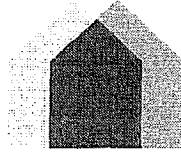


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**DECISION ON AN APPLICATION UNDER SCHEDULE 11 TO THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Ref : LON/00AL/LAC/2010/0014

Property: 25 Garrick Drive, Thamesmead, London SE28 0EQ
Applicant: Southend & City Group
Respondent: Falconers (Thamesmead) Management Company Limited
Decision date: 19th July 2010
Tribunal: Mr P Korn (Chairman)
Mr M Cairns MCIEH

BACKGROUND

1. The Applicant is the leaseholder in respect of the Property pursuant to a lease ("**the Lease**") dated 23rd December 1986 and made between Wimpey Homes Holdings Limited (1) the Respondent (2) and Clyde Hamilton (3). The Respondent is named in the Lease as the Management Company and the Lease contains covenants on the part of the leaseholder to pay sums direct to the Management Company.
2. On 30th April 2010 the Tribunal received an application from the Applicant challenging the payability of two administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002

("the 2002 Act"). Although it is not spelt out clearly in the application form, it appears that the two sums being challenged are:-

(i) a late payment fee of £80.50 invoiced by HML Andertons Limited, agents for the Respondent, on 30th March 2009; and

(ii) a fee of £161 (inclusive of VAT) charged by Property Debt Collection Limited in connection with collection of service charge arrears, invoiced to the Respondent on 9th June 2009 and charged to the Applicant.

3. Directions were issued on 24th May 2010. The Procedural Chairman directed that the case be dealt with on the documentation alone (i.e. no oral hearing) unless either party requested an oral hearing. No such request for an oral hearing has been received by the Tribunal and therefore the matter is being dealt with on the basis of written submissions alone.

THE APPLICANT'S CASE

4. In the application form, the Applicant states that the ground for the application is that the charges are unreasonable, and the Applicant has included with the application what it considers to be the relevant copy correspondence.
5. Whilst the Applicant has not provided a full statement of case, certain points can be gleaned from the copy correspondence. The Applicant argues in correspondence that the Lease does not make provision for payment of these sums, and there is also a suggestion that the demands are not proper demands under the relevant statutory provisions. The Applicant also argues that the £160 charge by the debt collection agency is excessive for the amount of work and that the Applicant's own solicitor would write a similar letter (i.e. one demanding payment) for £20.

THE RESPONDENT'S RESPONSE

6. The Respondent states that the service charge for the 2009 service charge year was demanded on 5th February 2009. On 18th March 2009 a reminder was sent to the Respondent by HML Andertons, which stated that an administration fee would become payable on top of the arrears if not paid within 7 days. Then on 30th March 2009 a 'final reminder before legal action' was issued, together with details of HML Andertons' administration fee of £80.50 for chasing the arrears. As no money was received within 7 days from the date of that letter the matter was referred to Property Debt Collection Limited to recover the arrears. Property Debt Collection Limited invoiced the Respondent in respect of its charges on 9th June 2009 and (somewhat curiously) the Respondent invoiced the Applicant for these charges on 4th June 2009.

7. The Respondent has provided some evidence as to the basis for the debt collection agency's charges of £161. It states that the agency's time was billed at £51.90 per hour and that the time spent included purchasing and examining copies of the freehold and leasehold titles and the Lease.
8. As regards recoverability under the terms of the Lease, the Respondent relies on paragraph 2 of Part I of the Sixth Schedule and paragraph 9 of Part II of the Sixth Schedule. These read as follows:-

Paragraph 2 of Part I of the Sixth Schedule

"The Purchaser shall within 14 days of receiving the notice referred to in paragraph 1 hereof pay to the Management Company a sum equal to the total amount specified in such notice divided by the number of flats within the Property and the Development."

Paragraph 9 of Part II of the Sixth Schedule *[which is preceded by the preamble at the beginning of Part II: "(Expenditure to be recovered by means of the Maintenance Charge)"]*

"The costs incurred by the Management Company in bringing or defending any actions or proceedings against or by any person whomsoever."

