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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00MC/LSC/2015/0074**
Property	:	**27 The Picture House, Cheapside, Reading, Berks. RG1 7AJ**
Applicant	:	**Atlantis Estates Ltd.**
Respondent	:	**Fatai Adeleke Olaide**
Date of transfer from the county court at Dartford	:	**22nd July 2015**
Type of Application	:	**To determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. In respect of the amount claimed from the Respondent for service charges in the sum of £2,446.63, the Tribunal determines that £2,205.63 is reasonable and payable.

2. This case is now transferred back to the county court sitting at Dartford under claim number B63YJ304 so that issues concerning the claim for statutory interest costs since the court proceedings have been issued and enforcement can be dealt with.

Reasons

Introduction

3. In March 2015, the Applicant issued a claim in the county court to recover service charges totalling £2,446.63 plus statutory interest and court fee totalling £2,615.12. The Applicant says in the claim form that it is the manager of the property although the manager named in the lease is Peverell OM Ltd. The evidence from the Applicant is by way of 2 statements in the bundle provided for the Tribunal both of which are made by Jennifer Trundle and say that the Applicant Atlantis Estates Ltd. is "*the Applicant's Managing agent*". Something

appears to be wrong. However, as the point has not been made by the Respondent and these are adversarial proceedings, the Tribunal will not take that matter any further.

4. The defence filed in the county court proceedings is not very clear and will therefore be quoted in full as follows:

> *"THE DEFENDANT DISPUTE THE CLAIMANT'S CLAIM OF £2,615:12. THE DEFENDANT DENIED OWING THE CLAIMANT THE £2,615:12 AS SERVICE CHARGES AND ADMINISTRATION CHARGES. THESE ARISES AS A RESULT OF DISPUTED CHARGES WHICH THE DEFENDANT CONTESTED AND REQUESTED THAT THE SUM DUE BE DETERMINED BY THE APPROPRIATE TRIBUNAL. THE CLAIMANT CHOSE TO MAKE THE CLAIM AT THE COUNTY COURT. THE DEFENDANT ASSERTS THAT THE CHARGES ARE CONTESTED ON THE BASIS THAT THEY ARE UNREASONABLE AND THESE SHOULD BE DETERMINED BY THE APPROPRIATE TRIBUNAL UPON REQUEST BY THE DEFENDANT AND IN ACCORDANCE WITH THE LEASE. THE CLAIMANT HAS NOT PROPERLY SERVE ON THE DEFENDANT A DEMAND AND THE SUMMARY AS REQUIRED BY THE LAW"*

5. The Tribunal issued a directions order on the 18th September 2015 timetabling the case to a conclusion. It said that the Tribunal was content to deal with the case on a consideration of the papers only on or after the 11th November 2015 but offered the option of an oral hearing if either part wanted one. Neither the Applicant nor the Respondent requested an oral hearing.

6. The Applicant's evidence consists of the 2 statements referred to above with copy statements and demands. The directions order required the Applicant to provide a statement of case which set out its justification in principle and in law for the disputed service charges. It has not. There are no service charge accounts or anything else to satisfy the Tribunal that the charges claimed are reasonable.

7. Unfortunately, the Respondent has not provided any evidence at all.

The Inspection

8. As the issues were not known at the time the directions order was made, no pre-hearing inspection of the property was requested by the Tribunal but it was indicated that one would be considered. None was requested by the parties and as the real issues are still not known, the Tribunal has not gone to this expense.

The Lease

9. The lease is dated 3rd October 2003 and is for a term of 125 years commencing on the 1st September 2002. It is in modern form with a landlord, a developer, a tenant and a management company. The Applicant presumably represents the management company.

10. There are the usual covenants on the part of the management company to

maintain the common parts and structure of the property and to insure it. The Applicant claims its costs pursuant to clause 4 of the Eighth Schedule which is a covenant by the Tenant to "*pay all costs charges and expenses (including legal costs and fees payable to a surveyor) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under Sections 146 and 147 of the Law of Property Act 1925...*".

11. The first thing to say about that is that these do not appear to be costs incurred by the lessor. They appear to be costs incurred by the management company. The second thing to say is that the notices referred to under sections 146 and 147 are specifically stated to be in contemplation of forfeiture. There is no suggestion in any of the papers supplied to the Tribunal that forfeiture is being contemplated.

12. Having said that, Part D of the Sixth Schedule sets out costs which can be claimed by the management company and they include (paragraph 7) "*all costs and expenses incurred by the manager....in the collection of rents and service charges and in the enforcement of the covenants and conditions*" of the lease. Further, they include (paragraph 15) "*...any legal or other costs reasonably and properly incurred by the manager and otherwise not recovered in taking or defending proceedings...arising out of any lease...*".

The Law

13. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

14. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

15. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") defines an administration charge as being:-

> *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with a breach (or alleged breach) of a covenant or condition in his lease."*

16. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

> *"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"*

Conclusions

17. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

> *"If the landlord is seeking a declaration that a service charge is*

payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."

18. In this case, the Applicant has not actually provided any information which could satisfy the Tribunal that the costs incurred to support the service charge demands have been reasonably incurred. The only specific issue raised by the Respondent is about the service of proper demands for payment with the required statutory information. The Applicant's evidence is that the demands were sent out 'correctly' and there are at least 2 samples in the bundle of invoices having been sent out with the statutory information. The Tribunal accepts, on the balance of probabilities, that such information was supplied.

19. The position is that the Applicant is collecting service charges for the management of the estate and the statement provided says that these are reasonable. On an objective view, the Tribunal uses its considerable experience and expertise to conclude that whilst the basic service charges are quite high, they are not outside the general range of reasonableness.

20. It is the Respondent who seeks to challenge the charges but there is no evidence or document supplied by the Respondent to suggest what, exactly, is being challenged. In those circumstances, the principle set out in the Schilling case is to be followed and the Tribunal's determination in respect of the service charges claimed, excluding the costs, is that they are payable.

21. In so far as costs are concerned, the lease provides that such reasonable costs can be claimed. The agent's costs seem to be £50 per chasing letter and £180 for preparing the case for submission to solicitors. No indication is given as to how those fees are calculated. The Tribunal considers that £50 per letter is excessive and determines that a reasonable cost is £25 per letter. The cost of preparing everything for transfer to the solicitors should not take longer than about 30 minutes to one hour and half the fee claimed is determined to be reasonable.

22. Turning now to the solicitors claim, writing a letter before action is a short task because the information to go into the letter is supplied by the agent. These letters are in standard template form and £50 to set up the file and send the letter is reasonable. So far as preparation of the court proceedings is concerned, this does require a good look at the papers supplied by the agent. The claim form is in standard form and will be from a template. This whole exercise should not take longer than about an hour and a quarter for a Grade A fee earner and a reasonable charge for that is determined at £300.00. It should be added that neither the agents nor the solicitors have mentioned VAT which means that the fees are either inclusive or, more likely, the VAT is recoverable as an input by the other contracting party. Whatever the situation, the Applicant has given no relevant information about that and the Tribunal has just had to determine the

issue on the information available. Whichever way it is the figures determined by the Tribunal will stand.

23. Thus, the claim of the agents is £50 + £50 + £50 + £180 and this is reduced to £25 + £25 + £25 + £90. The claim of the pre action costs is £183 + £243 and is reduced to £50 + £300.

24. The end result of this is that the service charges, excluding collection costs, in the claim form of £1,690.63 are confirmed as being payable and the pre action collection costs themselves are reduced to £515 making the total to be £2,205.63

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Bruce Edgington
Regional Judge
12th November 2015

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.