

10841



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

Case Reference : BIR/44UF/LIS/2014/0014
: BIR/44UF/LIS/2014/0052

Property : Flats 5, 6 and 8
Chestnut Court
4 Guys Cliffe Avenue
Leamington Spa
Warwickshire
CV32 6LY

Applicant : Mr I. Potter

Representative : Mr Wheeler
Field Overell Solicitors

Respondent : Chestnut Court (Leamington Spa) Ltd

Representative : Ms C Zanelli
Taylor and Emmet Solicitors

Type of Application : Under Section 27A of the Landlord
and Tenant Act 1985 for a determination of
liability to pay and reasonableness of
service charge and under Section 20C for a
determination as to whether the costs of
the application are to be treated as relevant
costs in determining the amount of any
service charge payable

Tribunal Members : Judge T. N. Jackson
Mr J. A. Turner FRICS

Date of Inspection : 23rd October 2014

Date of Decision : 04th March 2015

DECISION

Background

1. On 21st May 2014, the Applicant applied, under Section 27A of the Landlord and Tenant Act 1985, for a determination of the liability to pay and the reasonableness of service charges for the service charge years 2011, 2012 and 2013 in relation to the subject properties. The Applicant also sought an order under Section 20C of the Landlord and Tenant Act 1985 as to whether the costs of the application should be treated as relevant costs in determining the amount of any service charge payable. The case was allocated Tribunal case reference BIR/44UF/LIS2014/0014.
2. On 29th April 2014, the Respondent company commenced debt recovery proceedings against the Applicant in relation to arrears of service charges arising in the same service charge years and for the same subject properties as detailed above. By Order dated 4th November 2014, (typed 12th November 2014), District Judge Jones of Warwick County Court, ordered that the matter of liability to pay and the reasonableness of service charges in relation to the subject properties be transferred from the County Court to the Tribunal for determination. The transferred case was allocated Tribunal case reference BIR/44UF/LIS2014/0052.
3. By Direction Order 3 dated 10th December 2014, the Tribunal directed that the cases be combined and issued Directions as to the preparation of documentation for the hearing.

The Lease

4. The Leases of all 3 properties are drafted in similar terms to those set out in a Lease dated 12th February 1993 between Walker Homes Limited and Anne Cullen for a term of 125 years from 1st January 1992.
5. Clause 3.2 of the Lease sets out the Lessee's obligation to pay the service charge in advance on 1st January and 1st July each year. Under Clause 4.1, the Lessor covenants to provide the services as set out in the 5th Schedule.

The properties

6. Chestnut Court is a purpose built residential block of flats, having been constructed in or around the early 1990's. There are 16 flats within the development. The freehold of Chestnut Court was purchased following collective enfranchisement. 13 out of the 16 Lessees are shareholders of the freehold company.
7. The Applicant is the registered owner of the leasehold interest in Flats 5, 6 and 8 and occupies Flat 5.

Inspection

8. The Tribunal inspected the properties on 23rd October 2014 in the presence of the Applicant. There was no attendance by a representative on behalf of the Respondent company.

Hearing

9. A hearing took place on 19th February 2015 at Priory Court, Birmingham. The Applicant attended and was represented by Mr Wheeler, Solicitor. Mr Bob Howard attended as a Director of the Respondent company and was represented by Ms Zanelli, Solicitor. Mr D Christianson of the managing agent company was also present.
10. Mr Wheeler confirmed that there was no issue as to the liability to pay and that the issue to be determined by the Tribunal was the reasonableness of the service charges, specifically the service charge for the management charge in each of the years 2011, 2012 and 2013.
11. The Tribunal sought clarification as to whether the Applicant's case was concerned solely with the management charge as there appeared to be ambiguity arising from the documentation submitted in his bundle.
12. The Tribunal also sought clarification from the Respondent's representative as to whether she was in a position to proceed at the hearing with the matter transferred from the County Court, as the documentation submitted in response to Directions Order 3 appeared to raise concerns regarding a lack of particulars as to the matters being challenged.
13. The hearing was adjourned to allow the legal representatives to take instructions.
14. The legal representatives requested the Tribunal to make a Consent Order in the terms set out in Appendix 1 which had been signed by both parties.
15. The Tribunal noted that the proposed Consent Order disposed of all matters before the Tribunal in relation to both cases, including the application under Section 20C of the 1985 Act. The Tribunal also noted that paragraph 5 of the proposed Consent Order, which referred to payment of court fees, was outside the Tribunal's jurisdiction.

Determination

16. Save for paragraph 5 of the proposed Consent Order, (for the reason set out above), under Rule 35 of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, the Tribunal considers it appropriate to make a Consent Order in the terms set out in Appendix 1

Judge T N Jackson
First Tier Tribunal

APPENDIX 1

CASE NUMBERS: BIR/44UF/LIS/2014/004

BIR/44UF/LIS/2014/0052

HM COURTS & TRIBUNAL SERVICE

MIDLAND RESIDENTIAL PROPERTY

FIRST TIER TRIBUNAL

MR IAN POTTER

Applicant

AND

CHESTNUT COURT (LEAMINGTON SPA) LIMITED

Respondent

CONSENT ORDER

UPON TERMS AGREED between the parties

BY CONSENT IT IS ORDERED THAT:

1. The Applicant, Mr Potter, hereby agrees the sums formerly challenged under case reference BIR/44UF/LIS/2014/0014 are payable and reasonable under the provisions of the Landlord & Tenant Act 1985.
2. For the avoidance of doubt, the sums referred to above are:
 - 2.1. Flat 5- £207.18
 - 2.2. Flat 6- £207.18
 - 2.3. Flat 8- £207.18

For the service charge years ending 31st December 2011, 12 and 13.

3. The Applicant, Mr Potter, hereby admits the arrears upon which proceedings were issued in the County Court Business Centre (Claim Number: A5QZ9751) which were

subsequently transferred to the First Tier Tribunal (Property Chamber) under case reference BIR/44UF/LIS/2014/0052. The Applicant agrees such sums are payable and reasonable under the provision of the Landlord & Tenant Act 1985.

4. For the avoidance of doubt, the sums referred to above at (3) are:

- 4.1. Flat 5- £526.68
- 4.2. Flat 6- £526.81
- 4.3. Flat 8- £526.80

5. The Applicant agrees to pay the Court issue fee of £185 to the Respondent's Solicitors, Messrs Taylor & Emmet, within 28 days.

6. The Respondent acknowledges payments by the Applicant towards the suyms set out at (4) as follows:

- 6.1. Flat 5- £185.27
- 6.2. Flat 6- £185.07
- 6.3. Flat 8- £185.07

Such payments having been made on 25th November 2014, 29th December 2014 and 26th January 2015.

7. The balance on the sums transferred from the County Court stand as follows:

- 7.1. Flat 5- £341.41
- 7.2. Flat 6- £341.74
- 7.3. Flat 8- £341.73

8. The Applicant to make payments of the sums referred to at (7) to the Respondent's solicitors within 28 days.

9. There be no order under Section 20C.