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HM COURTS & TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, AND SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference: MAN/00CM/LAC/2012/0034

Premises: Apartments 50, 52, 62, 68, 73, 79, 80, 86 and 115, Echo Building, Wear Street West, Sunderland, Tyne & Wear, SR1 1XD

Applicant: Mr B. Egan (Leaseholder)

Represented by: In person

Respondents: Echo Buildings Management Company Limited (Landlord)
Forte Freehold Managers Limited (Managing Agent)

Represented by: Forte Freehold Managers Limited

Tribunal: Mr L. W. G. Robson LLB(Hons)
Mr J. Rostron MRICS

Determination Date: 17th December 2012

Decisions of the Tribunal

(1) The Landlord, Echo Buildings Management Limited, (Echo) as the immediate landlord and thus the principal party instructing Forte Freehold Managers Limited (Forte), shall be added as the First Respondent to this application.

(2) The registration fees of £60 per unit demanded are reduced to £50 per unit (thus reduced from £600 to £500).

(3) The disbursement of £12 per unit paid to the Land Registry for copies of the title is reasonable as demanded (thus this figure remains at £120).

(4) The charges demanded for letters chasing payment by Forte Freehold Managers Limited relating to all 10 units totalling £4,685.20 are reduced to £500 (£50 per unit).

(5) The charges incurred in connection with the application were accepted at £96.60 and £418, (but see (7) below)

(6) The Tribunal makes the other determinations as set out under the various headings in this Decision.

(7) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 limiting the landlord's costs chargeable to the Respondent under the service charge or otherwise and connected with this application to NIL.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to reasonableness of administration charges payable by the Applicant in the period 16th February 2011 and 7th September 2012 under the terms of a (specimen) lease of Apartment 50 (the Lease) dated 24th May 2007.

2. The administration charges relate to charges made relating to (1) arrears of ground rent and insurance contributions and (2) registration of underleases, under clauses 3 and 4 of the Lease. The dispute is as to whether the amounts charged are reasonable, but the legal basis for making the charges is not disputed. The parties agreed to a determination on the papers, rather than have an oral hearing.

3. The relevant statutory provisions are set out in the Appendix 1 to this decision.

Determination

4. As a preliminary point, the Tribunal noted that the Applicant had made Forte, the Managing Agent, the sole Respondent. This had apparently been noted by the Managing Agent in paragraphs 5 and 6 of its submission. It invited the Tribunal to consider that it was unnecessary to join the landlord, but confirmed it held instructions from Echo. The Tribunal decided that as a matter of practice, a principal party giving instructions to the manager should be a party. Thus it decided to add Echo as the first named Respondent.

5. Pursuant to the Tribunal's Directions dated 12th October 2012 the parties made separate written submissions supported by documents in their own bundles. Both parties replied to the submissions of the other party. The Applicant's written submissions lacked detail, particularly the exact amounts in dispute, and the Respondent's written submissions also did not set out the total amount claimed and provided inconsistent examples of charges made for individual properties. The Tribunal thus decided to use the summary of charges for each property (at RBN5 of the Respondent's bundle), and the summary of charges made in connection with this application in the Respondent's bundle.

6. The Applicant in his submissions accepted that the Lease gave the landlord power in principle to make the charges in dispute. In summary, his complaint

was that the charges made were "exorbitant". Letters had been issued in respect of each property individually, which was unnecessary. He agreed that a banker's draft he had sent to cover the registration fees had not been cashed, but considered that the Respondent's conduct over the matter generally was aggressive. He had attempted to contact Forte but they had not returned his calls, or replied unhelpfully. He subsequently discovered that the number he had been given to call was a premium rate number. He considered that Forte had not dealt with the matter in good faith, and its own conduct had increased the charges.

7. For the Respondent, Ms Rachel Blandford-Newson, Legal Executive employed by Forte, submitted that the unpaid demands had been properly and validly made and sent to the properties and to the Applicant's address in Ireland. In the absence of payment the letters had been followed up with further correspondence. Although the Applicant had made part payment, he had refused to pay the balances due, resulting in a large amount of email correspondence with Forte's paralegal, Diane Fletcher. The reason for sending a separate letter for each property was that although in this case the arrears for each property were the same, in many cases lessees had monies outstanding against one property, but not another. Thus it was the Respondent's policy to serve a separate letter for each property.

8. On the question of charging rates, the Respondent submitted that it was entitled to charge for salaried employees as though the charge was made by an independent solicitor, following Lloyds Bank Limited v Eastwood and Ors [1974] 3 All ER 603. Thus the work relating to the letters had been charged in accordance with the (relevant part of the) Supreme Court Costs Office Guide. The paralegal rate was £118 per hour, the legal executive rate was £161 per hour, and the solicitor's rate was £217 per hour, and these rates had been applied to the correspondence as indicated in Sections RBN9, RBN10 and RBN11 of the Respondent's bundle. Again following these rates, the costs of reading the Application and preparing the witness statement with its documents were £96.60 and £418 respectively. The Respondent considered that it had acted reasonably throughout, and had not charged the full amount of time that had been spent on the matter.

