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

Case reference : LON/00BK/LSE2014/0178 and
LON/00BK/LDC/2014/0085 and
LON/00BK/LAC/2014/0024

Property : Flat 1 , 22 Clifton Gardens

Applicant : Twenty-Two Clifton Gardens
Limited

Representative : William Heath & Co

Respondent : Thayer Investment S.A

Representative : IBB Solicitors

Type of application : For the determination of the
reasonableness of and the liability
to pay an administration charge &
For the reimbursement of fees and
costs under Rule 13

Tribunal members : Professor Helen Carr (Judge)
Mr Hugh Geddes RIBA

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR

Date of decision : 10th February 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £26,496.65 is payable by the Respondent in respect of costs and hearing fees incurred in connection with an application to the Tribunal to determine that service charges are reasonable and payable.
- (2) The whole sum is payable as a result of the Tribunal's determination in respect of the application under rule 13
- (3) The sum of £22, 541.65 is reasonable and payable under the relevant clause of the lease.
- (4) The tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Respondent in respect of costs incurred in connection with previous proceedings for a determination that service charges were payable and reasonable.
2. The Applicant also seeks a determination as to the payability of costs and the reimbursement of hearing fees pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) that the Respondent acted unreasonably in defending or conducting those previous proceedings.

The hearing

3. The Applicant was represented by Mr Fleming of William Heath & Co at the hearing. The Respondent did not appear nor was he represented.
4. Mr Fleming informed the Tribunal that Mr Diamond, the solicitor representing the Respondent had informed him that he would not be attending the hearing and that he did not oppose the application.

The application under the 2002 Act

5. The Applicant relied on clause 2(5) of the lease which contains a covenant binding upon the Respondent 'to pay all property costs charges and expenses including Solicitors costs and Surveyors' fees

reasonably incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under section 146 and 147 of the Law of Property Act 1925...’.

6. The Applicant had made clear to the Respondent that the original application to the Tribunal to determine service charges was made by the Applicant in its capacity as freeholder and with a view to serving a notice under section 146 of the Law of Property Act 1925 in a letter by email dated 29th January 2014. In that letter it was also made clear to the Respondent that the Applicant would be holding the Respondent liable for costs under that clause of the lease.
7. The Applicant accepted that although the total claim for costs and reimbursement of hearing fees totalled £26,496.65 the costs of the current hearing could not be awarded at this time under this clause. Therefore the costs the Applicant was claiming was £22,541.65.

The tribunal’s decision

8. The tribunal determines that the amount payable in respect of the administration charges is £ 22,541.65p .

Reasons for the tribunal’s decision

9. The Tribunal accepts the argument of the Applicant.

The claim under Rule 13

10. The Applicant set out in its statement of claim a full account of the proceedings between the parties. The statement concludes that the Respondent never had any genuine defence to the proceedings and that, in choosing to defend them notwithstanding this it has unreasonably put the Applicant to considerable expense.
11. The Applicant further points out that the Respondent’s entire conduct in this matter has been marked by its refusal to engage in attempts to resolve any genuine queries, the lack of clarity about what its case was, frequent changes of case and ultimately conceding that it had no case whatsoever.

The tribunal’s decision

12. The tribunal determines to award the Applicant its full claim of £26,496.65 under Rule 13.

Reasons for the tribunal’s decision

13. The Tribunal accepts the reasoning of the Applicant.

Name:

Date: