

11154



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

**Case Reference** : CHI/00HN/LSC/2014/0108 &  
CHI/00HN/LSC/2015/0047

**Property** : 30 Grosvenor Gardens, Bournemouth,  
Dorset, BH1 4HH

**Applicant** : Mr A R Videira, Mr B Dix & Mr T Zielinski

**Representative** : None

**Respondent** : Greentree Estates Ltd

**Representative** : SLC Solicitors

**Type of Application** : Service Charges

**Tribunal Members** : Mr A J Mellery-Pratt, FRICS  
Mrs J E S Herrington

**Date of Hearing** : 21<sup>st</sup> October 2015

**Hearing Venue** : Bournemouth County Court, Deansleigh  
Rd, Bournemouth

**Date of Decision** : 2 November 2015

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**DECISION**

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## **Preliminary**

- 1.0. On 21 October 2014, Mr Videira submitted to the Tribunal an application under section 27A of the Landlord and Tenant Act 1985 to determine the service charges payable for the years ending 16th of February 2012 and 2013
- 1.1. At a subsequent case management hearing on the 24 November, 2014. It was agreed that Mr Dix and Mr Zielinski should be joined as applicants with Mr Dix acting as the spokesman.
- 1.2. It also provided that the respondent should provide budgets and service charge accounts for the years ending in February 2011, 2012 and 2013, together with other documentation supporting those accounts.
- 1.3. A hearing was held on 22 April, 2015 at which a number of points were agreed, but the case was adjourned to allow the respondents to provide additional accounts for subsequent years ending in February 2014 and the final year up to 31 March, 2015, at which time the applicants Right To Manage company took over responsibility for managing the building.
- 1.4. Following the preparation by the respondent of the requested accounts, a further application was made by the applicants with questions concerning the service charge amounts in the subsequent service charge years.
- 1.5. As a result, the hearing on 31 July, 2015 became a further case management hearing with the final hearing set for 21 October, 2015

## **Documents**

- 2.0. The documents before the Tribunal consisted of:-
  - a. the bundle of documents prepared for the original hearing on 22nd of April 2015.
  - b. A bundle comprising the service charge accounts for all relevant years.
  - c. A respondents bundle including a Scott schedule and associated documents.
  - d. And applicants bundle containing the Scott schedule and representations.

## **Inspection**

- 3.0. The Tribunal inspected the property prior to the hearing on 22 April 2015, in the presence of the 3 applicants, together with Mr Gooch from Bridgeford and Co.
- 3.1. The Tribunal noted that the building is a detached property set in a quiet residential area comprising similar properties dating from the late Victorian period. The subject

property had been divided into 3 flats with one on each floor, the upper floor being within the roof space.

- 3.2. The building is constructed of cavity brick walls under a pitched tiled roof. There is a very small front garden and a small rear garden. The gap between this property and adjoining properties is narrow
- 3.3. Internally, the Tribunal noted that the decorations and carpeting were only in fair order and they were also shown the evidence of the settlement cracks within the ground floor flat at the rear. On the 2nd floor, the Tribunal was shown evidence of some damp penetration around a chimney breast. Dampness was also noted in the ground floor flat on the chimney breast and beneath the bay window.

## **The Law**

- 3.0. The Landlord and Tenant Act 1985, includes the following:-

*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 to which the service charge is payable or in an earlier or later period.*

*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 provision 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.*

*27A (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.*

*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.*

## **The Lease**

4.0. The original application included a copy of the lease of the ground floor flat, dated 12th April 1984, and the relevant clauses are:-

1. .... and paying by way of additional rent in advance payable on the 17th day of February in every year a sum amounting to ..... an amount equal to the proportion (as expressed in clause 3 of the 6th schedule hereto) of the estimated cost (such estimated cost to be such sums as the lessor in his absolute discretion thinks fit) for the ensuing year ..... of the amount or amounts to be expended by the lessor in carrying out the lessor's obligations under the 7th schedule hereto ..... and if the actual cost incurred by the lessor in performing such obligations is less or more than the amount so paid by the lessee the due proportion of the difference shall be forthwith credited to the lessee or paid by the lessee, as the case may be.

6th schedule.

