



12148
**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UB/LSC/2017/0011

Property : 6 Christopher Martin Place,
Meadow Rise,
Billericay,
Essex CM11 2DF

Applicant : Christopher Martin Place Residents'
Association Ltd.

Represented by : Jeff Hardman of counsel (Swaine Allen)

Respondent : Alan George Atkinson
Self representing

**Date of Transfer from
the County Court at
Southend** : 6th January 2017

Type of Application : to determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (Lawyer Chair)
Stephen Moll FRICS
John Francis QPM

**Date and place of
Hearing** : 20th April 2017 at Basildon
Magistrates' Court, Great Oakes,
Basildon SS14 1EH

DECISION

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1. The Tribunal determines that of the claim for service charges of £1,066.80, the sum of £1,066.80 is reasonable and payable forthwith.
2. The Tribunal also determines that of the claim for administration charges of £1,405.00, the sum of £120.00 is reasonable and payable forthwith in respect of the managing agent's charges claimed at £342.00. The balance of £1,063.00 in respect of legal charges is to be assessed by the court. In order to assist the court, costs other than *inter partes* costs are only payable if incurred in contemplation of forfeiture (Clause 5.14 of the lease). There has been no indication that forfeiture has even been thought about by the Applicant.

3. With regard to the claim for interest, the lease enables interest to be claimed at the rate of 5% above Lloyds Bank base lending rate or 10% whichever is the higher. The base lending rate as from March 2009 was .5% and this reduced to .25% on 4th August 2016. Thus, interest is claimable at the rate of 10%. Statutory interest is therefore not payable pursuant to section 69(4) of the **County Courts Act 1984**.
4. The claim is transferred back to the county court sitting at Southend under claim no. C29YY063 for determination of interest up to judgment and any legal costs. The parties should note that it will be up to them to make any application to the court in relation to those matters.

Reasons

Introduction

5. Court proceedings were issued by the Applicant for the sums stated above plus statutory interest in or about September 2016. The claim is made up as to:-

	£
Service charge balance as at 2013	1.71
Service charge on a/c 1 st July 2015 (balance)	490.17
Service charge on a/c 1 st January 2016	574.92
Administration charge (3 rd May 2016)	144.00
Administration charge (25 th May 2016)	198.00
Administration charges in the claim form	1,063.00
Statutory interest	<u>83.75</u>
	2,555.55

Court fees and costs are also claimed.

6. A defence was filed which said, in effect, that the managing agents were incompetent. There were 6 basic points made to support that contention i.e. a front boundary wall which had been repaired after an accident was incompetently done and used the wrong coloured bricks; other boundary walls had also been hit and were dangerous; they have allowed one flat owner to run cables across the front of the building; the mending of a small crack has left cement on the painted render; gutters have not been cleared and covers are missing from gas meter boxes. Photographs are attached.
7. Significantly, the defence also says "*I have always told Countrywide that I have no problem with paying my account as long as they carry out their contract as well, and will do when they do*". This indicates to the Tribunal that the service charges themselves are not challenged save for the standard of workmanship and omissions in service.
8. The claim is by a management company for service charges plus interest and costs in respect of one of 8 flats on this small estate originally let on a long 'tripartite' lease in a form which is quite normal nowadays, where the landlord passes over management to a management company which is a party to the lease. In this case, however, it seems that the freehold title has also been passed to the Applicant management company.

