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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL

Sections 19, 27A and 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act")

Case Number:	**CHI/29UK/LSC/2012/0116**
Property:	**6 Ide Hill Hall, Phillippines Shaw, Ide Hill, Sevenoaks, Kent TN14 6EY**
Date of Application:	**27 August 2012**
Applicant:	**Dr Michael David Lloyd**
Respondents:	**Ide Hill Park Leasehold Management Company Limited**
Appearances for Applicants:	**Applicant in person**
Appearances for Respondent:	**No appearance**
Date of hearing:	**21 November 2012**
Tribunal:	**Ms E Morrison LLB JD (Lawyer Chairman)** **Mr A Mackay FRICS (Valuer Member)** **Mr P A Gammon MBE BA (Lay Member)**
Date of the Tribunal's Decision:	**27 November 2012**

The Applications

1. The Applicant leaseholder applied under section 27A (and 19) of the Act for a determination of his liability to pay service charges relating to the costs of the lift at Ide Hill Hall. The application was stated to be in respect of service charge years 2009/10 - 2012/13 inclusive and future years. The Respondent is the management company for Ide Hill Hall.

2. The Tribunal also had before it an application under s 20C of the Act that the Respondent's costs of these proceedings should not be recoverable through future service charges.

Summary of Decision

3. The apportionment of lift costs between Apartments 6 and 7 is to remain as provided for in the lease. The recoverability of specific heads of lift expenditure is determined as set out below, subject to being demanded in accordance with the lease and statute.

4. No order is made under section 20C of the Act.

The Lease

5. The Tribunal had before it a copy of the lease for Apartment 6. The lease is dated 3 August 2009 and is for a term of 999 years from 1 January 2007 at a yearly ground rent of £150.00. The parties to the lease are (1) Livesey South Eastern Ltd as Landlord (2) the Respondent as the Management Company (3) another company which plays no part in these proceedings and (4) the Applicant and his wife as the Tenant.

6. The relevant provisions in the lease may be summarised as follows:

   (a) The Tenant covenants with the Management Company to pay a service charge in respect of the expenditure described in Part 1 of the Second Schedule. On account payments may be required (clause 7.1)
   (b) The Management Company covenants to keep in good and substantial repair the Retained Parts (clause 8.2) which are so defined as to include the lift (clause 2.5).
   (c) Part 1 of the Second Schedule describes the service charge expenditure and this includes the cost of performing the Management Company's repairing covenants.
   (d) In respect of expenditure relating to the lift the Tenant is to pay the proportion that the square footage of his property bears to the total square footage of all properties having the right to use the lift (clause 1.10);

The Inspection

7. The Tribunal inspected the subject property immediately before the hearing. The Applicant was in attendance. Ide Hill Hall is a large and imposing Victorian country

house in a rural location, which has recently been converted into seven apartments. The front door gives access to a very large and fully-furnished entrance hall. Apartments 1-5 are located on the ground floor, and four of these have front doors off the entrance hall. The fifth has a separate external front door. Another door off the hall leads to the lift lobby. In the middle of the building there is a large central staircase leading to a first floor landing which surrounds the stairwell. The front door of Apartment 6, which comprises the bulk of the first floor, is accessed off one corner of the landing. At more or less the opposite corner a doorway leads to a lobby from which there is access to the lift and to the front door of Apartment 7. Although Apartment 7 is the penthouse apartment occupying the second floor, its front door and one room are located on the first floor, with an internal staircase to the second floor.

8. The lift runs from the ground to the first and second floors. However operation to the second floor is controlled by a key switch.

Representation and Evidence at the Hearing

9. The Applicant had filed a statement with supporting documentation, and presented his own case at the hearing. The Respondent had not filed a statement of case as directed by the Tribunal and did not attend the hearing. It was clear from a letter sent to the Tribunal by the Landlord's solicitors dated 18 September 2012 that following receipt of the Application the officers of the Respondent had resigned with immediate effect. Those officers had been officers of the Landlord company, the leases providing for a handover of control to the Ide Hill Hall leaseholders once the last apartment was sold. The Respondent's managing agents had informed the Tribunal that they had no instructions to attend but had sent the Tribunal draft service charge accounts for the past two years and a draft budget for the current year. These documents were considered by the Tribunal, as well as copy emails and other documents in the Applicant's Bundle which affected the merits of the application.

10. The Tribunal also had before it a letter from the leaseholder of Apartment 7, the penthouse, dated 26 October 2012. He opposed any reallocation of expenses relating to the lift.

