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**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KG/LSC/2012/0095

Property : 81 Danbury Crescent,
South Ockendon,
Essex RM15 5BX

Applicant : Springfield (Blocks C, D, E, F, G, H)
Management Company Ltd.
Represented by Daniella Gilbert of counsel

Respondent : Toni Louise Gay

**Date of transfer from
Basildon County Court** : 18th July 2012

Type of Application : To determine reasonableness and
payability of service charges and administration
fees

The Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
John Francis

**Date and venue of
hearing** : 24th October 2012, The Thurrock Hotel,
Ship Lane, Purfleet, Essex RM19 1YN

DECISION

1. The Tribunal finds that in respect of the monies claimed by the Applicant from the Defendant in the Basildon County Court under case no. 1BE01991, the amount claimed for service charges is reasonable SUBJECT to any set off or counterclaim for damages for breach of contract or action for specific performance.
2. The Tribunal finds that in respect of the monies claimed by the Applicant from the Defendant in the Basildon County Court under case no. 1BE01991, the amount claimed for administration charges is not reasonable and not payable.
3. This matter is now transferred back to the Basildon County Court under case no. 1BQ00687 to enable either party to apply for any further order dealing with any other matter not covered by this decision including enforcement, if appropriate.

Reasons

Introduction

4. In or about August 2011 a county court claim was issued by the Applicant claiming £677.52 in service charges and £620.25 in administration charges from the Respondent. The Respondent filed a defence alleging breach of contract on the part of the Applicant although, significantly, none of the actual charges claimed were specifically challenged. By an Order made on the 18th July 2012 by Deputy District Judge Wilson, 'so much of the claim as is within the jurisdiction' of this Tribunal was transferred.
5. The Tribunal issued a directions order on the 27th July timetabling the filing and serving of evidence up to the hearing. The Applicant was ordered to file a statement explaining its justification for the charges levied by the 17th August. A statement was filed dated 16th August but this just exhibited a large quantity of paper without any explanation of the individual service charges being claimed. There was an explanation about the administration charges. There was also a summary of the claims being made as follows:-

			£
<u>Service charges:-</u>	1.12.2010-28.02.2011	Quarterly service charge	209.48
	1.06.2009-31.05.2010	End of year balance	240.56
	1.03.2011-31.05.2011	Quarterly service charge	209.48
<u>Administration Charges:-</u>	(no date)	Debt collection charge	176.25
	(no date)	Administration charge	42.00
	(no date)	Debt collection charge	180.00
	(no date)	Land Registry charge	18.00
	(no date)	Administration charge	42.00
	(no date)	Debt collection charge	180.00
			<u>1,297.77</u>

6. From the audited accounts for the year ending 31st May 2010 at page 73 in the bundle, one sees a shortfall of expenditure over income of £18,763.43. One seventy-eighth of that amount is £240.56 which accounts for the end of year balance. The quarterly payments on account of £209.48 each are set out in the budget at page 84 in the bundle even if the various tables set out are somewhat difficult to follow.
7. As far as the administration charges are concerned, they total £84 and are for writing 5 letters commencing at page 90. According to the statement at page 27, the debt collection charges totalling £536.25 are for writing 3 letters (starting at page 86) and attempts to contact the Respondent by e-mail or telephone.
8. The Respondent's statement in response was ordered to be filed and served by the 31st August 2012 detailing which particular service charges were being challenged and why. Her statement arrived on the 12th October 2012 which said, in summary:-
- (a) The main security door has been broken for a long time
 - (b) The eaves of the property are rotting
 - (c) The foyer is grubby
 - (d) Gardens were overgrown but this has been addressed

- (e) Parking is a problem because the parking spaces are not properly delineated
 - (f) Lighting in the car park is insufficient
 - (g) Bin shed doors do not lock resulting in fly tipping
 - (h) Lack of confidence in contractors used
 - (i) Dispute over overflow pipe
 - (j) Windows are not cleaned
9. Much of this amounts to allegations of breach of contract involving claims for damages and/or specific performance, which are not matters within the jurisdiction of this Tribunal. As will be seen, this Tribunal can only deal with the issue as to whether service charges or administration fees are reasonably incurred. There seems to be no argument that if they have been reasonably incurred, they would be payable under the terms of the lease.
10. The only service charge which seems to be directly challenged on the papers is for the cleaning of windows and the figure claimed as part of the income and expenditure account for the year ending 31st May 2010 is £4,145.64 (page 73).

