

9557



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

Case Reference : **LON/00BE/LSC/2013/0635 & 0510**

Property : **202B Dunstons Road, London SE22
0ES**

Applicant : **Mr Harminder Gill**

Representative : **Mr R D Barker MRICS
Fell Reynolds**

Respondents : **Mr Orlun Levent and
Ms Holly Phillips (1) Ground floor flat
Mr Jacabo Stendall and
Mrs Catalina Stendall (2) First floor flat**

Representatives : **Mr Levent and Mr Stendall In Person**

Type of Application : **Court referrals liability to pay service
charges and variable administration
charges**

Tribunal Members : **Judge John Hewitt Chairman
Mr Luis Jarero BSc FRICS**

**Date and venue of
Hearing** : **20 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 December 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:

1.1 Of the sums claimed in the court proceedings:

The sums payable by Mr Levent and Ms Phillips as lessee of the ground floor flat are:

| | |
|---------------------------------|---------|
| 2010 Management fees | £ 45.00 |
| 2011 Management fees | £ 45.00 |
| 2012 Management fee (part year) | £ 37.50 |

Variable administration charge £210.00

The sums payable by Mr and Mrs Stendall as lessee of the first floor flat are:

| | |
|---------------------------------|---------|
| 2010 Management fees | £ 45.00 |
| 2011 Management fees | £ 45.00 |
| 2012 Management fee (part year) | £ 37.50 |

Variable administration charge £210.00

- 1.2 The Applicant's application for a costs order against the Respondents is refused;
- 1.3 An order shall be made (and is hereby made) pursuant to section 20C Landlord and Tenant Act 1985 to the effect that none of the costs incurred or to be incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any services charges payable by the Respondents or any of them;
- 1.4 The First Respondent shall by **5pm Friday 17 January 2014** reimburse the Applicant the sum £62.50 towards the fees paid by the Applicant to the Tribunal;
- 1.5 The Second Respondent shall by **5pm Friday 17 January 2014** reimburse the Applicant the sum £62.50 towards the fees paid by the Applicant to the Tribunal; and
- 1.6 The files will now be returned to the Court along with copies of this Decision so that the Court may determine any issues between the parties as to ground rent payable, the costs incurred by the parties in the court proceedings and the Applicant's claims to recover court fees.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The Applicant is now the freeholder of the property known as 202B Dunstons Road. It appears that the property may have originally been constructed as a house but has subsequently been adapted to create two self-contained flats.
4. The two flats have been sold off on long leases. The lease of the ground floor flat is vested in Mr Levant and Ms Phillips (the First Respondent). The lease of the first floor flat is vested in Mr & Mrs Stendall (the Second Respondent).
5. The Applicant commenced separate court proceedings against each of the Respondents:

First Respondent: Claim Number 3YK01821 [1]

Second Respondent: Claim Number 3YJ18946 [21]

Both claims were identical and sought arrears of service charges, and ground rent of £1,491.00 and variable administration charges of £210.00. The Applicant also sought to recover, in each case, the court fee of £95.00 and Solicitor's costs of £60.00.

Defences were filed.

By order dated 29 August and drawn 4 September 2013 [20] District Judge Zimmels sitting at Lambeth County Court in the proceedings against the First Respondent ordered that:

“The proceedings be stayed and the matter referred to the Leasehold Valuation Tribunal (LVT) for the claim in relation to the service charges for the determination of the reasonableness of those charges.”

By order dated 17 July and drawn 24 July 2013 [51] District Judge Zimmels sitting at Lambeth County Court in the proceedings against the Second Respondent ordered that:

“The claim has been transferred to the Leasehold Valuation Tribunal to consider the reasonableness of the service charges claimed.”

6. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.
7. These proceedings are subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules).

