

10469



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

Case Reference : **CHI/43UD/LIS/2014/0008**

Property : **1 Summersbury Hall,
Summersbury Drive, Shalford,
Guildford, Surrey, GU4 8JJ**

Applicant : **Summersbury Hall Ltd**

Representative : **Mr Pain of Counsel**

Respondents : **(1) Michael John Crust
(2) Kimberley Beth Crust**

Representative : **In person**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal Members : **Judge I Mohabir
Mr A O Mackay FRICS
Miss J Dalal**

**Date and venue of
Hearing** : **7 October 2014
Guildford County Court**

Date of Decision :

DECISION

Introduction

1. The Applicant commenced proceedings in the Northampton County Court against the Respondents to recover service charge arrears and administration charges totalling £5,466.46 together with statutory interest and legal costs.
2. The Respondents defended the proceedings and counterclaimed in disrepair.
3. Pursuant to an order made by District Judge George at Guildford County Court dated 28 January 2014, the issues relating to the service and administration charges were transferred to the Tribunal for determination and the counterclaim was stayed pending the Tribunal's decision.
4. The Tribunal issued Directions on 27 February 2014, but given the limited compliance by the parties, a CMC was held on 1 July 2014 and supplementary Directions issued. Paragraph 3 of those Directions set out the service and administration costs claimed by the Applicant. Paragraph 4 of the Directions set out those matter not within the jurisdiction of the Tribunal and are remitted back to the County Court for determination.

The Issues

5. The Respondents had, in terms, raised a legal point as to whether the relevant service charge demands were valid and, if not, whether the service charges for the years concerned were irrecoverable by virtue of section 20B(1) of the Act.
6. The heads of service charge challenged by the Respondents in each of the years from 2010 to 2012 were, helpfully, set out in a Scott Schedule prepared by Counsel for the Applicant, Mr Pain, and annexed hereto. Unless stated otherwise, the Tribunal adopts the page references set out in the Scott Schedule. The Tribunal confirmed with the Respondents that

the heads of expenditure and amounts expressly stated to be admitted were in fact admitted by them. They admitted that all of the costs in issue had been reasonably incurred.

7. The Tribunal also ruled that it did not have jurisdiction to make any determination for the expenditure relating to accountancy (all years), corporation tax and legal fees (both in 2010) because they are not being claimed as service charges or otherwise. The remaining issues set out in the Scott Schedule are considered in turn below.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The hearing in this matter took place on 7 October 2014, following an inspection of the subject property. The Applicant was represented by Mr Pain of Counsel. The Respondents appeared in person.
10. It soon became clear to the Tribunal that although the Respondents had made valiant efforts in the preparation of their case, their understanding of how to deal with the evidence relating to the issues was limited. The Tribunal, therefore, concluded that the most appropriate way to deal with the issues was to hear submissions made by both parties on the heads of expenditure is issue below and this is followed by the Tribunal's determination. It should be borne in mind that this case takes place in the context of the Applicant as a wholly "tenant owed" company and the leaseholder being owner occupiers with the attendant common interest.

Service Charge Demands – Section 20B

11. It was common ground that, strictly speaking, each of the leaseholders was contractually obliged to pay a service charge contribution of 1/12th. However, it seems that by agreement a contribution of 1/13th is in fact paid by them and the Respondents are content with this arrangement.

12. Somewhat unusually, clause 1 of the lease requires estimated service charge demands on account in each year to be based on the expenditure incurred in the preceding year. However, Mr Pain told the Tribunal that the relevant demands are in fact based on the actual expenditure in the previous year. Essentially, service charges are paid in arrears.
13. The Tribunal accepted Mr Pain's submission that even though the demands are based on actual expenditure incurred in the preceding year, they are to be regarded as payments on account in relation to the subsequent year in which the demand is made. Consequently, the relevant test of reasonableness to be applied is under section 19(1) of the Act and section 20B is of no application. Understandably, the Respondents were unable to make any coherent submissions in reply.

14. The Tribunal also accepted Mr Pain's submission that this construction of clause 1 of the lease satisfied the "reasonable recipient" test enunciated in *Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749. In other words, an objective observer on receipt of the relevant service charge demands would have understood them to be demands on account, albeit based on the actual expenditure incurred in the preceding year.
15. The Tribunal was also supported in this view by the express language of clause 1 of the lease. There is clear reference that the service charge contribution is paid in advance in respect of costs incurred or to be incurred for the year the demand is made. This, in the Tribunal's judgement, shows that the contracting parties intended that such payments were made in advance and on account.
16. Therefore, the Tribunal concluded that the relevant demands are validly and properly prepared in accordance with the lease terms and, as payments on account, are not caught by the time limit in section 20B(1) of the Act.

