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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/00MC/LAC/2014/0006**

Properties : **2 & 5 Exbourne Road and
2 Rossington Place,
Reading,
Berks. RG2 8RH**

Applicant : **Martin Costelloe**

Respondent : **Marlborough House Management (1)
Proxima GR Properties Ltd. (2)**

Date of Application : **5th December 2015**

Type of Application : **to determine reasonableness and
payability of service charges and
administration charges**

The Tribunal : **Bruce Edgington (Lawyer Chair)
David Brown FRICS**

DECISION

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1. Proxima GR Properties Ltd. is added as a Respondent to this application.
2. The Tribunal determines that the amount of £550.00 for the 1 year period up to 30th June 2015, for what the Respondent Marlborough House Management describes as a 'Contract Management Fee' is reasonable and the relevant proportionate part is payable under the terms of the leases.
3. The Tribunal further determines that the administration charges claimed from the Applicant for 'arrears to cover our administration and collection costs' are not payable under the terms of the leases.
4. For the avoidance of doubt, the Tribunal is of the view that none of the fee claimed for 'health and safety risk assessment' is either reasonable or payable under the terms of the leases.
5. No order is made that the Respondents or either of them shall repay the Tribunal fee or any costs or fees incurred by the Applicant.

6. Finally, and for the avoidance of doubt, the Tribunal makes an order pursuant to section 20C of the **Landlord and Tenant Act 1985** (“the 1985 Act”) preventing the landlord from recovering the cost of representation within this application as part of any future service charge.

Reasons

Introduction

7. The original application by the Applicant was for a determination of the payability and reasonableness of an administration charge of £550 and only Marlborough House Management (“Marlborough”) was cited as Respondent. Further, the Applicant did not mention that he is only the tenant of 2 Rossington Place. His wife is the tenant of the other 2 properties.
8. Having now seen the evidence in the bundle provided by the Applicant, it is clear that the £550 referred to is a service charge but there is an additional claim by Marlborough for £25.00 plus VAT for ‘arrears to cover our administration and collection costs’ which is also in dispute. This is an administration charge.
9. Furthermore, Marlborough is not the landlord. The Applicant was asked in the application form for the name and address of the landlord and failed to insert this information. In its written evidence, Marlborough says that Proxima GR Properties Ltd. (“Proxima”) is the landlord although it seems that it has not yet been registered as freehold owner at the Land Registry.
10. In order to resolve these purely technical matters, the Tribunal adds Proxima as a Respondent. If that company is the freehold owner, it will be only that company which can recover monies from the Applicant. Marlborough is purely a managing agent and although it confirms that it acts on behalf of Proxima, it has no contractual relationship with the Applicant. The other technical issues do not matter because section 27A of the 1985 Act makes no requirement for any application to the Tribunal to be made by either a landlord or a tenant.
11. The Tribunal issued directions on the 12th December 2014 requiring Marlborough to file and serve a statement justifying its claims in law and in principle and to deal with the Applicant’s request for an order under section 20C of the 1985 Act. In case the Respondent was claiming costs as being incidental to the service of what is known as a ‘section 146 notice’ i.e. section 146 of the **Law of Property Act 1925**, it was also ordered to set out the “*precise circumstances in which the landlord determined that it was to proceed by way of forfeiture*”.
12. Marlborough has filed 3 statements, none of which is very helpful. There are no details at all of how the figure of £550 is made up. As far as section 20C is concerned the Respondent wishes to claim its costs as part of a service charge. It is confirmed that the Respondent has not issued forfeiture proceedings – which did not actually answer the question raised.

13. One of the directions said that the Tribunal would deal with this application as a paper determination i.e. on the basis of the application and the written evidence and submissions filed. It gave at least 28 days' notice and said that if either party requested an oral hearing then one would be arranged. No such request has been made.

The Inspection

14. In view of the issues in this case, the said directions order also said that there would be no inspection of the properties unless a request was made. No such request was received.

The Leases

15. The bundle produced for the Tribunal included a copy of the lease of 5 Exbourne Road which is dated 26th September 1984 and is for a term of 120 years from 25th December 1983 with a ground rent of £45 per annum payable half yearly in advance. All parties say that the 3 leases are in the same terms.
16. Two sub-clauses deal with service charges namely 1(e) and 1(f). The first relates to insurance only and has no bearing on this case. The second says:-

“(f) AND ALSO paying on demand by way of further or additional rent from time to time the sum or sums of money representing one equal twenty-second part of the costs expenses and outgoings incurred by the Lessor or its successors in title in keeping the grassed areas and garden ground within the block maintained (including grass cutting as required at the discretion of the Lessor) to the extent that such work is carried out by or by the direction of the Lessor

17. There is no further clause which enables any other costs to be claimed save for paragraph 4 of the 4th Schedule which enables costs to be recovered 'for the purpose of and incidental to the preparation and service of a notice under section 146 of the **Law of Property Act 1925...**'.