The Inspection

11. The members of the Tribunal inspected the development in which the property is situated in the presence of Kerri Howe from the managing agents and the Respondent.
12. It was a dull overcast morning. The development was built about 15 years ago and consists of several blocks of flats of brick construction under pitched tiled roofs each over 3 storeys and also some houses of similar construction. The members of the Tribunal walked around the grounds which consisted of car park areas, some pleasant landscaping and areas for rubbish bins. The common entrance to the particular block in which the property is situated (Block C) was seen where stair cases go to the upper floors. The stairs were carpeted and reasonably clean despite some engrained dirty marks but the walls were marked and in need of decoration.
13. The development is reasonable close to the centre of South Ockendon which is a small town close to the Lakeside shopping centre. It gave the impression of being a pleasant, reasonably well maintained estate.

The Lease

14. The Tribunal was shown a copy of what appears to be the counterpart lease. It is dated 8th September 1995 and is for a term of 99 years from the 24th June 1995 with an increasing ground rent.
15. There are the usual covenants on the part of the management company to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay a one seventy-eighth part of the service charges for maintaining the building and the estate. As no issue is raised in the defence about the payability of any item of service charge or administration fee, these reasons will not repeat the relevant provisions in the lease, save for those relating to the administration charges.
16. Clause 3(5) of the lease permits the management company to charge 5% per

annum above the base rate of Midland Bank PLC on any overdue payments. The same clause provides a covenant to pay the costs charges and expenses incurred by the management company for undertaking the tasks set out in paragraphs 1-14 of Part IV of the Schedule. Those provisions include the following entitlement i.e. *"The Company may employ such staff or agents for the performance of its obligations hereunder as it shall think fit"*.

17. However, the main provision enabling the Applicant to claim administration fees is paragraph 15 of that part of the Schedule which enables it to recover *"all costs charges and expenses.....properly incurred in relation or incidental to any such action which the Company is unable to collect from any such defaulting lessee"*. This clause does not make much grammatical sense but the intention is clear.

The Law

18. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

19. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

20. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."

21. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

22. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Hearing

23. The hearing was attended by Kerri Howe and Daniella Gilbert of counsel representing the Applicant and the Respondent, Toni Gay, and her friend Ryan Wisbey who, without opposition from Ms. Gilbert, spoke for the Respondent.

24. As far as the administration charges were concerned, the evidence from the Applicant was that the basic facts set out above as to the number of letters

written were correct. It was claimed that it was better to pay the debt collection company a fixed fee, as happened in this case, no matter what they had to do.

