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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HP/LSC/2013/0081

Property : 606b Ashley Road, Parkstone, Poole,
Dorset, BH14 0AN

Applicant : Southern Land Securities Ltd

Representative : Mr Brendan Milward, SLS Legal
Services

Respondent : Ms Analyn Taala Lewis

Representative : Mr Nick Hanning, RWP Solicitors

Type of Application : Service charges : section 27A of the
Landlord and Tenant Act 1985 (“the
1985 Act”)

Tribunal Members : Judge P R Boardman (Chairman), Mr
A J Mellery-Pratt FRICS, and Mr J
Mills

**Date and venue of
Hearing** : 28 October 2013
Court 8, Bournemouth County Court,
Deansleigh Road, Bournemouth,
Dorset, BH7 7DS

Date of Decision : 28 October 2013

DECISION

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Introduction

1. On 26 March 2013 the Applicant sued the Respondent in the Northampton County Court for £18356.15 for alleged arrears of ground rent, and service and other charges and interest. Following the service of a defence by the Respondent, the case was transferred to the Bournemouth and Poole County Court under claim number 3YK71238
2. On 9 July 2013 the court transferred the matter to the Tribunal to determine the reasonableness of the service charge

Inspection

3. The Tribunal inspected the Property on the morning of the hearing on 28 October 2013. Also present were Mr Milward, Ms Janet Di of Hamilton King Management Ltd, Ms Emily Webster (observing), Mr Hanning, and Ms Lewis
4. The Property was an early 1900s detached, brick-built building under a pitched, tiled roof with two dormers. On the left half of the front elevation was a protruding bay with tile hanging, and, on the right half of the front elevation, at first floor level, what appeared to be a former balcony which had been enclosed with timber stud and plastic shiplap cladding. There was an acro prop under the front right hand corner of the structure
5. The parties said that the first major works referred to in the papers before the Tribunal as “external repairs and redecorations” (“the first major works”), including painting the rendered areas, repointing where that had been a movement crack at the rear, and replacing the lintel above the rear ground floor window, and that the second major works, referred to as “the bay works” (“the second major works”), were prospective works to the right hand side of the front elevation
6. The Tribunal inspected the interior of the second floor, and also a bedroom at the front on the first floor which extended into the enclosed balcony structure

Documents

7. The documents before the Tribunal are :
 - a. the Applicant’s first bundle (“A1”)
 - b. the Respondent’s bundle (“R”)
 - c. the Applicant’s second bundle (“A2”)
 - d. written submissions produced by Mr Hanning at the hearing
8. References in this decision to page numbers are to page numbers in the respective bundles

The hearing

9. Present were Mr Milward, Ms Di, Mr Hanning, Ms Lewis, and, observing, Ms Webster, and (except for the latter half of the morning) Ms Maria Lourdes Petterssen, Ms Chona Garton, and Mr Kenichi Matsui
10. The parties agreed that the service charges in issue before the Tribunal were those included in the sum of £18356.15 claimed in the court proceedings, and that that figure comprised sums claimed between 31 January 2011 (the date of a zero balance on the Respondent's account according to a statement at A1 page 42) and 22 February 2013 (the date when the balance on the statement at A1 page 43 was £18356.15)
11. The parties also agreed that :
 - a. the items shown on the statement at A1 pages 42 and 43 which were service charge items within the jurisdiction of the Tribunal were :
 - the first major works
 - the second major works
 - the various sums for "half yearly service charge in advance"
 - the various items for "end of year balancing charge"
 - b. the following items shown on the statement at A1 pages 42 and 43 were not within the jurisdiction of the Tribunal, but were matters for the court :
 - the various items for rent
 - the various items for interest, there being no relevant payment provisions in the lease
 - the items for "plumbing survey" £540 and "inspect plumbing" £300, being items for which the Applicant had claimed the whole of the invoice price from the Respondent (as shown at A1 pages 44 and 45), rather than claiming a proportion from her by way of service charge in accordance with paragraphs 1 and 2 of the sixth schedule to the lease
 - the various items for "instruct solicitors", there being no relevant payment provisions in the lease

Mr Hanning's written submissions

12. Mr Hanning asked to be allowed to introduce written submissions at the hearing, with apologies for their late submission, as he had been instructed only on Friday 25 October 2013. He said that his submissions were that :
 - a. the service charge demands for the first and second major works did not comply with the procedure set out in the lease in that respect
 - b. the service charge demands which did comply with the procedure set out in the lease did not comply with statutory requirements
 - c. the insurance premiums claimed through the service charge

were excessive

- d. the Respondent wished to apply under section 20C of the 1985 Act for an order that the costs incurred by the Applicant 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 Respondent
13. Mr Milward objected to the admission of these submissions. The Applicant would be prejudiced by having been given no prior notice of them
14. The Tribunal indicated that it would adjourn the hearing for one hour to enable Mr Milward and Ms Di to consider Mr Hanning's submissions, following which the Tribunal would consider further submissions from Mr Milward about whether, and if so, to what extent, the hearing could proceed that day, or whether an adjournment to a later date was required
15. After some 45 minutes Mr Milward indicated that he was ready to proceed with the hearing that day, and was prepared to agree to Mr Hanning's submissions being admitted