The Law

18. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
19. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable. Having said that, if the question of payability becomes a highly technical legal issue – as may be the case here – the matter should be dealt with by way of declaratory proceedings in the county court, not an expert Tribunal such as this, which has limited declaratory jurisdiction.

20. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") ("the Schedule") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord."

21. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

22. The Respondents refer to a number of court and tribunal cases but produce no case reports.

23. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof in this sort of case. At paragraph 15 he stated:

"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook⁴ case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."

Discussion and Conclusions

24. The first question for determination is whether the £550 claimed by Marlborough is payable under the terms of the lease. Whether it is payable to Proxima cannot be determined. If this matter is not agreed between the parties, then court proceedings will have to be issued as stated above. The Tribunal would only comment that if Proxima is the beneficial owner of the freehold title i.e. it has completed the purchase and is the equitable owner, even if the legal title has not been registered in its name, then it could well 'stand in the shoes' of the registered proprietor in this sort of claim.
25. The relevant term of the lease is as stated above. It says, in effect, that if the landlord is incurred in cost, expense or outgoings in connection with the cutting of the lawns then a reasonable sum is recoverable. That does not, of course, just mean the invoice of the person who cuts

the lawn. It includes any reasonable administration involved, whether such sum has been claimed before or not.

26. There are 22 flats in the building being claimed for and the claim is for £550 i.e. £25 per flat. The Applicant says in his application form that "*this is massive for a tiny job*". In his evidence he says that it should be dealt with at 5 yearly intervals to save expense. The problem with granting a contract of more than a year is that the landlord then has to go through a complex – and expensive – consultation process involving various notices having to be given to tenants, a tender document being prepared and for the work to then go out to tender. Administering a contract for 1 year would probably be cheaper in the long run as there would still be ongoing costs with 5 year contracts i.e. of overseeing the contract, collecting monies from tenants etc.
27. Whilst the Respondents have not been helpful in providing information, they are a commercial organisation and the work they have to do is (a) identify possible contractors (b) obtain quotes (c) award and administer the contract itself (d) send out 22 demands for payment and (e) receive payments, report to the landlord and pay the contractor.
28. The totality of this work to include overheads could well be 2 or 3 hours over a one year period. Whilst £550 may be on the high side, it is up to the Applicant to satisfy the Tribunal that the claim is so unreasonable as to place the burden of proof on the Respondents. He has provided no comparable evidence e.g. from other managing agents in the locality as to what they would charge.
29. The Tribunal also mentions the matter of the health and safety report fee. Some of this has been claimed from the Applicant and the Respondents have said that there will be a credit back of some or all of the amount claimed. The Tribunal is not asked to determine this issue. However, as a matter of common sense, it cannot see how any part of a health and safety report fee can come within the terms of the lease as being payable by the tenants. It is nothing to do with keeping the grassed areas or the garden maintained.

Costs and fees

30. The Applicant asks for an order under section 20C preventing the Respondents' cost of representation in this application from being recovered as part of a future service charge. Before considering this issue a determination has to be made as to whether the leases provided for this. The Respondent says that it wants to charge its costs but it does not say how the leases make any provision for this. They don't unless a decision had been made to forfeit the lease. As the Respondents refused to answer the question raised by the Tribunal, the only inference which can be drawn is that no decision has been made to forfeit, and paragraph 4 of the 4th Schedule to the leases is not therefore engaged.
31. Neither do the leases allow for 'administration and collection costs' because they are defined as administration charges and cannot form

part of the cost of dealing with the lawns. Thus the Tribunal makes a formal determination that these charges are not recoverable and, for the avoidance of doubt, it also makes a section 20C order.

32. The Applicant, in his latest letter at page 33 in the bundle says "*I would like you to consider if I should get costs not least as the landlord has already accepted that some of the HSE charge is spurious...*". There is no indication of what those costs might be which makes it impossible for any determination to be made, even if the Tribunal was minded to do so.

33. In any event, the Applicant has not succeeded on the main part of his claim and these applications are 'no costs' proceedings in general terms. In other words, if a party makes an application, then no matter who 'wins' or 'loses', neither costs nor the fee paid is recoverable unless there has been some misbehaviour within the proceedings themselves. There does not appear to have been in this case and no order is made.

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Bruce Edgington
Regional Judge
17th February 2015