see p.83 of the Accounts Bundle). At R4, the Respondent have produced a full account history for the Applicant's service charge account showing the sums debited in respect of the half yearly estate and service charge for the relevant period. The document produced by the Applicant at p.16-17 is rather an extract on which the service charge half yearly amount has been adjusted giving credit for payments previously made. At R5, the Respondent provides copies of the estate and block annual service charges which were sent to the Applicant on which the demand was based.
25. The Applicant refers to the £466.45 which was charged to his account on 1 October 2011. He puts his case in these terms: "same period shows as £435.76 on 15/05/12 statement, therefore overcharged. The Tribunal can find no reference to this figure in either the statement of account (at p.16-17) or the full service charge history at R5. We are satisfied that £466.45 is the correct figure. At page 53 of the Accounts Bundle, we have the estimate of Service Charges for 2011/2. This totals £165,788. The Applicant is liable for 0.5627% of this figure, namely £932.88. 50% of this figure (the half year charge) is £466.44. This has been rounded up by 1p.
26. We note that the Tribunal has previously been provided with a Statement of Account, dated 15 May 2012, which does specify a figure of £435.76. This seems to be an error. We have seen a cheque dated 20 October 2011 in the sum of £793.33 and an invoice, dated 7 September 2011, demanding this sum. This relates to two charges: (i) half year service charge in advance (£466.45) and (ii) estate service charge (£329.88).
27. We are satisfied that this sum is payable under the lease (see above). We can see no evidence of overcharging. The Applicant has raised no substantive

case as to why these two service charges are not reasonable. We are therefore satisfied that they are. Subject to the appropriate Summary of Tenants Rights and Obligations having been served, we are satisfied that this sum is payable.

Application under s.20C and refund of fees

28. The Tribunal makes no order under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that the applicant has paid in respect of the application. The application has failed.
29. In his application form, the Applicant applies for an order under section 20C of the 1985, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. Again, we make no such order as the application has failed. The Applicant has been in breach of his obligations to pay service charges to his landlord over a substantial period.
30. The Respondent applies for an order against the Applicant pursuant to paragraph 10, Schedule 12 of the 2002 Act. We are only permitted to make such an order if satisfied that a party has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings". Any such order would be limited to £500. We have had careful regard to the matters raised by the Respondent in their Supplementary Statement of Case. The Respondent suggest that such an order would be appropriate to limit the costs charged to other lessees. We accept that the Respondent have done their utmost to provide the Applicant with relevant information relating to his service charge account and that the Applicant has failed to comply with the directions given by the Tribunal. On 2 November (at 71), the Respondent applied to have the application dismissed. On 14 November (at p.74), the Tribunal was satisfied that the Applicant had established a case that needed to be considered by this Tribunal. There is a high threshold before such an order is made. The LVT is generally a "no costs" jurisdiction. We have concluded that the Respondent has failed to satisfy this high threshold. However, the Applicant must be warned that he may be at risk of such an order in future if her fails to engage more constructively with his landlord.

Chair: 

(Robert Latham)

27 November 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.

- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) 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 any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—

- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.