Determination

9. The Tribunal considered the evidence and submissions. As noted above, neither party had been clear as to the total costs charged. Also, while the Respondent had provided sample costs summaries in RBN9, RBN10, and RBN11, these did not properly tally with the charges actually made to the property accounts noted at RBN5. The Tribunal decided that it would treat the summaries at RBN5 as definitive, to discover the totals and informative breakdowns of the charges made. The individual items of charge were identical in nine of the ten summaries, but the summary for Apartment 64 had one charge of £78 omitted, possibly in error. The Tribunal sets out the charges extracted from the summary for Apartment 115 below for information:

7 Day Arrears letter	67.20
Subletting Registration	60.00
Second letter-subletting	78.00
Land Registry Search	12.00
Letter to Mortgagee	134.40
Copy of letter to Lessee	67.20
Third Letting subletting	78.00 (not Apartment 64)

The summary noted at the end that "All sums are inclusive of VAT where applicable". Neither party referred to VAT. The Tribunal has seen no VAT invoices, and has assumed that as the most of the charges related to work done by employed staff, the question of VAT did not arise.

10. The Tribunal accepted that it was reasonable to carry out a Land Registry search to identify the current registered proprietor and any charges. The fee of £12 was effectively a disbursement paid to the Land Registry. In all 10 cases the fee was accepted as reasonable.

11. The Lease at clause 4.21 provides that the landlord may charge a fee of not less than £50 for registration of any document effecting (inter alia) an underlease. This point was effectively accepted by the Applicant. The Respondent considered that 5 years after the date of the Lease it was reasonable to charge £60. The Tribunal did not accept the Respondent's submission. Effectively 10 transactions were being registered at the same time, which should result in at least some saving in time spent. The Tribunal considered that a somewhat lower registration fee was reasonable, but it was not prepared to vary the Lease. It decided that the lessee had agreed to a fee of at least £50 and decided that £50 was a reasonable fee.

12. Relating to the charges for the letters chasing payment, the Tribunal did not accept the Respondent's interpretation of Lloyds Bank v Eastwood (supra). That case related to complex Intellectual property proceedings in court where the successful party employed its own legal department as well as outside solicitors. This application relates to a much more mundane dispute where no proceedings were issued. The issues are not of the same magnitude or complexity. Further, it is clear from the Master's decision in Eastwood that the basic costs principle of reasonableness was not diluted. That principle is that the charges should be reasonable in the circumstances of the case. This Tribunal is not required to carry out a forensic costs exercise based on the work done, but to determine a reasonable cost. In this case no proceedings were issued. Close scrutiny of the charges shown above indicates that for

each property no more than 4-5 letters were written, and such letters were of a generally repetitive nature following office precedents. In a reasonably efficient office they would have been generated very quickly on even a basic computer accounting package, both as to the wording and figures. Contrary to the Respondent's submission, the work would normally be delegated to a junior legal administrator, and much of it would have been included within a standard managing agent's annual fee. For this work the Respondent had demanded the sum of £424.80 for each of nine units, and £346.80 for the tenth, or a total of £4,170. The Tribunal decided that these sums were unreasonable in the circumstances of this case.

13. The Tribunal then considered what a reasonable charge might be. The Tribunal decided that a generous estimate would be 2.5 hours per file for drafting 4-5 letters, say half an hour per letter. At the cost of a legal administrator paid £25,000 per annum, the Tribunal considered that the gross annual cost was about £32,500. Allowing for usual office overheads and allowing for a modest uplift on the gross cost, the Tribunal calculated a figure of £41.66 per file, but decided that a higher uplift might also be reasonable arriving finally at a figure of £50 per file.

14. Adding the Land Registry fee and registration fee dealt with above, the Tribunal thus decided that a charge of £112 per file was reasonable, thus arriving at a total of £1,120

Application under s.20C

15. The Applicant applied for an order under section 20C of the 1985 Act.

16. The Respondent made no submissions on the matter. The Tribunal noted that the Applicant had been substantially successful in his application. The Tribunal also found the Applicant's submission relating to premium charges on the Respondent's phone number to be correct. It was an 0871 number. The Tribunal found it difficult to envisage a situation where a charge for any telephone communication with the Respondent's manager would be reasonable. While the Respondent asserted that it had carried out significant negotiations with the Applicant, there was no evidence in the bundle to substantiate it. All things considered, the Tribunal determined to make an order under Section 20C restricting the Landlord's costs of the application chargeable to the Applicant's service charge to NIL.

Mr L. W. G. Robson LLB (Hons)
Chairman

Dated: 20th December 2012

Appendix 1 - relevant legislation

Landlord and Tenant Act 1985

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.

Commonhold and Leasehold Reform Act 2002

Schedule11

"Meaning of "administration charge"

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 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) .....

(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).....

Reasonableness of administration charges

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

3. .....

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

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) (4) (5) and (6)....."