

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Case number : CAM/22UF/LSC/2006/0059

- Property** : Flat 4, Cathedral Walk, Chelmsford, Essex CMI INX
- Applications** : For determination of liability to pay service charges added to the service charge account or levied during the year 2006/07 [LTA 1985, s.27A]
 For disregard of landlord's costs as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant [LTA 1985, s.20C]
- Applicants** : Mr Peter Gaskin & Mrs Yvonne Gaskin, Little Acre, London Road, Great Horkesley, Colchester, Essex CO6 4BZ
appearing in person
- Respondent** : Bidfind Limited, 146 New London Road, Chelmsford, Essex CM2 0AW
- represented by** : Michael Buss BSc, of Countrywide Property Management
 Julie Harrison (of the same)

DECISION(Handed down 10th April 2007)

- Hearing date** : 14th March 2007, at the South Lodge Hotel, New London Road, Chelmsford
- Tribunal** : G K Sinclair, Frank James FRICS, Cheryl St Clair

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Decision

- I. In June 2006 various sums were added by the freeholder's current managing agent to the

service charge accounts of leaseholders for various charging periods since it took over management of the estate on 1st January 2004. For the reasons which follow the tribunal disallows :

- a. The balancing charge claimed in respect of the year ending March 2004 (breach of section 20B)
 - b. The balancing charge claimed for the 15 month period ending March 2005 (both on the merits, and because it may include items in breach of section 20B)
 - c. For the year ending March 2006, the service charge account shall be reduced by £2,785.64 (of which the Applicants' share is one eighteenth part)
 - d. For the budgeted sum demanded in advance for the year ending March 2007, the repairs estimate shall be reduced by £1,000 (of which the Applicants' share is one eighteenth part). As this financial year has just finished the tribunal's decision may be of academic interest only, as the year-end account and any balancing charge should soon be in the course of assessment and certification by an independent accountant.
2. Although the point was expressly conceded by Mr Buss on behalf of the freeholder, for the avoidance of doubt it is determined that the freeholder's costs (if any) incurred in defending this tribunal application shall not be regarded as relevant costs when assessing the amount of the service charge for this or any other year which is payable by the Applicants.

Background

3. Cathedral Walk is a small development of flats built just off the junction of Church Street and Cottage Place, immediately to the northwest of Chelmsford Cathedral. Until December 2004 the estate was managed on behalf of the freeholder by Equity Asset Management. Neither party had a good word to say about that organisation : the Applicants accusing it of not carrying out its duties properly under the lease, and the Respondent commenting that it took a long time to extract essential information from it after the hand-over of responsibility. While Equity Asset Management were in control it consulted about proposed major works, viz external and internal redecoration, and went so far as to appoint a firm of chartered surveyors to supervise the work. The new managing agents inherited this arrangement, which in the end proved unhelpful. The work was undertaken while Countrywide were in charge, but both parties to this application agree that it was done badly. Despite this, the chartered surveyors passed the work. The contractor has not been paid, and is believed now to be insolvent. The work will need to be redone.
4. The current managing agents state that it is because of delay by Equity Asset Management in providing vital information that accounts were prepared only in January 2006, and demands for revised figures issued in June of that year. This has consequences.

Relevant lease provisions

5. Clause 1(11) defines "service charge" as a rent to be ascertained and paid from time to time as mentioned in clause 3; 1(12) defines "landlord's expenses" by reference to matters contained in the Third Schedule, and "otherwise in the general management

supervision and proper maintenance of the building grounds and all parking spaces “or otherwise required to be taken into account for the purpose of calculating the service charge”. The “financial year” is defined by clause 1(13). The principal service charge provisions appear in clause 3. These include, at 3(2)(i), provision for a sinking fund. As soon as practicable after the end of the financial year the landlord is to procure the issue by its surveyor of the certificate of a chartered accountant containing a summary of the landlord’s expenses “for such financial year and of any expenditure which formed part of the landlord’s expenses in respect of any previous financial year but has not previously been taken into account for the purpose of any such certificate”. The leaseholder’s share is one eighteenth part of the total cost, or 5.5555%.¹ In March of each year the leaseholder shall pay on account a sum to be estimated by the landlord’s surveyor as fair and reasonable, upon the basis of likely expenditure. A balancing payment is then due as soon after the financial year-end as the accountant can manage.

6. The landlord covenants at clause 5(3) to “use its best endeavours to provide for the supply of the services specified in the Third Schedule”, although reserving the right to vary by way of addition or substitution any of those specified. Finally, the Third Schedule lists, under paragraphs (1)–(12), the various landlord’s expenses which may be recovered under the service charge.

Applicable law

7. The tribunal’s powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985.² Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)³ is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.
8. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
 - 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.
9. However, section 20B imposes a further restriction on the landlord’s ability to recover. It provides that 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

¹ One side of the car park has been retained by the freeholder and individual spaces let by it to local businesses. The gardening contract has included this area, so the leaseholders’ individual service charge apportionment for the gardening element has been adjusted to reflect the freeholder’s contribution, and is reduced to 4.722%

² As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)

³ Eg. provisions in a lease stating that the landlord’s accountant’s certificate shall be conclusive, or that any dispute shall be referred to arbitration

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. By subsection (2) this 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.

Inspection and evidence

10. The tribunal inspected the outside and internal common parts of the development at 10:00 on the morning of the hearing. At the time the weather was warm and dry. The development comprises two three-storey buildings facing each other across a communal garden planted with shrubs and a few trees. The flat owned by the Applicants is in the small building between the garden and Cottage Place. It comprises six flats accessed by a common stairway and external door. Adjoining the building, next to the vehicular entrance, is an office building known as Cathedral Hall. Repairs to a section of its metal roof had recently to be undertaken from the garden of Cathedral Walk. On the other side of the garden, with the communal car park behind, is a building with a further twelve flats accessed from two stairways and external doors.
11. The lease term is expressed to run for 125 years from 25th March 1989, suggesting that the development was indeed built in the late 1980s. Despite that, windows are of single-glazed softwood construction. The condition of the external woodwork was poor, with some soft patches and other signs of rot. Brickwork, roofs and guttering seemed in reasonable order from ground-level inspection, although the ends of the soffits on the gable wall had not been painted, perhaps because of difficult access – or simply because they were missed. Internally, some woodwork areas were also missed; particularly in the lobby areas between the entrances to pairs of flats, each separated from the stairwell by a fire door.
12. The garden did not look well tended, although there appeared to have been very recent savage pruning of bushes, judging by the fresh, clean-looking cuts to some quite large branches. However, there remained on view a large branch of a tree extending low over the boundary wall, almost resting on the corrugated roof of an adjoining building. Some tall, self-seeded sycamore trees had been allowed to get out of hand and were growing rather too vigorously and close to the larger building. The cut down remains of another, which had been growing in the narrow gap between gable wall and boundary fence, were also drawn to the tribunal's attention. So far as the standard of gardening was concerned, the general impression was of a lot of trampling down, not planting.
13. The hearing commenced at 11:05. At the outset it was brought to the parties' attention that one of the tribunal members, Mr James, knew one of the other leaseholders (flat 8) in the development, although that person was not a party to the application. Neither the Applicants nor the Respondent landlord objected to his continuing to act, so the hearing was able to proceed.
14. The Applicants supported their case with a short statement with a numbered bundle of documents attached. The Respondents had filed a short reply with its own, unnumbered

bundle, including various computer print-outs, statements of service charge expenditure and a budget forecast with effect from 12th December 2005 (not a contractual period).

15. The Applicants concentrated on the issues of :
 - a. Lack of clarity whether a sinking fund was being maintained, as monies had been collected for the redecoration work in advance but the decorators had not been paid, so the money must be shown in the accounts somewhere
 - b. The unreasonable quality of the redecoration work, so that the leaseholders should not be required to pay for it
 - c. The unreasonable quality of the gardening, to the same effect
 - d. The comparatively higher costs of management fees for this development than for two others in the locality in which the Applicants owned properties.