3. .... the lessees shall pay a contribution (as defined in clause 1 hereof) of the costs charges and expenses incurred by the lessor in carrying out his obligations under the 7th schedule hereto such contribution shall be calculated in the ratio which the rateable value of the premises shall from time to time bear to the aggregate rateable value of all the flats, save that the lessees contribution to the cost of the lessors obligations in so far as these relate to the common entrance porch and hall forming part of the reserved property shall be one third and that the lessee shall not be required to make any contribution to the cost of the lessors obligations insofar as these relate to the staircases passages and landings forming part of the reserved property.

7th schedule.

2.(a) The lessor shall keep the reserved property and all fixtures and fittings therein and additions thereto in good and tenantable, repair and condition and renew the same as necessary, ..... and

(b) The lessor will as often as reasonably required decorate the exterior of the building the common entrance porch and hall and the stairways passages and landings, leading to the upper flats .....

4. The lessors shall be entitled to employ such servants and managing agents and other persons as may be reasonably required for performing the services necessary for the purpose of complying with the covenants on the lessor's part hearing contained.

## **The Hearings.**

### **5.0. 22 April 2015**

**5.0.1** This hearing, held at Bournemouth County Court, was attended by the 3 applicants, together with Miss Bowmaker of SLC Solicitors and Mr Gooch.

**5.0.2** Initially it was agreed by Mr Gooch that the roofing contractors, AJF Roofing Services Ltd, had only been paid £8000 and as a result, the unpaid balance was £698

**5.0.3** It subsequently became clear that all the matters could not be resolved without additional certified accounts in respect of the years ending in February 2011, 2012, 2013, 2014, as well as the last period up to 1 April, 2015, which was the date on which the applicants' Right to Manage company took over responsibility. As a result, the hearing was adjourned with further directions to the parties and the hearing date set for 31 July, 2015.

### **5.1. 31 July, 2015.**

**5.1.1** When the respondents produced the accounts for the years requested, additional questions were raised by the applicants which resulted in a further application to the Tribunal. As there was insufficient time before the hearing date for the respondents to prepare, this hearing became a Case Management Hearing at which it was directed that the two applications should be heard together and the parties were required to complete a Scott schedule with a further hearing set for 21 October, 2015.

### **5.2. 21 October 2015.**

**5.2.1.** This hearing was held at 1000 hours at Bournemouth County Court and in attendance were the 3 applicants, together with Mrs Zielinska, Mr Green, a solicitors agent for SLC solicitors, and Mr Gooch of Bridgeford and Co

**5.2.2.** It was agreed to proceed through the Scott schedule, but leaving the management fees until the end. It was also noted that, although there were no formal accounts for the year ending February 2010, the figures were included as comparators within the accounts for the following year as the applicants were disputing the management fees for that year.

**5.3. Year ending February 2011. Item £1702.98.** Following the respondent's explanation, this item was accepted by the applicants.

**5.3.1. Item £1596.47.** The respondent had agreed to reduce the amount charged as their fee for dealing with the major works as a result of the reduced costs of that work. This resulted in a credit for the applicants of £444.47 in respect of the managing agent's fees and this figure was accepted by the applicants.

