



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

Case Reference : **MAN/30UH/LSC/2014/0107**

Property : **Various Flats at Lakeland House, Marine Road East, Morecambe, Lancashire LA4 6AY**

Applicant : **Mrs IG Graves of Flat 75, Lakeland House and the various other Applicants referred to in the Schedule hereto**

Representative : **Mrs IG Graves**

Respondent : **Lakeland House (Morecambe) Maintenance Company Limited**

Representative : **Mrs V Brown and Mrs A Liu**

Type of Application : **Landlord and Tenant Act 1985 – s 27A
Landlord and Tenant Act 1985 – s 20C**

Tribunal Members : **Judge JM Going
I James MRICS**

Date of inspection and hearing : **19th of March 2015**

Date of decision : **5th of May 2015**

DECISION

THE DECISION

The Tribunal found:- (1) that the service charges that had been demanded by the Respondent for 2013/14 were payable and reasonable (2) that the service charges for 2014/15 onwards could and should not be finally determined at this time (3) that the Respondent should not be precluded from including the costs of the present proceedings within the service charges, and (4) that there should be no further order for costs

Preliminary

1. The Applicant applied in September 2014 to the First-Tier Tribunal Property Chamber (Residential Property) "the Tribunal" under section 27A of the Landlord and Tenant Act 1985 (" the 1985 Act") for a determination as to whether service charges in respect of the Property are payable and/or reasonable. The application concerns the 2013/2014, 2014/2015, 2015/2016 and 2016/2017 service charge years.
2. The application also included a request for an order preventing the costs incurred in connection with these proceedings from being recovered as part of the service charge.
3. The Tribunal issued Directions following a case management conference at Lancaster County Court on 11th November 2014.
4. Each party provided extensive written submissions with their statements of case which were copied to the other.
5. The Tribunal inspected the development and the block of flats of which the properties form part on 19th of March 2015.
6. A hearing was subsequently held on the same day at Lancaster County Court. It was attended by Mrs Graves, who represented the Applicants, Ms Holden, Mr Hatfield, Mr Langstreth and Mr Williams. The Respondent were represented by Mrs Brown who confirmed she was its Company Secretary and Treasurer and Mrs Liu its Chairman

Facts and Submissions

7. Lakeland House is a tower block of 78 purpose built flats constructed in approximately 1976 immediately overlooking the front at Morecambe with 9 habitable floors over a garage basement.
8. From the papers it appears that each Applicant owns his or her flat as the Lessee under virtually identical forms of Lease ("the Lease") granting terms of approximately 990 years which began in in the late 1970s and early 1980s and which were made between Lakeland House (Morecambe) Maintenance Company Limited and the original flat owners.

The Lease

9. Under clause 1 of the Lease each Lessee covenanted to pay a yearly ground rent of £25
10. Each Lease obliges the Lessee to keep the interior of the Lessees flat in good and substantial repair and condition.
11. The 7th schedule of the Lease confirms various covenants and obligations for the Lessor including that: –
 - (i) the Lessor shall pay the rents reserved by the head Lease
 - (iii) the Lessor shall take out and keep on foot insurance
 - (vi) the Lessor shall keep the hall stairs landings lifts and passages forming part of the reserved property properly furnished carpeted cleaned and in good order and shall keep adequately lighted all such parts of the reserved property as are normally lighted or as should be lighted and shall (without thereby incurring any liability for unforeseen breakdowns) keep the said lifts properly repaired and maintained and insofar as reasonably possible in permanent working order.
12. Clause 19 of the 6th schedule to the Lease confirms covenants that:-

“The Lessee shall contribute and shall keep the Lessors indemnified from and against 1/78th the part of all costs and expenses incurred by the Lessor in carrying out its obligations under and by giving effect to the provisions of the 7th schedule including paragraphs (8) to (12) inclusive of that schedule or otherwise in relation to the estate (including the rent reserved by the head Lease) after deducting interest if any received by the Lessor on cash in hand and rents received by the Lessor or by virtue of underLeases by the Lessor of parts of the estate....”
13. Clauses 8 to 12 of the 7th schedule of the Lease reads as follows: –
 - “8. The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this schedule and pay their wages commissions fees and charges.
 9. (a) From and after the 25th day of March the Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities and payments whether certain or contingent and whether obligatory or discretionary

(b) If and so far as any monies received by the Lessor from the Lessee during any year by way of contribution to the Lessors said costs and expenses are not actually expended by the Lessor during that year in pursuance of this schedule the Lessors shall hold those monies (including any part thereof which may be in any such reserve fund as aforesaid) upon trust to expend them in subsequent years in pursuance of this schedule and subject thereto upon trust for the Lessee absolutely...

