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

Case Reference : CHI/45UF/LIS/2013/0076

Property : Bowman Court, London Road, Crawley, West Sussex
RH10 8XG

Applicants : (1) Mr Robert Young
(2) Mr Colin Guest

Representative : In person

Respondents : Bowman Court Management Company Limited

Representative : Mrs A Ritchie (director)

Type of Application : Determination of payability of service charges under
s.27A of the Landlord and Tenant Act 1985

Tribunal Members : Judge A Johns (Chairman)
Mr A O Mackay FRICS (Surveyor member)
Mrs Jan Morris (Lay member)

**Date and venue of
Hearing** : 4 October 2013, Holiday Inn Express, Crawley

Date of Decision : 15 October 2013

DECISION

Introduction

1. This is an application by Mr Young and Mr Guest to determine the payability of service charges. They are leaseholders of flats at Bowman Court, London Road, Crawley, West Sussex RH10 8XG. Mr Young owns Flat 13. Mr Guest owns Flats 2, 5 & 7.
2. Service charges under the leases of the flats are now paid to the respondent, Bowman Court Management Company Limited ("BCMC"); the leases being varied by deeds entered into in around 2004 to reflect the fact that BCMC had taken over the functions of the original management company under the leases.
3. Complaint was made in respect of service charge years going back to 2005/2006. Amongst other things, it was said that the basis on which service charges were calculated and demanded had been unclear.

Procedure

4. The application was originally made by Mr Young alone. The Tribunal gave directions on 8 July 2013 including for further information to be given to him and for him then to consider which items he disputed. There was a case management conference on 30 July 2013 at which further directions were given including the joining of Mr Guest as an applicant. Both sides prepared statements of case in accordance with those directions.

Inspection

5. The Tribunal inspected the property immediately before the hearing. The inspection was attended by both Mr Young and Mr Guest as well as Mrs Ritchie, a director of BCMC and of the managing agents, Crawfords.
6. The property comprises a detached, purpose-built block of flats arranged on ground and two upper floors, built in or about 1988 and located in the Northgate district of Crawley. The area is mixed in character comprising both residential and commercial uses. Immediately opposite the subject property is a small retail park. At the back of the building there is an area of car parking.
7. The Tribunal viewed the exterior of the property and walked the common parts. Our attention was drawn to a door entry phone system. The property appeared generally in good repair and gave the impression of being well managed.

Jurisdiction

8. The Tribunal has jurisdiction to deal with the application. By s.27A of the Landlord and Tenant Act 1985 (as amended by the Transfer of Tribunal Functions Order 2013) the Tribunal may determine whether service charge is payable and in what amount.

Sample Lease

9. The documents before the Tribunal included a sample lease, being the lease of Flat 13.

10. By the lease the tenant covenanted, amongst other things:

10.1 To pay 8% of the cost to the landlord of insuring Bowman Court (clause 3(3)). This covenant was made with the landlord.

10.2 To pay 8% of the service charge and the provisional service charge at the times specified in the Third Schedule (clause 4(1)). This covenant was made with the management company as well as the landlord.

11. The service charge was defined as the cost to the management company in a given year of carrying out a list of obligations including the repair and decoration of Bowman Court. The provisional service charge was defined as the likely cost of service charge. The Third Schedule made clear at para.1 that the company could appoint managing agents and accountants and that their reasonable fees would be recoverable as service charge. It also provided at para.2 for notification to the tenant of the provisional service charge which was then payable by four equal payments on the first days of January, April, July and October. Para.6 provided for a calculation of service charge at the end of the year and the payment of any shortfall or the repayment or carrying forward of any surplus.

12. It was common ground that the leases of Mr Guest's flats were in like form save that the leases of Flats 5 and 7 provided for contributions to insurance and service costs at the rate of 6%. That is because Flats 5 and 7 are studio flats while Flats 2 and 13 are one-bedroom flats.

Hearing

12. The hearing followed the inspection. Mr Young and Mr Guest represented themselves. Mrs Ritchie appeared for BCMC.

13. Although a range of points had appeared in the application form, the statement of case for the applicants set out succinctly the points remaining after BCMC had provided further information. Mr Young explained those points more fully to the Tribunal at the hearing. In summary, they were as follows:

13.1 Mr Young queried the insurance charges. He made clear that he had no quarrel with the actual cost of the premiums, being in the sum of £2,200 or thereabouts each year. His concern was that the service charge budget accompanying the demand for provisional service charge showed a very different figure by way of estimate, usually £3500.