17. Even if the Tribunal is wrong in reaching this conclusion it was satisfied, as was alternatively submitted by Mr Pain, that an estoppel by convention arose given that the Respondents had for some time accepted this historic arrangement and had raised no objection or taken any point about this before.
18. It is perhaps important to distinguish the previous Tribunal's decision (CHI/43UD/LIS/2009/0094) concerning these same parties. In that decision, the Tribunal held that the service charge demands for the years 2007 and 2008 were invalid because they had not in fact been based on the preceding year's expenditure and there was some doubt that the demands had been properly served. That is not the case here. For the avoidance of doubt, the Tribunal accepted the evidence given by Mr Moreland, one of the Directors of the Applicant company, as to the timing and method of service of the demands on the Respondents.

Management Fee (All Years)

19. Management fees of £1,350, £1,890 and £1,980 are claimed by the Applicant for the years 2010, 2011 and 2012 respectively.
20. The Respondents bare assertion was that the standard of the management was not good and submitted that none of these costs should be allowed.
21. The Respondent's assertion as to the standard of the management was completely unsupported by any evidence. In addition, on inspection, the property did not strike the Tribunal as being badly managed. Accordingly, the Tribunal had little difficulty in finding that these costs were reasonable and were allowed as claimed.

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2010

Advanced Preservation

22. The cost of £4,416 related to damp treatment at the property. The only point taken by the Respondents is that the Applicant did not carry out statutory consultation by serving them with the relevant s.20 notices.

23. On balance, the Tribunal accepted that the section 20 notices found at pages 198B and 198C and at pages 316-318 had been posted through the Respondents' letterbox and amounted to valid service. Subject to this, the Respondents did not otherwise complain that the consultation process itself had been incorrectly carried out by the Applicant. Accordingly, they remain liable for these costs.

FJB Decoration

24. The cost of £6,000 relates to external decorations. The Respondents complained that the standard of the works to their windows in particular was not of a reasonable standard and the cost should be disallowed.

25. The Tribunal had the benefit of an external inspection of the property, including the Respondent's windows. It was told that the windows had not been redecorated since 2010. On inspection, save for tolerable deterioration over time, the Tribunal found the external decoration to be of a reasonable standard and these costs were allowed as claimed.

Level 1 Scaffolding

26. The cost of £5,350 was the associated cost of erecting scaffolding to carry out the external decorations. The Respondents appear to submit that because the standard of the decorations was unreasonable, these costs should also be regarded as being unreasonable.

27. However, it follows from the Tribunal's finding at paragraph 25 above, this cost has to be regarded as reasonable also and allowed as claimed.

Maddisons Surveys

28. Two amounts of costs of £265 and £469 are claimed. The former related to the inspection of the external major works including the redecorations. The latter related to a roof survey.
29. The Respondents' case in relation to this item of cost is not understood. They appear to concede these costs in the event that the surveys identified that their windows required restorative work. Indeed, the first survey correctly identified shortcomings in standard of the external decorations and resulted in a substantial reduction in the original estimate for the works.
30. However, for the avoidance of doubt, given that the Tribunal has already found the cost of the external decorations are reasonable, it must also follow that these costs are to be regarded as being reasonably incurred and reasonable in amount, especially having regard to the obvious benefit derived by the leaseholders by the savings made in relation to the external decorations. The roof survey cost does not appear to be challenged by the Respondents. Accordingly, these costs are allowed as claimed.

2011

Bromley Roofing

31. The Respondents asserted that their liability for this expenditure of £12,984 is limited to the sum of £250 because they were never served with the relevant section 20 notices. The notices are to be found at pages 209-212 of the bundle.
32. For the same reasons set out at paragraph 23 above, the Tribunal found that the Respondents had been served with the requisite notices and that this expenditure is recoverable in full.

Accord Surveyors

33. The expenditure of £1,554 was admitted by the Respondents as being reasonable and payable by them.

2012

Buildings Insurance

34. The expenditure of £3,775 was admitted by the Respondents as being reasonable and payable by them.

Roofing

35. The expenditure of £5,998 was admitted by the Respondents as being reasonable and payable by them.

Administration Charges

36. It was conceded by Mr Pain that there is no contractual provision in the lease that allows for the recovery of contractual interest or pre-litigation costs. Therefore, the claim in respect of the sums for contractual interest of £711.37, £447.45 and £212.61 for the years 2010, 2011 and 2012 respectively and pre-litigation costs of £661.63 was abandoned.

Section 20C

37. For the same reason, Mr Pain also conceded that the costs of these proceedings were irrecoverable under the terms of the Respondents' lease. Therefore, it is not necessary for the Tribunal to go on to consider the application made by the Respondents under this section and it is dismissed.

