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

Case Reference : **LON/00AY/LSC/2013/0589**

Property : **Flat A, 386 Wandsworth Road,
London, SW8 4TN**

Applicant : **Chancery Lane Investments Ltd**

Representative : **Service Charge Recovery LLP**

Respondent : **Mr B McBurney**

Representative : **In person**

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

Tribunal Members : **Judge I Mohabir**

**Date and venue of
Hearing** : **29 October 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 October 2013**

DECISION

Introduction

1. By a claim issued in Northampton County Court on 11 April 2013, the Applicant commenced proceedings against the Respondent to recover estimated service charge arrears of £4,973.33 for the year ending 24 March 2014.
2. By an order made by District Judge Smart in Kingston-upon-Thames County Court dated 12 August 2013, the claim was transferred to the Tribunal. It should be noted that the claim is also made in respect of arrears of ground rent in the sum of £25.00 for the period 25 March 2013 to 28 September 2013. The Tribunal has no jurisdiction in relation to the ground rent because it is not a “service charge” within the meaning of section 18 of the Landlord and Tenant Act 1985 (as amended) (“the Act”). Therefore, it is to be assumed that this part of the claim remains stayed in the County Court proceedings in the event that the ground rent remains in issue.
3. On 17 September 2013 the Tribunal held a CMC in this matter. The Applicant did not attend and was not represented. The Tribunal identified that the sole issue as being whether the service charges demanded were recoverable under the terms of the Respondent’s lease.
4. The Respondent told the Tribunal that he had requested a breakdown of the service charges, but none had been forthcoming. His belief was that they related to proposed major works and no statutory consultation had been carried out by the Applicant under section 20 of the Act.
5. The Tribunal issued Directions on 17 September 2013 which required the Applicant to serve a statement of case particularising what the service charges in issue related to and how liability on the part of the Respondent arose.
6. The Applicant has failed to comply with that direction and, understandably, the Respondent has been unable to serve any evidence in reply. Indeed, on 21 October 2013, the Tribunal wrote to the Applicant’s representative informing them that the failure to comply with the Tribunal’s direction may result in the claim being struck out or the Applicant being restricted in its participation in these proceedings. No reply has been received from the Applicant.
7. The Tribunal also directed that this matter be determined by way of a paper determination unless a request had been received from either party by 16 October 2013 for an oral hearing. No such request has been received.

Relevant Law

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

Decision

9. The Tribunal's determination took place on 29 October 2013.
10. As this is the Applicant's application, the burden of proof is on it to prove its case. That is, the Applicant is obliged to prove that the Respondent is contractually liable to pay the service charges in issue and that they are reasonable.
11. In the absence of any evidence from the Applicant, the Tribunal had little difficulty in dismissing the claim in respect of the service charges demanded from the Respondent. The Applicant had been unable to prove those matters set out in paragraph 10 above.
12. Accordingly, the Respondent has no liability for the service charges in issue and this case is remitted back to the County Court to determine any outstanding matters.

Judge I Mohabir
29 October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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) the appropriate 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.]