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**FIRST-TIER TRIBUNAL**

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**PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00AR/LSC/2013/0644

**Property** : 1, 4, 5, 7, 8, 12, and 17 Western  
Court, Chandlers Way, Romford,  
Essex RM1 3JR

**Applicant** : Various Leaseholders

**Representative** : Ms C. Gilder; (Flat 5)

**Respondent** : Regis Group plc

**Representative** : Mr D. Bland; Pier Management  
(Agents)

**Type of Application** : Service Charges – Section 27A and  
20C; Landlord & Tenant Act 1985

**Tribunal Members** : Mr L. W. G. Robson LLB (Hons)  
Mr H Geddes JP RIBA MRTPI

**Date and venue of  
Paper Determination** : 25<sup>th</sup> November 2013  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 9th December 2013

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**DECISION**

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## **Decisions of the Tribunal**

- (1) In respect of the issues raised by the Applicants, the Tribunal determined that;
- a) Reasonable and payable total buildings and terrorist cover insurance premiums for Western Court for the years in dispute shall be as follows:
- 2011/12 - £5,109.48; 2012/2013 - £5,450.41; 2013/2014 - £5,822.57, (in all cases a reduction of 25%)
- b) In accordance with the Lease, the total premium for each year shall be divided by 18 so that each Applicant shall pay the following contributions:
- 2011/12 - £283.86; 2012/13 - £302.80; 2013/4 - £323.48
- c) The insurance administration fees charged to the Applicants in each year are unreasonable in their entirety and therefore not payable.
- d) The Respondent shall give the Applicants due credit on their accounts for the amounts found to have been overpaid as a result of the above determinations, and notify them of the same within 21 days of the date of this decision.
- (2) In respect of the Section 20C application, none of the landlord's costs are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicants.
- (3) The Tribunal exercised its discretion to order that the Respondent pay the Applicants' fees of £125 for this application paid to the Tribunal under Rule 13(2) of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Such sum shall be repaid within 21 days of the date of this decision to the person who drew the cheque which paid the tribunal fee.
- (4) The Tribunal made the other determinations as set out under the various headings in this decision.

## **The application**

1. By an application dated 23<sup>rd</sup> August 2013 the Applicants seek a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to whether the insurance premiums demanded by the Respondent are reasonable and payable pursuant to a (specimen) lease dated 22<sup>nd</sup> April 1988 (the Lease).
2. After a Pre-trial Review, Directions were given by the Tribunal on 19<sup>th</sup> September 2013 (subsequently amended on 11<sup>th</sup> October 2013) for a hearing or paper

determination. No application for a hearing was made. Directions 4 and 5 made very specific disclosure requirements of the Respondent and Applicants, to try and ensure that sufficient evidence was forthcoming for the Tribunal to properly consider the issues in dispute.

3. The Respondent sent written representations on 18<sup>th</sup> October 2013 and 17<sup>th</sup> November 2013. The Applicants sent written representations on 1<sup>st</sup> November 2013, and also a satisfactory trial bundle for the determination. The Tribunal considered and determined the case at a meeting on 25<sup>th</sup> November 2013.

### **Preliminary Matters**

#### **A. Res Judicata**

4. The Respondent submitted that the Applicants could, and should, have raised this matter in the previous application to the Tribunal relating to the property (LON/00AR/LSC/2012/0380) between the same parties. Mr Bland had attended the Pre-Trial Review in that case on behalf of both the Respondent and Pier Management. The Applicants had confirmed to the Tribunal that they had no dispute on the question of insurance. They would not raise the issue of Res Judicata, but would wish to refer to the matter on the question of costs.
5. The Applicants submitted that the previous case had related to service charges demanded by two firms of managing agents, not Pier Management Limited (Pier). (The Tribunal notes that Pier is a company connected with the Landlord, not a managing agent). One Applicant in that case was not joined in this case. They disputed that they had agreed that there was no dispute on insurance. They had stated that it might be the subject of a future claim.
6. The Tribunal noted the factual differences between the parties. The Tribunal also noted from the correspondence (pp. 399 -401 of the bundle) that the parties were discussing the issue of the premiums for all 3 years in dispute as late as 1<sup>st</sup> August 2013. The Tribunal decided that in this case no issue of Res Judicata arose, nor should the matter affect questions of costs.

#### **B. Agreed matters**

7. The Respondent admitted that the correct proportion payable by each of the the Respondents under the service charge was one eighteenth (Fifth Schedule Clause 1(d)).
8. The Applicants had originally applied to object to the insurance for the year 2014/15, but had (correctly) agreed with the Respondent to limit their claim to the years where the expenditure was known.

