



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

Case Reference : **CAM/22UH/LSC/2017/0088**

Property : **Roding Hall, Ongar Road, Abridge,
Essex RM4 1BN**

Applicant : **Roding Hall RTM Company Limited**

Representative : **Mr Steve Lazarus**

Respondent : **Mrs Jacqueline Anne Hall**

Representative : **Mr Gregory Hall (Husband)**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – determination of service
charges payable**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan) FRICS
Mr John Francis QPM**

**Date and venue of
hearing** : **24 January 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26 January 2018**

DECISION

The issue(s) before the tribunal and its decision

1. The issues before the tribunal were:

The amount of service charges payable by the respondent (Mrs Hall) to the applicant pursuant to s103 Commonhold and Leasehold Reform Act 2002 in respect of:

- 1.1 the period 8 February to 31 December 2016; and
- 1.2 the amount payable on account in respect of the year 2017.

An application pursuant to s20C Landlord and Tenant Act 1985 (LTA 1985) and an application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLRA 2002).

2. The decisions of the tribunal arrived at by agreement with the parties are:

- 2.1 The amount of service charges payable by Mrs Hall in respect of the period 8 February to 31 December 2016 was the sum of £7,296.00.
- 2.2 Mrs Hall had paid £5,400.00 on account of that liability and the applicant has collected grounds rents from the long lessees totalling £2,400.00 which are due to Mrs Hall. Those sums amount to a total of £7,800.00 so the net result is that Mrs Hall's account was in credit in the sum of £504.00.
- 2.3 The amount of service charge payable on account for 2017 was a total of £3,000, less the credit of £504, a net balance of £2,496.00, That was payable as to £996.00 on 8 March 2017 and as to £1,500.00 on 1 July 2017. Those sums have not been paid as at the date of the hearing.
- 2.4 The application pursuant to s20C LTA 1985 is dismissed; and
- 2.5 The application pursuant to paragraph 5A of Schedule 11 to CLRA 2002 is dismissed .

Procedural background

3. The applicant made an application pursuant to s27A LTA 1985 in respect of service charges payable by Mrs Hall in respect of the years 2016 and 2017.
4. Directions were given on 21 September 2017.
5. Mrs Hall chose not to serve a statement of case pursuant to direction 8.
6. The application came on for hearing before us on 24 January 2018.

For the applicant there was present: Ms Tracy DA Costa (secretary and director and lessee flat 9), Ms Bobbie Lazarus (lessee flat 7), Ms Siobhan Mulvihill (lessee flat 2) and Ms Maggie Cooper (lessee flat 5). They were accompanied by Mr Steve Lazarus who acted as representative of and advocate for the applicant.

Mrs Hall was present and was accompanied by her husband, Mr Hall, who acted as her representative and advocate.

The property background

7. On 24 February 1999 Mrs Hall was registered at Land Registry as proprietor of the development now known as Roding Hall. The property was formerly a public house known as The White Hart. The property was adapted/converted to comprise 9 two-bedroom self-contained apartments. Between September 2002 and August 2009 six of those apartments were sold off on long leases of 125 years from 1 January 2001. Mrs Hall retained 3 apartments, nos 1, 4 and 6 which she has let from time to time on short term lets.
8. Evidently the 6 long leases are in common form and recite an intention that each apartment shall be demised by a lease in similar terms.

As a sample we were provided with a copy of the lease to apartment 2.

By clause 2(1)(b) there is a covenant on the part of the lessee to pay the Service Charge in accordance with the provisions of the Fourth Schedule.

The detail of the Fourth Schedule was not in issue and may be summarised as follows:

1. A contribution of 1/9th of expenditure on services;
2. The expenditure on services was defined to mean the expenditure incurred by the landlord in compliance with its obligations set out in the Sixth Schedule.
3. An accounting period of 1 January to 31 December;
4. An interim service charge instalment payable on 1 January and 1 July in each year;
5. A service charge statement to be prepared for each year with a balancing debit payable by the lessee on demand and a balancing credit repayable to the lessee;
6. Paragraph 5 of the Fourth Schedule provides that the service charge may include: *“such sum as the Lessor shall decide in its absolute and unfettered discretion towards a reserve of sinking fund to make provision for expected future expenditure including (but without prejudice to the generality of the foregoing) the external decoration of the Building and nay major repairs”*

The provisions of the Sixth Schedule are in broadly conventional form. We draw the attention of the parties to paragraph 9 because it may be of some relevance to them in respect of future projects which the applicant may have in mind.