Judge I Mohabir
11 November 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended) ("the Act")

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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

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).

ITEM	COST	TENANT'S COMMENTS		LANDLORD'S COMMENTS IN STATEMENT OF CASE	RELEVANT PAGES IN BUNDLE
		ON SCHEDULE	IN STATEMENT OF CASE		
2010					
Management Fee	£1,350	1. Not reasonable standard 2. Directors hired on own	[336/88]	Based on Rs' opinion; no evidence of reasonable cost; challenge to standard unsubstantiated. [172/24-28]	[179]
Advanced Preservation	£4,416	No consultation	[336/89] But satisfied sum reasonable	Section 20 notices hand delivered or served by email [172/29-30]	[248-249] [199-200] S20 part 2
FJB Decoration	£6,000	Not reasonable standard	[336/90] Never made good	Only £6,000 of £12,700 paid to contractor [173/31] S20s and full suite of quotes obtained	[204-206], [267] [314-315] S20 Pt 1 [201-202] S20 Pt 2 [320] Additional quote [321-322] Additional quote
Gardening	£3,672	Area near Rs excluded	Sums now admitted [336/91-92]	[173/32-34]	[297]
R Locke Pointing	£2,160	Standard/supervision queried	Sum now admitted [336/93-94]	[173/35]	[208], [268], [273] and [295]
Level 1 Scaffolding	£5,350	Erected for painting which was of an unreasonable standard	Forms one cost with the painting [337/95-96]	Reasonable cost for unavoidable expense [173/36]	[207], [271] [323] Additional quotation

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Maddisons Surveys	£265, £469	Led to £50,000 roofing works [?]	Admitted if advised Rs' windows needed restorative work [337/97]	Survey saved money on painting; no full survey in respect of roofing works yet. [174/37-39]	[255] and [276]
Accountancy	£154	No write off [?]	Failure to write off earlier sums dealt with by LVT means accountant does not deserve sum [337/98]	Not sought as part of service charge [174/40-43]	
Corporation Tax	£81	Exempt	Accepted as reasonable [337/99]	Not sought as part of service charge [174/40-43]	
Legal Fees	£150	For what?	-	Not sought as part of service charge [174/40-43]	
2011					
Bromley Roofing	£12,984	1. No consultation 2. Put to proof that reasonable	[337/100]	Section 20 notices hand delivered or served by email [174/44-45]	[209-212] S20 Pt1 & Pt2 [213] Comparison of quotes by project manager [214] Project manager recommended contractor [258] Certificate of interim valuation

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		ON SCHEDULE	IN STATEMENT OF CASE		
Accord Surveyors	£1,554	1. Related to roofing, 2. Should have been part of section 20 consultation	[337/101]	Not part of roofing Below section 20 threshold [175/46]	[300], [303-4]
Management Fees	£1,890	Not reasonable standard	[336/88]	Based on Rs' opinion; no evidence of reasonable cost; challenge to standard unsubstantiated. [175/47]	[180]
Cleaning	£447, £487	Accounts and itemisation [?] Actuals, forecast[?]	Admitted [338/103-4]	[175/48-49]	[305]
Homemarvel Downpipes	£142	Plastic: put to proof that recoverable under lease and that reasonable	Admitted [338/105]	[175/50]	[256]
Accountancy	£154	No write off	Failure to write off earlier sums dealt with by LVT means accountant does not deserve sum [338/106]	Not sought as part of service charge [175/51]	
2012					
Buildings Insurance	£3,775	Very high	Should not pay if Rs have no benefit of it [333/66], [338/107]	Reasonable cost, reviewed on renewal [176/52]	[216], [234]

ITEM	COST	TENANT'S COMMENTS		LANDLORD'S COMMENTS IN STATEMENT OF CASE	RELEVANT PAGES IN BUNDLE
		ON SCHEDULE	IN STATEMENT OF CASE		
Roofing	£5,998	1. Put to proof that reasonable 2. No consultation	Seeks disclosure of all roof surveys [338/108]	Urgent repairs and inspection [176/53]	[287-288], [292-293]
Management Fees	£1,980	Not reasonable standard	[336/88]	Based on Rs' opinion; no evidence of reasonable cost; challenge to standard unsubstantiated. [176/54]	[181]
Accountancy	£180	Put to proof that reasonable	Failure to write off earlier sums dealt with by LVT means accountant does not deserve sum [337/98]	Not sought as part of service charge [176/55]	
Write-off	£5,475	Query total	Admitted [338/111]	Not sought as part of service charge [176/56]	
Repairs and Renewals	£1,657	No itemisation provided	Admitted [338/112]	[176/57]	

END.