

8983



**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of Sections 20C and 27A of the Landlord and Tenant Act 1985

Case No. CHI/43UF/LIS/2013/0005

Property: **1 The Green  
Upper Lodge Way  
Netherne on the Hill  
Coulson  
Surrey  
CR5 1LX**

Between: **Ms Shirley Palmer  
(the Applicant)**

and

**Netherne Management Company Ltd  
(the Respondent)**

Date of hearing: 23<sup>rd</sup> April 2013

Date of the decision: 29<sup>th</sup> April 2013

Members of the Tribunal: Mr D Dovar LLB (Hons)  
Mr Brandon Sims FRICS MCI Arb  
Mr Roland Dumont

## **DECISION**

### **Introduction**

1. This is an application for the determination of the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 for the year end 2007 and 2008.
2. The Applicant appeared in person and Mr Murdoch represented the Respondent. He is a director of the Respondent company and had only recently been drafted in to attend the hearing. The Respondent is a company owned and controlled by the residents.

### **The Property**

3. The Property is a three bedroom flat in a building situated in the middle of a large estate of flats and houses (around 500 properties) which has a significant amount of communal areas. On the whole the estate appeared well maintained and the Tribunal was shown the communal lawn, village hall and recreational centre by the parties.

### **The Lease**

4. Ms Palmer's lease provides for the payment of different types of service charge. This application relates to estate service charges (for leisure and communal facilities) and not to a separate service charge that is payable for the building in which her flat is contained.

### **The Statutory Provisions**

5. Section 18 of the Landlord and Tenant Act 1985 defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.
6. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard. Under section 19 (2) where sums are due before the costs are incurred, 'no greater amount than is reasonable is so payable'.
7. Section 21B, which has been in force since 1<sup>st</sup> October 2007, requires demands for service charges to be accompanied by a summary of rights and obligations. A failure to adhere to this section, renders the demand ineffective.
8. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount which is payable and the date at or by which it is payable. The determination can be made whether or not any payment has been made and also in respect of anticipated expenditure.

#### **The sums in dispute**

9. The Tribunal had been provided with very little information on the sums in dispute. Mr Murdoch candidly accepted that he did not have a lot of the supporting documentation to justify the sums under review. His primary response to this application was to set out the history of the management of the site. In 2011, the ownership of the communal areas passed to the Respondent as well as the management of the estate. The developer had

owned those parts and had carried out the maintenance of the estate. Mr Murdoch stated that substantial sums were owed in respect of maintenance and the estate was going into decline. A deal was struck, whereby a collection of residents agreed to take on the substantial debt, in return for being given the reigns of management and ownership of the communal parts. He stated that the majority of the residents had paid sums demanded for the period prior to the change-over on the basis those sums needed to be paid, regardless of whether they were actually payable, in order for the Respondent to continue to function and to maintain the estate.

10. For the year end 2007, Ms Palmer disputes the total amount charged to her of £700.18. That amount was demanded in a series of payment requests for payments on account (with one balancing adjustment for the year end 2006). The Tribunal has not been provided with the final account of the actual expenditure to which these demands relate. Mr Murdoch was unable to refer to any specific evidence as to what these sums would have been applied to. In absence of any evidence by the Respondent to support these charges, the Tribunal disallows them.
11. For the year end 2008, Ms Palmer disputes the total amount charged to her of £845.64 which is contained in one demand dated 8<sup>th</sup> September 2008 and comprises an on account charge for three quarters. The Tribunal was provided with the Company's trading account for the period of 18 months ending on 31<sup>st</sup> December 2008. These accounts did little to satisfy the Tribunal of the actual expenditure in that:
  - a. The budgeted sums set out in the account bore no relation to the sums demanded on account;
  - b. There were significant and genuine queries over the amounts stated as having been actually incurred, in particular:

- i. There were very large maintenance costs and it was not clear why these had been incurred and/or how they fell to be regarded as sums recoverable by way of service charge;
  - ii. There was a very large sum for leisure centre works and it was not clear why, if as Mr Murdoch stated, this was due to vandalism, that this had not been claimed on insurance;
- 12. Mr Murdoch stated that there were significant works budgeted for in this period, but shortly after this demand was sent out, the managing agent ceased work for the estate. He candidly stated that he had also queried this budget when it came out and only paid it after the management of the site had passed to the residents in 2011.
- 13. The Tribunal does not consider that the Respondent had provided sufficient information to justify the on account demand for service charges. There were a number of significant and genuine outstanding queries and the Tribunal is not able to make a determination that the sums demanded on account were reasonable for the purposes of section 19 (2). Therefore those sums are not payable.
- 14. Further, in relation to the sums demanded for 2008, the Tribunal enquired whether there had been any summary of tenant's rights accompanying this demand. Mrs Palmer stated she could not recall, whilst Mr Murdoch said that he thought he had received them with his demand. The Tribunal was not satisfied on the evidence before it that the demand had been accompanied by a summary of tenant's rights and obligations and therefore even if the Tribunal had been able to make a determination that the sums demanded were reasonable under section 19 (2) they would still not have been payable.

**Section 20 C and refund of application fee and costs order.**

15. The Applicant made an application for an order under section 20C of the Landlord and Tenant Act 1985 to limit the recovery of the costs incurred in these proceedings under the service charge and separately for a refund of her application and hearing fee under Regulation 9 of the Leasehold Valuation Tribunals (Fees) Regulations 2003.
16. Whilst the Tribunal appreciates the Respondent's position, namely that it took over a financially troubled estate and that many on the estate have agreed to draw a line over past problems with service charge payments and paid regardless of a lack of accountability, the Applicant is perfectly entitled to know what it is she was being asked to pay for. Further, the Respondent had no substantive defence to this application and the Tribunal considers that in those circumstances they should not have resisted this matter or continued to pursue the amounts from the Applicant.
17. For those reasons the Tribunal does make an order under section 20C limiting the recoverability of any costs of these proceedings through the service charge, as well as making an order that the Respondent reimburse the Applicant's hearing and application fee.

### **Summary**

18. As both the years in question related to on account service charges, and as the Respondent was unable to come up with any proper explanation as to how these sums had been arrived at, the Tribunal cannot make a finding that the sums are reasonable under section 19 (2) and therefore allows the application in full.
19. In addition the Tribunal makes an order under section 20C of the 1985 Act, and for the application fee and hearing fee, being a total of £250, to be reimbursed to the Applicant by the Respondent by 4pm on 31<sup>st</sup> May 2013.

Daniel Dovar LLB (Hons)

Chairman

29<sup>th</sup> April 2013