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

**Case Reference** : CAM/11UC/LSC/2016/0074

**Property** : Flat 4, 29-31 Lansdown Road, Chalfont St Peter,  
Gerrards Cross SL9 9SP

**Applicants** : Alexander Craig Herowych  
Nicholas Andrew Herowych  
Richard John Thomas Yates  
Paul Douglas Matthews

**Representative** : Mr E McDonald of Counsel instructed by PDC  
Legal Solicitors accompanied by Mr Stuart  
Gardner and Tracy Tarpey both of HML  
Hathaways Limited (managing agents)

**Respondent** : Paul Douglas Matthews

**Type of Application** : Application under 27A of the Landlord and  
Tenant Act 1985 and schedule 11 paragraph 5 of  
the Commonhold and Leasehold Reform Act  
2002

**Tribunal Members** : Tribunal Judge Dutton  
Mrs H C Bowers BSc (Econ) MSc MRICS  
Mr A K Kapur

**Date and venue of  
Hearing** : Grovesfield House Hotel, Burnham, Slough  
SL1 8LP on 10<sup>th</sup> January

**Date of Decision** : 23rd January 2017

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**DECISION**

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## DECISION

1. **The Tribunal determines that the Respondent liability to the Applicant is £618.95 for each of the two years in dispute for the reasons set out below. However, taking into account the payments made on account the actual sum due and owing we find to be £567.60.**
2. **The Tribunal determines that the administration fees of £312 are not recoverable for the reasons set out below.**
3. **The Respondent remits back to the County Court in claim number C28YM852 at the County Court at Slough, the issue relating to the costs of the proceedings said to be £720. In addition the Court's attention is drawn to paragraph 24 below.**
4. **No other order for costs is made.**

## BACKGROUND

1. This matter started life in the County Court at Slough under case number C28YM852. On the 5<sup>th</sup> October District Judge Parker transferred this matter to the Tribunal for determination of the dispute as to the quantum of service charges. The order went on to say that any remaining issues were stayed pending the decision of the First-tier Tribunal.
2. Directions were issued by this Tribunal on 19<sup>th</sup> October 2016 which in the main have been complied with by the Applicants. The Respondent, however, has not in reality engaged in these proceedings. A Defence was filed in the County Court dated 28<sup>th</sup> July 2016 but there has been no involvement in the proceedings before this Tribunal by Mr Matthews, save for a letter which was sent to the Tribunal, but it appears not to the Applicants, dated 9<sup>th</sup> January 2017.
3. Before the hearing we were provided with a bundle of documents which included the Court papers, a copy of the lease which is dated 25<sup>th</sup> May 1976 and a Deed of Surrender in Re-Grant dated 8<sup>th</sup> February 2008. Copies of the demands and correspondence from the managing agents to the Respondent were also included as was a copy of the 2014 accounts, it appearing that there are no subsequent accounts prepared. A statement of charges at the end of the bundle indicated a liability on the part of the Respondent of £1,435.45 as at 1<sup>st</sup> April 2016.

## INSPECTION

4. Before the hearing we inspected the subject property. It is a purpose-built detached block of four flats over two floors. It is of a brick construction with an artificial slate, mansard type roof. The nature of the structure has accommodation at ground and first floor to part of the building and accommodation at first floor level to another part, supported on a side-wall, forming a 'bridge' over the access road to the rear where there was a block of garages. We understand one garage each is within the ownership of each individual lessee. It should be noted that the lessees are the owners of the freehold and that such ownership changes as and when any lessee devolves themselves of their interest in a flat. Miss Tarpey and Mr Gardner of the managing agents accompanied the Tribunal on the inspection. The Tribunal did meet Mr Matthews on the inspection and he indicated that he would not be attending the hearing and did not accompany the Tribunal on the

inspection. He had, however, left the door to the common parts open which we were able to inspect. We noted fairly basic common parts and that there was water damage to the ceiling on the first floor. The communal lighting to the top floor could only be operated from the top floor and on a plunger timer basis. The cleaning to the common parts is apparently undertaken by the lessees.

5. There is car parking to the front and limited garden area which was in reasonable order at the time of our inspection. The property has something of a feel of being slightly neglected and could do with some decorative works.

