

9379



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

Case Reference : **LON/00AR/LSC/2013/0553**

Property : **55 Messant Close, Harold Wood,
Romford, Essex RM3 0WP (“the
flat”)**

Applicant : **Woodgrove Park Management
Company Ltd (“the management
company”)**

Representative : **Quality Solicitors**

Respondent : **Mr K J Sarson
Mrs J A Sarson**

Type of Application : **For a determination of the
reasonableness of and the liability
to pay service and administration
charges**

Tribunal Members : **Angus Andrew
Mr S F Mason BSc FRICS FCI Arb**

**Date and venue of
Hearing** : **30 October 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 November 2013**

DECISION

Decisions

1. The following administration charges inclusive of VAT are payable by Mr and Mrs Sarson to the management company:-

Date Demanded	Charge
21 August 2009	28.75
26 November 2009	28.75
28 July 2011	36.00
7 January 2013	42.00
14 February 2013	42.00
Total	£177.50

2. Mr and Mrs Sarson having already paid administration charges of £143.75 a balance of £33.75 is payable by them to the management company.
3. £107.86 of the on account payment of £448.30 demanded on 11 September 2012 remains outstanding and is payable by Mr & Mrs Sarson to the management company.
4. The insurance service charge of £108.08 demanded on 17 September 2012 remains outstanding and is payable by Mr & Mrs Sarson to the management company.
5. In summary of the £707.96 claimed in the County Court proceedings £249.69 is payable by Mr & Mrs Sarson to the management company.
6. The management company may recover only one half of its costs incurred in these proceedings from the lessees through the service charge.
7. Since we have no jurisdiction over County Court costs and fees, the legal costs incurred in the County Court proceedings are referred back to the Romford County Court.

The application

8. The management company issued proceedings in the Northampton County Court to recover £707.96 said to be arrears of "*rent and/or service charge fees due under the lease*". In addition they claimed statutory interest, legal costs incurred in connection with the proceedings and court fees that are not within our jurisdictions. Mr & Mrs Sarson filed a defence to which we refer in more detail below. The proceedings were transferred to the Romford County Court and on 3 July 2013 District Judge Wright referred them to this tribunal.
9. For the purposes of the transferred proceedings the management company seeks determinations pursuant to section 27A of the Landlord and Tenant Act 1985 ("1985 Act") and Schedule 11 to the Commonhold and Leasehold

Reform Act 2002 (“the 2002 Act”) of the service and administration charges that are claimed from Mr and Mrs Sarson. The relevant statutory provisions are set out in the appendix to this decision.

The hearing

10. At the hearing the management company was represented by Mr P Maxwell, a barrister instructed by Quality Solicitors. Mrs H Ventom, a property manager with Countrywide Managing Agents (“Countrywide”) gave evidence on behalf of the management company. Mr Sarson appeared in person and also represented his wife.

Background

11. Mr and Mrs Sarson purchased the flat in 2007. They let the flat on a commercial basis and are therefore what have become known as “*buy to let landlords*”. The flat forms part of a large development built in the late 1980’s or early 1990’s. Mr and Ms Sarson hold their flat under a tripartite lease. The management company is a party to the lease. It is responsible for the repair, maintenance and insurance of the development and recovers its costs through the service and administration charges that are payable by the lessees. The management company has appointed Countrywide to manage the development. Countrywide are a large firm of managing agents.

The issues in dispute

12. The sum of £707.96 claimed by the management company was the balance of a running account extending back to early 2008 that records all the transactions relating to the flat since it was purchased by Mr and Mrs Sarson.
13. Mr & Mrs Sarson defence to the County Court claim was unambiguous. They said that they had paid the rent and service charges in full and that they disputed only the administration charges that can be summarised as follows:-

Date demanded	Net	VAT	Gross
21 August 2009	25.00	3.75	28.75
26 November 2009	100.00	15.00	115.00
28 July 2011	125.00	25.00	150.00
7 January 2013	120.00	24.00	144.00
14 February 2013	165.00	33.00	198.00
Total	£535.00	£100.75	£635.75

14. The shortfall of £72.21 is accounted for by (a) Mr & Mrs Sarson’s payment of the first two disputed administration charges totalling £143.75 and (b)

their failure to pay service charges of £107.86 and £108.08 demanded on 11 and 17 September 2012. The balance of 2p is accounted for by Countrywide's accounting error.

15. At the hearing Mr Sarson also disputed all the service charges demanded prior to August 2011 on the grounds that the relevant costs were incurred more than 18 months for before a demand for payment of the service charges was served on himself and his wife. Thus he relied on section 20B of the 1985 Act.
16. For the sake of completeness it should be said that Mr & Mrs Sarson did not dispute their liability to pay any of these charges under the terms of their lease and consequently we do not consider the lease terms in this decision.
17. Finally at the pre-trial review held on 29 August 2013 a tribunal judge had accepted Mr & Mrs Sarson's application for an order under section 20C of the 1985 Act for the limitation of the management company's costs incurred in these proceedings.

