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

Case Reference : LON/OOAW/LSC/2016/0449

Property : Ashburnham Mansions, London,
SW10

Applicant : Mr Raymond Widdicombe (lease-
holder) who was not represented

Respondent : Ashburnham Mansions Limited
(landlord) who were represented by
Mr Shomik Datta of counsel who
was instructed by KDL Law, solici-
tors

Type of Application : Applications under sections 27A
and 20C of the Landlord and Tenant
Act 1985 ('the Act)

Tribunal Members : James Driscoll, solicitor (Judge)
and Mrs Lucy West MBA (Lay
Member)

Date of the Hearing : 6 February, 2017

Date of Decision : 23 May, 2017

DECISION

Introduction

1. This application is made under section 27A of the Landlord and Tenant Act 1985 (the 'Act') for the determination of service charges. It is made by Mr Raymond Widdicombe the owner of flat 5 in the premises at Ashburnham Mansions, London SW10. He does not live in the flat which instead he rents out.
2. The premises consist of three five storey blocks containing 62 flats all held on long leases. Only leaseholders are entitled to become members of the company. The landlord, which is the respondent to the application, is a company owned by 54 of the 62 leaseholders. It is therefore a leaseholder controlled company which was formed to acquire the freehold from Daejan Investments who own by way of a leaseback seven of the flats.
3. At the hearing we were told that only members of the company are eligible for election as a director.
4. In June 2015 the company granted new leases to the members for 999 years with modernised service charge provisions. These new provisions included the holding of a reserve fund to make provision for future expenditure. It also included new service charge provisions which allow the company to demand sums in advance of expenditure with the usual mechanisms for considering at the end of a particular accounting period (the calendar year) any additional costs that need to be levied. Provision is also made for the size of the individual contributions but it is unnecessary to describe the provisions of the new leases in any more detail than this for the purposes of this decision.
5. In the past Mr Widdicombe has made three applications to this tribunal. Both sides drew to our attention the decision of this tribunal on an application made by him which was decided in March 2013 (LON/OOAW/LSC/2012/0408 and 0598).
6. On 29 November 2016 the Tribunal received this application from Mr Widdicombe seeking a determination under section 27A of the Act and an order under section 20C of the Act. The determination of service charges is sought for the accounting year ending 2015 (the application form also referred to the year ending 2016 but at the hearing Mr Widdicombe told us that he was not pursuing the appli-

cation for the year ending 2016). He seeks an order under section 20C of the Act limiting recovery of any professional costs incurred in these proceedings on behalf of the company as a future service charge.

7. Directions were given dated 2 December 2016 (which were later amended on 17 January 2017). Mr Widdicombe prepared a statement of case which he dated 19 January 2017. In response those advising the company prepared in accordance with the Directions a bundle of documents (of some 750 pages) which included the most up-to-date accounts and a statement in reply which is dated 30 January 2017 prepared by KDL Law, solicitors who are advising the company. At the hearing we were handed a written set of submissions written by counsel for the company.

The hearing

8. The hearing of the application took place on 6 February 2017. Mr Widdicombe appeared in person and he did not call any witnesses. He told us that he is unhappy with the current provisions for the holding of the reserve funds. One of the former directors and a leaseholder, a Mr Greenberg, told him that there were no funds in the reserve fund. Mr Widdicombe added that letters he sent to the managing agents were unanswered. He was worried that the funds might have disappeared. In order to safeguard his position he has withheld sums demanded for the reserve fund until he is satisfied that the reserves are held on a proper account.
9. The company was represented by Mr Shomik Datta of counsel who was accompanied by Ms Angeles Lozano a director of the Company, and Mr Gareth Newport of Principia the current managing agents.
10. At the start of the hearing, Mr Widdicombe told us that it might be possible for the parties to reach agreement on the disposal of the application. After those present clarified a number of matters for us we agreed to an adjournment to give the parties the chance to see if an agreement could be reached.
11. Following a short adjournment, Mr Widdicombe informed us that he was no longer seeking a determination of the contributions to the reserve fund. As a result of seeing the documents in the company's bundle he was now satisfied that the reserve funds have been properly kept. Nevertheless he maintained that he was justified in launching these proceedings.
12. In the circumstances there is no need for the Tribunal to make a determination under section 27A of the Act. Mr Datta agreed with this

and told us that the current managing agents have taken over the management of the premises and that there have been delays in receiving papers and some of the funds held by the previous managing agents ('Preside') whom they have replaced. This accounts for the delay in dealing with some of Mr Widdicombe's complaints and he has been previously kept informed as to the problems associated with the 'handover' from the previous agents to the present ones.

