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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDEN-
TIAL PROPERTY)**

Case Reference : LON/OOAW/LSC/2012/0806

Property : Flat 3, 1 Ladbroke Square,
London W11 3LX

Applicant : Mr G. Harrison (leaseholder)

Representative : In person

Respondent : One Ladbroke Square Limited

Representative : Mr M. Anastasis of Symon Smith &
Partners (managing agents) with
Mr M. Thomas a director of the
landlord company and the lease-
holder of Flat 1 in the subject prem-
ises.

Type of Application : Seeking a determination of service
charges under the Landlord and
Tenant Act 1985

Tribunal Members : Professor J. Driscoll, solicitor (Tri-
bunal Judge), Mr I. Thompson
FRICS and Ms J. Dalal

**Date and venue of Hear-
ing** : The hearing took place on 18 June
2013 at 10 Alfred Place, London
WC1E 7LR. Various documents
were sent to the tribunal after the
hearing.

Date of Decision : 22 July 2013

DECISION

Summary of our decisions

1. We summarise our decisions for the 2011 - 2012 period by stating that the following costs were reasonably incurred and recoverable from the leaseholders in full: building insurance £2592, director's insurance £227, lift maintenance and repairs £2072, accountancy fees £1,878 and management fees of £960 + VAT. A due proportion of these charges is payable by the leaseholder under the proportion due in his lease.
2. Turning to the 2012-13 period the following costs were reasonably incurred and recoverable in full: building insurance £2,800, director's insurance £225, lift £1,800, accountancy fees £1,825 and management fees of £1000 plus VAT. A due proportion of these charges is payable by the leaseholder under the proportion due in his lease.
3. Copies of the relevant statutory provisions are appended to this decision.

Background to the applications

4. This applicant is the leaseholder of Flat 3 in a mixed-use building. He has one of the five flats in the building which are all held on very long leases (999 years). There is also a commercial unit which occupies the whole of ground and basement floors and which is currently used as a nursery. The owner of the building is a company which owns the freehold and is the landlord of the five residential leases and the landlord under a separate lease of the ground floor and the basement areas. These are leased (for 999 years) to the Royal Borough of Kensington and Chelsea who in turn have granted a sub-lease of that area to another organisation which runs a nursery in that part of the premises.
5. The landlord company is owned by the five leaseholders who have all the shares of the company and four of them (one leaseholder is a family trust) are each a director of the company. The company appointed Symon Smith and Partners as managers of the whole of the building and the managers have responsibility for the management of the whole of the building including both the residential and commercial units.
6. We will refer to the parties as the 'leaseholder,' the 'landlord', and the 'manager' respectively.

7. We were told that three of the five leaseholders reside in their flats and that the other two sublet to assured shorthold tenants. The applicant leaseholder is one of the leaseholders who sublets. He lives and farms in West Sussex and he told us that he also owns a second flat close by to the subject premises. For the flat in the subject premises he receives a monthly rent of £2,340 and the second flat he owns in the other building commands a monthly rent of £3,011. He believes that the service charges for his flat in the subject premises are far too high and he reaches this conclusion by comparing the charges he pays for the second flat which he told us are cheaper. The leaseholder has a more general complaint as he believes that the other leaseholder directors and the managers do not consult him over decisions. To repeat his challenges to the service charges are based mainly on a comparison with the charges he pays for the other flat.
8. It is against this background that he has made this application. For the service charge year 2011 -2012 he challenges the reasonableness of the charges and he challenges the costs of the insurance of the building, the costs of maintaining the lift, the accountancy fees and the management fees. He makes similar challenges for the service charge year 2012 - 2013.
9. We understand that there have been two previous determinations by this tribunal in 2006 and 2010 when determinations were made in relation to the apportionment of the service charge contributions by the leaseholders. It is unnecessary to refer to these two decisions in any more detail as they are not in issue in these proceedings.
10. As to the division between the residential and the commercial elements of the development, we were told that the commercial users contribute 52% and the residential users together contribute 48% to the landlord's costs of insuring and maintaining the building.

The hearing

11. A pre-trial review was held on 10 January 2013 when certain directions were given with a hearing date fixed for 14 May 2013. In the event, and at the request of the leaseholder, the hearing was postponed until 18 June 2013. The names of those who attended the hearing are listed above. As directed the leaseholder prepared a bundle of documents. Unfortunately he failed to paginate the bundle and no index was provided either. The start of the hearing was delayed to allow the leaseholder (with the assistance of Mr Anastasis and Mr Thomas) to paginate the bundle.