25. The Tribunal chair pointed out to the parties, and to the Respondent in particular, that much of her submissions were in respect of alleged breaches of contract in the sense that she was accusing the Applicant of failing to comply strictly with the terms of her lease. In fact the only specific service charges complained of were for window cleaning and management. The evidence on the window cleaning issue was that the outside of the windows always appeared to be dirty. The Respondent accepted that she was usually out during the day.
26. The amount in the service charge accounts for window cleaning equates to about £1 per week per property. For that, the Tribunal, using its knowledge and experience, would assume that the upper windows would just be sprayed and brushed using long handled equipment. This is not very efficient and could well have left the upper windows looking as though they had not been cleaned very thoroughly. The alternative would be to have contractors who provided the man power and time to enable people to use ladders or cherry pickers to get to the individual windows. This would undoubtedly be more expensive.
27. The other issue on the service charge account was the level of management. Ms. Howe described how the management charge of about £244 per unit per annum was her company's mid level service which involved 6 sites visits per annum plus attending 2 directors' meetings of the management company. They have a 24 hour emergency call out service and an internal legal team. The company also has a 'custom' level of service for £150 per unit per annum and a 'high' level for £250-350 per unit per annum which would involve 10 site visits and attending 4 directors' meetings.
28. The Respondent's main objection was that despite many complaints, the 'secure' entrance door had been inoperative for some 2/3 years. Even when the Tribunal inspected, it was working but the outside protective plate was only held on by one screw and it was clearly loose. It was accepted that a contractor had been called out but it appeared from the van and equipment used that the contractor was in fact a cleaning company. The Respondent had ascertained that a locksmith would have charged just over £100 to do a 'proper' job.
29. There were also some other incidents of alleged failure to provide a reasonable level of management. A contractor called in to deal with a leaking pipe had caused a hole in the roof. There does not appear to be anything done about fly tipping in the dustbin areas or people who were bringing their bicycle and pushchair into the common parts of Block C and either scraping the wall or leaving them in the hallway for people to trip over.

Conclusions

30. When the Tribunal went around the estate, the windows did not give the appearance of being dirty and uncleaned. On balance, the Tribunal finds that the window cleaning charge in the service charge account is reasonable for the service provided.
31. There were other accusations about the level of management given by the

managing agents but the upshot of all this, so far as the Tribunal was concerned, is that whilst the supervision of contractors was possibly lacking, particularly with regard to the security door, the general level of and cost of the management was reasonable. There is no doubt, in the Tribunal's view, that the Respondent did feel very vulnerable and, at times, frightened when the security door was not working.

32. The problem with this sort of development is that you pay for what you get. A system of CCTV cameras and/or constant patrolling would be ideal but it would also be very expensive. Locks had been put on the dustbin areas but these rarely work because, as in this case, the locks and hasps are just pulled off. With the type of security door used in this development, it is not that difficult for someone who has lost their key to just break the door locking mechanism to get in. The fact of the matter is that the level of disturbance and bad behaviour one gets is almost entirely dependent on the level of pride the occupants have in their surroundings. With the increase in buy-to-let properties, this Tribunal is finding that there are more sub tenants than there used to be and sub tenants do not tend to care too much about their environment.
33. Mr. Wisbey said that he was familiar with part of the Chafford Hundred development where Caxtons were the managing agent. His impression was that Caxtons did a better job. However, the Tribunal had no evidence as to the character and size of that part of Chafford Hundred.
34. So far as the administration fees are concerned, the Tribunal's view is that letters written by the managing agent should be included in the management fee, which is at the upper end of the range of fees charged by professional managing agents in the locality for an estate as large as this one. It is certainly possible for the managing agent to use a debt collection company under the terms of the lease. The question is whether this was reasonable in the circumstances. Charges totalling £536.25 for writing 3 letters and using the telephone or e-mail seems to this Tribunal to be totally disproportionate and unreasonable.
35. It is clear that the Respondent was refusing to pay as a matter of principle because of what she saw to be a genuine complaint about the level of service being provided by the managing agent. The Tribunal's impression was that if the managing agent had dealt properly with the complaint about the security door, this litigation would not have been necessary.
36. The simplified on line system of issuing court proceedings for debt means that a large, experienced firm or company of managing agents with its own legal department should be able to either resolve this sort of problem before it gets to court or, if all else fails, issue court proceedings itself. If a defence is filed, it can then decide whether to seek professional help.

For the Court's assistance

37. This Tribunal has only determined the reasonableness of the management fees on the basis that the managing agents have performed reasonably well. The problem is that most of the allegations of the Respondent are about whether the Applicant has properly complied with the terms of the lease as to maintenance and repairs etc. The only remedies which will satisfy the Respondent are

damages or specific performance, neither of which is within the jurisdiction of this Tribunal.

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Bruce Edgington
Chair
26th October 2012