Reasons for our decision

Administration charges

18. These charges had been levied for reminder letters sent by Countrywide chasing unpaid service charges. In answer to our questions Ms Ventom justified these charges by saying that they reflected a standard tariff from time to time applied by Countrywide for 14 and 28 day reminder letters. With some assistance from Mr Maxwell she explained that the charges covered the cost of a person's time in ascertaining that the service charges were unpaid and then completing and sending standard reminder letters.
19. On basis of that evidence we had considerable sympathy with Mr Sarson's observation that the charges were "*a money making machine*" at least in so far as the observations referred to the charges levied after 21 August 2009.
20. It is perhaps surprising that a company as large as Countrywide has not computerised its debt collecting processes to the extent that a clerical assistant should not need to "*identify*" the unpaid service charges. Nevertheless, the work described by Ms Ventom does not require any skilled input. It should be capable of being performed by a clerical assistant in not more than 20 minutes. In that context the charge of £25.00 plus VAT applied on 21 August 2009 appears reasonable and clearly sets the bench mark for the administration charges that were to follow. Indeed Ms Ventom was unable to explain the subsequent large increase in the administration charges other than to say that they were the charges levied by Countrywide at the particular time. Accepting the charge

on 21 August 2009 of £25.00 plus VAT as being reasonable and making a broad allowance for inflation we therefore allow a similar charge on 26 November 2009, £30.00 plus VAT on 28 July 2011 and £35.00 plus VAT on 7 January and 14 February 2013. We disallow the balance of the administration charges claimed as being unreasonable and excessive.

Unpaid service charges of £107.86 and £108.08

21. In reality Mr Sarson did not dispute these charges. Nevertheless we explain why they were not paid because it has some bearing on our decision under section 20C of the Act.

22. Countrywide initially demanded an insurance service charge of £107.88 for 2012/13. On 11 September 2012 Countrywide issued a composite demand for £340.44. That demand comprised both a demand for an on account payment of £448.30 and a credit note for the insurance service charge in the sum of £107.86 (rather than the £107.88 previously demanded). That composite demand was followed a week later by demand for the correct insurance service charge of £108.08. Mr and Mrs Sarson were thoroughly confused by these demands. They paid the sum of £340.44 that had been demanded and believed that the credit note covered the insurance service charge subsequently demanded on 17 September 2012. Having looked at these demands we understand their confusion. The assertion in their defence that they had paid their service charges was genuine, if mistaken. In reality £107.86 of the on account payment and the insurance service charge of £108.08 remain outstanding.

Service charges demanded before August 2011

23. Mr Sarson asserted that after he and his wife purchased the flat in 2007 Countryside had not demanded any service charges until they received a statement showing arrears of £2,277.89 that had been sent to the flat. This statement had presumably been forwarded to them by their tenant. Thus no demand having been issued within 18 months of the relevant costs having been incurred service charges could not be payable.

24. Leaving aside the merits of Mr Sarson's argument we have no jurisdiction on this transferred application to consider this issue. The service charges incurred before August 2011 had been paid by Mr & Mrs Sarson in full and they had not in their defence taken issue with them. Indeed they did not take issue with them until the hearing. Should they wish to dispute those service charges they must make a separate application to the tribunal.

25. If we had had jurisdiction we would nevertheless have found the service charges to be payable in full. We accept Ms Ventom's evidence that until August 2011 the demands were sent to the flat. To the extent that Mr & Mrs Sarson did not receive those demands the obvious explanation is that their tenant did not forward the demands to them.

26. Mr Sarson said in evidence that having purchased the flat in 2007 he advised Countrywide of his correspondence address although he was unable to provide a copy of a letter to Countrywide prior to August 2011 confirming his correspondence address.
27. Ms Ventom's evidence was that Mr & Mrs Sarson did not inform Countrywide of their correspondence address until August 2011. Consequently Countrywide had sent the demands to the flat, which was the address shown in the property register of Mr & Mrs Sarson's title and the only address that Countrywide had for them.
28. We accept Ms Ventom's evidence and reject that of Mr Sarson because as Mr Maxwell pointed out the proprietorship register of Mr and Mrs Sarson's title (which now records their correspondence address) records that on 27 September 2011 "*the proprietor's address for service has been changed*". That entry is wholly consistent with Ms Ventom's evidence and substantially undermined Mr Sarson's credibility.
29. Prior to being notified Mr & Mrs Sarson's correspondence address in 2011 Countrywide had sent the demands to the flat, which was the only address they had for Mr & Mrs Sarson. We are satisfied that that constituted good service for the purpose of section 20B of the 1985 Act.

Section 20C

30. To the extent that the costs might be recovered the right to recover them is a property right which should not be lightly disregarded. Section 20C however provides that a tribunal may "*make such order on the application as it considers just and equitable in the circumstances*". Those words permit us to take into account the conduct of the parties in deciding whether to make an order.
31. Mr & Mrs Sarson had largely been successful in objecting to the administration charges that we have found to be excessive. Their failure to pay the service charges resulted in large measure from the mistakes made by Countrywide in sending an inaccurate demand and then issuing a credit note for the wrong amount. Nevertheless we have to set against that Mr & Mrs Sarson's conduct in pursuing their 20B point that was ill conceived and without merit. Balancing this conduct we consider it is just and equitable in all the circumstances to limit the management company's recoverable cost in these proceedings to one half of the total costs incurred by it.

Name: Angus Andrew

Date: 20 November 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (a) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) Specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).