## HEARING

6. At the hearing the Applicants were represented by Mr McDonald of Counsel and Miss Tarpey and Mr Gardner attended. Mr McDonald had provided us with a skeleton argument, which was helpful and sought an order debarring the Respondent from participating in the proceedings. A general complaint was made that the Respondent's failure to engage in the proceedings left the Applicants in some difficulty in seeking to determine exactly what was the complaint.
7. The Defence filed in the court proceedings by Mr Matthews appeared to indicate that there was a denial that proper demands had been sent to him, a suggestion that he had made reasonable contributions to the service charge for the year 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2015 and that he was not obliged to pay any contribution to the current year because of "a lack of consideration on the part of the managing agent." The Defence went on to allege that the managing agent had not managed the property competently or effectively and had no right to make a charge for their services. It was also suggested that the managing agent did not have sufficient authority to levy a charge for the calendar year 2016 and put the managing agent to strict proof that all freeholders had approved the 2016 budget.
8. The Defence went on to make complaints concerning the gardening services and the lack of maintenance.
9. In the letter of 9<sup>th</sup> January 2017, Mr Matthews took issue with some of the matters set out in the Applicant's statement, particularly relating to the identity of the parties where there appear to have been some misunderstanding on the part of the Applicants and the fact that there was no contract to establish the agent's position and instruction by freeholders. The letter also alleged that the budget details had not been sent out.
10. Mr McDonald sought to rely on the statement of case for the Applicants prepared by Che Davey, a Paralegal with PDC Law. There were also discussions between the Tribunal and Mr McDonald as to the provisions of the lease relating to future payments on account. We were told that there were no accounts for the year ending December 2015 nor were we provided with any management accounts for 2016. The provision with regard to the budget appeared to be that this was submitted to the Applicants and if there was no response within a period of time then it would be taken as having been approved and the management would proceed accordingly. We were told that there was a management agreement although no copy had been disclosed.

11. Miss Tarpey told us that she had joined the company in September of 2015 but had not been given the subject property to manage until the beginning of 2016. Mr Gardener told us that he was a long-standing property manager and was there to provide assistance if required. Asked how the budget would have been prepared without the 2015 accounts we were told that it was likely that the expenditure would have been based on the 2014 accounts, which had not been audited but had been approved by a senior accountant at Hathaways. Mr Gardner thought that the preparation of the accounts would be included within the annual management fee.
12. It was noted that in some of the papers prepared for the Tribunal reference was made to an Andrew James Bennett, who appears to have acquired an interest in one of the flats after these proceedings commenced. He appears to replace Mr Richard John Yates. It was accepted by Mr McDonald that this Tribunal does not have power to amend the identity of the parties and he was not able to help us with the correctness of Mr Matthews being both an Applicant and Respondent. Miss Tarpey told us that so far as she was aware, there had been no instructions from the Applicants for proceedings to be commenced by Hathaways, a matter that we will return to under the Findings section. It was noted also that the demands included the name of Mr Yates as the freeholder when this would appear to be incorrect, as he had been replaced by Mr Bennett.
13. We were told by Miss Tarpey that there is now no gardening charge made and a gardener has not in fact been engaged since the summer of 2015. There is also, we were told, no reserve fund. It was confirmed to us that the debt that the Applicants were seeking to recover was as set out on the statement of charges namely £1,435.45.
14. Questioned on the recoverability of the £312 administration fee, Mr McDonald relied on the Deed of Surrender and Re-Grant which had re-worded the provision of clause 3(a) of the lease, which he said enabled the administration charge to, in effect be a service charge and recoverable by that method.
15. On the question of costs again Mr McDonald sought to rely on the terms of the lease, in this case the original one, which contained the right to recover costs as charges and expenses in contemplation of any proceedings under the Law and Property Act 1925 (sections 146 and 147).

## **THE LAW**

16. The law applicable to this matter is set out in the annex attached.

## **FINDINGS**

17. Mr Matthews has shown little interest in these proceedings other than lodging the Defence in the County Court and writing a letter extremely late in the day which we were prepared to consider, particularly because it really added nothing to the matters that we were required to determine. This claim centres around demands in respect of estimated service charges for the years ending December 2015 and 2016. In the papers before us was a budget which had apparently been prepared for the financial year ending December 2016 showing a contribution due from Mr Matthews of £907.50, being one quarter of the anticipated expenditure. We were

told that the budget is submitted to the freeholder who are the lessees and if they do not respond then Hathaways considered that that was sufficient for them to proceed on the basis of this document.

