



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

Case reference : **LON/00AP/LSC/2017/0464**

Property : **Flat 9, The Coliseum, 10 Salisbury Promenade, London N8 0RX**

Applicant : **Magic Homes Limited; and The Coliseum RTM Company Limited**

Representative : **Mr Sinclair, of counsel**

Respondent : **Mr Rajesh Kumar Dhir**

Representative : **Mr Sawtell, of counsel**

Type of application : **Liability to pay service charges and/or administration charges**

Tribunal member(s) : **Judge Pittaway
Ms Krisko FRICS**

Date and venue of hearing : **29 March 2018
10 Alfred Place, London WC1E 7LR**

Date of decision : **9 April 2018**

DECISION

Decisions of the tribunal

1. The claimed administration charges are recoverable by The Coliseum RTM Company Limited under clause 4(g)(ii)(a); or in the alternative under clause 4(k).
2. The administration charges claimed are reasonable.
3. The percentage of the administration charges payable by the respondent is 6% of the total charges.
4. The tribunal makes an order under section 20C that the costs incurred by the landlord in connection with the proceedings before the tribunal may not be regarded as relevant costs to be taken into account in determining the amount of the administration charges payable by the tenant.

Background

- (1) The applicants seek and, following a transfer from the county court, the tribunal is required to make a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether certain administration charges in the sum of £12,682.60 are payable and reasonable. The administration charges in question are the legal costs of Bradys, the applicant's solicitors, in connection with action taken by the applicant to recover service charge costs from the respondent. The applicants had previously sought to recover the costs on a contractual basis related to the landlord's ability to recover its costs of preparing and serving a notice under sections 146 and 147 Law of Property Act 1925, preparatory to forfeiture of the lease of the property. This unsuccessful application was the subject of a previous decision of the tribunal dated 31 May 2017 (LON/00AP/LSC/2016/0351) ("the **previous decision**")
- (2) The original proceedings were issued in the county court under claim no. D32YM749 and were transferred to the tribunal by Deputy District Judge Evans by order dated 24 November 2017.
- (3) Directions were issued by the tribunal on 22 January 2018, which contemplated a paper determination unless either party requested a hearing. By a letter received on 9 February the applicant's solicitors Bradys, requested a hearing.
- (4) The hearing was held on 29 March 2018. The tribunal had before it a bundle of documents which included a copy of the lease of the property, the previous decision and a witness statement by Carmela Inguanta, a solicitor at Bradys. On the day of the hearing the tribunal was provided with a skeleton argument prepared by Mr Sinclair on behalf of the applicant and a skeleton argument prepared by Mr Sawtell on behalf of the respondent and heard submissions by both counsel. The tribunal had regard to all the above in reaching its decision.
- (5) The tribunal was asked to determine the following

- a. Are the claimed administration costs recoverable under clause 4(g) of the lease, or alternatively are they recoverable under clause 4(k). The respondent also queried by whom the costs were recoverable.
- b. Is the sum claimed reasonable.
- c. If recoverable, what proportion of the total cost is payable by the respondent;
- d. Should the tribunal make an order under section 20C of the Landlord and Tenant Act 1985.

The parties' cases.

Are the claimed costs recoverable and if so, by whom.

- (6) It was the applicant's case that the costs were recoverable under clause 4(g) of the lease which provides

"The Landlord will itself or alternatively (at its discretion) employ a firm or managing agents:

(i) to manage the Building and will discharge all proper fees salaries charges and expenses payable to itself to such agent or such other person who may be managing the Building including the cost of computing and collecting the rents and service charge and undertaking the obligations of the Landlord under the terms of the lease and all ancillary costs in connection therewith.

(ii) To employ all such surveyors builders architects engineers tradesmen accountants solicitors or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building."

Mr Sinclair referred the tribunal to paragraph 49 of the previous decision which recorded that in that tribunal's opinion the clause appeared wide enough to enable The Coliseum RTM Company Limited to recover its expenses of enforcing covenants under the lease, including the payment of service charge through the service charge.

- (7) Alternatively Mr Sinclair argued that the costs were recoverable under clause 4(k) of the lease, which provides

"To make provision for the proper payment of all proper legal and other costs and expenses incurred by the Landlord in running and management of the Building and in the enforcement or attempted enforcement of the covenants conditions and regulations contained in the leases granted of any of the units in the Building and the regulations imposed hereunder."

on the basis that this permits the recovery of legal costs under the service charge, including the costs of previous proceedings not recovered from the tenant.

- (8) For the respondent Mr Sawtell argued that the costs sought were not “*necessary or desirable for the proper maintenance safety and administration of the Building*”. For them to be recoverable under this clause they would have to be recoverable under “*administration*” but litigation for the recovery of small amounts of service charge to advance the freeholder’s potential right of forfeiture cannot be described as “*administration*” in this context. As for potential recovery under clause 4(k) he argued that this referred to “*proper*” legal costs relating to enforcement, as apposed to management, and that the costs in question were not therefore recoverable under this clause.
- (9) Mr Sinclair did not address by whom the claimed costs are recoverable.
- (10) It was Mr Sawtell’s submission that the costs are not recoverable by Magic Homes Limited, as the landlord company has no interest in the non-payment of service charge, as all the functions relating to service charge are now in the hands of The Coliseum RTM Company Limited.

