



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

Case Reference : LON/00AJ/LSC/2014/0486

Property : 578 Bromyard House, Bromyard Avenue, W3 7FG

Applicant : Mr Stuart Wilson

Respondent : A2 Dominion Homes Limited

Representatives : Mr Wilson (Self representing)
Ms A Gourlay (Counsel)

Type of Application : Service Charges

Tribunal : Mr M Martynski (Tribunal Judge)
Mr H Geddes JP RIBA MRTPI
Mrs L Walter MA (Hons)

Date and venue of Hearing : 18 December 2014,
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 January 2015

DECISION

DECISION SUMMARY

1. We find that all the Service Charges challenged by the Applicant are reasonable and payable by him in full based on the evidence before us.
2. We do **not** order the Respondent Housing Association to reimburse the Applicant's tribunal fees.
3. **No** order is made restricting the Respondent charging the costs that it has occurred in this application to the Service Charge payable by the Applicant.

BACKGROUND

The Application

4. The Applicant's application to the tribunal challenged various Service Charges for the years 2011 to 2015.

The Buildings

5. The Applicant's flat is on the first floor of a very large former light industrial building which has been converted into flats.
6. That building sits in an estate with other buildings recently constructed by Berkeley Homes.
7. The Estate is a gated development with communal areas, parking and a management suite¹ with a 24-hour concierge service. The gardens and internal courtyards in the main building are landscaped.
8. Some individual flats and some blocks of flats and internal common parts within the building are owned by the Respondent Housing Association on long leases. The flats owned by the Respondent are occupied by a mixture of weekly tenants and shared ownership leaseholders.

The ownership structure

9. The freehold to the Estate is owned by the developer Berkeley Homes.
10. The Respondent Housing Association has a long lease of the Applicant's flat 'the Headlease'. That lease is dated 8 November 2010 and is for a period of 999 years from 1 January 2004.
11. The Applicant has a shared ownership lease of his flat. That lease is made between the Respondent and the Applicant and is dated 3 June 2011. The lease is for a period of 125 years from 1 January 2004.

¹ With a meeting room which can be used by residents in the Estate

12. The Applicant originally purchased a 25% share. He has not acquired any further share as yet.
13. Under the terms of the Headlease, the Respondent has to pay a Rent and a Service Charge for the maintenance and upkeep of, and the facilities in, the Estate. Part of that Service Charge includes a management fee for the managing agents, HML Hawksworth Limited.
14. Under the terms of his lease, the Applicant is liable to pay:-
 - (a) A monthly rent (on the 75% of the flat not owned by him)
 - (b) A management charge to the Respondent
 - (c) The rent and the Service Charge payable by the Respondent to the freeholder under the terms of the Headlease

The inspection

15. We inspected the building and estate on the morning of the hearing.
16. It appeared from our inspection that the estate is well maintained. There are large landscaped communal external areas that require a good deal of maintenance. The building in question appeared to be clean and we do not agree with the Applicant's observations made whilst we were inspecting the estate as to, what he considered to be, poor maintenance and cleaning.

The issues and our decisions

The apportionment of Service Charges

17. As stated above, the Applicant is liable to pay to the Respondent housing association the Service Charges payable by the Respondent to the freeholder under the terms of the Headlease. This should involve a simple process whereby the Respondent simply demands from the Applicant any sums by way of Service Charges that have been demanded by the freeholder in respect of the flat. The Applicant is then liable to pay those charges to the Respondent.
18. However, so that the accounting for this estate is dealt with in the same way as the accounting for other properties owned by the Respondent, the Respondent does not deal with the Service Charges in this way.
19. The Respondent calculates the Service Charges payable by it to the freeholder in respect of several of its flats within the building and then apportions that total between those flats.
20. The result of dealing with Service Charges in this way means that the Respondent does not comply with the terms of the Applicant's lease so far as Service Charges are concerned. The amount in Service Charges demanded from the Applicant by the Respondent does not equal the

amount demanded by the freeholder in respect of the Applicant's actual flat.

