12309

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LAC/2017/0051**
Property	:	**Flat 24 Kingsbridge Court, 1 Dockers Tanners Road, London E14 9WB**
Applicant	:	**Dr Shalini Gupta**
Representative	:	**Cook Taylor Woodhouse**
Respondent	:	**Aulcome Property Management Limited c/o SL Property Consultants Limited**
Representative	:	**See above**
Type of application	:	**Liability to pay administration charges**
Tribunal members	:	**Judge Hargreaves** **Peter Roberts DipArch RIBA**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **10th July 2017**
Date of decision	:	**10th July 2017**

DECISION

Decisions of the Tribunal

(1) The Tribunal has jurisdiction to determine the application.

(2) The Tribunal determines that a reasonable amount to pay by way of the relevant administration charge pursuant to clause 8(b) Fourth Schedule of the relevant lease is £480 plus VAT (£96).

REASONS

1. The facts are taken from the Respondent's witness evidence, the Applicant's case being put briefly in a "Rider" to the application she made pursuant to *Schedule 11 Commonhold and Leasehold Reform Act 2002* which was received by the Tribunal on 11th May 2017, and an email dated 15th June 2017.

2. The Applicant is the assignee of the long leasehold interest in the above property. She completed the transaction without entering into a deed of covenant as required, with the landlord, first. On 6th December 2016 Judge Sykes Frixou (JSF) wrote to the Applicant's solicitors (CTW) indicating that the fee would be £750 plus VAT for the deed of covenant which "we shall draft". Pausing there, it is not unreasonable in the case of a development for all such deeds to be the same. CTW sent a cheque for an incorrect amount. On 17th January 2017 JSF reminded CTW that "the fee for the deed of covenant is £750 plus VAT." By letter dated 20th January 2017 CTW paid the required amount without qualification. None of CTW's correspondence (attached to the application) qualifies that payment or reserves the right to challenge it.

3. There appears to be no evidence of a challenge to the charge of £750 plus VAT before the making of the application. No letter before action is exhibited. Be that as it may, the Applicant took a tough line with the Respondent when it asked for additional time to serve its evidence, which arrived under cover of a letter dated 5th July. Although late, (the directions dated 22nd May seem to have been largely ignored), neither side is prejudiced by the Tribunal's decision to deal with the application on paper at this stage, particularly bearing in mind the amount in dispute, the overriding objective, and the use of judicial resources. The technical point on the Tribunal's jurisdiction has been dealt with by CTW in the email dated 15th June 2017: see below.

4. JSF for the Respondent submit that the Tribunal has no jurisdiction to deal with the application because the administration charge was "agreed". The landlord relies not only on the payment of the amount demanded as evidence of an agreement as to the amount payable

(see *CLRA 2002 paragraph 5(4)*) but also the fact that CTW wrote a letter dated 15th February 2017 which stated: *"We would be grateful if you could confirm that all formalities have now been complied with and further confirm that there are no arrears of ground rent or any other charges"*. No response having been exhibited, we assume no response was given.

5. *Paragraph 5(5)* specifically provides *"But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made payment"*. However the Respondent does not rely *"only"* on the Applicant's payment, but on the further letter of 15th February 2017. The Respondent asserts that on the face of it the letter indicates, that the Applicant is content with and has agreed to pay the £750 plus VAT. In our judgment that is stretching the meaning of the letter too far: it seeks confirmation that (i) all formalities have been dealt with and (ii) that there are no other charges. It does not state, expressly or impliedly, that the Applicant agrees the £750 plus VAT charge. The letter is too vague to bear the construction relied upon by the Respondent.

6. It follows that the Tribunal has jurisdiction to consider reasonableness.

7. The Applicant's solicitors have taken the line that £750 plus VAT is simply too high for a one page deed of covenant. That is unfair and unreasonable: they have not put that in the full context of the conveyancing transaction: see eg the Respondent's statement paragraphs 8 and 16. Nor have they proposed a reasonable alternative figure. On quantum the Respondent's position is set out at paragraphs 16-17. Whilst the Tribunal accepts that the Respondent has limited its fees to £750 plus VAT rather than charging out over 3 hours at £395 plus VAT, the fee is still high for the work which was done. There are certain points: (i) the property is not in a prime central London location and (ii) the Respondent's insistence on using its own drafts to achieve uniformity should be reflected in lower charges in any event; and (iii) there was no need to use a Grade A fee earner.

8. A reasonable charge is £480 plus VAT, or put another way, roughly two hours' work by a Grade B fee earner in WC2. There is no need to employ Grade A fee earners on this type of transaction, and two hours is sufficient bearing in mind this is a standard draft.

Judge Hargreaves

Peter Roberts DipArch RIBA

10th July 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).