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**HM COURTS AND TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Case Number:** CHI/40UE/LIS/2011/0081

**Re:** 1 Compass Hill, Taunton, TA1 4EF

**In the matter of** an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges.

**Between:**

**Compass Hill House Management Limited** Applicant

and

**Victoria Marie Vincent** Respondent

Date of issue of claim:	25 May 2011
Date of transfer to the Tribunal:	18 October 2011
Date of hearing:	26 January 2012
Members of the Tribunal:	Mr. J. G. Orme (Lawyer Chairman) Mr. P J R Michelmore FRICS (Valuer member) Mr. J S McAllister FRICS (Valuer member)
Date of decision:	8 February 2012

**Decision of the Leasehold Valuation Tribunal**

**For the reasons set out below, the Tribunal determines that the sum of £720.30 claimed by Compass Hill House Management Limited from Victoria Marie Vincent in respect of service charges for Flat 4, 1 Compass Hill, Taunton is not payable by her.**

**Reasons**

**The Application**

1. 1 Compass Hill, Taunton, TA1 4EF ("the Property") has been converted into residential accommodation containing 5 flats.
2. The freehold of the Property is now owned by the Applicant. The company was represented before the Tribunal by its managing agent, Mr. P W Muzzlewhite FRICS, a partner in the firm of Whitton & Laing. Mr.

Muzzlewhite is recorded at Companies House as the secretary of the Applicant Company.

3. The Respondent, Miss Vincent, is the leasehold owner of Flat 4 at the Property. She is also registered at Companies House as a director of the Applicant Company.
4. On 25 May 2011 the Applicant issued claim number 1EX01176 in the Exeter County Court against the Respondent claiming £720.30 service charges due as at 17 May 2011 together with interest and costs. The Respondent filed a defence on 28 May 2011 in which she alleged that no explanation of the service charges had been provided and that she had objected to the appointment of Whitton & Laing as managing agents. She also alleged that no maintenance had been carried out. The claim was transferred to the Taunton County Court and by order made on 18 October 2011, the claim was transferred to the Tribunal to determine whether the service charges claimed are payable.
5. The Tribunal issued directions on 31 October 2011 providing for the parties to exchange written statements of case and for the application to be listed for hearing. The application was listed for hearing on 26 January 2012.

## **The Law**

6. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20B, 20C, 21B and 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").
7. Section 18 of the Act provides:
  - 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.*
8. Section 19(1) provides:-
  - 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 provision 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.*

9. Section 20B provides:-

- 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.*

10. Section 21B provides that a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The form of that summary is prescribed. A tenant may withhold payment of a service charge if the prescribed summary is not provided. Subsection (4) provides *"Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it."*

11. Section 27A provides:-

- 1) *An application may be made to a leasehold valuation 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.*

Subsections 2 to 7 of section 27A are not relevant in this application.

12. Section 20C provides:-

- 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 ... 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.*
- 2) *...*
- 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.*

## The Lease

13. The Tribunal had before it a copy of the lease relating to Flat 4. It is dated 19 November 1993 and was made between Mawcourt Limited as landlord, the Applicant as the Management Company and Nicola Collard as tenant.
14. By the lease, the landlord demised Flat 4 to the tenant for a term of 99 years from 1 June 1993 at a yearly rent of £50 subject to review.
15. The Lease contains the following material definitions which will be adopted in these reasons:
  - 1.4 *"the Building" means Compass Hill House 1 Compass Hill Taunton Somerset as is shown edged red on plan 1 comprising five residential flats*
  - 1.6 *"the Common Parts" means the access entrance hall store refuse areas and all other parts (if any) of the Building which are intended to be for the use and enjoyment of the Tenant in common with other occupiers (and their invitees) of other parts of the Building*
  - 1.9 *"the Service Charge" and "the Provisional Service Charge" shall bear the meanings ascribed to them respectively by and shall be construed in accordance with the Third Schedule of this Lease*
  - 1.10 *"the Proper Proportion" means the proportion attributable to the Flat being 12.46 per centum of the total expenditure incurred by the Landlord and the Management Company in providing the services and carrying out its obligations in accordance with Clause 5.1 hereof and Clause 2 of the Third Schedule*
16. Clause 3 of the lease contains a covenant by the tenant to pay to the landlord or the management company  
*"The Service Charge as a contribution towards the costs and expenses of running the Building and the maintenance thereof and the other matters more particularly specified in the Third Schedule in accordance with the provisions of the said Schedule"*
17. Clauses 5.1(a), (b) and (c) of the lease contain covenants by the landlord and the management company (subject to payment of the service charge and provisional service charge) to maintain repair decorate and renew the main structure of the building, the common parts and the gas and water pipes drains and electric cables which serve the flat and other premises forming part of the building; to keep clean and lighted the passages landings and staircases used by the tenant; and to insure the building.
18. The third schedule contains the service charge provisions. Paragraph 1 provides for the tenant to pay the service charge by quarterly instalments. The service charge is to be the proper proportion of the reasonable cost to the landlord of providing supplying maintaining and making provision for the supply of the services and other matters specified in paragraph 2 of the schedule together with the fees and disbursements paid to any

managing agents appointed by the landlord. The service charge is to be calculated:

*"1.1 quarterly in advance on the first day of January April July and October in each year each such payment being one quarter of the proper proportion (as certified by the Landlord or the Management Company) shown in the most recent accounts prepared as hereinafter provided apportioned where necessary so as to relate to a part of the year and reasonable adjustments made thereto to take account of an increase in the cost of providing the said services or any proposed exceptional or major expenditure in relation to any of the said services."*

19 Paragraph 1.3 provides

*"as soon as is convenient after the expiry of each accounting period commencing with the one current at the date hereof the Landlord shall submit to the Tenant an account certified by the Landlord showing the expenses and outgoings incurred by the Landlord or the Management Company in providing supplying maintaining and making provision for the services and other matters specified in the said paragraph 2 during that accounting period which shall include not only those expenses outgoings and other expenditures which have been actually disbursed incurred or made by the Landlord during that year (or part of a year) but also such reasonable provision on account of part or all expenses outgoings and other expenditures which are not of an annually recurring nature (whether non-recurring or recurring by regular or irregular periods of more than one year) whenever to be disbursed incurred or made as the Landlord or the Management Company may in its discretion allocate to the year (or part of a year) in question as being fair and reasonable in the circumstances so as to ensure as far as is reasonably foreseeable that the Service Charge shall not fluctuate unduly from year to year and the Service Charge payable by the Tenant in respect thereof shall be the proper proportion of those expenses and outgoings and other expenditures and the said provisions and fees."*

20 Paragraph 1.4 provides for any balancing charge between the provisional service charge and the actual service charge to be paid by the tenant to the landlord or by the landlord to the tenant.

21 Paragraph 2 lists the services referred to in paragraph 1 of the schedule. They are listed by reference to the landlord's obligations under clauses 5.1(a), 5.1(b) and 5.1(c).

### **Inspection**

22 The Tribunal inspected the Property on 26 January 2012 in the presence of the Respondent and her father. The Applicant was not present nor represented. In view of the Tribunal's findings, there is no need to set out in detail the Tribunal's observations other than to say that it was apparent that the Property is in need of repair and maintenance.

## **The Hearing**

- 23 The hearing took place at the Shire Hall, Taunton on 26 January 2012. The Applicant was represented by Mr. Muzzlewhite. The Respondent appeared in person with her father.
- 24 Mr. Muzzlewhite had submitted a statement with supporting documents. The Respondent had submitted no statement of case or documents and relied on the terms of her defence.
- 25 The issue to be determined was whether the service charges claimed by the Applicant are payable by the Respondent.

## **The Evidence**

- 26 Mr. Muzzlewhite confirmed that the contents of his statement were true. He said that he had been managing the Property since mid-2008 when he was approached by 3 out of the 5 residents. He said that he had entered into a contract with the Applicant to manage the Property. He thought that he possibly had a formal letter of appointment but was unable to produce it to the Tribunal. He had agreed a fee of 15% of actual expenditure, subject to a minimum of £300 per year, plus VAT. He did not know if the 3 residents who approached him had authority to bind the company. He said that he had received no objection from any other residents of the Property.
- 27 Mr. Muzzlewhite said that he had not produced a schedule of works and estimates for the work which was required for the Property. He said that he had produced budgets and discussed those with the residents. He undertook work as and when it was practical. He was aware that further works were required but as 2 residents were not paying their service charge, the other residents were unwilling to put in more of their own money. In response to a question from the Tribunal, Mr. Muzzlewhite confirmed that he was aware of the provisions of the Service Charge Residential Management Code produced by the RICS.
- 28 He said that he had given advice to the Applicant about enforcing arrears of service charge. He had a large file of letters to the Respondent and the other defaulting resident demanding payment and had issued the claim when the arrears were of a sufficient size. He said that the Respondent was not living at the Property and had refused to reveal her address but had asked for correspondence to be sent to the Property.
- 29 Mr. Muzzlewhite had produced copies of the company accounts for the Applicant for the years ended 30 September 2008, 2009 and 2010. He said that there were no separate service charge accounts and he relied on the income and expenditure accounts within the company accounts as an account of the service charge. The accounts were certified by an accountant. He was unable to point to anything that amounted to a landlord's certificate on the accounts. He said that a copy of the accounts had been sent to the Respondent soon after they were produced but he could not produce copies of the covering letters. He said that it was his

standard practice to call residents' meetings to discuss the accounts. The Respondent had not been present at any of those meetings. He agreed that the accounts made no provision for future expenditure.