21. Unfortunately, the amounts demanded by the Respondent from the Applicant in respect of Service Charges over the years have in fact been less than the Applicant should have paid had the Respondent simply passed to him the Service Charges demanded by the freeholder for the flat. The Applicant has therefore underpaid for Service Charges.
22. At the hearing the representatives of the Respondent agreed that:-
 - (a) they would in future comply with the terms of the Applicant's lease and demand from him the same sum as is demanded of them by the freeholder in respect of Service Charges – this unfortunately will mean that the Applicant will pay higher Service Charges in the future
 - (b) they would not attempt to re-calculate and recover from the Applicant any under-claimed Service Charges for any past period

Staff agency fees

23. The staff at the estate are employed by HML Concierge Services (HMLCS), a company linked to the managing agents, HML Hawksworth Limited (HML). HMLCS charge the salaries that it pays to the staff at the development to HML. A further fee for the handling of the salaries is then payable by HML to HMLCS.
24. The Applicant objected to the charges. He considered that the payment by HML of a fee (ultimately partly payable by the Applicant) for the supply of labour on top of HML's own management fee was in effect a double charge. Alternatively, HML's management fee should be lower given that the work done in employing the staff at the estate was not being done by them.
25. We do not agree with the Applicant's objections. We consider that HML's management fees are reasonable (see our comments directly on that issue later in this decision). It would not be usual for a managing agent to directly employ staff to provide services exclusively for one building. The supervision of the employment would not normally therefore be undertaken by managing agents as part of their basic fee. We do not consider therefore that there is any double or excessive charging. The commercial agreement between HMLCS and HML (albeit that they are associated companies) appears to us to be reasonable.
26. We consider that if the staff were employed via a different company unconnected to HML, then HML would still have to pay for the salaries and for a fee on top of that to represent that independent company's administration costs and profit margin.

27. We were however a little concerned that HML should be able to demonstrate that the way in which it or the freehold company organises the concierge staff is reasonable so far as Service Charges are concerned – possibly by way of comparison with the charges that would be incurred using an independent company to supply the labour. We did not insist on or penalise the Respondent for failing to have this information for the hearing given that the Applicant's main complaint on this issue was, what he perceived to be, a double charging for the administrative costs of the supply of staff which is a slightly different point to the one relating to the overall supply and administration of staff.

Staff costs - general

28. In the hearing the Applicant stated that this seemingly separate head of challenge to the Service Charge was essentially the same as the challenge in respect of Staff agency fees. He did not challenge the number of staff employed or their salary. The only separate challenge that he felt he had was as to the standard of service that was received although this, he admitted, really related to cleaning and not the concierge service.

Sinking Fund

29. As put in his Statement of Case, the Applicant's challenge was:-

£74.04 – It seems unreasonably high for new build flats. I never have been supplied with the calculation for this sinking fund and it is very difficult for me to make comparisons.

30. We were supplied with a document entitled '10 year proposed planned maintenance plan' drawn up by Surveyors Shaw & Company. This document set out the detail of the building and a maintenance policy. It had attached to it a spreadsheet setting out the anticipated capital expenditure over a 10-year period.
31. It appears to us therefore that this report stands as a considered and logical base on which to calculate the amount of a sinking fund and the contributions to it. In the face of this document and in the absence of any more detailed challenge from the Respondent, we are bound to accept that there is a logical basis for the level of the sinking fund and that it is reasonable.

Cleaning costs

32. The Applicant complained that he only had five windows which the window cleaners took a matter of seconds to clean four times per year. He agreed that there was some communal glass to be cleaned that he was obliged to pay for (the glass corridors connecting parts of the building and the canopies outside various entrance doors).

33. As to general cleaning, the Applicant complained in his Statement of Case that internal cleaning was hardly noticeable and that marks were left on doors for months.

34. As to window cleaning, the Applicant relied upon:-

(a) a quotation from a company called Just Ask. The quote appeared to be for a one-off visit and was subject to a further site inspection – the quote was for the sum of £13,843.

(b) a quotation from a company called All Clean Services Limited for the sum of £975 plus VAT per clean. This would have been increased by 50% if abseiling proved to be necessary and may not have included the glass corridors.

