

12144



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

CASE 1:

Case Reference No: CHI/00HD/LSC/2016/0101
Property: 4, 5, 6 & 7 Bramley Court, Barrs Court,
Bristol BS30 7AZ
Applicant: Mr. H Powell, Mr I Fenwick, Mr. M Hillier-
Brown, Mr. A Formoso
Represented by: Mr. H Powell
Respondent: White (Reading) Properties) Ltd

CASE 2:

Case Reference No: CHI/00HD/LSC/2016/0102
Property: 6, 7, 8 & 9 Greve Court, Barrs Court, Bristol
BS30 7AU
Applicant: Mr. A Diamond, Ms N. Kent, Mr B. & Mrs D.
Lovell, Mr, D Evans
Represented by: Mr. A Diamond
Respondent: White (Reading) Properties) Ltd
Application type: Application for determination of liability to
pay and reasonableness of service charges –
section 27A Landlord and Tenant Act 1985
Tribunal: Judge Professor David Clarke
Date of Hearing: 27 February 2017

DETERMINATION AND STATEMENT OF REASONS

Determination

1. The Tribunal determines that the Applicants in each case have made out their case that the insurance premiums charged by the Respondent in respect of the years 2015-16 and 2016-17 are unreasonable in that they have not been reasonably incurred; but in respect of the four earlier years the charge for the premiums was not unreasonably incurred. For the years 2015-16 and 2016-17, the Tribunal determines that the sum of £500 (£125 per flat) can be properly charged for the two years 2015-16 and 2016-17.
2. The Tribunal further determines that the administrative charge of £25 added to the charges is not recoverable under the terms of the Leases.
3. An order is made under section 20C of the Landlord and Tenant Act 1985.

Statement of Reasons

The Applications

4. By an Application dated 14 October 2016, Huw Powell, Ian Fenwick, Mark Hillier-Brown and Antonio Formoso, the lessees of 4, 5, 6 and 7 Bramley Court Bristol (“the Bramley Court Applicants”), applied under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of their liability to pay and reasonableness of the service charges levied by the Respondent, White (Reading) Properties Ltd for the six years 2011-2012 through to 2016-2017.
5. By multiple applications variously dated 27 September, 29 September and 1 October 2016, Mr. A Diamond, Ms N Kent, Mr B & Mrs D Lovell and Mr D Evans, the lessees of 6, 7, 8 and 9 Greve Court Bristol (“the Greve Court Applicants”), applied under section 27A of the Landlord and Tenant Act 1985 for a determination of their liability to pay and reasonableness of the service charges levied by the Respondent, White (Reading) Properties Ltd for the six years 2011-2012 through to 2016-2017.
6. By Directions issued on 2 December 2016, Judge Tildesley directed that the applications were to be heard together as each involved the same issues with the same landlord but a different set of leaseholders. He also directed that the cases were to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. Directions were also given for the parties to file their statements of case, for the provision of certain documentation and for the preparation of a bundle of documents.
7. In the absence of any objection by any of the parties, this case was determined without a hearing on 27 February 2017.
8. In this determination, any reference just to “the Applicants” is a reference to both sets of Applicants.

The Facts

9. The properties with which this case is concerned each consist of four flats. A photograph supplied of 6-9 Greve Court shows a building similar in proportion to a pair of semi-detached houses, but with four doors, two for the two ground floor flats and two for the two upper floor flats. The properties date from 1981 and 1982. The two sample Leases (“the Leases”), one in respect of each application, are from the same developer and are in similar terms, granting a lease of 99 years from 1 October 1980 at an annual rent of £35, reviewed according to a set formula every 11 years. The rent has apparently risen under this formula to £210 per annum but at least two of the flats have now extended their leases by a term of 90 years by virtue of the provisions of the Leasehold Reform (etc) Act 1993 and now pay only a peppercorn rent. The reversion to both properties is now vested in the Respondent.

10. The only clauses of the leases that are relevant to this application are Clauses 5(iv), the lessor’s covenant to insure and Clause 4(iii), the lessee’s covenant to pay one fourth part of expenses incurred in insuring the building. Clause 5(iv) provides (excluding words not relevant to these applications):

“the Lessor will insure and keep insured at all times throughout the term hereby created the Building ... against loss or damage by (*long list of risks*) and such other risks as the lessor shall deem appropriate in some insurance office or with underwriters of repute to be selected by the Lessor in the full reinstatement value thereof . . .”

Clause 4(iii) provides for a covenant by each lessee to:

“Pay and contribute to the Lessor from time to time upon demand one fourth part of the expenses incurred by the Lessor in insuring the Building and carrying out its obligations under clause 5(iv) of this Lease.”