- 5.4. **Year ending February 2012. Item £90.** Mr Green directed the Tribunal to the lease and in particular clause 4 of the 7th schedule allowing the lessor to employ such persons as may reasonably be required to enable them to carry out their obligations.
- 5.4.1. In addition, he advised that there was no requirement within the lease to provide accounts and that as the Tribunal had requested accounts for the relevant years, the respondent had incurred accountancy costs of £1000 plus vat (a copy of the invoice was produced on a laptop computer and shown to the applicants and the Tribunal later in the day) despite the Scott schedule including a figure of £500 (no mention of VAT).
- 5.4.2. Mr Gooch confirmed that if service charge accounts did not need certification, then they were prepared by the in-house accounts team. For this year in question, it was a new charge levied by the managing agents and the lack of a similar charge in subsequent years, was due to an oversight on their part. This is a basis that had been agreed with the respondent, for whom they act on a large number of properties, although it had not been confirmed in writing.
- 5.4.3. Mr Dix was concerned that they had not been notified of the intention to charge for accounting and he queried the qualification of the accountants who had prepared the full set of accounts. Mr Gooch was able to point the Tribunal to a letter from the accountants confirming that they were a chartered firm and registered auditors. Mr Green advised that there was no requirement within the lease for notice of the charge to be given.
- 5.5. **Year ending February 2014. Item £698.** This figure represents the outstanding balance which had not been paid to AJF Ltd in respect of the roof works. It had been previously accepted by the respondent that this amount would be credited to the service charge account and the applicants accepted this basis.
- 5.6. **Item £60.** The respondents had accepted that this was an overcharge to the service charge account and had agreed to credit the service charge account with £30. The applicants accepted this basis.
- 5.7. **Item £983.** This total is included within the accounts as two figures of £335 for repairs and maintenance and £648 for major works, and related to the installation of emergency lighting and smoke detectors. It was accepted by the respondent that the work that had been carried out was not to the specification provided and, indeed, they had had the value of the work actually carried out separately assessed at £390. Mr Gooch was also able to confirm that the company had gone into liquidation shortly after the work had been carried out, and he was not aware of any of the budgeted expenditure having been paid to the contractor.
- 5.7.1. When this point had been explored by the Tribunal, it was agreed between the parties that the sum of £983 should be credited to the service charge account with the proviso that the applicants would indemnify the respondent against any possible claim that might be received from a liquidator of the contractor company.
- 5.8. **Year ending 31st of March 2015. Item £950.** This item shown as income in the accounts is made up of budgeted figure for repairs and maintenance for the year of £750, together with an additional payment made by flat C of £200. The respondent had provided statements of the service charge account showing that the payments made by the applicants had been received and credited to the account and that the income was satisfactorily shown in the certified accounts. The applicants were satisfied with this explanation.
- 5.9. **Management fees.** Mr Gooch confirmed that there was no written management agreement with the respondent, but that they did manage a large number of properties for the same landlord for whom they had acted for about 10 years, and that their basis

had been agreed with their client and that the fees should increase by an RPI index figure every year. He pointed out that even if no repairs had to be carried out at the property in a particular year, the management fee was still payable as there was considerable work involved in preparing budgets, entering those budgets on the system, issuing demands and dealing with direct debits on a monthly basis (which was more expensive than the annual payment required by the lease), processing those payments and making regular visits to the property (even if these were unannounced and might not be seen by the lessees). He also pointed the Tribunal to the computer printout of messages and tasks relating to this property so that it could be seen that there was active management taking place.

- 5.9.1. After a question from the Tribunal, Mr Gooch also confirmed that whilst it would be normal for a small block of 3 flats to have a minimum charge applied, which for their firm was set at £1000, this property benefited from the large number of flats being managed for this client and thus no minimum charge was applied. He was therefore of the view that the charges were both reasonable and reasonably incurred.
- 5.9.2. Mr Dix was concerned that any work required took a considerable time to be actioned and that the accounting procedures were very unclear and had necessitated the application to the Tribunal being made. He noted that many of the delays had been blamed on a lack of funds, although he pointed out that had the relevant credits been applied to the account when they had been agreed, there would have been sufficient funds in the account.
- 5.9.3. As evidence of the delays he mentioned the dampness around the chimney breast in flat C which had been reported many months ago and it had been promised that an insurance claim would be made. However, no such claim had been prepared and the contractor who had dealt with the works on the roof would not return, unless the additional scaffolding costs of £400 were paid.
- 5.9.4. Additionally, the front gate which had been replaced was installed in a very poor fashion such that the catch did not engage and even when this was put right the blocking timber attached to the concrete post was loose.
- 5.9.5. The repair of the front entrance door had also been delayed for so long that the applicants had arranged for the work to be done themselves as security is essential in the area.
- 5.9.6. Mr Videira was of the view that they pay for management and not for paperwork
- 5.9.7. The amounts charged in the years in question were:-
- |                           |            |
|---------------------------|------------|
| Year ending February 2010 | £532       |
| Year ending February 2011 | £535       |
| Year ending February 2012 | £544.      |
| Year ending February 2013 | £544       |
| Year ending February 2014 | no charge. |
| Year ending February 2015 | £580       |
- 5.9.8. Mr Dix was of the view that in the period to 31 March 2015, the £580 represented the management fee for the 12 months up to February 2015 but that there was an additional £68.33 for the period from 17th of February 2015 to 31 March, 2015, when the management terminated. However, the Scott schedule shows clearly the management expenses of £580 and confirms that these are for the full period up to 31st of March 2015.
- 5.9.9. Mr Gooch was of the opinion that the fees were reasonable and reasonably incurred, but Mr Dix was of the opinion that they should only pay 25% of the figures charged