18. It seems to us, however, that the correct way of dealing with the budget is to be found in the original lease. Clause 3a has been amended by reference to the Deed of Surrender and Re-grant. Clause 3b, however, says as follows:

*“3(b) The Lessee shall on the execution hereof pay and contribute to the Lessors towards the creation of an initial cash float to enable them to carry out their obligations hereunder in the sum of ten pounds and on each quarter day (except the first) after the execution hereof during the continuance of this demise the Lessee shall pay to the Lessors on account of the Lessee’s obligations under the last preceding clause an amount in advance amounting to:-*

*(i) in the period ending to thirty first day of December one thousand nine hundred and seventy eight to Ten pounds per quarter and*

*(ii) during the remainder of the term hereby granted to [pay sic?] quarter of the proportionate amount (as certified in accordance with clause 18 of the Third schedule hereto) due to be paid by the Lessee to the Lessors for the accounting year or lesser period to which the most recent notice under clause 19 of the Third schedule relates.”*

19. We then need to look at the Third schedule. Clause 18 says as follows:

*“The account taken in pursuance of the last preceding clause shall be prepared and audited by a competent chartered or certified accountant who shall certify the total amount of the said costs and expenses (including the fee for preparing or auditing the account) for the period for which the account relates and the proportionate amount due from the Lessee to the Lessors pursuant to clause 3 of this lease.”*

Clause 19 says:

*“The lessors shall within one month of the date to which the account provided for in clause 17 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 preceding clause and the Lessee shall be entitled to inspect the said account or, at the option of the Lessors, to be provided with a copy thereof.”*

20. We, therefore, conclude that in the light of the terms of this lease the arrangement is that the Respondent and his co-lessees are required to pay a contribution towards the advanced sums under the provision of clause 3b relating to the last set of accounts for which notice has been given. In this case those would be the 2014 accounts as they are the last ones that have been prepared. We calculate that a quarter share of the total sum claimed in the 2014 accounts would be £618.95. This seems to us to be the 'proportionate amount' referred to in the lease, although we are to an extent hamstrung because we were not provided with a complete copy of this document, missing as we were clauses 7 through to 16 inclusive. Nonetheless it seems to us that that is the intention and that accordingly the demands made in respect of the service charges for these two years by the

Applicants through Hathaways is too high. In each year, it seems to us it should be £618.95.

21. There is no provision in the lease for charges to be levied in connection with the administration matters to which Hathaways appear to be laying a claim. These relate to the sums involved in connection with an arrears collection fee of £60, referral instruction fee of £84 and PDC legal fee of £168. It is unclear to us as to which element of the lease gives right to make this administration charge and Mr McDonald was not able to help us on this point. In those circumstances, we dismiss any claim in respect of administration charges under the Commonhold and Leasehold Reform Act 2002.
22. Insofar as the costs of the proceedings are concerned, we do not accept that the lease makes clear provision for the recovery of legal fees against Mr Matthews. Certainly, the clause to which we were referred refers to costs being recoverable incurred or in contemplation of forfeiture proceedings. The particulars of claim make no reference to any forfeiture and the best we can see is that there is a threat contained in one of the letters where a final request for payment is made in April of 2016 and a warning that upon judgment being obtained certain steps could be undertaken. In those circumstances, we do not consider that the lease enables recovery of costs against Mr Matthews. It is for the Applicants to consider whether any other means of recovery would be appropriate.
23. We find, therefore, on a quantum only basis that Mr Matthews is obliged to make a contribution in respect of the service charge years 2015 and 2016 of £618.95 for each year. It is noted from the schedule that Mr Matthews has paid £400 and has received a credit of £270.30. **On our calculation, therefore, the sum actually owed by him for these two years is £567.60.**
24. We also raise for consideration by the Court the lack of evidence to show that the Applicants had actually instructed HML Hathaways to bring these proceedings in their names. No letter of instruction was produced from the freeholders and indeed if Mr Matthews were to be included as an Applicant it is unlikely that such a letter involving him would have been forthcoming. We also note that the proceedings are commenced including Mr Yates as an applicant who we understand devolved himself of his interest in the property, it would seem perhaps around April of 2015, when the Register of Title shows Mr Bennett as the owner. This is to be found on an office copy of the Register dated 24<sup>th</sup> October 2016. Certainly, therefore, at the time this matter came before us Mr Bennett was a co-owner of the freehold and Mr Yates was not.
25. We should perhaps just add that we are not making any alterations to the budgeted figures arising from the 2014 accounts. The reason for that is that some of the items shown in the 2014 accounts, for example gardening, is not likely to appear in the 2016 accounts of indeed perhaps part of the 2015 accounts. This, therefore, does not prevent Mr Matthews from bringing a challenge once the final accounts have been prepared which may include a challenge to the management fees. We make no further comment on that aspect.

Andrew Dutton

Judge:

A A Dutton

Date:

23rd January 2017

### **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985**

##### **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 a leasehold valuation 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 a leasehold valuation 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.