The first major works £12977.58

16. Mr Hanning referred to the sixth schedule to the lease (A1 pages 16 and 17) as follows :

1 The Maintenance Charge payable by the Lessee shall be a yearly sum in respect of each year ending on 25 March equal to one half of the total of the following :

- (a) the cost to the Lessor in complying with the covenants on the part of the Lessor in paragraphs 2,3, and 4 of the fourth schedule.....*
- (b) the fees and disbursements paid to any Managing Agents.....*
- (c) the costs.....of ascertaining the Maintenance Charge.....*
- (d) a contribution fixed annually by the Lessor to provide a reserve fund.....*

2 The Maintenance Charge shall be paid :

- (a) by payments on account of the sum conclusively estimated by the Lessor as being the likely Maintenance Charge for the year in question by two equal payments on the 25th March and 29th September in that year*
- (b) the balance (if any) within 21 days of the service on the Lessee of the certificate of the Lessors auditor as to the total referred to in paragraph 1 of this Schedule in respect of the preceding year.....*

17. Mr Hanning submitted that there was no liability to pay a service charge unless payment had been demanded on account under

paragraph 2(a) or a balancing charge had been demanded under paragraph 2(b). No such demand had been served in respect of the first major works

18. Mr Milward submitted that the demand for payment of the cost of the first major works was the letter from Hamilton King dated 5 October 2010 entitled "To all Lessees – External Repairs and Redecoration Works 606 Ashley Road Parkstone" at A1 page 67, which set out the estimated cost of £12977.58 and required payment to be made within 30 days but offered to spread the cost over 12 monthly payments. Also, the Respondent's one half share of £12977.58, namely £6488.79, had been demanded on 6 October 2010 by a document from Hamilton King entitled "request for payment" (R page 45). Mr Milward submitted that both those documents complied with paragraph 2(a) of the sixth schedule to the lease. In addition, the service charge account for the year ended 25 March 2011 (R page 67) complied with paragraph 2(b) of the sixth schedule in that it included the figure of £12977.58 as "major works service charge billed in period"
19. Mr Hanning submitted that the inclusion of the figure of £12977.58 as "major works service charge billed in period" in the service charge account for the year ended 25 March 2011 did not comply with paragraph 2(b) of the sixth schedule in that there was no evidence that the account had been certified by the Applicant's auditor, and in any event it showed the figure as having been billed, not as having been paid. The fact that the sum had not then been paid was confirmed by the document showing a "major works fund surplus carried forward" of £12531.67, and by the letter from Lewis Berkeley dated 9 May 2012 (A1 page 270) stating that the first major works were now complete and that the final account had been agreed at £5170 plus VAT
20. Mr Milward submitted that the final payment might well have been in the 2012 service charge accounts, which were not before the Tribunal. However, a balancing credit of £1936.50 had been credited to the Respondent on 12 February 2013, calculated in accordance with the final statement of the first major works at R page 75, and as shown in the statement at A1 page 43

The second major works £31059.81

21. Mr Hanning made similar submissions to those in relation to the first major works. There were no service charge demands complying with paragraph 2(a) of the sixth schedule to the lease, and, as the work had not been carried out, there was no service charge account complying with paragraph 2(b)
22. Mr Milward submitted that the letter from Hamilton King dated 19 November 2012 entitled "606 Ashley Road – Major Works – Bay works/major work" at A1 page 69, which enclosed the demand (at A1 page 70) for payment of £15529.90, and required payment to be made within 30 days but offered to spread the cost over 12 monthly

payments, and the “statement of estimates” showing the total cost of £31059.81 (at A1 page 39), complied with paragraph 2(a) of the sixth schedule to the lease. Mr Milward accepted, for the purposes of paragraph 2(b) of the sixth schedule to the lease, that the work had not been carried out

The Tribunal’s decision in relation to the payability of the cost of the first and second major works at the date of the court proceedings