The Issues

11. The principal issue raised under both applications is that of the amount of the insurance premium under the two block policies in force for each set of four flats. Each block is insured with RSA (formerly Royal Sun Alliance) and has been for many years and certainly for the last six years. The total sum insured for both blocks is the same, namely £486,724 but the premiums differ. For Bramley Court the premium from 1 October 2016 is £1,847.86 and for Greve Court it is £1,756.14. In each case it is the amount of the premium that is disputed by the Applicants. There is no dispute as to the sum insured or the standard of cover.

12. A subsidiary issue is specifically raised by the Bramley Court Applicants in their Application. The amount they are being asked to pay includes a £25 administration charge levied by the Respondent. Though this subsidiary issue is not formally raised in the applications by the Greve Court Applicants, it is clear from the paperwork that this issue is also relevant in that case as well.

13. Finally, it should be noted that, when sending in his bundle of documents, Mr Diamond, on behalf of the Greve Court Applicants, said that he had

become aware of the fact that RSA treated the Respondent as an insurance broker. He noted that this might have a bearing on this case as the Respondent may be receiving payment from RSA. However, not only is there no evidence on that point filed with the papers but the Respondent has not had the opportunity to respond. It is not therefore an issue that can be considered in this determination.

The Submissions

14. Neither party made detailed submissions. The Applicant's case was straightforward. On behalf of the Bramley Court Applicants, it was said that the landlord charges excessive and unreasonable buildings insurance premiums and that, despite many representations over a period of years, the Respondent has refused to make changes despite the premiums being out of line with the market. The Greve Court Applicants raised the same question for determination and noted that no evidence had been provided by the Respondent to test the market for other quotations from insurers, as this being asked for in the Directions of 2 December.

15. The Bramley Court Applicants additionally contended that the administration fee was unreasonable and the justification for the charge was weak.

16. The Respondent's submissions were that the Lease provided for the insurance company to be selected by them and that RSA was an office of repute and that they had fully complied with the terms of the Lease. The Respondent also defended the administration charge contending that this is levied to cover forwarding the insurance renewals by post, collecting premiums, banking cheques and, if necessary, sending reminders and finally forwarding their own cheques to the insurers. They also contended that the application was, in effect, an application to vary the terms of the insurance covenant.

17. The Respondent claimed that its £25 administration charge was covered and permitted by the Administration Charges Regulations 2007.

18. In response, the Bramley Court Applicants, through a letter from Mr Powell, denied that they were trying to vary the lease and stressed they were not disputing the terms of the insurance covenant but emphasised the issue of reasonableness, stressing that the Respondent had refused to discuss that issue and there was no justification made for the selection of RSA put forward. Mr Powell provided four alternative quotations. Mr Diamond, on behalf of the Greve Court Applicants, provided two alternative quotations for the insurance. The contention was that the very significant discrepancy between the quotations obtained and the premium charged could not be justified.

19. Neither party made any submissions on the applicable law.

The Evidence

20. The Respondent provided copies of the insurance policies and the annual renewal notices. Despite a request in the Directions, no evidence was supplied of the arrangements in obtaining insurance or steps taken to test the market. No other evidence was submitted.

21. The evidence of the Applicants centred on the alternative quotations for insurance. Mr Powell provided full documentation for quotations through brokers from Aviva (£410.89), Ageas (£360.17), Liverpool Victoria (£488.60) and UK Insurance (£490.77). Mr Diamond provided quotations through brokers from Allianz (£470.89) and UK Insurance (£470.89). They contended that these quotations provided cover for all the risks covered by the RSA policy and this is not disputed by the Respondent. The Respondent did initially contend that the RSA policy had no excess while all the above quotations are for a £100 excess but once the policy documents had been filed, Mr Diamond pointed out that the renewal notice for the RSA policy, memo 1, applies a similar £100 excess to each and every claim.

22. In an early letter, the Respondent claimed that he saved a fee by not using a broker but the applicants pointed out that their quotations were from brokers and included a broker's fee.

23. On behalf of the Bramley Court Applicants, Mr Powell also submitted copy correspondence from September and October 2014 when the issues of the insurance premium and administration charge were raised with the Respondent. The same points were made in that correspondence in reply as have been made to this Tribunal and no changes were made.

The Law

24. These applications, made under Section 27A of the 1985 Act, relate to the insurance for the two blocks of flats. Recovery of insurance premiums is a staple part of the service charges made in nearly every block of flats whether the lessor is a property company (as here), or a resident leaseholder's management company, or an individual since most leases sensibly require a single block policy for a building containing a number of residential units. Section 27A gives a Tribunal jurisdiction (*inter alia*) to determine the amount of a service charge and therefore the amount of the insurance premium contained within it. By virtue of section 19 of the same Act, the costs within a service charge must be 'reasonably incurred' subject to the terms of the relevant leases which regulate the details of the relationship between the parties.