The Lessors shall keep proper books of account of all costs and expenses incurred by it in carrying out its obligations under and giving effect to the provisions of this schedule or otherwise in relation to the estate...

11. The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a competent chartered accountant, who shall certify the total amount of the said costs and expenses (including the audit fee of the account) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to paragraph 19 of the 6th schedule above

12. The Lessor shall within 2 months of the date to which the account provided for in paragraph 10 of this schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified by and certified in accordance with the last preceding paragraph

The Applicant's case

14. The Applicants in their application objected to the increase in service charges from those made in previous years.
15. The service charges (including ground rent of £25) demanded by the Respondent for 2013/2014 (30/3/2013 to 29/03/2014) and including a special levy of £250 per Leaseholder amounted to £1,250. The Respondent had proposed further increases for future years.
16. The Applicants, said to represent 16% of the Leaseholders in the development, stated in their application that increases had been demanded without "any explanation or reasoning" and appeared to maintain that the depletion of the management company's reserves over recent years had been as a consequence of mismanagement by the management company.
17. The Applicants raised various technical issues as to the preparation and submission of the accounts, questioned the independence of the audit that had been undertaken by the management company's accountants, appeared to believe that such audits would not have included reference to the management company's bank accounts, and questioned the veracity of draft accounts being submitted to the Company's annual general meeting and being later amended following that meeting. They

maintained that reserves had to be held in a separate bank account and in the name of trustees separate from the management company. They questioned why a 5% discount obtained by the Respondent when paying the ground rent under the head Lease had not resulted in each of the flat owners receiving a 5% reduction in their own ground rents and inferred that monies had been misappropriated.

18. The applicants maintained that insufficient details of works had been disclosed to the members of the company, and appeared to believe that tenders and consultation were required for all works or services requisitioned by the company.
19. The Applicants clearly were concerned by the increase from previous years of the fees paid to the cleaning contractor, a Director of management company but not living at Lakeland house. They questioned his annual fees having increased from the previous year by 11.1%.
20. The Applicants did however agree that there ought to be provision to replenish the reserves, and confirmed that they would accept and pay a 5% increase in service charges from that levied in the previous year i.e. from £1000 to £1050

The Respondent's Reply

21. The Respondent provided answers to each of the Applicants concerns, although clearly not all those answers were accepted by the Applicants.
22. The Respondent did not agree with any assertion that the expenses that had been included in previous years accounts had been unexplained. They confirmed that they were necessary expenses accounted for in the usual manner.
23. As had been set out in the directions the Respondent provided a summary and breakdown of the major amounts of expenditure had been included within the annual service charge accounts for the 2010/11 years onwards. These included extraordinary items for repairs to the lifts, roof fans, installation of 4 new roof water tanks, replacement of water pumps and various works to the roof and the building. It was shown that the company's cash at bank and in hand had fallen from £84,751.58 as at 29/03/2008 to £34,728.49 as at 29/03/2014.
24. The Respondent provided explanations for the amendment of the draft accounts following the company's 2014 AGM, and stated that the accounts had been properly audited and in accordance with the terms of the Lease, and that the various company accounts had been correctly signed.
25. The Respondent confirmed that estimated budgets had been circulated to all of the members prior to the AGM with the draft accounts. The

Respondent confirmed that various issues which had been raised by the Applicants were discussed at the well attended AGM and confirmed that the majority of the Leaseholders had voted against the Applicants proposals. The Respondent explained that the proposed increase in service charges included provision for restoring the company's reserves to their previous levels over a period of 4 years.

26. The Respondent explained that all the company's bank accounts were held in the name of the company and thereby held on the appropriate statutory trusts for the members of the company and the individual flat owners.
27. It was confirmed that the discount obtained when paying the ground rent to the head landlord was retained within the management company's bank accounts for the benefit of all the members.
28. The Respondent explained that the cleaners duties had been extended to that of a site supervisor and that the work was not restricted to a set numbers of hours in each week and regarded by a large majority of the members as something that they wished to see continue, as confirmed at the AGM.