9. Relations between some of the long lessees and Mrs Hall have not been good for a number of years. Both parties have complaints against the other but we need not go into any of the details as they are not pertinent to what we have to decide.

10. Some of the long lessees promoted the applicant RTM company and on 8 February 2016 the applicant acquired the right to manage Roding Hall.
11. The contractual provisions for recovery of service charges amounted to six ninths, being 1/9th payable by each of the six long lessees. The shortfall was thus 3/9ths. By virtue of s103 CLRA 2002 the shortfall is required to be made up by the 'appropriate person'. It was not in dispute that in this case the 'appropriate person' was the freeholder, Mrs Hall, because the three 'excluded units' retained by her were not subject to any leases.
12. It was not in dispute that external redecorations had not been undertaken for several years and were required. Some other repairs and security arrangements have been under consideration for some years.

The 2016 service charge accounts

13. Having acquired the right to manage in February 2016 the applicant went about undertaking a number of tasks which, apart from day to day management, included projects to undertake external redecorations and possibly the installation of electronic gates, CCTV and other security provisions. A form of s20 LTA 1985 consultation was undertaken but we were not shown the full set of documents and we make no findings about it. Demands were made of Mrs Hall for payments on account of routine service charges and these were paid by Mrs Hall. The applicant purported to levy demands on Mrs Hall for payments on account of the major works projects the applicant had in mind and these were challenged by or on behalf of Mrs Hall, who, evidently was unclear as to what was proposed, at what cost and what her rights or legal position was.
14. It is unfortunate that in this case neither party sought or obtained professional advice as to their respective positions. Lack of clarity over these matters has plainly caused the relationship between the parties to worsen.
15. The applicant has produced accounts for the period 8 February to 31 December 2016 which have been signed off by Knight Accountants & Registered Auditors.

They show a total service charge expenditure of £21,888 listed under 10 headings. We went through each heading carefully and the only one Mr Hall initially challenged was 'Major Works £15,000'. It was clarified that that was intended to show that £15,000 had been included for transfer to a reserve fund. The intention was that as and when expenditure was incurred on major works projects, it would be drawn down from the reserve fund.

There was a discussion as to whether it was reasonable for the applicant to allocate £15,000 to a reserve fund. We were told that during 2017

external redecorations had been undertaken and details of the works and the cost of them had been provided to Mrs Hall. Mr Hall, who said he was in the building trade, confirmed he had seen the details and whilst sceptical as to the reasonableness of the cost of scaffolding he did not have much to object to. Mr Hall agreed that in those circumstances it was not unreasonable for the applicant to include an expense of £15,000 to be allocated to the reserve fund in the 2016 accounts. We were told that the actual cost of the works would feature in the 2017 accounts which will be issued in due course.

16. Thus, in the event Mrs Hall raised no objections or challenges to the 2016 accounts and agreed that her one third share amounted to £7,296.

Both parties were agreed as to the payment on account of £5,400 and Mrs Hall's entitlement to the £2,400 ground rents held by the applicant, so that Mrs Hall's account was in credit by £504.

The 2017 service charge – interim payments on account

17. Year-end accounts have not yet been issued. The applicant had demanded on account interim payments of £1,000 per apartment (total £3,000) and Mrs Hall agreed that these were reasonable interim payments on account sums and were due payable by her.
18. Given the credit of £504 the net balance payable by Mrs Hall is £2,496, payable by way of two instalments. In paragraph 2.3 we have recorded the dates and the amounts of the instalments in case that information is of importance to one or other of the parties.
19. In due course the 2017 accounts will be issued. There may be a balancing debit or credit depending on the amount of expenditure incurred during the year. If there are issues between the parties on that expenditure and if the parties are unable to resolve the issues between themselves, it is open to either party to make an application to the tribunal for a determination on what is payable.

The s20C and Paragraph 5A applications.

20. In sections 9 and 10 of the application form the applicant has ticked the boxes indicating that it wished to make applications under these provisions.
21. These applications were discussed with the parties, in particular the applicant. It was pointed out to the applicant that it was an RTM company, not a tenant or lessee and thus it was not entitled to orders in its favour. It was also pointed that Mrs Hall is not now in control of the service charge account or in a position to demand a variable administration charge in respect of any costs of the proceedings which she may have incurred, and thus both applications were ill-founded.
22. For the sake of good order we have formally dismissed them.

Judge John Hewitt
26 January 2018

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 Tribunal 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 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.
4. 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.