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

Case Reference : MAN/00BY/LSC/2013/0141

Property : Apartment 703, Beetham Plaza, 25 The Strand,
Liverpool, Merseyside, L2 0XJ

Applicant : KM (Property Management) North West Ltd

Represented by : J B Leitch, solicitors

Respondent : Bernard John Nieto Hearn and
Lauretta Maria Hearn

Type of Application : Determination of liability to pay and
reasonableness of service charges

Tribunal Members : P J Mulvenna LLB DMA (Chairman)
I James, Dip Surv, MRICS
L Bottomley JP MIFireE

Date & venue of Hearing : 24 February 2014 on the papers

Date of Decision : 24 February 2014

DECISION

That the service charges levied by the Applicant for the year ended 31 March 2012 are payable by the Respondents.

DETERMINATION AND REASONS

INTRODUCTION

1. The Applicant lodged a claim in the County Court seeking the payment from the Respondents of specified charges for services in respect of the Property. An order was made on 30 August 2013 by District Judge Baker sitting at Liverpool County Court that the question of whether the service charges (for the year ended 31 March 2012) were reasonable and payable be transferred to the First-Tier Tribunal (Property Chamber).
2. The Applicant is the landlord of the Property which is held by the Respondents (as the tenants) for a term from 12 March 1999 to 10 March 2149 under a lease dated 4 December 2000 and made between (1) Beetham Plaza Limited and (2) Stephen Beetham ('the Lease'). The Applicant's interest is a leasehold interest for a term of 150 years from and including 12 March 1999 granted by a Lease dated 12 March 1999 and made between (1) Liverpool City Council and (2) Beetham Plaza Limited ('the Head Lease').

THE PROPERTY

3. The Property is the penthouse apartment, together with two car parking spaces, in a purpose built development comprising 45 self-contained apartments, together with commercial units ('the Development'). The residential element of the Development has a common entrance area with two lifts (only one of which serves all floors) and stairs to the accommodation on the upper floors. The Development overlooks the River Mersey estuary and is situated within reasonable walking distance of Liverpool city centre.

THE INSPECTION AND HEARING

4. The Tribunal was due to inspect the common parts of the Development externally and internally on the morning of 24 February 2014 and, later the same day, to hear the parties' oral evidence and submissions on the disputed issues at the Civil & Family Court, 35 Vernon Street, Liverpool.
5. On 21 February 2014, the Tribunal was notified by the parties that the Respondents had accepted their liability to pay the services charges (but not their reasonableness) and that the parties had agreed to a consent order to reflect that position. The Tribunal accordingly proceeded by considering the matter on 24 February 2014 by reference to the papers placed before them.

THE LAW

6. The material statutory provisions in this case are as follows.

(i) The Landlord and Tenant Act 1985

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

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(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' include 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 provision 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 ^{the appropriate} leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to a ^{the appropriate} 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.

THE LEASE

- 7. The Lease contains provisions (in Schedule 3) for the contribution by the tenants to the costs, charges, etc. incurred by the landlord in respect of the provision of the services specified in the Lease. Schedule 4 to the Lease contains a covenant by the tenants to pay the service charge.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

- 8. The Applicant has asked for a determination of the reasonableness of the service charges for the financial year ended 31 December 2012.
- 9. In the light of the information given on behalf of the parties, the Tribunal determined that the Respondents in this case had effectively withdrawn the challenges to the service charges to be considered by the Tribunal and that, as between the parties, there was no dispute to adjudicate upon. The Tribunal also took account of the decision in *Birmingham City Council -v- Keddie & Hill [2012] UKUT 323 (LC)* in which it was held that a tribunal had no jurisdiction to determine issues not raised by the application. By analogy, the Tribunal determined that it had no jurisdiction to consider issues in the present case on their own motion. The Tribunal did not, therefore, consider the reasonableness and payability of the service charges in question by a detailed examination and assessment of the service charge accounts and the supporting documentation, but accepted the parties' position.
- 10. The Tribunal finds, therefore, that, by consent of the parties, the service charges levied by the Applicant for the year ended 31 March 2012 are payable by the Respondents. For the avoidance of doubt, the Tribunal has made no finding on the question of reasonableness.

COSTS

- 11. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:

'(1) The Tribunal may make an order in respect of costs only –

...(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –

...(ii) a residential property case...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.'

12. Neither party has made an application for the award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Decision, there was no circumstance or particular in which either of the parties had acted unreasonably. The Tribunal concluded that it would not be appropriate or proportionate to award costs to either party or to make an order for the reimbursement of any fees.