The Law

29. Section 27(a) of the 1985 Act provides that:-
 - (1) An application may be made to the Tribunal for a determination whether a service charge is payable and, if it is, as to:-
 - (a) the person to whom it is payable
 - (b) the person by whom it is payable
 - (c) the amount which is payable
 - (d) the date at or by which it is payable
 - (e) the manner in which it is payable
 - (2) Sub-section 1 applies whether or not any payment has been made.....
 - (3) But the tenant is not to be taken to have agreed or admitted any matter by reason of having made any payment.
30. Section 19 of the 1985 Act confirms that :-
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge
 - (a) only to the extent that they are reasonably incurred
 - (b) when they are incurred on the provision 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.

The Tribunal's Reasons and Conclusions

31. The Tribunal found, when making its inspection, the Development to be clean tidy and generally well presented and that it appeared to have been maintained to a good and reasonable standard. It was noted that management company were in the process of addressing the discovery of various asbestos in the meter cupboards.
32. Section 19 of the 1985 Act imposes a general requirement of reasonableness in relation to service charge expenditure.
33. The initial questions to be asked are whether a landlord's actions in incurring the relevant costs and the amount of those costs are both reasonable, and whether the works are of a reasonable standard.
34. Dealing firstly with the question as to whether the costs included in the service charges have been reasonably incurred.
35. The Applicants appeared to believe that all expenditure undertaken by the Respondent should firstly be the subject of consultation with all of the Leaseholders. The Tribunal could not agree with that contention.
36. The 1985 Act sets out the various occasions when statutory consultation is required and as referred to in the service charge demands sent out to the various flat owners. Put briefly Leaseholders have a statutory right to be consulted prior to major works where any one Leaseholder's contribution towards works will exceed £250.
37. The Court of Appeal has recently confirmed in the case of Francis –v- Phillips [2014] EWCA CIV 1395 that that particular limit relates to sets of qualifying works. That statutory requirement does not mean that all the Leaseholders have to be consulted in respect of all works.
38. The Tribunal noted when inspecting the development that information as to various works was displayed on notice boards, and understood from the evidence provided at the hearing that newsletters are issued to the different flat owners on a regular basis.
39. The Tribunal found that the Applicants had on occasions become fixated on certain technical issues relating to the accounts, and had sometimes misinterpreted them or simply got them wrong.
40. As an example the lead Applicant made much of whether a Director or the company Secretary could or should sign the annual accounts and on which page, but then also produced extracts from the Companies Act which showed the particular requirements had been satisfied.
41. The Tribunal did not agree with the Applicant's contention that the discount that the Respondent had obtained when paying the ground rent under the head Lease on behalf of the management company

entitled the individual flat owners to pay a reduced ground rent under their individual Leases.

42. The ground rents to be paid by the individual flat owners to the management company are clearly set out in the Lease. Any profit that the management company had made had clearly been retained and used to offset the ongoing costs of maintaining the development.
43. The Tribunal found no evidence to substantiate any assertion made by the Applicants that monies moneys which had been paid to the company had in any way been misappropriated, and concluded that the manner in which certain accusations had been made were close to being vexatious.
44. The Tribunal carefully considered the terms of the Lease and concluded that the Applicants were wrong in their belief that the wording in the individual Leases required reserves to be paid into a separate bank account and to be held by separate individuals acting as trustees as opposed to being held as part of and within the accounts managed by and under the name of the management company which holds monies on behalf of and in trust for all of the Leaseholders.
45. The Tribunal noted that the Respondent's accountants acting as statutory auditors had in respect of each of the published accounts appended a certificate to confirm that such statements "gave a true and fair view of the company's affairs... And had been properly prepared in accordance with the generally accepted accounting practice". For each year the statutory auditor had stated that that was nothing to report in respect of matters where the Companies Act would require a report, if in his opinion:-
 - adequate accounting records had not been kept...
 - Financial statements ... not in agreement with the accounting records and returns...
 - or he had not received all the information and explanations required for the audit
46. The Tribunal found no evidence to question the auditor's independence and no reason to question his conclusions that the accounts had been properly kept and prepared
47. The Tribunal found both Mrs Brown and Mrs Liu to be credible witnesses who appeared to be painstaking in their diligent, often unpaid, work for the management company.
48. The Tribunal agreed with the Respondent analysis that a number of the extraordinary items falling outside those coming within the annual maintenance budget had been as a natural consequence of the age of the building.

