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

Case Reference : **MAN/00BY/LAC/2015/0007**

Property : **Flat 104, 15, Hatton Garden, Liverpool L3
2HA**

Applicants : **Miss J. Hill**

Respondent : **Barclays Real Estate Securities Limited**

**Type of
Application** : **Liability to pay an administration charge and
to vary a fixed administration charge**

Tribunal Members : **Mr J R Rimmer
Mr K Kasambara**

Date of Decision : **14th August 2015**

DECISION

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Order : The Tribunal has no jurisdiction in respect of the Application as the charge in question is not an administration charge within Schedule 11 Paragraph 1 of the Commonhold and Leasehold Reform Act 2015.

Application and background

1. The Applicant is the owner of one flat within the development comprising a large number of flats at 15, Hatton Garden, Liverpool. The Respondent is the freeholder, but exercises its management and administrative functions through managing agents, Grangeford, in turn represented by SLC, Solicitors of Shrewsbury.
2. Miss Hill has recently embarked upon an attempt to sell her leasehold interest in Flat 104, being the residue of a lease made on 26th November 2004 between Maritime Housing Association (1) and Gerard Myles Preston (2) for a period of 99 years, less 10 days, at a rent of £10.00 per year (and a further premium)
3. In the course of the sale process a number of disagreements have arisen between the parties as to sums due from the outgoing tenant to the landlord's agent in accordance with provisions within the lease.
 - (1) Under clause 3(17) of the lease the leaseholder is required to pay to the landlord) 0.50% of the market value of the premises for each year (or a proportionate part thereof for months within a year) of "the leaseholders or his predecessors in title's occupation of the premises" under the lease". The amount being sought from Miss Hill was for the period of occupation from the start of the lease under the Grangeford's interpretation that they could claim for all the period of occupation Miss Hill and her predecessors.
 - (2) Although Miss Hill had negotiated a sale for an amount of £127,750 for her sale Grangeford sought to establish that the market value was £185,000.00 as being the indexed valuation of the initial premium at the start of the lease.
 - (3) Grangeford then sought a further assessed contribution of £2500.00 "attributed to the depreciation of the fabric of the building of which the leaseholder of flat 104 must pay an 0.8084% share of, the estate service charge percentage, which is also sent out under clause 3(17)".
- 4 It is in respect of these three matters that Miss Hill now seeks the assistance of the Tribunal as she is of the view that either the amounts sought, or the method of calculating those sums is unreasonable.

5 Although Miss Hill provided a statement of her case for the Tribunal, following the directions given by a Deputy Regional Judge of the Tribunal, there was no statement in reply made by, or on behalf of, the Respondent. At the hearing that was held on 26th May 2015 it then became apparent from the issues that she was raising and the observations she was making that Miss Hill was seeking a variation of Clause 3(17) of the lease to remove the apparent entitlement of the Respondent to aggregate the periods of occupancy of the current leaseholder and predecessors in title in the calculation of the contribution to the sinking fund. The Tribunal gave further directions in order to incorporate this element of the application and to enable the Respondent to comment should it wish to do so.

6 A statement was provided on behalf of the Respondent in which it accepted that in relation to the matters listed at (2) and (3) in paragraph 3, above, it conceded the points raised by the Applicant and indicated it would not seek to pursue those additional charges. The claim in relation to the period of occupancy relevant to Clause 3(17) was maintained, although the Respondent was now indicted that it would only seek to include the period of occupancy of the Applicant and her immediate predecessor. This still concerned the Applicant as she had established earlier that her vendor had discharged the obligation up to the point of her purchase. In her view the interpretation being put on Clause 3(17) by the Respondent, apparently entitling it to encompass the period of occupancy of all, any, or none of the predecessors in title, in addition to that of the Applicant, only served to illustrate the unfairness and ambiguity of the clause and which required a remedy.

The Law

- 7 An administration charge is defined in paragraph 1(1) Schedule 11 Commonhold and Leasehold Reform Act 2002 as:
- “An amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly
- (a) For or in connection with the grant of approvals under his lease, or applications for such approvals
 - (b) For or in connection with the provision of information or documents by or on behalf of the landlord or is a party to his lease otherwise than as landlord or tenant
 - (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) In connection with a breach (or alleged breach) of covenant or condition in his lease.

8 Paragraph 2 then provides that if the administration charge is variable, Being a charge which is neither specified in the lease, nor calculated by reference to a formula in the lease, it is payable only to the extent that the charge is reasonable.

9 Paragraph 3(1) provides that:

“Any party to a lease of a dwelling may apply to a...tribunal for an order varying the lease in such manner as is specified the application on the grounds that-

(a) Any administration charge specified in the lease is unreasonable, or

(b) Any formula specified in the lease in accordance with which an administration charge is calculated is unreasonable.”

10 Paragraph 5(1) provides that

“An application may be made to a... tribunal for a determination whether an administration charge is payable and, if it is, as to-

(a) the person to 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”

Conclusions and reasons

11 The Tribunal considered very closely with Miss Hill and Mr McVey whether or not the outstanding charge under Clause 3(17) of the lease amounted to an administration charge or not, since so far as the Applicant was concerned her ability to sell or otherwise dispose of her leasehold interest was affected by the need to make the appropriate payment.

12 The Tribunal however has considered at length the four descriptions of an administration charge contained in Paragraph 1 Schedule 11 of the Act. Three of those descriptions, set out in paragraph 6, above, at items (b), (c) and (d), do not apply to this situation. The only one that might conceivably apply is that related to, or in connection with, the grant of approvals.

- 13 Close and critical examination of the lease, however, does not suggest that the payment being sought has any direct or indirect connection with the grant of any approval required for an assignment of the lease to take place. The payment clearly has a connection with a proposed assignment as it is a requirement of the lease that the payment be made, but that is entirely different from any approval and here none is required, or contemplated. The lease requires a contribution to be made, and clearly a substantial one, whatever is the proper construction of Clause 3(17) of the lease, but this is an obligation to make a payment that is entirely independent of any administrative function of the landlord or its agents which are sorts of matters envisaged by the definitions in Schedule 11 paragraph 1 of the Act.
- 14 The Tribunal is therefore drawn to the conclusion that the charge in question under Clause 3(17) is not an administration charge within Schedule 11 Paragraph 1 and the Tribunal therefore has no jurisdiction to make any order in relation to either the reasonableness of the charge or the variation of the clause.