9. The Respondent's company built the block but such company has been dissolved. The Respondent was a director of the Applicant until 20th January 2016.
10. The Order of District Judge Ashworth dated 6th January 2017 is for the case to be transferred to this Tribunal "*for case management and determination*".
11. A bundle of documents was duly lodged on time and the Applicant has responded to the defence. A brief appraisal of the Applicant's answers is:
 - The damaged wall was repaired but in view of the Respondent's complaint it was redone and the other leaseholders are content with all the walls and their condition
 - The gutters have been cleared
 - The covers for the gas meters are the leaseholders' responsibility
 - When the service charges are paid, the outside of the property will be re-decorated and the cement marks will then be dealt with
 - When the re-decoration work is done, the cables will be tidied up

The Lease

12. The bundle produced for the hearing included a copy of a certified copy of the lease which is dated for the 13th December 2004 and is for a term of 999 years from 1st January 2004 with a ground rent of a peppercorn. The lease provides that the Applicant shall insure the property and keep the building and grounds in repair. It can then recover one eighth of the cost of so doing from the leaseholder.
13. As to administration fees relating to litigation costs, there is no provision in the lease for them to be recovered in any situation other than in contemplation of the proceedings under sections 146 and 147 of the **Law of Property Act 1925** i.e. for forfeiture. The clause specifically covers all expenses including solicitors' costs.
14. Clause 7 and the Fourth Schedule deal with service charges. Interest can be claimed on unpaid charges at the rate of 5% above Lloyds Bank PLC base lending rate or 10% whichever is the greater. The Applicant's covenant to keep the building and common parts in repair and maintained is subject to payment by the leaseholder of service charges.
15. By a combination of clauses 1.14 and 5.25, the Applicant can claim service charges on account.
16. It is one of the tenant's covenants (clause 5.23) that upon being requested to do so, he will become a shareholder and/or director of the Applicant.

The Law

17. Section 18 of the 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'.
18. 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.

19. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") ("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... directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord."

20. 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"

21. Section 69 of the **County Courts Act 1984** gives the court wide discretion to award interest. However, sub-section 69(4) says *"interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs"*.

The Inspection

22. The members of the Tribunal inspected the property in the presence of the Respondent, counsel for the Applicant, Rebecca Hewitt, property manager from the managing agents and one or two observers.
23. It is a self contained purpose built small block of flats of brick/block construction under concrete interlocking tiled pitched roofs. It was built in about 2003. There are uPVC window frames and doors with plastic guttering some of which was clearly blocked with weeds and a birds' nest. There are some rather unsightly wires across the front of the building and the exterior is in need of decoration.
24. The building is opposite a small parade of shops. Billericay has a train station with regular trains to London and Southend. When looking into the internal common parts from the glass front, it was noted that the stairwell appeared to be in reasonable decorative order. The carpeted surfaces appeared to be clean.
25. The Respondent pointed out various things to the Tribunal members. It was noted that there were problems with ridge and hip tiles. At the hearing, it was pointed out that these had been damaged in a recent storm. The remedial works had been approved by insurers in the week before the hearing and were due to commence in the following week or so.
26. It was noted that a fence panel had been replaced, the brick walls to the front had been repaired in various places and the low wall to the right of the plot when looking at it from the road had clearly been 'knocked', presumably by a vehicle, although it was hardly noticeable and the structure was solid. A repair may be necessary in due course to prevent

water penetration and/or frost damage. It was also noted that some repairs may be required to the sand and cement verge fillets to the main roof.

27. It was noticeable that there were several design features which were potential hazards for motor vehicles. Apart from the front wall, the other brick walls were low and may be below the line of vision when driving a motor vehicle. The same could be said about what appeared to be covers for the gas meters where one had been damaged.
28. As to the main wall at the front, it was fairly obvious that a triangular section of this wall had been replaced. Thus, the original wall, which had weathered etc. over 14 years, looked slightly different from the triangle. It is understood that this new section had been artificially coloured to try to make it blend in.