12. The leaseholder told us that he believes that the landlord wastes a lot of money, and savings could be made if one searched for more competitive insurance quotations, better lift contracts and lower accountancy fees. In his opinion the managing agent is failing in its duties to get best value for the leaseholders. He has requested meetings and discussions to raise these issues but he has not been successful in arranging meetings.
13. So far as service charge payments are concerned, at present he pays £100 per month as standing order towards his contribution to the service charges, but he accepts that he is currently in arrears with service charge payments. The manager (Mr Anastasis) told us that the leaseholder has paid the sum of £1,200 for the service charge periods 2011-12 and 2012-23 (that is through monthly payments by standing order of £100 per month). According to the manager the actual service charges which are payable is the sum of £ 3,713.24 for the first period and the sum of £3,768.76 in respect of the second period.
14. The manager explained the procedures for sending out service charge demands. Each year he and his company send a budget to the Directors. This is done each February. Service charge contributions are demanded quarterly and collected in advance.
15. The leaseholder argued that the insurance premium for the building is far too high by comparison to the costs for insuring the building containing his other flat (that is 20 Stanley Avenue) is the sum of £2,175. On the basis of this observation and as a result of speaking to other insurers he believes that the reasonable costs of insuring the building is between £1,800 and £2,000.
16. He also questions the costs of arranging insurance to cover the directors. The leaseholder does not consider that it is necessary for such a cost to be incurred.
17. Responding to these criticisms, the manager told us that one reason the premiums are high were claims made following water leaks from the nursery into the remainder of the building. He added that the leaseholder was invited to find and provide an alternative insurance quotation for the 2012 - 2013 period but he failed to do so. The costs of insuring the commercial part of the is borne by the sub-tenants of the commercial unit.

18. The manager elaborated on the current insurance arrangements. A broker called St Giles Insurance Brokers arranges the insurance each year and they take commission at the rate of 25% of the premium whilst the manager's company takes 20% commission. In addition to arranging the insurance, the Brokers deal with any claims made by the leaseholders. Similarly, the manager administers the insurance arrangements and assists any leaseholder who needs to make a claim.
19. He also addressed us on the management charges. He reminded us that his company manages both the residential and the commercial sections of the building. It is his understanding that the landlords cannot recover any management charges from the commercial tenant.
20. At our request and after the hearing he sent the tribunal a copy of the lease between the landlord and the local authority and an email apologising for having told us that no management charges can be recovered from the commercial tenant. The tribunal received a copy of the lease, the service charge statements for the year 2011 - 2012 and an explanatory email from which we quote as follows: *Further to your email. We have found a copy lease which is attached herewith. It seems that I have mislead the Tribunal in respect of the Nursery's lease. Indeed, there is a provision for the 'Company' to recover a management fee. I was not involved in the initial discussions/negotiations and therefore I have spoken to Alan Millinder, a Partner of Symon Smith and whom agreed the terms of our engagement in 2008 with the Directors of One Ladbroke Square Ltd. The agreed management fee to manage the development (including the Nursery) was £2,000 plus VAT per annum. However, in the event that we do not recover a contribution from the Nursery, an additional fee of £400 will be charged to the lessees. I can confirm that we have not charged this additional fee as we were given the opportunity for our brokers to quote for the building insurance albeit in 2010. I have attached an email exchange between One Ladbroke Square Ltd and Alan Millinder which I hope is self explanatory. To summarise, the initial annual management fee was £2,000 plus VAT (£400 per unit) and which has subsequently increased by indexation to £2,192 plus VAT (£438 per unit). I would like to apologise for any misunderstanding or inconvenience caused by the inaccurate information provided at the hearing. I would be grateful if you can forward this email to the Chair.*
21. The tribunal is grateful to the manager for this clarification. Our case officer sent a copy of the documents received to the leaseholder by email on 1 July 2013 asking for comments by 8 July 2013. No comments were sent to the tribunal. Turning to the costs of arranging insurance cover for the directors, the manager told us that in his opinion arranging such insurance is essential for the protection of individuals and that it is a reasonable cost for the protection of the four directors.