### **Applicant's Case**

#### **Insurance Administration Fee**

9. The Applicant submitted that the Tribunal was specifically asked to decide if it was reasonable in principle, and if the charge was reasonable. It should be immaterial if the application had been made under Schedule 11 or not. The Respondent had given no satisfactory explanation of the fee as specifically directed by the Tribunal. It had increased from £11.69 to £19.99 (67%) in the three years 2010 – 2013. The Tribunal had jurisdiction to decide on the matter.

### Insurance Contributions

10. The Applicants noted that they had only discovered the unequal division of the insurance contribution (chiefly favouring Flat 10 which was owned by a connected company of the Landlord) as a result of these proceedings. Further the Respondent had only made full disclosure of the premiums for 3 years in question on 29<sup>th</sup> October, correcting previous disclosure at a late stage. The premiums were:

2011/12 - £6,812.64

2012/13 - £7,267.22

2013/14 - 7,763.43

The Applicants considered that the terms of Section 27A(5) were clear and disagreed with the interpretation argued for by the Respondents. It stated "the tenant is not to be taken as having agreed or admitted any matter by reason only of having made any payment" Some Applicants had felt pressurised by the Respondent's letters demanding payment, and other Applicants had still not paid at all. There was no evidence of the Respondent reviewing the insurance market. Contrary to the impression given, it seems clear that the Respondent receives a commission based on the whole portfolio, but the Tribunal's Direction for disclosure and explanation by the Respondent on this point had not been complied with.

### Insurance cost

11. The Applicants accepted that index linking would result in marginal increases but submitted that the premiums had increased by more than index linking. The Applicants should not pay higher charges because the Respondent is a corporation and unwilling to insure each development separately. The Respondent showed no proof that the premium charged was within the market norm. By contrast the Applicants' quotes suggested that the premiums were around £3000 over the market norm. Those quotes (including Terrorist Cover) were: CHU Residentsline - £4,230; Flats Direct (Liverpool Victoria) - £4,803.36; Residents Insurance Services - £3,413.96; Flats Direct (Allianz) - £2,399.81. There were differences in the cover but the average of the first three quotes was £4,148.94, or a difference of £3,614.49 compared with the latest premium charged by the Respondent. The Applicants produced evidence that the claims history had been notified.

### **Respondent's Case**

#### Insurance Administration Fee

12. The Respondent submitted that the Applicants had made no application under Schedule 11. It was reasonable for the work done by Pier Management. Pier did not charge a management fee for the property.

### Insurance Contributions

13. The Respondent confirmed that it had accepted that the original apportionment was incorrect "due to differing portfolios and the same being affected by high claims, especially on 1<sup>st</sup> Applicant's flat". The contribution by other flats was not all that different. Flat 10 (belonging to a company connected to the Respondent), was a very low risk. Flat 10 "does not process claims as they do any repairs themselves". Due to 1/18 apportionment total premium for Western Court "must be recalculated". This will affect the other units including Flat 10.

### Insurance Cost

14. The Respondent doubted if the Applicants' quotes were reasonably comparable, and pointed out some discrepancies. The Respondent also doubted if the claims history had been revealed, which they considered poor. The use of the Respondent's name might have caused a more advantageous quote for the business. Further the Respondent's "all risks policy was considered to be more advantageous to lessees. The Respondent used an A\* insurer with specialised policies suitable for its portfolio. The Respondent considered that the Applicants had used the lowest quotes. Also some properties in Western Court "will be let to DSS". £390 per unit was reasonable. The Respondent relied upon the Court of Appeal decision in Berrycroft Management Company Ltd v Sinclair Gardens Investments (Kensington) Ltd [1996] EWHC Admin 50 to support its proposition that despite the level of insurance premium, the cost was reasonably incurred in the normal course of business. It was held acceptable for a large commercial landlord to place insurance on large block policies with a single insurer.