## Consideration

- 6.0. The Tribunal considered all the points raised by the parties, and considered that:-
- 6.1. The parties had different approaches to the accounts, with the respondent relying upon the computer printouts of the expenditure and the income received from the individual tenants, together with the certified accounts. However, the applicants were trying to reconcile their individual payments against the final balance, as shown in the accounts for each year.
- 6.1.1. The Tribunal considered that the certified accounts should provide the basis to work with, and that any amendments which were either agreed between the parties or determined by the Tribunal should, if appropriate, be used to adjust the final balance shown on the accounts to 31 March, 2015 of £1081
- 6.1.2. A number of points had been explained by the respondents and subsequently accepted by the applicants and further points are to be decided by the Tribunal. All the items are shown on the completed Scott schedule, which is attached, but may be summarised as:-
- 6.2. **Item £1702.98.** No longer in dispute. No adjustment is required.
- 6.3. **Item £1596.47.** The credit proposed by the respondent of £444.47 had been accepted by the applicants and the final balance sheet needs to be credited with this amount
- 6.4. **Item £90.** The Tribunal notes that certified accounts are not required by the lease. However, there is a general requirement for all lessees to be given a statement of the service charge account clearly identifying the various areas of expenditure, together with the income. It is therefore appropriate for the respondents to produce service charge accounts and for a charge for the preparation of those accounts to be part of the service charge expenditure. The Tribunal was advised that this charge had only been implemented by the managing agents for the first time in this year as a new policy, although they omitted to make any charge in subsequent years. The Tribunal considers that the charge of £90 is reasonable, and although there have been deficiencies in the accounts, the figure is approved for the year in question. No adjustment to the final balance sheet is necessary
- 6.5. **Item £698.** The respondents have confirmed that this money had not been paid to the contractors and can be credited to the service charge account. This position has been accepted by the applicants. The service charge account should be credited with this figure
- 6.6. **Item £60.** The respondents had accepted that this this charge was incorrect and that it should have been £30. They agreed that a credit for £30 should be added to the service charge account. This point has been accepted by the applicants and £30 should be credited to the service charge.
- 6.7. **Item £983.** No evidence was produced at the hearing to show that any of this money had been paid to the contractor and it had been agreed by the parties at the hearing, that the whole of this amount should be credited to the service charge, but with the proviso that the applicants undertake to indemnify the respondent against any possible claim by the contractor or its representative in the future. A credit to the service charge for the whole amount is required.
- 6.8. **Item £950.** The explanation about this item had been accepted by the applicants, and no further adjustments to the service charge are required.
- 6.9. **Tenants' individual accounts.** During the hearing, it transpired that flat A had been treated differently to flats B and C, in that a charge of £532.67 which had previously been removed from all 3 accounts, had been reapplied to flat A, but had not



been reapplied to flats B and C. In the circumstances, it was necessary to add a charge of £532.67 to the accounts of both flats B and C. The resulting balance on each of the accounts would therefore be:-

