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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UD/LSC/2017/0110**
Property	:	**Flat 1 Pilgrim House, Evron Place, Hertford, SG14 1PF**
Applicant	:	**Jenny Murley & John Kirby**
Respondent	:	**Pilgrim House Hertford Management Ltd**
Date of Application	:	**5th December 2017**
Type of Application	:	**to determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (Lawyer Chair)** **David Brown FRICS**

DECISION

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1. The Tribunal determines that in respect of the various allegations made by the Applicants that there have been breaches of the consultation requirements set out in section 20 of the **Landlord and Tenant Act 1985** ("the 1985 Act"), such breaches have not been proved save for (1) the contract with Black & White Fire Safety for electrical works set out in quote 102-6838 for which dispensation from the consultation requirements has been given and (2) the possibility that work to the drainage system at a cost of £2,484.00 may have been claimed from the leaseholders, in which case a refund of anything paid over £250 per flat is due.

2. The Tribunal also determines that the assertions by the Applicants that various service charges have been excessive have also not been proved.

3. An order is made pursuant to section 20C of the 1985 Act that the Respondent's costs of representation in these proceedings cannot form part of any future service charge demand. It also orders that such costs cannot be part of any claim for administration charges.

Reasons

Introduction

4. This application relates to a block of 9 flats in a building which includes commercial premises. The Applicants say that the service charges used to be some £900.00 per annum but they have increased dramatically recently. They also allege that monies paid to certain contractors have been more than the £250 per flat threshold for qualifying works and the £100 per flat threshold for long terms agreements.

5. The Tribunal issued a directions order on the 12th December 2017 directing the parties to exchange written representations and stating that the Tribunal would be content for the matter to be determined on the basis of the papers filed and written representations as was requested by the Applicants. It was made clear that if any party wanted an oral hearing then one would be arranged. No request for such a hearing was received.

6. The directions order said that the bundle to be lodged for the determination must include copies of the application, directions orders, statements of case and the lease. None of those documents were included. It was fortunate that the Tribunal members made enquiries with the Tribunal office to see if statements of case had been filed. Both sides had served such statements which would not have been seen if such enquiries had not been made.

7. Finally, it must be said that after close of office hours on the 9th February 2018, a letter arrived by e-mail from those representing the Respondent with 30 pages of attachments including a Scott Schedule. Why this was not included in the bundle is not explained although it is clear that the Applicants have seen this document as it includes their comments.

The Lease

8. A copy of the lease for flat 1 was also obtained which is dated the 16th April 2004. C.A. Pilgrim Properties Ltd. is said to be the landlord, the Respondent is said to be the management company and Karen Jane Seabourne is said to be the long leaseholder. The term is 125 years from 24th June 2003 with an increasing ground rent. In essence the management company agrees to keep the building in repair and the long leaseholders pay one ninth of the cost attributable to the building excluding the commercial part. The landlord agrees to insure the building and recover the premium on the same basis.

9. Of particular relevance to this case is that the original long leaseholder agrees to be a shareholder and member of the management company (clause 1, Sixth Schedule). Thereafter, under the leaseholders' covenants in the Third Schedule, clause 17, each long leaseholders undertakes to ensure that when he or she sells his or her long leasehold interest, they will ensure that the share in the management company is passed on to the buyer. Thus, if the leaseholders have complied with the terms of the leases then each leaseholder is a shareholder and member of the management company.

The Law

10. 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'.

11. Section 20 of the 1985 Act states that in respect of qualifying works and qualifying long term agreements, the contribution payable by the leaseholders is limited to the threshold figures stated above unless there has either been a consultation or dispensation from consultation has been granted by this Tribunal. An application for dispensation can be retrospective and such applications are often made where very urgent qualifying works are needed e.g. a lift in a building with elderly or infirm tenants which has broken down. Examples of dispensation in qualifying long term agreements are for the supply of services such as gas or electricity where the landlord or management company only has a very limited time to accept favourable terms.

12. These requirements only apply to specific works or agreements with contractors which last more than 12 months. Thus, the amount paid to a contractor in a year is not necessarily an accurate guide as to (a) whether all the work was part of particular and specific qualifying works or (b) how long an agreement with a contractor may be.

13. Section 21 of the 1985 Act says that, upon request, a management company must provide a written summary of costs incurred. Section 22 provides that if a request is made within 6 months of the supply of the summary, the management company must allow facilities to inspect the accounts receipts and other documents supporting the summary. It must also allow copies to be taken but at the cost of the leaseholder. However, it should, of course, be said that in a situation such as this, where the leaseholders are shareholders and members of the management company, such a procedure is presumable not necessary.

The Inspection

14. In view of the issues involved, the Tribunal determined that it would not inspect the property. This was notified to the parties who were told that if anyone wanted an inspection, they should apply and such application would be considered on its merits No-one requested such an inspection.

Discussion

15. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof in a dispute about service charges. At paragraph 15 he stated :

> *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the*

evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."

16. This Upper Tribunal decision which is binding on this Tribunal, together with sections 21 and 22 of the 1985 Act, which entitled leaseholders to see the landlord or management company's documents, means that anyone challenging service charges cannot just lodge some documents and copy e-mails with the Tribunal and expect it to undertake some sort of 'investigation' of its own volition. In Britain, we have an adversarial legal system which means that an applicant has to prove his or her case. This is particularly relevant in this case where the leaseholders are shareholders and members of the management company. If that is not in fact the case, then leaseholders have been in breach of the terms of the leases.

17. Thus, the first issue for the Tribunal to consider is whether, on the face of the evidence supplied by the Applicants, they have satisfied the Tribunal that there were qualifying works or qualifying long term agreements. The Respondents filed a full explanation for their actions and the Applicants then filed their reply. The end result of this is that there is evidence of 2 sets of potential qualifying works but no evidence of any long term qualifying agreements. Buildings insurance, for example, is almost invariably on a year by year basis to enable the insured to seek competitive quotes at the end of each year.

18. Of the 2 sets of potential qualifying works, 1 is for emergency work to the lighting system undertaken by Black & White Fire Safety following the report filed in the application for permission to dispense with the consultation requirements in respect of those works. The cost was £6,330.00. In the decision granting dispensation, the Tribunal has been critical of the Respondent and its managing agents who appear to have just ignored the requirement to either consult or obtain dispensation at the time the work was done.

19. Nevertheless, in order to also say that the cost of the work is unreasonable, there has to be some evidential basis. The Applicants have challenged the cost but they have produced no evidence of comparable cost which another contractor might have charged. Dispensation has been granted and the Tribunal has no evidence to suggest that the actual cost of these works was unreasonable. It is therefore deemed to be reasonable in amount.

20. The 2nd contract is headed 'London Drainage Clearance - £2484' and the explanation is that this work was undertaken to the drainage system to the building following a blockage identified as a build up of wet wipes and kitchen towel in flat 7. The work seems to have affected the whole building. The comment made on behalf of the Respondent is *"Ringley have not recharged any of these works to flat 7, but if Ringley were to do so, then some of these costs would be shared and would have needed prior agreement from the landlord of flat 7, which may not have been forthcoming. Therefore Ringley believe they acted in good faith as a responsible managing agent for the benefit of all residents. Based on £2484 and £2250 threshold, it is possible that by taking proactive steps there was a breach in the section 20 threshold for works of £234".*

21. The Tribunal cannot tell from the evidence whether an insurance claim was made. If it was and the cost of the contract was met by the insurers, then there is no cost to leaseholders and the lack of consultation is irrelevant. If, on the other hand, the cost has been passed on, then, in the absence of dispensation, the recoverable cost is indeed only £250 per flat.

22. As to the Applicants' general comments about what they consider to be excessive charges, they have, once again, produced no evidence to support such an assertion. For example, there are no competing quotes for insurance premiums or management fees. From the Tribunal's own knowledge and experience, management fees of £240 per annum per flat in a block such as this are certainly within the range of reasonableness.

Conclusion

23. The Tribunal, having taken all the evidence and submissions into account, concludes that there is no evidence to suggest either that the service charges claimed are unreasonable or that consultation has been required apart from the 2 examples stated above in respect of qualifying works. In 1 example, dispensation has been granted. In the other example, it is admitted that the cost of the work exceeded the threshold and if the leaseholders have actually been charged more than £250 per flat, they are due a refund of the balance paid over that figure.

Costs

24. The Applicants stated in the application form that they wanted orders that no cost of representation in these proceedings should be charged to the leaseholders either by way if a service charge or an administration charge. In the directions order, the Respondent was ordered to respond to this, which it has failed to do. The Tribunal therefore assumes that the Respondent does not wish to oppose the orders sought. In any event, the apparent failure of the Respondent or its managing agent to understand the consultation requirements would inevitably lead to such orders being made, which they are.

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Bruce Edgington
Regional Judge
14th February 2018

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.