8. Directions were given on 8 October 2013 [66]. Those directions record that the parties agreed that (notwithstanding the orders of District Judge Zimmels) all matters apart from the rent were referred to the Tribunal for determination. Thus it is we have jurisdiction to determine the claims to the variable administration charges.
9. The references came on for hearing before us on 20 November 2013. The Applicant was represented by Mr Baker of Fell Reynolds, a firm of chartered surveyors who, in 2009, were appointed as the Applicant's managing agents. Mr Levent represented the First Respondent and Mr Stendall represented the Second Respondent. Mr Levant and Mr Stendall collaborated with one another and, in effect, jointly presented the case for the Respondents.
10. We established that the arrears of £1,491 claimed in the court proceedings were made up as follows:

| | | | |
|----------------------|----------------|---------|-------------------------------------|
| Ground rent arrears | | £800.00 | |
| 2009 Management fees | | £ 45.00 | |
| 2010 Management fees | £ 45.00 | | |
| Insurance | <u>£196.00</u> | | £241.00 |
| 2011 Management fees | £ 45.00 | | |
| Insurance | <u>£185.80</u> | | £230.88 |
| 2012 Management fees | £ 33.75 | | |
| Insurance | <u>£140.37</u> | | <u>£174.12</u> (NB 3 quarters only) |
| Total | | | £1,491.00 |

11. The question of ground rent was not before us as we do not have any jurisdiction in relation to it. We note, in case it may be of assistance that Mr Levant and Mr Stendall did not dispute that the ground rent had not been paid that and the arrears claimed against them were payable by them.
12. The annual management fees of £45.00 per year were not disputed. What was in dispute was the insurance. There was no challenge to the quantum of the insurance; the challenge was that the property had not been insured in the name of the Applicant.
13. Mr Baker did not wish to give evidence; he was content to make submissions to us. Mr Levant and Mr Stendall both gave evidence and they both answered questions put to them by Mr Baker and members of the Tribunal.

The leases

14. The landlord's covenant as regards insurance is set out in clause 4.4.1. An example is at [92]. It is in these terms:

"To maintain in an insurance office of repute in the name of the landlord insurance against the Insured Risks the amount of such insurance risks defined in Clause 1.11.1 being not less than the full reinstatement value of the items mentioned in that clause together with the costs of debris removal plus not less than 12½% of which value in respect of professional fees in relation to the carrying out of the reinstatement"

The Insured Risks as defined were not in issue so we need not set those out.

What is in issue is whether the insurance was maintained in the name of the landlord; and if not whether that has any effect on the obligation on the Respondents to contribute to the cost of insurance.

Background and findings

14. Having regard to the oral and documentary evidence before us and the submissions of the parties we make the findings set out below.
15. The Applicant has a substantial property portfolio. Some of the properties are held in his personal name and some are held in companies controlled by him.
16. In 2006 a company known as Premier Commerce Incorporated Limited (Premier) was incorporated in England with Company No. 05842956.
17. Premier was owned or controlled by the Applicant.
18. The freehold title of 202B Dunstons Road is registered at Land Registry with Title Number 133976.
19. By June 2007 Premier was registered at Land Registry as the proprietor of 202B Dunstons Road.
20. By a lease dated 20 April 2007 and made between Premier as landlord and the First Respondent as tenant the ground floor flat was demised to the tenant for a term of 125 years from 1 January 2007. On 11 June 2007 the First Respondent was registered at Land Registry as the proprietor of that lease [7].
21. By a lease dated 17 October 2007 and made between Premier as landlord and the Second Respondent as tenant the first floor flat was demised to the tenant for a term of 125 years from 1 January 2007. On 19 December 2007 the Second Respondent was registered at Land Registry as the proprietor of that lease [27].