Reasons for our decisions

22. We deal first with the buildings insurance. Whilst we note the leaseholder's observation on the comparable costs for his other flat, this may not be comparing 'like with like'. For example, the claims history of the two properties appear to be different. The leaseholder might have made a more convincing challenge if he had obtained an alternative quotation for the insurance as the manager asked him to. It is for the leaseholder, who is bringing this challenge, to prove that the current costs are too high and it is our conclusion that he has failed to do so. The landlord's costs of insuring the building were reasonably incurred and for a reasonable cost and therefore recoverable in full from the leaseholders.
23. We have concluded that the costs of insuring the premises was reasonably incurred for both of the service charge years and that the leaseholder's proportion is recoverable in full. That said, the costs are on the high side (probably because of the recent claims history) and the manager should endeavour to ensure that the most currently competitive quotations are obtained for future insurance cover.
24. Turning to the costs of arranging insurance for the four directors (one of which is the leaseholder), in light of our professional experience, we have little hesitation in concluding that such insurance cover is essential. Few people, in our experience, will commit themselves to acting as a director without such insurance cover. The costs were reasonably incurred and the leaseholder's contribution is recoverable in full.
25. Coming on to the accountancy fees, the leaseholder complains that they are too high (£1,878 for 2012 and £1,825 for 2013) and he compares the fees chargeable for his other property of £750. Those fees were paid to Ramsey Brown & Partners.
26. The manager told us that David Cramer their accountants were already appointed when they took over the management of the subject premises. This firm deals with both the service charge expenditure and the landlord company accounts. As these were the accountants appointed by the landlord company they saw no reason to change the appointment.
27. Bearing all of this in mind, and also our general comments on the setting and the recovery of service charges in this case, we consider that although the accountancy fees are on the high side for a fairly small development, they were reasonably incurred as the managers had no good

reason, nor any instruction, to seek alternative quotations. The current accountants deal with both the service charges and the company matters.

28. However, as the level of charges has been brought into contention, the managers may wish to obtain other quotations from other accountants for the future.
29. The leaseholder also challenges the costs of the works to the lift. He told us that he has obtained a quotation from the company which would deal with the lift for £1,000 per year. This company deals with the lift in Stanley Crescent under what he described as a 'basic contract' which includes day-time call outs but does not provide emergency cover or weekend call outs. Nor does it include repairs or a lift telephone.
30. For the service charge period 2011 - 12 the landlord spent £283 to insure the lift, maintenance costs to the lift of £1,156, £356 on lift repairs and £277 on the lift telephone line rental payable to BT. This comes to a total of £2,072 for the lift which services the four floors of the residential part of the development.
31. For the service charge period 2012 - 2013 the landlord incurred costs of £345 for the insurance, £1,200 for maintenance of the lift and £255 for the lift telephone.
32. Most people would accept the proposition that any lift needs to be properly maintained with emergency cover available each day. We consider that the present level of cover and the expenditure is sensible. The lift costs were reasonably incurred and are recoverable in full.
33. The leaseholder also questions the level of management charges. The manager told us that his company were appointed as managers in 2007 operating under an annual renewable contract. We refer to the documents sent to the tribunal after the hearing. The lease clearly states that a management charge can be made of the commercial tenant. We do not have a copy of the commercial sublease so we do not know if the tenant can pass on any management charges to the commercial subtenant. What is clear, however, is that the landlord can charge for the costs of managing the commercial part of the building as the schedule to the lease which defines the costs which can be recovered as a service charge includes the costs of appointing a surveyor or any other person employed to manage the building.

34. We do not understand why the landlord has chosen not to exercise the right it has to recover management fees from the commercial tenant. It is wrong that, in effect, the residential leaseholders are contributing to the total costs managing the building. The only issue remaining is the ability to charge a proportion of the fee to the nursery – which it can be virtue of the lease terms – (see definition in clause (6)(h) of the Schedule to the lease). The proportion payable by the nursery is 52%. Therefore for each year, the management fee payable by the residential leaseholder should be reduced by that percentage so that they only pay what they should have done had the landlord properly exercised its ability to charge the residential tenants.
35. So, in the first year of management, the nursery should have paid £1,040 + VAT (£2000 x 52%) with each residential lessee paying its percentage proportion of the balance of £960 + VAT. (Remembering that percentages are variable across the flats). It is, of course, open to the managers to recover the share owing from the commercial subtenant. We have indexed the leaseholder's share for the second financial year to a total of £1,000 plus VAT. This equates to £192 per flat (which may be increased if reasonable for successive years. On the basis of our professional knowledge and experience we consider that figure to be reasonable for a development of this size.
36. Our decisions are summarised above and the statutory provisions are set out in the appendix to this decision.

James Driscoll (Tribunal Judge)

22 July 2013

Appendix: The relevant legislation

Landlord and 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 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 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).