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

**LANDLORD AND TENANT ACT 1985, Section 27A as
amended by the COMMONHOLD AND LEASEHOLD
REFORM ACT 2002**

Property : 17 Chaseley Field Mansions
21 Chaseley Road
Salford M6 7DZ

Applicant : Chaseley Field Limited

Respondents : Mr Philip Wright and Mrs Julie Wright

Case number : MAN/00BR/LSC/2011/0077

Date of Reference : 26 July 2011

Type of Application : Application for a determination of
liability to pay and reasonableness
of service charges

The Committee : P J Mulvenna LLB DMA (chairman)
R D Pritchard FRICS

Date of decision : 27 January 2012

ORDER

**That the service charges for the year ended 31 December 2010 and ending 31
December 2011 are reasonable and payable by the Respondents under the terms
of the Lease.**

REASONS

INTRODUCTION

1. Chaseley Field Limited ('the Applicant') lodged a claim in the County Court seeking the payment from Mr Philip Wright and Mrs Julie Wright ('the Respondents') of specified charges for services in respect of 17 Chaseley Field Mansions, 21 Chaseley Road, Salford, M6 7DZ ('the Property'). On 26 July 2011, at Salford County Court, an Order was made by District Judge Neaves for the matter to be referred to the Leasehold Valuation Tribunal.
2. The Property is an apartment in a purpose-built block of 18 apartments known as Chaseley Field Mansions ('CFM') constructed by or on behalf of Whispers Construction (Chaseley Field) Limited ('Whispers') in or around 2008.
3. The Respondents acquired a leasehold interest in the Property granted by an Underlease made between (1) Whispers, (2) the Applicant and (3) the Respondents on 22 April 2009 for a term of 250 years (less 10 days) from 8 April 2004 ('the Underlease').

THE HEARING

4. Directions were issued by Mr A Robertson, procedural chairman, on 8 September 2011 and subsequently amended at the request of the Applicant. The parties have complied with the Directions.
5. The substantive hearing of the application was held at the Tribunal's offices, 5 New York Street, Manchester, on 27 January 2012. The Applicant was represented by Ms L Barry, solicitor, and Ms J Whalley. The Respondents were represented by Mr P Wright.
6. Having heard from the parties, the Tribunal determined that, having regard to the nature of the issues in dispute, an inspection of the Property was unnecessary.
7. The Tribunal heard oral evidence from Ms Whalley and oral submissions from Ms Barry on behalf of the Applicant and oral evidence and submissions from Mr Wright on behalf of the Respondents.
8. The Tribunal also had before them the written evidence and submissions of the Applicant and the Respondent, together with the documentation relating to the Applicant's claim in the County Court. .

THE EVIDENCE, SUBMISSIONS & ISSUES FOR DETERMINATION

9. The Applicant has asked for a determination of the reasonableness of the service charges for the financial years 2009/10 and 2010/11. The Tribunal had before them the service charge demands for those years which complied with The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.
10. There has been no challenge by the Respondents as to the reasonableness of the service charges demanded. The challenge is in relation to payability. The

evidence and submissions from both parties related to the circumstances in which Scanlans Property Management LLP ('Scanlans') were appointed as managing agents for CFM and an agreement reached between Scanlans and the Respondents as to the payment of the service charges.

THE LEASE

11. The Tribunal has read and interpreted the Leases as a whole but in reaching its conclusions and findings has had particular regard to the following matters or provisions contained in the Leases, none of which were the subject of dispute or argument by or on behalf of the parties:
 - (a) The Definitions Clause which contains definitions which include matters relevant to the service charge.
 - (b) Clause 1 which contains the Demise.
 - (c) Clause 2 which contains the Respondents' covenants, in particular, those relating to the Maintenance Charge.
 - (d) Clause 4 which contains the Applicant's covenants.
 - (e) Clause 5 which contains Whispers' covenants.
 - (f) Clause 6 and the Third Schedule which contains and refers to the Management Charge covenants.