22. On 25 April 2008 Premier changed its name to Chelsea Leisure Limited (Chelsea)
23. On 29 August 2008 the Applicant was registered at Land Registry as the proprietor of the freehold of 202B Dunstons Road. Thus as from that date the Applicant became the landlord for the purposes of the leases. There was an issue between the parties as to whether Chelsea as vendor of the freehold gave notice of its intention to make a relevant disposal for the purposes of section 5 Landlord and Tenant Act 1987 but that is not an issue before us. We observe that an offer notice given to the First Respondent is at [172]. It is dated 6 May 2008 and was given by ebw Solicitors. It states the notice was given by ebw llp as agents for Premier which was defined as "*(the Landlord)*".
24. On 24 March 2009 Chelsea was dissolved.
25. In 2009 the Applicant instructed Fell Reynolds to act as his managing agents and evidently there was some misunderstanding in the instructions given to Fell Reynolds and/or the insurance brokers, Belmont, as to the name of the freeholder and someone along the line appears to have been told or assumed it was Premier.
26. At some point in 2009 Fell Reynolds notified the Respondents of their appointment and that the freeholder was the Applicant. The relationship did not get off to a good start. The Respondents tried to make contact with the Applicant but mail sent to the address recorded for him at Land Registry was returned and evidently he was not known at that address. Enquiry was made at ebw solicitors but they stated they no longer acted for him. Suspicions were raised and were not helped by inappropriate demands for service charges sent to the Respondents which apparently included alleged expenditure on features of the property which simply did not exist. In the event and over time these matters got sorted out and a number of credit notes were issued to regularise the accounts. Nevertheless the Respondents were frustrated and worried by what had occurred and this led them to withhold payment of ground rent and other sums demanded of them.
27. The property requires little services and an arrangement was arrived, possibly by default, whereby the Respondents look after the property on a daily basis providing whatever cleaning, gardening or maintenance repairs are required. The property is insured through Belmont as brokers. Thus all that Fell Reynolds has to do is send out the demands for ground rent and the insurance contributions. The management fee for doings so of £45 per unit is not in dispute.
28. At all material times the building insurance for the property was placed with Aviva Insurance Limited (Aviva). Belmont has issued a series of documents in common form. They are headed:

"TO WHOM IT MAY CONCERN

FLAT AND HOUSE OWNERS INSURANCE POLICY SCHEDULE

RE: FELL REYNOLDS

As Insurers Brokers to the above named client, we summarise the cover effected on their behalf:-

Type of Insurance: *Flat and House Owners Policy Wording*

Policy No. *24433196CHC*

Insured: *Premier Commerce Inc c/o Fell Reynolds*

Business Description: *The ownership (Freehold or leasehold or management of the Buildings*

Premises Situate: *202B Dunstons Road, East Dulwich SE22 oES*

Period of insurance: *...*

Additional Interests: *The interests of the freeholder and head lessor of the Buildings (if they are not the Policyholder) the owner or lessees of each flat and the mortgagees of any of them are noted in section 1 of this Policy and the nature and extent of such interest to be disclosed in the event of loss.*

There then follows the amounts of various sums insured.

The document for the Period of Insurance 01 January 2011 to 31 December 2011 is at [174]. It is not dated.

The document for the Period of Insurance 01 January 2012 to 31 December 2012 is at [176]. It is dated 9 January 2013.

The document for the Period of Insurance 01 January 2013 to 31 December 2013 is at [177]. The page bearing the date has not been provided to us.

29. It was not until October 2013 that Aviva were notified that that the landlord of the property was the Applicant. By letter dated 22 October 2013 sent by Aviva to Belmont [159] Avivia said:

“Re: Fell Reynolds – Policy Number 24433196 CHC

I write with reference to the above policy and our recent conversations regarding the Premises situate 202B Dunstons Road, East Dulwich, London SE22 0ES.

As discussed it has come to light that these Premises were added to the policy back in 2008 with the name of the owner incorrectly stated as 'Premier Commerce Inc.' whereas it should have been 'Harminster Gill'.

In the circumstances I have reissued the Property Schedule for the current Period of Insurance commencing 1st January 2013 and I will send this to you separately by email for ease of onward transmission.

Unfortunately, our systems do not allow for the creation of amended Property Schedules for expired Periods of Insurance and hence I am unable to reissue such annual Schedules going back to 2008. Please however take this letter as evidence that we have noted our records to show the correct beneficial ownership of[?].

Further, we confirm that this policy has been in place with Aviva since 2008. Additionally, this policy does contain an Other Interest Clause which automatically notes the interest of all interested parties.

I do hope that the above is of assistance.

Kind Regards"

30. The reissued Property Schedule referred to in the above letter is at [147]. It states the Policy Number to be 24433196CHC and the Reason for Issue is 'Mid Term Amendment'.

Material for present purposes are the following extracts:

"Contact Details: *The Policyholder Fell Reynolds"*

"Notes: *Policyholder*
Please note the above Property is owned by
Harminster Gill c/o Fell Reynolds"

31. Belmont reissued the documents mentioned in paragraph 28 above to record the Insured as being "*Harminster Gill c/o fell Reynolds*" as follows:

The document for the Period of Insurance 01 January 2009 to 31 December 2009 is at [149]. It is dated 7 August 2013.

The document for the Period of Insurance 01 January 2010 to 31 December 2010 is at [151]. It is dated 7 August 2013.

The document for the Period of Insurance 01 January 2011 to 31 December 2011 is at [153]. It is dated 7 August 2013.

The document for the Period of Insurance 01 January 2012 to 31 December 2012 is at [155]. It is dated 7 August 2013.

The document for the Period of Insurance 01 January 2013 to 31 December 2013 is at [157]. It is dated 7 August 2013.

32. We were not provided with a copy of the policy by which the building is insured.
33. A material authority is *Green v 180 Archway Road Management Co Limited* [2012] UKUT 245 (LC), a decision of HHJ Nicholas Huskinson. Neither party had cited it. Copies were made available to the parties and the hearing was adjourned for a short while to enable them to consider it.

The rival submissions

34. The submissions made on behalf of the Respondents were simply that the Applicant had not insured the property in his name, as required by the lease. They said that for the three years in question the property had been insured in the name of Premier which was incorrect in three respects. First Premier changed its name to Chelsea in April 2008. Secondly, the Applicant became the landlord on 29 August 2008. Thirdly, Premier then known as Chelsea was dissolved on 24 March 2009. They also complained that no evidence had been provided to confirm that the premiums had been paid. They submitted that the documents issued by Belmont were not reliable evidence because they are brokers, not the insurer. Also it is plain that Belmont has backdated a number of documents in an effort to show that in prior years the policyholder was the Applicant when plainly as Aviva has confirmed that was not the case.
35. Mr Baker for the Applicant submitted that at all material times the property had been insured and that the brokers have clearly stated that Mr Gill was the policyholder. He said that he would happily send a copy of the policy if required. He also submitted that if either of the Respondents had made a claim on the policy Aviva would have paid out on it but he did not produce any evidence to support that submission.

Mr Baker also stated that he was content for the Respondents to pay the ground rent direct to the Applicant if they preferred. He also confirmed that the Applicant is content to allow the Respondents to manage the property on a day to day basis.

Conclusions

36. Before considering the evidence and rival submissions we remind ourselves of the guidance give to us in *Green v 180 Archway Road*.

In that case the lease obliged the landlord to insure the building ‘*in the joint names of the lessor and lessee*’. The judge noted that there was authority for the proposition that a joint insurance in the names of both lessor and lessee is very commonly arranged. The evidence in that case was to the effect that the property was insured in the sole name of the landlord but that the policy was subject to a general interest clause and on some of the certificates issued Ms Green’s interest was specifically noted and sometimes it was not. In paragraph 14 HHJ Huskinson made clear that the question was not whether insurance had been placed and that it would have been sufficient if Ms Green had made a claim; the question was whether the landlord had insured the property in the joint names of the lessor and lessee.

37. In paragraph 15 of his judgment the judge concluded that to place insurance in the name of the lessor with no mention of the name of the lessee, even with the lessee’s interest noted on the policy, is not the same thing as placing insurance in the joint names of the lessor and lessee. In paragraph 18 the judge rejected the notion that if a general interest clause protected the lessee, the property was insured and the lessee was not at risk so that it was immaterial that the policy was not in the joint names of the lessor and lessee.
38. In the subject case the obligation in the lease is for the landlord ‘to maintain ... insurance in the name of the landlord against the insured risks...’.

The question we have to decide is whether the Applicant produced evidence to us to persuade us that he has fulfilled that obligation.

39. We find that he has not. The documents issued by Belmont, as brokers, do not amount to evidence as to the name of the policyholder. It was unhelpful that Belmont saw fit to reissue documents in an effort to record Mr Gill as being the policyholder when quite plainly that was not the case. We find that Aviva dealt with that matter quite correctly by saying that it was unable to reissue documents relating to expired periods of insurance.
40. We are satisfied that at all material times the property was insured by Aviva because we accept Aviva’s letter dated 22 October 2013 [159] to that effect. There was no evidence before us and it may well be that the Respondents’ interests were covered by the general interest clause, but as is clear from *Green v 180 Archway Road* that is not the point.
41. The subject policy was not produced to us. That would have shown who the insured was. The limited evidence produced to us suggests that the policyholder was in fact Fell Reynolds. Mr Baker made several references to a block policy taken out by his firm. The Aviva letter at [159] is headed: “*Re: Fell Reynolds – Policy Number 24433196 CHC*”. The Aviva policy schedule at [147] names the policyholder as being Fell Reynolds. The only reference to Mr Gill is a footnote to the effect that the property is owned by Harminder Gill c/o Fell Reynolds. We are

quite clear that if that is the arrangement, then the Applicant has not complied with the obligation 'to maintain ... insurance in the name of the landlord against the insured risks...'. A policy in the name of Fell Reynolds noting that Mr Gill is the owner is not the same as the insurance being maintained in the name of Mr Gill.

42. Accordingly for the reasons set out above we conclude that the Applicant has not complied with his obligations under the lease and thus the contributions to the costs of the insurance claimed in the court proceedings are not payable by the Respondents.

Administration charges

43. The administration charges claimed are modest. They are made up as to a charge of £60 paid to Fell Reynolds and a charge of £150 paid to PDC Legal to chase payment of arrears of ground rent.
44. It was not in dispute that the ground rent had not been paid. The reasons for non-payment were concerns over who the Applicant was and whether Fell Reynolds had authority to receive the ground rent on his behalf. Whilst these concerns may have been justifiable in the early days those issues were resolved a good while back. We find the ground rent should have been paid. The continuing issue over insurance was not justification to continue to withhold ground rent. We find it was not unreasonable for the Applicant to incur costs in chasing the arrears and we find the costs so incurred are reasonable in amount.
45. Accordingly we have determined that the sum of £210 is payable by each Respondent.

Costs and fees

46. Mr Baker made an application for a costs order. The application was opposed. The court proceedings transferred to us were commenced prior to 1 July 2013 when certain functions were transferred to this Tribunal. In accordance with the Transitional Provisions the costs regime which applied prior to 1 July 2013 continues to apply to proceedings commenced prior to 1 July 2013.
47. Thus our jurisdiction as to costs is that set out in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The maximum we can award is £500 and we can only do so if we find that a party has acted 'frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
48. Mr Baker submitted that the Respondents had so acted, they have refused to pay a penny since the leases were granted and they have raised issues which amount to nothing more than a smokescreen which amounts to vexatious and frivolous conduct.
49. We have considered the rival submissions carefully. We reject the Applicant's submission. In the proceedings before us the only live issues were the cost of insurance and the administration charges. The

management fees had been conceded. Whilst the Respondents did not succeed on the administration charges issue, they did succeed on the insurance issue which was the more important of the two. We find the Respondents were perfectly entitled to take both points and their conduct during the course of the proceedings was perfectly correct and proper.

50. Mr Baker also made an application that the Respondents reimburse the Applicant the sum of £250 fees paid to the Tribunal. The application was opposed. Having carefully considered the rival submissions we find that the fees incurred should be shared between the parties equally; that is say the Applicant should bear £125 and the Respondents should bear £125 between them. We have therefore made an order that each of the Respondents should reimburse the sum of £62.50. We arrived at this conclusion because each of the parties contributed to the need to incur the fees. The Applicant made a justified claim to ground rent which the Respondents ought to have paid, the Applicant succeeded on his claim to the administration charges and the Respondents succeeded on the case concerning insurance.
51. The Respondents made an application for an order pursuant to section 20C Landlord and Tenant Act 1985. The application was opposed. We have made an order because we consider it just and equitable to do so. The substantive issue in the proceedings before us was that of the insurance. On that the Applicant failed. It would be unfair on the Respondents that they should have to contribute to the costs of such a failure.

Next steps

52. We have referred the files back to the court with our Decision which determines the issues which the court referred to us. The court will need the files in case any of the parties wish to take further steps in the court proceedings.

Judge John Hewitt