The Law and Jurisdiction

11. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

12. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

13. By section 20 of the Act and regulations made thereunder, where there are qualifying works, or the landlord enters into a qualifying long term agreement, there are limits on the amount recoverable from each leaseholder by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation, the limit on recovery is £250 per leaseholder in respect of qualifying works, and £100 per leaseholder in each accounting period in respect of long term agreements. ('Landlord' means anyone who has the right to enforce payment of a service charge: section 30).

14. Under section 20C a tenant may apply for an order that all or any of the costs incurred in connection with proceedings before a leasehold valuation tribunal 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.

The Issues for Determination

A Allocation of cost between Apartments 6 and 7

15. The Landlord's solicitors had informed the Tribunal that only the leases of Apartments 6 and 7 granted a right to use the lift. This was not disputed by the Applicant. The managing agents had informed the Tribunal that the costs were apportioned 42.24% to Apartment 6 and 57.76% to Apartment 7. The Applicant accepted this was "probably right" based on the floor areas of the respective properties.

16. The Applicant's submitted that allocation on the basis of floor area was unfair. He explained that neither he nor his wife use the lift because of its location and the easier access to the stairs. The remote location of the lift from his front door shows that it is really there to serve the penthouse; on the second floor the lift gives direct access to the interior of that apartment. Only the penthouse occupants are able to operate the lift between the first and second floors. He accepted there was potential for him to use the lift but said that potential was limited. The Applicant suggested that an allocation of 20% of the costs to him would be "more workable". He said that when he signed the lease he didn't know what the costs would be or realise that the penthouse access to the lift was different from his.

17. Determination: The provisions of the lease are clear. The recoverable costs for the lift are to be divided between the two apartments using the lift according to their respective square footage. The extent to which the Applicant chooses to use the lift has no relevance. The lease is the contract entered into by the Applicant and the Tribunal has no jurisdiction in a section 27A application to vary the lease.

B Service Charge Year 2009-10

18. There were no copies of demands or final accounts confirming service charge expenditure for this year before the Tribunal. The Applicant thought he had only received demands for on account payments. However, the Applicant said he had known about the figures said to be due in respect of the lift for a while, and the

account he relied on was included in a document at page 4.2 of his bundle. He said this had been issued by the managing agents on 14 June 2012 and was marked 'Draft'. The lift costs for the year (which ran to 31 March 2010) total £1206.09, broken down into lift maintenance of £710.24, lift telephone at £66.97 and £428.88 lift key holding service.

19. The Applicant did not challenge the figures for lift maintenance or the telephone but disputed his liability to pay for a key holding service which benefitted only Apartment 7. The keys held were the key for the lift access to the second floor, and the front door key which has nothing to do with the lift and which was incidental. When the Applicant had challenged this charge with the managing agents the service had been cancelled at the end of service charge year 2010-11, with no objection from Apartment 7. He did not think the lease provided for such a charge to be made.

20. Determination: Having considered the relevant clauses of the lease (clause 8.2 and Second Schedule Part 1) the Tribunal is not satisfied that a lift key holding service provided for the benefit of one leaseholder only is expenditure which can be recovered under the service charge provisions, whether they be the specific lift cost provisions or the general service charge provisions. The total recoverable lift service charge costs for 2009-10 are therefore limited to £777.21 of which £328.29 (42.24%) is attributable to Apartment 6. As the Applicant's lease only started on 3 August 2009 a further apportionment of costs may be required if any of the lift costs were incurred prior to that date. There was no evidence on that point before the Tribunal. Furthermore, payability is subject to a valid demand being made which complies both with the lease and the relevant statutory provisions.

C Service Charge Year 2010-11

21. Again no copies of demands or final accounts were in evidence. The Applicant relied on figures in the same document at page 4.2, with lift costs totalling £1579.82 (maintenance £831.01, telephone £310.81 and key holding service £438.00). The only charge challenged was the key holding service, for the same reasons as for the previous year.

22. Determination: As for the previous year the key holding charge is disallowed. The total recoverable lift costs are therefore £1141.82, of which £482.30 is attributable to Apartment 6. Payability is subject to a valid demand being made which complies both with the lease and the relevant statutory provisions. It should also be noted that in the most recent draft accounts submitted by the managing agents to the Tribunal with their letter of 22 October 2012, there is an additional head of lift expenditure noted: electricity at £197.53. This charge was not considered as part of this application and the determination does not cover it.