16. During the hearing, through evidence or concessions made on behalf of the landlord, the following became clear :
 - a. The accounts had not been audited, and although some accounts had eventually been produced for the year ending three months after Countrywide took over, the information had largely been supplied by the previous managing agents but was inadequate
 - b. The accounts for the year ended March 2005 showed an unusually large amount for management fees, etc when compared with the following year. This, it was explained, was because the decision had been taken to include within this period all expense incurred since taking over in January 2004. This accounting period therefore included 15 months and not 12
 - c. The management fees with effect from 25th December 2005 are £2,475 including VAT. This was not described by Mr Buss as a decrease. However, the service charge expenditure for the year ending March 2006 shows the fee as £2,790.64
 - d. The statements of expenditure which had been calculated by Countrywide's independent accountants had been prepared in December 2005/January 2006
 - e. The service charge deficit (ie a balancing payment sought from the Applicants) for the period 01/01/04 – 24/03/04 recorded on Countrywide's computer record on 11th January 2006 was not brought to the Applicant's attention until an application for payment was issued on 30th June 2006 [Applicants' page 29]; nor had the managing agents given any prior intimation that any further payment might be required
 - f. Neither the freeholder nor the present managing agents were happy with the standard of the redecorating, which started inside in January 2005 and continued outside in April/May, and had refused to pay for it. The decorators, Harringtons, were now believed to have gone out of business. Fresh tenders would be invited
 - g. When asked whether a new section 20 consultation exercise would be embarked upon Ms Harrison made known her lack of knowledge of the 1985 Act
 - h. The supervising surveyors for this contract, Ingleton Wood, were still owed a balance of £500 but this was in dispute and had not been paid
 - i. Countrywide had engaged their own contractors to do the gardening when they took over management in 2004. However, Ms Harrison had recently discovered that the only qualified gardener in that firm had been laid off
 - j. Further, she had been the person who periodically inspected the site, but had no knowledge whatever of gardening. The contractor had admitted that the work

had not been supervised.

Discussion and findings

17. The tribunal formed the impression that the managing agents, Countrywide, operated in a general state of confusion, with an inability to have information available (for the leaseholders or at the tribunal), displayed a lack of knowledge of the statutory regime, relied upon the inspection of the gardening by an agent with no knowledge of gardening, and who made or retained no inspection notes.
18. Any claim for a balancing payment for the year ended March 2004 falls foul of section 20B as it was not calculated until the end of 2005 (at the earliest) and not demanded until 30th June 2006 (although with a claimed due date of 01/01/04 – which could never have been true, even if assessed immediately after the end of that service charge year). Both the date of assessment and demand are outside the 18 month limit. The amount claimed is disallowed.
19. So far as the 15-month period ended March 2005 is concerned, the tribunal is concerned that some of the amounts claimed [see the Applicants' page 36] may have arisen before March 2004 and also fall foul of section 20B. The amount claimed for gardening is far larger than in the previous year, and there is an "audit fee" when no audit was ever undertaken. The account records under expenditure £8,820.13 as a credit item for repairs, followed by a debit of £9,640.23 (described as "reserve account"). No proper explanation of how the redecoration monies were being held or accounted for is given. The tribunal is not satisfied as to the standard of management during this year, and fairness can be achieved by not disturbing the amounts collected in advance but instead disallowing the balancing payment of £397.76 demanded on 30th June 2006.
20. For the year ended March 2006 the tribunal adjusts the management fee from that stated to the lower amount mentioned by Mr Buss in evidence (£2,475 including VAT). With no evidence of anything other than minor repairs ever being undertaken, the amount claimed (for which no documentary proof was produced) is reduced by £1,000. The auditor's fee is disallowed. Again, there is a complete failure to account for the monies still held in the sinking fund. The gardening bill is reduced, on grounds of excessive cost and poor delivery, by £1,000. The resultant figure appears in the Schedule annexed.
21. Although largely of academic interest, as the service charge year ended March 2007 was shortly due to end and has now ended, the tribunal reduces the budget for repairs by £1,000. Should the need for repairs ever increase then this figure may seem more reasonable in future years.

Dated 10th April 2007

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Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

SCHEDULE

Accounting period	Adjustment		Allowed
y/e March 2004	no balancing charge : s.20B		NIL
p/e March 2005	no balancing charge : merits, & perhaps s.20B		NIL
y/e March 2006	figures reduced as follows :		
		£2,859.50	
		£911.10	
		£185.52	
		£3,105.06	
		£357.58	
		£1,164.03	
		£166.27	
		£2,475.00	
		£0.00	
		£11,224.06	x 5.5555%
			£623.55
		£1,152.96	x 4.7222%
			£54.45
			£678.00
y/e March 2007 budget		£12,230.00	x 5.5555%
			£679.44
			say £680.00
			or quarterly £170.00