49. Having inspected the development, carefully considered all of the evidence before it, and using its own knowledge and experience, the Tribunal did not find that evidence that any of the expenditure within the service charges had been unreasonably incurred.
50. The Tribunal then went on to consider the reasonableness of the costs and standard of the works included within the service charges
51. The Tribunal noted the Applicants concerns as regards the wages of the cleaner/ site supervisor but also that the majority of the flat owners had at the company's AGM voted for a continuation of the status quo.
52. The Tribunal would of course have no objection to such work being put out to tender particularly if that had been the wish of the majority of the flat owners. However the statutory requirement that costs be reasonably incurred does not mean that the relevant expenditure must always be the cheapest available, and the Tribunal concluded that the cleaner/site supervisor's wages were not unreasonable.
53. In reviewing the overall costs of service charges, the Tribunal noted that each flat owners' water charges are paid through the service charge rather than being paid for individually, which means that the service charges are less expensive than might otherwise initially appear to be the case when drawing comparisons with the costs charged in comparable developments where, in the Tribunal's experience, water charges are more often than not individually metered and paid for.
54. The Tribunal found that the various flat owners had been saved a substantial amount of money by work which had been done, often without proper payment, by the present and past directors and other flat owners
55. Had independent managing agents been employed, as authorised under the Lease, the Tribunal would not have been surprised, nor concluded it unreasonable, if such independent managing agents had made a charge of approximately £250 per annum per flat for a development of this type.
56. The Tribunal's overall conclusion was that the service charges which had been levied in recent years were modest by comparison to what might be expected for a development of this type.
57. If there was a criticism of the level of service charges over recent years it was that they had probably been set at too low a level. Nevertheless the Tribunal understood that it is all too easy to have 20/20 hindsight and concluded that the extraordinary items of expenditure made in recent years had been entirely appropriate in order to sustain and maintain a large block of 78 flats over 9 floors and with garage basement.

58. The Tribunal were pleased that all parties saw the prudence of increasing the reserves back up to previous levels and concluded that it was very sensible to aim to move the reserves back to a balance of approximately £100,000 and wholeheartedly endorsed the Respondent's proposals that the management company should aim to include in its forthcoming budgets a surplus of £20,000 per annum until the reserves had been bought back up to a figure of approximately £100,000.
59. As consequence of the foregoing and for the reasons stated the Tribunal concluded that the service charges which had been demanded by the Respondent for the 2013/2014 year were reasonable and payable.
60. The Tribunal also found that those service charges that it was aware of which had been demanded for the 2014/15 service charge year were reasonable and payable. However the Tribunal did not feel that it could or should make a final determination as regards the 2014/15 service charge year, both because that had not been completed at the time of the hearing, and because substantial additional payments could legitimately be anticipated in order to address the works required to remove the harmful asbestos. Nor did it feel able to make any determination as regards any future years service charges at this time, simply because they are in the future.

The Section 20(c) Application and Costs

61. The Tribunal went on to consider the request, included in the Applicant's initial application, that the Tribunal make an order under section 20(c) of the 1985 Act that the Respondent be precluded from including within the service charges the costs incurred by the Respondent in connection with the present proceedings before the Tribunal.
62. The Tribunal having regard to what is just and equitable in all the circumstances determined that such an order should not be made.
63. Paragraph 13 of The Tribunal Procedure (First-tier Tribunal Property Chamber) Rules 2013 provides that a Tribunal may determine that one party to the proceedings pays the costs incurred by the other party in the limited circumstances set out in that rule, if that party has acted unreasonably in bringing defending or conducting those proceedings.
64. The Tribunal has decided that, in the circumstances of this case, it would not be appropriate to make an order for such costs.

The Schedule hereinbefore referred to

Mrs IG Graves – Flat 75 Lakeland House
Ms Y Holden – Flat 52 Lakeland House
N Hatfield – Flat 33 Lakeland House
J Langstreth – Flat 26 Lakeland House
Ms J Exton Evans – Flat 2 Lakeland House
G Williams – Flat 25 Lakeland House
Mr & Mrs H England – Flats 39, 42, 44 and 79 Lakeland House
CS Povey – Flat 76 Lakeland House
Mr & Mrs W Jones – Flat 62 Lakeland House

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