Is the sum claimed reasonable?

- (11) Mr Sawtell submitted that because the legal costs dwarf the original sum of service charge claimed and is disproportionate to the extent of the dispute the sum claimed is unreasonable.
- (12) Mr Sawtell also queried whether any proportion of the costs was actually payable by Magic Homes Limited. Mr Sinclair drew to the tribunal’s attention that Brady’s invoice was addressed solely to The Coliseum RTM Company Limited.

The proportion of the total cost payable by the respondent.

- (13) Mr Sinclair referred the tribunal to Paragraph 8 of the particulars of the lease which state that the tenant’s Share of Total Expenditure is

“By way of further rent from the date hereof 6% (one bedroom flat) 8% (two bedroom flat) (in respect of the overall service charge liability of the residential accommodation in the Building) of the total expenditure incurred by the landlord in performing the covenants contained in clause 4 hereinafter appearing and set out or mentioned in the Third Schedule hereto PROVIDED ALWAYS that in the event of such percentage being inappropriate the landlord shall be at liberty in its discretion to adopt such other method of calculation of the Tenant’s share of total expenditure to be attributed to the Flat as shall be fair and reasonable in the circumstances.”

It was common ground between the parties that the property is a one bedroom flat.

Mr Sinclair submitted that the Landlord's discretion to adopt another method of calculation allowed it to adopt an alternative proportion of the service charge to be payable by the respondent in relation to the costs the subject of this application alone; and that that proportion should be 100% of the total expenditure on such costs. In his submission as the costs had been incurred by reason of the respondent's action it was fair and reasonable in the circumstances for the respondent to bear 100% of the cost.

- (14) Mr Sawtell submitted that the applicants had not established why the agreed percentage was unreasonable and that they were exercising their discretion unfairly and unreasonably in allocating 100% of the cost to the respondent.
- (15) The tribunal drew attention to the wording referring to the landlord having the right to "*adopt such other method of calculation of the Tenant's share of total expenditure*". as indicating that an alternative method of calculation must relate to all sums payable by the respondent; not just one item of expenditure.

Order under section 20C Landlord and Tenant Act 1985

- (16) Mr Sinclair submitted that it was not appropriate to make an Order under section 20C Landlord and Tenant Act 1985 as this would leave The Coliseum RTM Company Limited out of pocket on the costs incurred in the current application.
- (17) Mr Sawtell invited the tribunal to make an Order under section 20C Landlord and Tenant Act 1985 to bring the litigation of costs chasing costs to an end.

Reasons for the tribunal decision.

Are the claimed costs recoverable and if so, by whom.

- (18) The tribunal see no reason to depart from the opinion of the tribunal in the previous decision that clause 4(g) is wide enough to enable The Coliseum RTM Company Limited to recover its expenses of enforcing covenants under the lease, including the payment of service charge through the service charge.
- (19) It further considers that the costs are recoverable under clause 4(k) as "*costs and expenses incurred by the Landlord in in the enforcement or attempted enforcement of the covenants conditions and regulations contained in the leases granted of any of the units in the Building and the regulations imposed hereunder.*"
- (20) The tribunal agree with Mr Sawtell that the claimed costs are recoverable by The Coliseum RTM Company Limited, when claimed under either clause 4(g) or clause 4(k).

Is the sum claimed reasonable?

- (21) The tribunal had no evidence before it as to the breakdown of the total cost claimed. In the absence of any witness evidence from the respondent as to the unreasonableness of the costs it has no alternative but to determine that the costs are reasonable.

The proportion of the total cost payable by the respondent.

- (22) The respondent is responsible for 6% of the total costs claimed.
- (23) The wording referring to the landlord having the right to “*adopt such other method of calculation of the Tenant’s share of total expenditure*” entitles the person dealing with service charge under the leases of the flats in the building to adopt an alternative method of calculation in relation to all sums payable by each tenant; the wording does not entitle the service provider to unilaterally alter the proportion payable by one tenant in respect of one item of service charge, which is what the applicants are seeking to do here.
- (24) The wording is designed to permit alternative methods for the whole of the service charge payable by a tenant. For example by changing the basis of charge from the number of bedrooms per flat to the net or gross area of each flat.

Order under section 20C Landlord and Tenant Act 1985

- (25) The tribunal considers it just and equitable to make an Order under section 20C to ensure that no further costs are charged to the service charge in connection with the settled service charge claim, which claim was significantly less than the administration charges which the applicants are now seeking to recover.

Name: j. Pittaway

Date: 9 April 2018