- 30 Mr. Muzzlewhite said that there was a service charge budget but he was unable to produce it. The payments on account of service charge were the minimum necessary to cover the cost of insurance, basic costs and minimum repairs. For the convenience of residents, it had been agreed that the service charge was payable monthly.
- 31 He said that the amounts claimed from the Respondent were payments on account of service charges. There had been meetings of residents when the accounts of the previous year had been discussed and the amount of future payments had been agreed. He said that demands for payment had been sent out accompanied by the service charge accounts. He produced copies of letters demanding payment of arrears of service charge but no letter setting out either what the service charge would be or a certificate from the landlord. He said that the section 21B notice would have accompanied each request for payment but he could not produce a copy of the notice.
- 32 Mr. Muzzlewhite was taken through the income and expenditure accounts for the years ended 30 September 2008, 2009 and 2010 and asked to justify the expenditure recorded in those accounts. He produced invoices for some but not all of the payments.
- 33 The Respondent said that she was not aware of the appointment of Whitton & Laing as managing agents. She had not been asked to attend meetings to discuss budgets. She had not received any certified demands for payment of service charges. She said that she received letters from Whitton & Laing every month demanding payment of the charges but she had not received any statement of her rights and obligations. She had not seen any service charge accounts before seeing the company accounts in the bundles for the hearing. She had not made payment as she was not satisfied that the sums claimed were due. She had asked for information but Whitton & Laing had refused to communicate with her. She accepted that some of her post may have gone astray but she did collect it from the Property. She had not wanted to reveal her home address for fear of being harassed.

## **Conclusions**

- 34 Mr. Muzzlewhite emphasised on several occasions that he sought to manage the Property on a consensual basis and that he discussed his plans with the residents and agreed with them what could be afforded. Whilst that might be a very laudable approach, it does not necessarily follow the terms of the lease or of the Service Charge Residential Management Code.
- 35 What Mr. Muzzlewhite did not seem to appreciate is that the lease is a contract between the Applicant and the Respondent and that recalcitrant

leaseholders may be forced to pay service charges provided that the correct procedures are followed.

- 36 Mr. Muzzlewhite accepted that the sums claimed by the Applicant are payments on account of service charges. As such, the Applicant ought to have complied with the terms of paragraph 1.1 of the third schedule to the lease. That requires the Applicant to produce service charge accounts in accordance with paragraph 1.3 of the schedule and then for the Applicant or its managing agent to certify the proper proportion payable by the Respondent for the following year.
- 37 On the basis of the evidence before the Tribunal, the Tribunal finds the following facts:
- a) The Applicant has produced no service charge accounts for the year ended 30 September 2008 and subsequent years as required by paragraph 1.3 of the third schedule. The income and expenditure accounts attached to the company accounts do not suffice for that purpose. The company accounts are produced to enable the company to comply with its statutory obligations. The service charge accounts should be prepared in accordance with the terms of the lease. There may not seem to be much difference between the two but it is an important one and they would differentiate the liability of the Respondent as a leaseholder and her liability as a shareholder and director of the Applicant Company. In particular, the service charge account should make reasonable provision for future expenditure so as to ensure that the service charge does not fluctuate unduly from year to year and it should be certified by the landlord.
  - b) The Applicant has not produced to the Respondent a certificate by the Applicant as to the proper proportion of the service charge which is payable by her based on the most recent accounts in accordance with paragraph 1.1 of the third schedule.
  - c) The Applicant has not served on the Respondent the appropriate notice required by section 21B of the Act. The only evidence of such a notice having been served was the reference to such a notice being enclosed with a letter dated 27 October 2010 demanding payment of arrears of service charge. The Tribunal accepts the Respondent's evidence that such a notice has not been served on her.
- 38 As the Applicant has failed to comply with the provisions of paragraphs 1.1 and 1.3 of the third schedule to the lease, The Tribunal concludes that the Respondent is not liable to pay the sums on account of service charges which are claimed from her in this action. Even if the Applicant had complied with the provisions of the lease, the Respondent would be entitled to withhold payment of such sums as the Applicant has not complied with the provisions of section 21B of the Act.
- 39 It is still open to the Applicant to rectify the position by producing proper service charge accounts in accordance with the provisions of the lease



and serving them on the Respondent and other residents of the Property. A question may arise as to whether section 20B of the Act will prevent recovery of some costs but that is not a question to be addressed in this application.

- 40 In the light of the Tribunal's findings, there is no need for the Tribunal to make a determination as to the recoverability of each individual item in the income and expenditure accounts. However, the Tribunal has some doubt as to whether the accountancy fees, Companies House fees and postage are recoverable as service charges under the terms of the lease. They may be recoverable from the shareholders of the company as part of the costs of running the company but that would be a different liability from the liability to pay service charges under the lease.
- 41 Likewise, there is no need for the Tribunal to make any findings as to whether or not Whitton & Laing were properly appointed to act as managing agents on behalf of the Applicant. Whether or not they were properly appointed, the proper procedures have not been followed. However, it would be as well to ensure that they have been properly appointed so that the point does not arise in future.
- 42 There was no application by the Respondent under section 20C of the Act. The Tribunal is not able to deal with any questions that arise in relation to the claim for interest or for costs of the claim. Those issues must be dealt with by the County Court.



Mr. J G Orme  
Chairman  
Dated 8 February 2012