THE DETERMINATION AND DECISION

12. The Tribunal have considered the issues on the whole of the evidence and submissions now before them and, applying their own expertise and experience, have reached the following conclusions on the issues before them.
13. The Respondents have not challenged the reasonableness of the service charges and there is no objective evidence before the Tribunal to suggest that they are unreasonable. In particular, no evidence has been produced of comparable service charges for comparable works and services at comparable properties which would suggest that the service charges are inherently unreasonable. No sustainable issues have been raised as to value for money in relation to any of the individual costs recharged. The Tribunal are aware from their own experience and knowledge that the service charges demanded are not substantially different from those of other, similar developments in the immediate area or in the wider area of the Residential Property Tribunal's Northern Region. The Tribunal find that the service charges demanded for the years in question are reasonable.
14. The Respondents have not disputed that they are liable to pay the service charges apportioned to their apartment under the terms of the Lease. Their challenge is based on an agreement that expenditure claimed to have been incurred by them would be credited to their service charge account. In these circumstances, the Tribunal find that the Respondents are liable to pay the service charges for the years in question.

15. It is common ground that sometime in or around 2010 Whispers ceased to trade and Scanlans were appointed (on 18 June 2010) as managing agents of CFM. On 13 August 2010 a meeting was held between Philip Wright (one of the Respondents) and Ian Burns of Wrightchoice Developments Limited ('Wrightchoice') and Joanne Whalley of Scanlans. Wrightchoice appears to have been a company through which the Respondents managed properties, including the Property and other properties in CFM. Wrightchoice was wound up pursuant to a voluntary creditors liquidation on 16 March 2011.
16. The minutes of the meeting held on 13 August 2010, which have been relied upon by both parties and have not been disputed, record that

'JW went through the service charge budget proposal with Phil who deemed this to be reasonable. Wrightchoice Developments have requested payments from the Owners to 31 July 2010 and the Management Company is to raise demands from 1 August 2010 onwards' and that

'Wrightchoice Developments Income & Expenditure Sheet completed to 31 July 2010. Once received it was then agreed to apply a credit to the service charge accounts of the apartments owned by Wrightchoice for the equivalent amount. Phil also agreed to pay the contractors to 31 July 2010 after which the Management Company would arrange for payment directly to the contractors to coincide with the Management Company commencing service charge billing to the Owners on 1 August 2010.'
17. The Respondents did not submit the Income & Expenditure Sheet to Scanlans and there is evidence that some contractors' invoices dated prior to 31 July 2010 were not paid by or on behalf of the Respondents.
18. The Tribunal find that the agreement reached on 13 August 2010 was fair and reasonable. The difficulty is that, in the absence of any evidence as to the expenditure incurred by Wrightchoice and of any payments received by them, the extent to which the Respondents' service charge accounts in relation to any properties at CFM and, in particular, the Property are to be credited in accordance with the agreement cannot be assessed. There was no time limit in the agreement by which the information had to be submitted and it appears that it is still open to the Respondents to supply the information and receive the agreed credits. That is not a matter, however, for resolution by the Tribunal, being outside their jurisdiction.
19. In these circumstances, and on the evidence before them, the Tribunal can only make a finding as to the reasonableness and payability of the service charges and for the reasons given above find that the service charges are reasonable and payable by the Respondents.

COSTS

20. Neither party asked for an order for costs to be awarded against the other. The Tribunal did, however, consider the power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

‘(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.’

21. The Tribunal did not consider that any of these circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

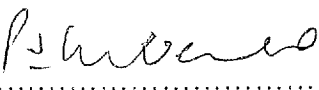
22. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

‘(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).’

23. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case.

24. No application was made by the Respondents under section 20C of the Landlord and Tenant Act 1985 that an order be made that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has not, therefore, formally considered the position, but, given that the Applicant has been successful in the application would not have been disposed to make an Order had an application been made.

Signed..... 

P J Mulvenna

Chairman

27 January 2012