35. According to Ms Gillian Byfield, the Managing Director of HML who made a witness statement and who was present at the hearing, the current window cleaning company had been used for six years. In that time they had not increased their prices. The accounts showed the following figures for cleaning windows:-

2011 -	£98,127
2012 -	£100,387
2013 -	£113,918

Ms Byfield thought that the differences in the figures year on year represented extra work carried out by the company over and above the basic contract price.

36. Ms Byfield stated that the window cleaning had not been tendered in the last six years (given that the contractor's charge had not been increased in that time) but that the costs had been 'benchmarked'. Ms Byfield produced a quote from a company called Cliffhanger dating from August 2014 for a building 'Montevetro' (a brand new riverside block of flats in Battersea) for £12,500 for a single clean. This equates to £50,000 plus VAT per year. She said that Montevetro contains 100 flats. The subject building contains five times as many flats but the costs were only approximately double that for Montevetro.

37. We were very troubled by this issue. As to the Applicant's evidence, we discounted the quote from All Clean Services. This was simply an email and appeared to be so far out from other figures as to be unreliable.

38. The estimate from Just Ask was interesting. That estimate would equate to £55,000 plus VAT. However, the estimate lacked detail and was of course said to be subject to another site visit.

39. We were very concerned by the fact that the window cleaning had not been tendered by HML and we were concerned that the cost had only been 'benchmarked' in such a crude fashion. Montevetro is clearly a very different building - much higher than the subject building.

40. The window cleaning contract is for a very large sum, and for such a large sum we would expect to see much more rigour on the part of HML in testing the market.
41. On balance and with reluctance, we feel bound to accept the current figure for window cleaning as reasonable as we are not satisfied with the evidence provided by the Applicant as to alternative prices. Had we been supplied with two or more detailed quotes that were substantially below the sum currently paid by HML for window cleaning and in the absence of any further justification for the current window cleaning contract, it is possible that we would have found the current charges to be unreasonable and to have reduced the Applicant's contribution to them.
42. As for general cleaning, we noted that there was no record to show that the Applicant made any previous complaint and there was no real evidence that cleaning had not been carried out properly or that the costs for cleaning was unreasonable.

The Respondent's management fee

43. The Respondent charged £175 (now £180) per year for its management fees.
44. The Applicant was aggrieved in that he had to pay two management fees, the fees of HML (which he considered to be too high in any event) and the Respondent's management fee.
45. Whilst we sympathise with the Applicant on this point, the two management fees are a result (and we conclude a necessary result) of the lease structure at the building. The Respondent is obliged to take up Service Charge issues with the freeholder as the individual leaseholders do not have a direct relationship with the freeholder. The Applicant has to have staff trained and in place to make sure that it complies with the complex legislation applicable to landlords. Further the Respondent has to run the rent account and the rented part of the lease bearing in mind that 75% of the flat is actually rented by the Applicant from the Respondent. Clause 2(e) of the lease obliges the Applicant to pay to the Respondent:-

A management charge being the Landlord's reasonable administration fee in respect of this Lease and the payments made under this Lease
46. The Respondent's fee for its management does not appear to us to be excessive and we do not consider that there is any relevant overlap between the services provided by HML the work that has to be undertaken by the Respondent.

General comments

47. We sympathise with the situation in which the Applicant finds himself. He is in a situation where he is obliged to pay relatively expensive Service Charges. This is a product of the fact that he lives in a gated prestige development and that he has an extra layer of management due to the fact that he has a shared ownership lease. Further, even though he only has a 25% share of the capital value of his flat, the Applicant is obliged to pay 100% of the costs of the maintenance of the flat and the building. That may appear somewhat unfair but that is a product of the way in which shared ownership leases work and there is nothing that we can do to alter this situation.

Fees and Costs

Fees

48. Given that we have not upheld any of the Applicant's challenges, we do not make any order that the Respondent reimburse him with respect to the fees that he has paid to the tribunal to pursue this application.

Costs

49. For the same reasons we do not make any order that would restrict the Respondent placing the costs of these proceedings on to the Service Charge. We understand however that the Respondent would not place the costs of these proceedings on its Service Charge in any event.

**Mark Martynski,
Tribunal Judge**