13. Mr Widdicombe told us that he now agreed that his contribution to the reserve fund for the accounting period ending in December 2015 in the sum of £3,022.25 is properly recoverable. He told us that this will be paid immediately.

Costs

14. We heard submissions on the issues of costs and on the exercise of our discretion under section 20C of the Act.
15. In summary, Mr Widdicombe was of the view that it was the failure of the managing agents to respond in a timely manner (or at all) to his requests for information on the status of the reserve fund that caused him such concerns. It was this coupled with his suspicions over the reserve funds that drove him to make this application.
16. In response, Mr Datta started by reminding us that under section 20C(3) we are to make such an order that is just and equitable. He said that Mr Widdicombe was well aware of the position on the reserve funds long before he made this application. In particular he took us to page 22 of the bundle (and beyond) which contained the accounts certified by Gibson Appleby (chartered accountants and registered auditors) which shows the accounts and reserve funds for the accounting period ending 24 December 2014 (which he says was sent to all of the leaseholders including Mr Widdicombe).
17. Counsel also took us to pages 402 to 508 of the bundle which sets out the accounts for several years including the year ending in December 2015. He also submitted that the position on the holding of reserve funds was also made clear in the proceedings that led to the decision referred to above in paragraph 5 above.
18. He added that Mr Widdicombe's suggestions that the reserve monies had been lost or misappropriated were wrong, unfair and without any foundation. Counsel added that the Company was justified in going to the expense of resisting the application by seeking legal assistance. It was entitled to do this and justified in doing so. It had no alternative but to defend its position.

Reasons for our decision on costs

19. We make no finding as to whether the company as the landlord under the flat leases is entitled to instruct lawyers or other professionals. Nor are we in a position to judge whether any legal costs incurred and charged as a service charges are reasonable if they are included in a future service charge.
20. In reaching our decision on the section 20C issue we start with the point that this tribunal is generally a 'costs free' jurisdiction. However, where a landlord is entitled to demand contributions to meet its costs incurred in bringing or defending, we are to decide at the instigation of a leaseholder whether it is just and equitable to make an order under section 20C of the Act preventing recovery of such costs.
21. In considering how to exercise our discretion we consider that we must take account of the fact that in this case the 'landlord' is a company owned and controlled by the leaseholders. There is no external landlord which may profit from owning and managing the premises. Moreover, if no section 20C order is made, and if the company is entitled under the flat leases to include legal or professional costs in its charges, all of the leaseholders will be required to share the costs even though they played no part in the proceedings.
22. We note that Mr Widdicombe has decided not to proceed with his application. As we indicated during the hearing we have doubt as to whether we have jurisdiction under section 27A of the Act to determine whether there is in fact a reserve fund and where it is held. There is no dispute between the parties over the payability of service charges for us to consider under section 27A of the Act.
23. That said, we do not think that Mr Widdicombe was either entitled to, or acted fairly, by withholding his contribution to the reserve fund. Reserve funds (and we remind ourselves that under the original flat leases there was no provision for a reserve fund) are commonly considered to be an essential feature of well-drawn leases. The existence of such funds ensures that monies are available to meet future expenditure. As this is a leaseholder-owned freehold any shortfall in reserve fund contributions has to be met by other leaseholders who, so far as we know, are not involved in this matter (and may not be aware of it).
24. Nor do we accept that Mr Widdicombe was justified in questioning the existence of the reserve fund, or what it may have been used for. He bases his suspicions on a conversation he had with Mr Green-

berg. However, as Mr Datta pointed out there was an exchange of emails (starting on page 28 of the bundle) between the two of them and it appears that in the email sent by Mr Greenberg on 4 December 2016 he stated that the service charge account had an average of £100,000 even though at one point the reserve balance itself showed a nil balance.

25. Given the seriousness of the complaints, and the application to the tribunal, we conclude that the company had little option but to take legal advice and to instruct counsel to represent its interests at the hearing.
26. Given all of these factors we have little hesitation in concluding that it would not be fair or equitable to make an order under section 20C of the Act.

James Driscoll and Lucy West
23 May, 2017

Under rule of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 a person seeking permission to appeal must make a written application to the Tribunal for permission to appeal. Such an application under paragraph (1) must be sent or delivered to the Tribunal so that it is received within 28 days after the date that the Tribunal sends to the person making the application written reasons for the decision.