13.2 He also queried the basis of calculation of the figure demanded for provisional service charge each year. In each of the past years being considered, save for one, the sum demanded was not 8% of the budgeted service charge figure. It was less, raising the question of how the total budget figure was raised.

13.3 A sum of £588 paid by him in December 2005 had not been credited by BCMC. Accordingly, payment by his lender of service charges was an overpayment to that extent.

13.4 The management fees appearing in the budget each year, usually £1200, do not match the sum in fact appearing in the accounts as actually spent, usually £750.

Further, neither matches invoices for management fees in 2012 which total £3000; an invoice dated 16 March 2012 for £1200 being followed by a further invoice covering the same period (24 March 2011 to 24 March 2012) and dated 31 March 2012 of £1800.

13.5 Mr Young challenged accountants' fees of £744 in 2010/2011 and £900 in 2011/2012 as excessive.

13.6 Mr Young questioned an agreement for the provision and maintenance of a semi digital entry system for Bowman Court. He did not challenge the annual cost but rather the wisdom of committing to such a cost for 17 years, being the term of the agreement, and wanted to be satisfied that the cost was in fact being incurred by BCMC given that the agreement named Chase Property as the customer.

13.7 Mr Guest had wrongly been named as a director on BCMC's accounts.

14. Whilst the application had referred to the service charge years up to and including 2012/2013, Mr Young and Mr Guest made the same points, where they applied, in relation to the provisional service charge demand for the current year 2013/2014.

14. Mrs Ritchie was given an opportunity to respond to each of those points. Like the applicants, she also extended her arguments to the current service charge year 2013/2014.

15. The central problem, which gave rise to many of the points, emerged in the course of her response. It was that the service charge budget produced each year bore no relation either to the sum demanded or the amounts actually spent. Mrs Ritchie explained that the budget represented no more than an indication of what she would like to have spent on the block. The sums actually demanded by way of provisional service charge were not based on the budget at all but were fixed amounts based on what had been charged before she began managing the block in the year 2000.

16. This revelation provided the answer to some of the key queries raised by the application.

17. As to insurance, it meant that the sum demanded for each of the past service charge years being considered was not based on the figure of £3500 appearing in the budget at all. This satisfied Mr Young and Mr Guest that they had not in fact been asked for more than was spent.

18. As to the current service charge year of 2013/2014, Mrs Ritchie explained that for the first time she was demanding provisional service charge in a way which was designed to reflect the lease, namely at the rate of 8% of a budgeted figure. The figure of £3500 is the figure in the budget for insurance. The insurance is arranged by BCMC as agent for the landlord. Mrs Ritchie clearly found it difficult, and a burden, to try and estimate insurance premiums in advance.

19. It was pointed out to Mrs Ritchie at the hearing that the lease does not require, or indeed provide, for the cost of insurance to be estimated in advance and sought and paid as part of the provisional service charge. It provides separately, by clause 3(3), for simple recovery of that cost. Her response was that if the lease so provided she was happy to do it that way.

20. As to the basis of calculation for provisional service charges for each of the past years, Mr Young's inability to understand the percentages flowed from the fact that the sum demanded was not calculated as a percentage of proposed expenditure at all.

21. As to the management fees, the revelation meant, in the same way as with the insurance, that the sum demanded for each of the past service charge years being considered was not based on the figure of £1200 appearing in the budget at all. Again, this satisfied Mr Young and Mr Guest that they had not in fact been asked for more than was spent.

22. As to the questions which remained, BCMC's case as explained by Mrs Ritchie on those was, in summary, as follows:

22.1 She said that an acknowledgment of receipt of the sum of £588 had now been found so that there had indeed been an overpayment of service charge to that extent. She confirmed that she would repay the sum to Mr Young or, if he so directed, to his lender.

22.2 The extra invoice for management fees in 2012 in the sum of £1800 related to apparent underpayments. That requires some explanation. As part of this challenge to service charges, Mrs Ritchie rediscovered the management agreement between BCMC and Crawfords, the managing agent. 'Rediscovered' as she was candid that she had forgotten about it. That agreement, which the Tribunal saw, is dated 15 September 2000 and provides for an annual management fee of £750 for the first two years rising to £1750 by the fifth year (with some indexing thereafter). It follows that the fee which the contract provides for has been £1750 for several years but that a lesser sum had been asked for and paid by BCMC each year. The invoice dated 31 March 2012 is said to relate to arrears of contractual payments.

22.3 As to the accountants' fees, Mrs Ritchie defended the level of those fees whilst conceding that they did look on the high side in the current market which, she said, pointed to a fee of no more than £700. She also accepted that a fee of £700 would reflect a full accounting job including reconciling sums actually spent against the budget whereas that was no part of the accountants' role here where the budget was a fiction.

22.4 Mrs Ritchie said that the term of 17 years in the entry system agreement was the price for avoiding the initial cost of the system which would otherwise have been a few thousand pounds. The long term also meant that the annual cost would include a replacement system during the term and that such replacement was likely within a 17 year period. She said that Chase Property, the named customer, was related to Crawfords and that the cost was passed on, as one would expect, to BCMC.

22.5 She accepted that the reference to Mr Guest as a director in BCMC's accounts was incorrect and that she had asked for it to be corrected. She did not know how the error came about.

Discussion

23. It will be apparent from the above that the number and range of points on which a decision was required from the Tribunal reduced significantly by the end of the hearing.

24. The only outstanding issue on the topic of insurance was the figure of £3500 appearing as part of the provisional service charge for 2013/2014 of which 8% was demanded from Mr Young as owner of Flat 13.

25. In the judgment of the Tribunal, that figure is not recoverable as service charge. First, insurance is not a service charge item under the lease. Second, that figure does not in any event reflect an actual cost. It purports to be an estimate of what a premium may be in the future. And it is not even a reasonable estimate judging, as the Tribunal can only do, by previous premiums in fact paid.

26. The Tribunal makes clear that the cost of insurance will be recoverable under the lease, but at the level of the actual cost and outside the service charge machinery.

27. The remaining question in relation to management fees was the recoverability as service charge of the extra sum of £1800 invoiced in March 2012. That sum is not payable as service charge. It is not, in the judgment of the Tribunal, a cost which can properly be said to be an actual cost incurred by BCMC. Whilst there was an invoice for the sum the fact is it has not been paid by BCMC and is now historic. Further, as well as being a sole director of BCMC Mrs Ritchie also represents Crawfords, the managing agent. The reality is that she has not insisted on payment and, given her twin roles, no one else will do so.

28. It does not appear that any demand has yet been made by way of service charge to reflect this suggested sum. It follows in the judgment of the Tribunal that any such demand would not be payable. The Tribunal noted that the provisional service charge for the current year included the figure of £1200 for management fees. The Tribunal agrees that that is a reasonable figure.

29. The Tribunal's conclusion on the accountants' fees is that they were higher than is reasonable. Given the limited work that was in fact done and that £700 represents the most that could be charged for more extensive work, the Tribunal considers a reasonable fee to be £350. It follows that £394 and £550 fall to be deducted from the service charge for the years 2010/2011 and 2011/2012 respectively. The Tribunal welcomed the news that no accountants' fee would be payable for the current year as the accountant has agreed to prepare the statements without charge as a goodwill gesture.

30. Finally, the costs incurred under the agreement for the entry system are reasonable in the view of the Tribunal for the reasons given by Mrs Ritchie. They are also properly regarded as costs incurred by BCMC. It is, after all, the entry system for Bowman Court.

31. Overall, it seemed to the Tribunal that this application had the important effect of unearthing the basic problem that has laid at the heart of the confusion over service charge. It is hoped that now that confusion has been cleared and there seems to be an intention to operate the service charge and insurance in accordance with the provisions of the leases the parties are now set along a more satisfactory course for the future.

Summary of decision

32. The Tribunal therefore decides that:

32.1 The sum of £3500 sought by way of provisional service charge for the year 2013/2014 is not payable.

32.2 The sum of £1800 invoiced as management fees is not payable as service charge.

32.3 The accountants' fees of £744 and £900 for 2010/2011 and 2011/2012 are unreasonable. They are payable only to the extent of £350 for each such year.

32.4 The annual cost of the entry system is reasonable and so is payable as service charge.

Appeal

33. 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.

34. 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.

35. 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.

36. 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 A Johns (Chairman)

Dated 15 October 2013