The Hearing

29. The hearing was attended by those who were at the inspection. At the outset of the hearing, the Tribunal chair attempted to find out the relationship between the Applicant and the Respondent. As has been said, until January 2016, the Respondent was a director of the Applicant and is still, presumably, a member although no-one seemed to know for certain. When he was a director, he signed off all the instructions to Countrywide. He told the Tribunal that he just became fed up with taking all the responsibility. When the front wall was damaged and Countrywide could not, in his view, sort out the problem properly, he resigned.
30. Ms. Hewitt gave evidence. She said that all material decisions were taken by the Applicant and she received her instructing from a director. That director was happy with the state of the walls and the position with regard to the cables. Indeed, the Applicant was happy with the standard of management. She was questioned by the Respondent in fairly aggressive terms but, save for admitting that she knew nothing of the damage to the right hand wall, she did not waiver in her evidence.
31. Mr. Atkinson gave evidence. His case seemed to come down to this. He was a builder and developer. He had a flat in the building but did not live there. He was very upset by the repair to the front wall and things went downhill from there. He accepted that Countrywide were not builders and he also accepted that he did not agree with the views of the builders employed by the Applicant as to the standard of repairs. He would have paid the service charges if the standard of management had been in accordance with his wishes.
32. As far as administration charges were concerned, counsel for the Applicant said that these would be dealt with by the court. He was reminded that the directions order required his client to justify such administration charges so that the tribunal could consider them. He was unable to provide a costs schedule.
33. After some discussion, he conceded that the Tribunal could and should assess the 2 fees charged by Countrywide in the sums of £144 and £198

respectively. The balance, being legal fees, should be assessed by the court.

Discussion

34. The Respondent was not as straightforward with the Tribunal as he could and should have been. Having to run a management company owned by lessees is often described as being a thankless task. He appears to have done this for some years. He became frustrated by what happened over the front wall. Countrywide acknowledged that they had made an error and the work was re-done without cost to the tenants.
35. When asked by the Tribunal whether he had fallen out with his co-tenants he said that he had not. However, the evidence of Ms. Hewitt was believable and accepted by the Tribunal. Countrywide were clearly acting on the instructions of the Applicant i.e. the other tenants. Whatever the criticism levelled at Countrywide by the Respondent, was not shared by those other tenants.
36. The Tribunal members could see what Mr. Atkinson was saying and, to a certain extent, the reasons why he was so strong in his opinion. However, at the end of the day, Mr. Atkinson is no longer in charge. Taking a broad brush approach, the Tribunal concluded that one must look at the property in its context. It is in a residential area of mixed post war housing next to quite a busy road and opposite a small shopping area.
37. It is not a listed building or in an area of particular architectural merit. Yes, the front wall is not ideal and neither are some of the other matters raised by the Respondent. However, overall, the proposed work to the roof and the decoration work to include clearing all the gutters and making the wires tidier, will enhance the property. It will then be in a reasonable condition. In other words none of the matters of concern to the Respondent now will devalue the flats in any material way.
38. Mending the cover over what is assumed to be the gas meter should be a matter for the Applicant. The lease is not clear as to who is actually responsible for this. No-one seems to know who caused the damage and it seems to the Tribunal that the reasonable contemplation of the parties to the leases was that this should be a communal matter paid for by the tenants generally.

Conclusions

39. Of the points in dispute mentioned above, the Tribunal, having taken all the evidence and submissions into account, concludes that Countrywide have been acting on the instructions of the Applicant i.e. the other tenants. They appear to be happy with the standard of management. In these circumstances, the service charges claimed are reasonable and payable by the Respondent.
40. As to the administration charges of £144 and £198, these related to writing an extra letter and then giving instructions to the Applicant's solicitors. It may be that there is an element of 'punishment' in the charges to prevent people falling into arrears.

41. It is the Tribunal's task to assess their reasonableness. £144 for writing what appears to be a template letter is clearly excessive. Assuming the letter took 10 minutes, then, at a charge out rate of £150 per hour, £25 would be reasonable.
42. As to the instruction of solicitors, this clearly takes longer as documents have to be sorted out and copied. Using the same rate, the Tribunal considers that 30 minutes would be sufficient to do this task and accordingly it allows £75 i.e. a total of £100 plus VAT.

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Bruce Edgington
Regional Judge
24th April 2017

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.