25. The 1985 Act, by virtue of section 30A and the Schedule to that Act, also gives the lessees rights with respect to insurance but the provisions of that Schedule are not directly relevant to this application.

26. In relation to applications under 27A relating to insurance premiums, the following principles can be discerned.

- (1) There is no term to be implied into a lease that the lessor must 'shop around' for the lowest premium available. Provided the insurance office was reputable and the premiums reflected the usual rates offered, the lessor was entitled to be indemnified for the insurance taken out under the terms of the lease: *Havenridge Ltd v Boston Dyers Ltd* [1994] 49 EG 111, CA.
- (2) In a case where the lease required a tenant's management company to insure with a nominated insurer, and the premiums were higher than the company could have obtained in the market, the management company had to pay the higher premium; no term should be implied that the sum charged should not be unreasonable: *Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [1997] 1EGLR 47.
- (3) The test for the recovery of insurance premiums is whether they have been 'reasonably incurred' not whether they are reasonable: *Forcelux Ltd v Sweetman* [2001] EGLR 173.
- (4) The lessor need not go with the cheapest quotation available provided it can demonstrate that there has been adequate testing of the market in order to justify that it is reasonable to accept a particular insurance quotation: *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 264.

27. It is provided by the 1985 Act that no application can be made under section 27A in respect of a matter which has been agreed by a tenant, though making a payment is not to be taken as an agreement : Section 27A (4) and (5) of the 1985 Act.

Determination – the insurance premium

28. Applying the law to the facts of this case, the Tribunal determines that the Applicants have made out their case in respect of the years 2015-16 and 2016-17 but not in respect of the four earlier years. It is clearly not sufficient for the Applicants to show that the insurance premium charged is higher than could be obtained in the market. This lease permits the lessor to select an insurance office of repute and there is no suggestion that RSA is not an insurance office of repute. But the insurance selection, and premium, does need to be 'reasonably incurred'. Where, as here, the lessees make the lessor aware that there is evidence that very considerably better terms for the same cover can be obtained in the market from many other insurers of repute, it is necessary for the lessor to test the market and to then justify the selection made. The Respondent in this case has provided no evidence whatsoever that such a testing of the market has been done either in the past two years or previously. While there is no evidence that the Respondent obtains a commission on the policy taken out, that can never be a reason for selection of a particular policy since allowance must be given for the full amount of any commission obtained: *Williams v Southwark LBC* (2001) 33 HLR 224.

29. The reasoning in respect of those first two years cannot apply to earlier years. Though the Applicants contend, in general terms, that this is an issue which was raised with the Respondent many times over the years, no evidence was submitted with either application to justify that contention. The earliest date where there is evidence was at the end of September 2014 just before the insurance renewal took effect for 2014-15 and after the Respondent had agreed to such renewal. But that correspondence should have put the Respondent on notice to test the market before the 2015-16 renewal. It has steadfastly refused to do so. On that basis alone, the case succeeds.

30. It therefore remains for the Tribunal to determine, in accordance with Section 27A(1)(c), the amount that is payable. The Tribunal has the benefit of six quotations from five reputable insurers for cover on just as good terms as that from RSA and in at least one case, with a higher sum assured. None of the premiums exceed £490 and the rest are for lower figures. The Tribunal therefore determines that the sum which is payable in respect of insurance for the two years 2015-16 and 2016-7 in respect of both Bramley and Greve Courts is £500 in total, or £125 per flat.

Determination – the administration fee

31. The Bramley Court Applicants contend that the administration fee of £25 added by the Respondent to the amount of the insurance premium taken out is unreasonable. The Respondent justifies the charge by reference to the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 and that a charge is reasonable given the work it undertakes, namely forwarding the renewal details, collecting premiums, sending reminders, banking cheques and forwarding payment to the insurers. It was also justified by the fact that insurance brokers were said to charge administration fees.

32. The Respondent's case is misconceived. The issue is whether the Leases permit the charge to be made. These Leases are in an old form. Clause 4(iii) only provides for the lessees to pay 'one fourth part of the expenses incurred by the lessor'. In the judgement of the Tribunal, that can only justify expenses actually incurred in effecting the insurance – see *OM Property Management v Burr* [2013] EWCA Civ 479. The Tribunal therefore determines that this administrative charge is not an expense that is so 'incurred' and so cannot be charged to the lessees.

33. Consequently, the Tribunal determines that any part of the sums charged to any of the Applicants in the last six years are not properly chargeable under the terms of the Leases. However, where any of the Applicants has purchased one of the flats within the six year period, such applicant can only benefit for the period he or she has been a lessee.

Section 20C

34. The Applicants ask for an order under section 20C of the Act. It is not thought that these leases would permit recovery of costs incurred by the

Respondent in these proceedings but an order is made in case that becomes an issue.

Right of Appeal

35. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

36. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

37. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

38. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge Professor David Clarke
28 February 2017