THE LAW

9. Paragraph 1(1) of Part I of Schedule 11 to the 2002 Act defines an 'administration charge' as including *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly ... in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant ..."*.
10. Paragraph 1(3) of Part I of Schedule 11 to the 2002 Act defines a 'variable administration charge' as *"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"*.
11. Paragraph 2 of Part I of Schedule 11 to the 2002 Act states that *"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"* and paragraph 5 gives a leasehold valuation tribunal the jurisdiction to determine the amount which is payable on an application being made for such determination.
12. Applying the above, the Respondent is "a person who is a party to [the Applicant's] lease otherwise than as landlord or tenant" and the Tribunal is satisfied that the charges which are the subject of this application are both variable administration charges and that therefore it

has jurisdiction to determine the extent to which (if at all) they are payable.

APPLICATION OF FACTS TO LAW

13. In relation to the **amount** of the charges, the Applicant argues that they are excessive but does not bring very compelling evidence to support this assertion. By contrast, the Respondent does provide a breakdown in respect of the debt collection agency's charges. The Tribunal considers the breakdown to be credible, and the Tribunal accepts that the role of the debt collection agency was not simply to type and send a letter. HML Andertons Limited's charge of £80.50 does not seem unreasonable in the absence of any comparable or other evidence having been brought by the Applicant. Therefore, the Tribunal considers – on the balance of probabilities – that the **level** of both charges is reasonable.
14. The Applicant has also argued in correspondence, although not directly on the application form or in any supporting statement, that the demands were not properly served in accordance with the relevant legislation. However, the Applicant has not properly substantiated this argument and the Tribunal considers that there is insufficient information to enable it to conclude that the demands were defective.
15. Regarding the question of whether these charges are payable as a matter of construction of the terms of the Lease, it is necessary first to expand on the context in which the Respondent has referred to the particular provisions that it has quoted. Paragraph 2 of Part I of the Sixth Schedule has presumably been quoted to establish that service charges (referred to in the Lease as 'Maintenance Charges') are payable and that there is a mechanism for charging them and an obligation on the part of the tenant to pay them within a certain period after they are demanded.
16. It seems that it is paragraph 9 of Part II of the Sixth Schedule on which the Respondent is relying to establish that HML Andertons Limited's charges and the debt collection agency's charges are recoverable under the Lease. However, paragraph 9 allows the Management Company to recover the costs incurred in bringing or defending any "actions" or other "proceedings". Whilst this would cover court actions or proceedings or tribunal proceedings, the Tribunal does not consider that it extends to chasing arrears prior to (or as a substitute for) instigating any actions or proceedings. The Lease could very easily have been drafted so as to be wide enough to cover these sorts of charges (for example by referring to costs incurred in the attempted recovery of arrears) but it has not been so drafted. Therefore, in the Tribunal's view, these charges are not recoverable as a matter of construction of the terms of the Lease.
17. The Tribunal also notes that the provisions relied on by the Respondent are *service charge* provisions, not administration charge provisions.

Therefore, even if the Tribunal were to have agreed with the Respondent that the provisions relied upon are wide enough to cover these charges, this could only have been on the basis that those provisions were *service charge* provisions, and therefore in any event the Applicant's liability would be limited to paying the relevant service charge proportion of these charges rather than the full amount.

DETERMINATION

18. The Tribunal hereby determines that neither HML Andertons Limited's charges of £80.50 nor Property Debt Collection Limited's charges of £161 are payable under the terms of the Lease.

19. With regard to costs, the Applicant has stated on the application form that it does not wish to apply for a Section 20C Order (i.e. an order preventing the Respondent from adding to the service charge some or all of its costs in connection with this case). It is possible that this was an error on the part of the Applicant, as the explanation given for not applying for an Order seems to contradict the wish not to apply for an order. Nevertheless, the Tribunal considers that it has no option but to assume that the Applicant does not wish to apply for a Section 20C Order, and therefore there is no need to consider whether it would be appropriate to make an Order. No other cost applications have been made.

Chairman:  (P Korn)

Dated: 19th July 2010