Flat A	£502.67
Flat B	£532.64
Flat C	£332.67

- 6.9.1. As a result of these adjustments, the service charge balance should be reduced by the two figures of £532.67, a total of £1065.34
- 6.10. **Management fees.** The Tribunal noted the points made by the parties in connection with the fees of the managing agents and accepted that there is considerable work within the office in dealing with a block of flats, even if no actual repairs have to be undertaken. However, the Tribunal was concerned at the considerable lack of clarity in the service charge accounts and the absence of any statement showing the receipts and payments to and from the reserve account. Additionally, where items had been agreed with the applicants, these matters had not been amended in the service charge accounts or the individual statements of the lessees. Had some of these adjustments been made, there may have been sufficient funds within the accounts to carry out some of the works which appear to have been considerably delayed.
- 6.10.1 Overall, the Tribunal was concerned at the lack of clarity within the service charge accounts and the seeming inability of the managing agents to answer the various questions raised by the applicants. The Tribunal notes the lack of any management agreement between the respondent and the managing agents and the lack of any written confirmation of the management fees. However, the level of the fees charged would not be unreasonable for a proper management service, especially bearing in mind the small number of flats at the building and the fact that no minimum charge has been applied to the fees.
- 6.10.2 Despite that, the Tribunal feels that the lessees have not received the service that they might reasonably expect and it would be appropriate for there to be a reduction of 25% to each of the fees shown in the service charge accounts. This will require a credit being applied to the service charge in respect of the five charges which have been made.
- 6.10.3 For the five figures shown in para 5.2.10.7 above the respective credits are £133.00, £133.75, £136.00, £136.00, and £145.00.
- 6.11. **Accountancy charges.** The Tribunal has already confirmed that accountancy charges are appropriate for inclusion within the service charge accounts and has confirmed the figure of £90 for the year ending February 2012. The managing agents have produced an invoice from the accountants for preparing the 5 years of accounts and this was £1000 plus VAT. However, within the Scott schedule, the figure was given as £500, with no VAT. The Tribunal believes that £500 is a more appropriate figure and that £1000 plus VAT, is excessive. The Tribunal therefore proposes to allow an amount of £500 for the accountancy for the 5 years but from that figure must be deducted the £90 already approved. This will result in an additional charge being made to the service charge of £410.
- 6.12. **Costs.** The applicants have requested that their fees paid to the Tribunal, in respect of their application and the hearings, should be reimbursed to them. Additionally, they have submitted a sheet showing their expenses by way of time involved and direct costs, although there was no supporting evidence in respect of the direct costs.
- 6.12.1 The respondents, likewise, have submitted a schedule of their legal and managing agents costs based on the time involvement in the various stages of the case.

- 6.12.2 The Tribunal notes that many items queried by the applicants have subsequently been explained by the respondents and overall the problem centres around the lack of clarity in the accounts produced by the managing agents. However, on the other hand a meeting had been arranged at the managing agents to go through all the accounts, but this was cancelled by the applicants.
- 6.12.3 The Tribunal therefore finds that the applicants should be reimbursed by the respondent for the fees they have paid to the Tribunal but that each party should bear their own costs in connection with the other direct expenses and the time charges involved in the case. This decision will require a payment by the respondent of £440, made up of the initial application fee of £125, a hearing fee of £190 and a further hearing fee of £125
- 6.13 **Section 20 C application.** The applicants have applied for an order under section 20C of the Landlord and Tenant Act 1985 to prevent the respondent from including any of their costs in this case being included within the service charge account. In the light of the Tribunal's decisions above it is agreed that such an order is granted.

### The determination

- 7.0. The Tribunal determines the items set out above.
- 7.1. As a result of the findings of the Tribunal it determines that the final balance sheet figure shown in the accounts to 31st of March 2015 of £1081.00 should be adjusted as below:-

	Additions	Deductions
	444.47	532.67
	698.00	532.67
	30.00	410.00
	983.00	
	133.00	
	133.75	
	136.00	
	136.00	
	<u>145.00</u>	
Totals	2839.22	<u>1475.34</u>

### 7.2. Adjustments

7.2.1.	Total as per balance sheet	£1081.00
	Additions	£2839.22
	Deductions	<u>£1475.34</u>
	Adjusted Total	£2444.88

- 7.2.2. However, from this balance sheet total, it is necessary to deduct the arrears showing on the tenant accounts, to arrive at the figure which is to be paid to the applicants' RTM company. The balances, having been adjusted in respect of flats B & C as described above, are:-

Flat A	£502.67
Flat B	£532.64

Flat C	<u>£332.67</u>
Total	£1367.98

7.2.3. Deducting this amount from the adjusted total in 7.2.1 gives a net figure of £1076.90 and this amount should be paid to the Right To Manage company of the applicants

7.3. **Costs**

In addition to the adjusted total of the balance sheet which is to be paid by the respondent to the Right To Manage company of the applicants, the respondent shall also reimburse the applicants with the costs that they have paid to the Tribunal of £440.00

7.4 The Tribunal grants an order under section 20C of the Landlord & Tenant Act 1985.

8.0 **Appeals**

8.1 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.

8.2 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.

8.3 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.

8.4 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.

A J Mellery-Pratt FRICS  
Chairman

A member of the Tribunal appointed by the Lord Chancellor  
Date 2 November 2015