23. After an adjournment of the hearing to enable the Tribunal to consider all the evidence and submissions before it, the Tribunal indicated its decision as follows :
- a. the Respondent would be liable to pay her share of the cost of the first and second major works by way of service charge under the lease at the date of the court proceedings only if relevant demands had been served under paragraph 2(a), or a certificate by the Applicant’s auditor had been served under paragraph 2(b), of the sixth schedule to the lease
 - b. the Applicant had served demands for other service charge items which the Tribunal found to comply with paragraph 2(a) of the sixth schedule to the lease; for example, the demand dated 4 May 2011 at R page 159 :
 - was headed “Statement of Anticipated Service Charge Expenditure”
 - referred to the service charge period “26 Mar 2011 – 25 Mar 2012”
 - had a column entitled “expenditure heading”, with items “accountancy, insurance premium, repairs and management fees”
 - had a column entitled “anticipated expenditure” with figures by each item of expenditure totalling £1978.00
 - had a column entitled “percentage”, noting the Respondent’s share of 50%
 - had a column entitled “anticipated share due”, noting the Respondent’s 50% share of the total anticipated expenditure as being £989.00
 - stated, under the heading “charge details”, that the “half yearly service charge in advance due on 25 March 2011” was £494.50
 - c. by way of contrast, the documents prayed in aid by Mr Milward as complying with paragraph 2(a) of the sixth schedule to the lease in relation to the first and second major works were not in a similar format, did not express themselves to be demands for a half yearly service charge in advance due on 25 March or 29 September in the year in question, and indeed did not even express themselves to be service charge demands, as distinct from simply expressing themselves to be demands for payment
 - d. in relation to the first major works, the letter at A1 page 67 purported to be a notice under section 20 of the 1985 Act and,

- although it also contained a demand for payment of the Respondent's share of the cost, the demand was for payment within 30 days, not for payment on one of the payment days referred to in paragraph 2(a) of the sixth schedule to the lease
- e. similarly, the demand at R page 45 was for payment within 30 days, not for payment on one of the payment days referred to in paragraph 2(a) of the sixth schedule to the lease
 - f. neither of those documents mentioned the words "service charge", neither of them referred to the service charge year in question, and neither of them requested payment on either of the payment days referred to in paragraph 2(a) of the sixth schedule to the lease
 - g. neither of the documents complied with paragraph 2(a) of the sixth schedule to the lease, accordingly
 - h. in relation to paragraph 2(b) of the sixth schedule to the lease the Tribunal :
 - found that the wording in paragraph 2(b), namely *the balance (if any) within 21 days of the service on the Lessee of the certificate of the Lessors auditor as to the total referred to in paragraph 1 of this Schedule in respect of the preceding year.....* signified, by its ordinary and natural meaning, and when construed in the context of paragraph 1 of the sixth schedule to the lease, that the Applicant had to have incurred a cost in relation to the item in question, or had to have fixed a reserve fund contribution in relation to it, and that the Applicant's auditor had to have so certified, before the cost could become payable by way of service charge under paragraph 2(b)
 - accepted Mr Hanning's submission that the inclusion of the figure of £12977.58 as "major works service charge billed in period" in the service charge account for the year ended 25 March 2011 did not comply with paragraph 2(b) of the sixth schedule in that there was no evidence that the account had been certified by the Applicant's auditor, and, in any event, it showed the figure as having been billed to the Respondent, not as having been a cost incurred by the Applicant
 - found that there was no evidence before the Tribunal, despite the inclusion of the words "major works fund surplus carried forward.....£12531.67" in the service charge account for the year ended 25 March 2011 (R page 67), that the Applicant had "fixed" a contribution to provide a reserve fund in relation to the first major works for the purposes of paragraph 1(d) of the sixth schedule to the lease
 - i. in relation to the second major works, the Tribunal found that the documents at A1 pages 69 and 39 did not comply with paragraph 2(a) of the sixth schedule to the lease for similar reasons to those which the Tribunal had found regarding the documents at A1 page 67 and R page 45 in relation to the first major works, and also found that it was common ground that the works had not been carried out, so that the Applicant had not incurred a cost in relation to it, and that there was

accordingly no evidence that paragraph 2(b) of the sixth schedule to the lease had been complied with in relation to the second major works

- j. as neither paragraph 2(a) nor 2(b) of the sixth schedule to the lease had been complied with, neither the cost of the first major works, nor the cost of the second major works, was payable under the terms of the lease at the date of the court proceedings

The question whether those service charge demands which did comply with the procedure set out in the lease did not comply with statutory requirements

24. Mr Hanning said that following discussion with Mr Milward and Ms Di during the lunch adjournment this question was no longer in issue before the Tribunal

The question whether insurance premiums included in the service charge were excessive

25. Mr Hanning said that although the Respondent felt that the premiums were excessive, there was no independent evidence in this respect before the Tribunal, and that this question was therefore no longer in issue before the Tribunal

The application under section 20C of the 1985 Act

26. In answer to questions from the Tribunal, Mr Milward said that he was not challenging the late submission of this application. He conceded that there was no provision in the lease enabling the Applicant to include the Applicant's costs of these proceedings in a future service charge, and that the covenant by the Respondent to pay the Applicant's costs in connection with a notice under section 146 of the Law of Property Act 1925 (paragraph (q) of part I of the third schedule at A1 page 10) was a direct covenant by the Applicant, and not a provision enabling the Applicant to include such costs (even if such costs had been incurred in this case) in a future service charge

The Tribunal's decision in relation to the application under section 20C of the 1985 Act

27. The Tribunal accordingly indicated its decision to make an order that the costs incurred by the Applicant 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 Respondent

Appeals

28. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

29. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
30. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
31. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 28 October 2013



.....
Judge P R Boardman
(Chairman)