D Service Charge Year 2011-12

23. The Applicant explained that following his complaints about the lift charges at the start of 2011, it was agreed with the managing agents that the costs needed to "managed down". The key holding service was terminated. The leaseholder of Apartment 7 identified a cheaper lift maintenance company, JDR, to replace Otis.

The Applicant had no objection and a new 1 year contract was entered into between JDR and the Respondent as of 1 August 2011. However the costs had in fact increased. Again no copies of demands or final accounts were in evidence, and again the Applicant relied on the document at page 4.2, with lift costs totalling £2230.83, comprising lift service contract £80, maintenance £1859.12 and telephone £291.71. The Applicant disputed the maintenance costs. He said there had been frequent call-outs, which (apart from one that he had instigated on 26 April 2011) he thought had been initiated by the occupant of Apartment 7 (which had been let out) direct to the lift maintenance company without any control by the managing agents. There was no evidence that call-outs had even gone through the managing agents. The occupant of Apartment 7 had no interest in controlling cost and the managing agents had simply been passive. He didn't know why there were so many call-outs for a new lift, but did not dispute that Otis or JDR had attended and done the work referred to on the job sheets.

24. The maintenance figure included £714.00 for the cost of a new auto-dialler. According to an email from the managing agents, the original auto-dialler in the Otis lift had to be replaced when Otis's maintenance contract ended as it could not be programmed to call another company. So this was a cost of transferring the service contract, of which the Applicant had had no prior warning. Nor had he been consulted before the work was done. The job sheet for a repair visit on 29 November 2011 noted that "Customer requests auto-dialler quote". The Applicant thought this customer may simply have been the occupant of Apartment 7. The work was not urgent; no-one had ever been stuck in the lift.

25. Determination: It is clear from the documentation that JDR charged less than Otis both as an annual fee to cover regular services, and for call-outs. Over the year there were 5 call-outs to attend to apparent problems with the lift, 3 attended by Otis and 2 by JDR. One of these was initiated by the Applicant. He had no direct evidence to challenge the need for the further visits, which are all substantiated by job sheets. While there may be some ground for investigating why a new lift is malfunctioning so frequently, there is no evidence to establish that any of the call-outs or their cost was unreasonable. With regard to the auto-dialler, the Tribunal finds that this work comes within the scope of the Respondent's maintenance and repairing obligations under the lease, but as the each of the concerned leaseholder's share of the cost exceeds £250.00 the consultation procedures required by section 20 of the Act should have been followed. There was no consultation and there has been no application to dispense with the consultation requirements. As a result the amount recoverable in respect of the auto-dialler is limited to £500.00 (£250.00 per leaseholder). All other lift charges are allowed.

26. The total recoverable lift costs are therefore £2016.83, of which £851.90 is attributable to Apartment 6. Payability is subject to a valid demand being made which complies both with the lease and the relevant statutory provisions. (The same point is made as for the previous year with regard to electricity.)

E Service Charge Year 2012-13

27. This is the current year, which does not end until 31 March 2013. Thus consideration is limited to the reasonableness of the budget, a draft of which was provided by the managing agents. The lift budget consists of £120.00 for the JDR

service contract, £1250.00 as a global figure covering both repairs outside the scope of the service contract and a reserve for future major cost, £320.00 for the lift telephone, £102.00 for electricity, and £360.00 for engineering inspection. The Tribunal does not find any of these figures to be unreasonable. The lease provides (at paragraph 5.1 of Second Schedule Part 1) for a reserve to be accumulated. It would be preferable for future budgets to have separate allocations for lift maintenance and lift reserve but the global figure of £1250.00 as stated in the current budget is reasonable.

28. The Tribunal notes that the JDR service contract was automatically renewed as of 1 August 2012. According to the written conditions (at page 3.4 of the bundle) it will have been renewed for a 2 year term. However an email from the managing agents (at page 6.2) suggests the renewal is only for 1 year. This must be clarified. If for 2 years, the consultation requirements of section 20 will apply and limit recoverability under that contract to £100.00 per leaseholder in each relevant accounting period (unless there is a successful application for dispensation).

F Future service charge years

29. As there is no budget in place for future years, there is nothing for the Tribunal to determine.

G Section 20C Application

30. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. In this case the Applicant has been successful only to a limited degree. The Respondent was left in a difficult position by the Landlord when its officers suddenly resigned. For these reasons, no order is made under section 20C limiting recovery of the costs as a future service charge. It must be emphasised, however, that no determination is made as to the reasonableness of any such charge. Nor is there any finding as to whether the Respondent is entitled to recover such costs under the terms of the lease.

Chairman: _____
E Morrison LLB JD

Dated: 27 November 2012