### **Decision**

15. The Tribunal considered the documents and evidence. The Tribunal decided that the Respondent's submissions would have had rather more weight if it had complied with Directions, and given proper evidence of its commission arrangements. Generally it appeared to give discovery very reluctantly, and late. The Tribunal found it surprising that a professional landlord with a large portfolio could have made such an elementary mistake as to consider it proper to ignore the fixed contribution percentages set out in the Lease. Its view of the effect of Section 27A(5) of the 1985 Act (noted above) also seemed out of date, in that it quoted Daejan Properties Limited v London LVT [2001] EWCA Civ 1095, which had clearly been overturned by Parliament inserting a new Section 27A (including subsection (5)) in the Commonhold and Leasehold Reform Act 2002, Section 155(1). The Respondent's reference to Universities Superannuation Scheme v Marks & Spencer (1999) 1 EGLR 13 also did not assist its case. It is correct that a service charge provision should be interpreted to fulfil its purpose, but until a landlord proves that it has acted reasonably in incurring a liability, it is not entitled to recover the full cost of doing so. While it is also correct that no formal application had been made under Schedule 11 relating to the insurance administration fee, the Applicants had very clearly put that fee in issue in their original application, and the Tribunal is clearly obliged to consider the substance of an application before it rather than the form of it, certainly since reform of the jurisdictions of the higher courts in 1873, unless prohibited from doing so by statute.
16. The central argument in the application dealt with whether the insurance cost was reasonable and reasonably incurred. Because the Respondent had failed to produce any relevant evidence of its practices and commission arrangements, it was unable to take any comfort from the Berrycroft case. The correspondence showed that there had been a lengthy disagreement over the insurance which had reached an impasse only in mid-2013. The Applicants had then made this application. The Respondent asserted that no commission was taken relating to this particular building, but without any supporting

evidence, and it seemed clear from the Respondent's own statement in its Reply (para. 4iii) that the Respondent derived some commission from the arrangement. Since no evidence of it had been produced, this amounted to a secret profit. Landlords should be aware that they are in the position of trustees in connection with service charges.

17. The Tribunal then considered the effects of the above on the facts of this case. Dealing firstly with the insurance administration fee, the Tribunal has jurisdiction. The Tribunal noted that the Respondent had produced no satisfactory explanation as to the reasons for this charge. Pier Management had apparently no role in management of the building, only in the setting and collection of insurance charges. There was no evidence that it tested the market itself, or otherwise acted in a way from which the Applicants derived any real benefit. The Tribunal thus decided that the insurance administration charge was unreasonable in its entirety.
18. The proportions of the insurance premium have been agreed between the parties at 1/18, in accordance with the Lease. Thus no determination is necessary.
19. The evidence relating to the insurance cost was unsatisfactory. The Tribunal has already commented on the shortcomings of the Respondent's case. Nevertheless, it accepted that there were also ambiguities and shortcomings in the comparable evidence offered by the Applicants. The Tribunal was not prepared to accept any one of the comparable quotes as being sufficiently reliable. The Respondent had pointed to discrepancies or problems with all of them. In the absence of any useful evidence from the Respondent as to how its own figures were arrived at, the Tribunal decided that it should take a broad view of the evidence, relying upon its own knowledge and experience of the insurance market over the period.
20. The Applicants argued for a figure of a figure of £4,148.94, being an average of the quotes obtained. The Respondent argued for the figures (noted above) it had charged, i.e. for 2011/12 - £6,812.64, 2012/13 - £7,267.22; and for 2013/14 - 7,763.43. It also argued that £390 per unit (or £7,020) was reasonable. The Tribunal considered that the Applicants' figure was too low, taking into account that a landlord would wish to insure comprehensively with a policy which had relatively few exclusions. On the other hand, the Tribunal considered that the landlord had not made out a reasonable case for its figures. Also the landlord's figures seemed consistently higher than the Tribunal would have expected. In the end the Tribunal decided that it a reduction of 25% to all the premiums charged by the Respondent would produce reasonable insurance charges for the years in question.
21. The Tribunal thus made the orders noted at paragraph (1) a) – d) above.

### **Costs and Fees**

22. The Applicants made an application under Section 20C of the Landlord and Tenant Act 1985 in their application form, and an application for reimbursement of their fees paid to the Tribunal under Regulation 9 of the

- Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 in their representations dated 1<sup>st</sup> November 2013.
23. Relating to Section 20C the Tribunal noted that the Applicants had effectively been successful on all points in dispute. The Tribunal, having rejected the Respondent's submission that the matter should have been raised in the previous proceedings, decided that the Respondent had only given partial discovery of relevant information in this application, and many submissions made by it seemed bound to fail. The Tribunal decided to make an order under Section 20C as noted in paragraph (2) above.
24. Relating to reimbursement of the Applicants' fees, the Tribunal decided that the Applicant had no reasonable alternative to making this application. It decided to grant the order requested.

Signed: Lancelot Robson  
Mr L. W. G. Robson LLB (Hons)  
Tribunal Judge

Dated: 9th December 2013

## **Appendix**

### ***Landlord & Tenant Act 1985***

#### **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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold



valuation 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;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).