



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

Case Reference : **LON/00BJ/LSC/2015/0105 & 0194**

Property : **Flat 6, Spencer Court House, 47
Wandsworth Common North Side,
London SW18 2ST**

Applicant : **Mutual Security Limited**

Representative : **No attendance**

Respondent : **Mr Virendra Sharma**

Representative : **Mr Amardeep In person**

Type of Application : **For the determination of the
liability to pay service charges
and/or administration charges**

Tribunal Members : **Judge W Hansen (chairman)
Mr A Lewicki FRICS**

**Date and venue of
Hearing** : **11 June 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **10 July 2015**

DECISION

Decisions of the Tribunal

- (1) Mutual Security Limited is substituted as the Applicant for Pilotchip Ltd;
- (2) The tribunal determines that the Respondent is liable to pay his share (14.5481%) of the following sums in respect of management fees: £1,260 per annum for the years 2009-2015 inclusive = £183.30 per annum;
- (3) The tribunal determines that the remainder of the service charges for the period covered by the county court claim and/or the Respondent's application to the tribunal dated 25 April 2015 are fully payable.
- (4) The tribunal determines that the Respondent is liable to pay the administration charge of £40.00 claimed on 31/3/10; save as aforesaid, none of the other administration charges that form part of the County Court claim are payable by the Respondent;
- (5) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or costs.

The Application

1. The Applicant was originally named as Pilotchip Limited because that company commenced proceedings in the County Court in its own name. However, it is common ground that landlord and hence the correct applicant is in fact Mutual Security Limited. On that basis the Tribunal has substituted that party as the Applicant. The County Court claim was commenced on 31 October 2014 and transferred to the Tribunal on 27 February 2015. It covers the period from 9/6/09 up to 31/12/13 and is a claim for £4,729.27 plus interest and costs. Part of that claim relates to ground rent which is a matter for the court. The remainder relates to service charges and administration charges which are a matter for the tribunal. On 25 April 2015 the Respondent brought his own application challenging the payability and reasonableness of various service charge items and administration charges in the period 2009-2015 inclusive. In

the event, the Respondent only pursued two matters at the hearing: management fees for the period 2009-2015 inclusive and the administration charges which form part of the County Court claim, i.e. those levied in the period from 2010 to 2013. The relevant legal provisions of the Landlord and Tenant Act 1985 are set out in the Appendix to this decision.

2. The landlord did not attend the hearing and was not represented. Mr Graham, a director, had previously sought an adjournment which had been refused by another Judge. We considered it appropriate to proceed in his absence and took account of the various written evidence and submissions that had been filed on behalf of the Applicant. We also took account of the Respondent's Statement of Case and Witness Statement, both dated 25 April 2015, together with the exhibits to that statement.
3. The Respondent is the lessee of Flat 6, 47 Wandsworth Common North Side, London SW18 2ST. He holds under a long lease dated 18 November 1997. Clause 6 of the Lease makes provision for the payment of a service charge by the lessee, being his "due proportion" of the expenses and outgoings incurred by the lessor and as set out in the Fifth Schedule. No point has been taken about the service machinery in the Lease. The sole remaining challenge to the service charges relates to management charges.
4. *Management charges.* For each year in question, the management charge was £1,750 for the block. The Respondent's due proportion is 14.5481%. The Respondent's case is that the landlord undertakes little or no management of the Property. Rather it is the tenants (so it is said) that take the lead and arrange all necessary repairs and redecoration, such as re-carpeting and decorating the common parts. We were provided with various invoices, addressed to the tenants or particular tenants in the block, which were designed to illustrate the point. There were invoices for pest control, draining down a water tank and ancillary

repairs as well as invoices for carpeting to communal areas and redecoration of the hallways. It was said that the vast majority of any necessary works had been commissioned by the tenants and paid for, in the first instance, by the tenants.

5. Mr Graham on behalf of the landlord said in his written evidence that he tried to keep service charge costs as low as possible. He said he has recently been discussing redecoration and various other works with the lessees and said he was obtaining estimates.
6. There was a dearth of evidence as to what exactly had happened, as to the extent of involvement by the landlord, and as to the extent of reimbursement by the landlord. However, the sums expended on, for example, redecoration and recarpeting, had subsequently found their way into the service charge accounts (see e.g. accounts for the year ended 31 December 2009 and the items entitled "Redecoration of Hallways" and "Recarpeting hallways") and on that basis we proceeded on the basis that the tenants had ultimately been reimbursed. Doing the best we can, on fairly limited evidence, we concluded that there were grounds for reducing the management charges based on the landlord's limited management work. The Respondent contended for a sum of £50.00 per flat. This is much too low. It was accepted that the landlord arranged insurance for the block and prepared the service charge accounts. On this basis the Tribunal determined that a reasonable management charge would be £180 per flat per year for each of the years 2009-2015 inclusive = £1,260 for the block (7 x £180) of which the Respondent is liable for his due proportion (14.5481%). The figure is the same for each of the years in question, i.e. 2009-2015 inclusive.
7. Administration Charges. The County Court proceedings include a claim for administration charges as follows: £40.00 on 31/3/10; £40.00 on 25/8/10; £40.00 on 1/12/10; 3 x £30.00 on 19/5/11, 30/6/11 and 30/9/11; £30.00 on 20/12/12. We were not provided with details of any other administration charges. Nor were we provided with

any detail as to the circumstances in which these charges were levied. They are all identified simply as “arrears administration fees”. The difficulty in the present case stems from the fact that the landlord appears to have been rather haphazard in demanding payment from this Respondent. However, we have seen a demand for interim service charge dated 21/12/09 (VS 1) and on that basis are prepared to allow the first administration charge of £40.00 dated 31/3/10; we are not persuaded that the tenant’s response (VS 2) was sufficient to justify complete non-payment. Thereafter the position is again shrouded in mystery. The tenant appears to have attempted to pay the ground rent on a number of occasions (VS 5 and VS 8) and the landlord appears to have responded at least once asking the tenant to “settle our accounts” (“VS 6”). However, in all the circumstances, and in the absence of any proper evidence from the landlord responding to this challenge, we consider that the further administration charges are not payable or reasonable.

8. There were no costs applications made by either party, whether under section 20C of the 1985 Act or otherwise.

Name: Judge W Hansen

Date: 10 July 2015

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.