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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 : Flats 126, 135, 136 & 137, 3 Rumford Place
Liverpool
L3 9BW

Applicant : Rumford Investments Limited

Respondents : Mr G P Finneran, Mr M O McGrath & Mr L H Goodman

Case numbers : MAN/00BY/LSC/2012/0061 to 64

Dates of Reference : 21 & 22 March 2012

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

The Tribunal : P J Mulvenna LLB DMA (chairman)
J Faulkner FRICS

Date of decision : 21 September 2012

ORDER

1. That the service charges generally for the years ended 31 December 2009, 2010 and 2011 are reasonable and payable by the Respondents, save to the extent that management/administration charges, interest and other charges might have been included in the service charges for the Property as a consequence of a failure by the Applicant to apportion any payments made by the Respondents to the appropriate flat, which is the sole outstanding issue in this case.
2. That the parties exchange information and negotiate in relation to the sole outstanding issue identified above and report the outcome of such negotiations to the Tribunal no later than 21 November 2012.
3. That either party be at liberty to apply further under the present application if the outcome of the negotiations does not result in a mutually satisfactory solution, but not further or otherwise.
4. That the Respondents pay the Applicant's costs in this matter in the sum of £500.00.
5. That the Respondents reimburse the Applicant's hearing fee of £150.00.
6. That any further application in this matter is determined on the papers unless either party requests an oral hearing for justifiable reasons.

DETERMINATION AND REASONS

INTRODUCTION

1. Rumford Investments Limited ('the Applicant') lodged claims in the County Court seeking the payment from Mr Gerard Patrick Finneran, Mr Michael Owen McGrath and Mr Lawrence Howard Goodman ('the Respondents') of specified charges for services for the years ended 31 December 2009, 2010 and 2011 in respect of Flats 126, 135, 136 and 137, 3 Rumford Place, Liverpool, L3 9BW ('the Property'). On 21 and 22 March 2012, at Telford County Court, Orders were made by District Judges Griffiths and Chapman for the matters to be referred to the Leasehold Valuation Tribunal.
2. The Property comprises four self-contained flats in a purpose-built, 24 storey development, constructed in or around 2003/4, containing 146 residential units, together with commercial units (in a totally separate block) which are managed separately, known as 3 Rumford Place ('the Development'). The residential units in the Development are a mix of one, two and three bedroom, single floor, duplex and triplex flats. The flats comprising the property are all two bedroom, duplex flats, the entrance to 126 is on the 13th floor and to 135, 136 and 137 on the 16th floor. The residential element of the Development has a common entrance/reception area with two lifts (for 14 persons or 1050kg) and stairs to the accommodation on the upper floors. The common areas include secure car parking, a gymnasium, a furnished patio area with two barbecues, and a bin store. There are two cradles for cleaning and maintaining windows and cladding. The western elevation of the Development overlooks the River Mersey estuary and the Development is situated within reasonable walking distance of Liverpool city centre.
3. The Respondents have leasehold interests in the Property which are held under identical Leases for each flat made between (1) Rumford Investments Limited and (2) Michael John Charles Chai on 15 May 2007 for a term of 150 years from 1 January 2003 ('the Leases'). They also have leases for two other flats in the Development, which are not included in the present application. All the flats in which the Respondents have an interest are (in common with many other flats in the Development) sub-let under assured shorthold tenancies. The Tribunal heard that the flats are the subject of high demand and that vacancies arise infrequently and are soon filled.

THE INSPECTION

4. The Tribunal inspected the common parts of the Development externally and internally on the morning of 21 September 2012. The Applicant was represented by Mr S Armstrong of counsel instructed by J B Leitch, solicitors, Ms K Magill of the managing agents and Mr D Hillyard, the building manager. The Respondents were represented by Ms E Hodson. The Tribunal found the Development to be maintained to a good standard.

THE HEARING

5. Directions were issued by a procedural chairman on 22 May 2012 and subsequently amended at the request of the Applicant. The Applicant complied with the Directions, but the Respondents did not.

6. The substantive hearing of the application was held on 21 September 2012 at Cunard Building, Pier Head, Liverpool. The Applicant was represented by Mr S Armstrong, Ms K Magill and Mr N Gascoigne, head of operations. The Respondents were represented by Ms E Hodson.
7. Two members of the public were present at the hearing. The views of the parties were requested as commercially sensitive information might be revealed in evidence and/or submissions. Neither party requested that the hearing, or any part of it, be held in private.

ADJOURNMENT REQUEST

8. The Tribunal received a request from the Respondents on 19 September 2012 for the proceedings to be adjourned. The request was refused for two reasons: first, the Respondents had not complied with the Directions and had not requested an extension of time for compliance; and, secondly, the request did not disclose any reason which merited an adjournment. The Tribunal indicated, however, that it was open to the Respondents to renew the request at the hearing when argument could be heard from both parties. Ms Hodson was asked if she wished to renew the application, but declined.

THE LAW

9. The material statutory provisions in this case are as follows.

- (i) The Landlord and Tenant Act 1985

Section 27A (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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

Section 19(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

- (ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to a leasehold valuation tribunal for a determination whether an administration 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.

THE LEASES

10. The Leases contain provisions for the contribution by the Lessee to the costs, charges, etc. incurred by the Lessor for the provision of services. There is no dispute between the Parties as to these provisions or as to their applicability to the charges under consideration.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

11. The Applicant has asked for a determination of the reasonableness of the service charges for the financial years 2008/09, 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.
12. The Tribunal heard oral submissions from Mr Armstrong on behalf of the Applicant and from Ms Hodson on behalf of the Respondents. The Tribunal also had before them the written evidence and submissions of the Applicant, together with the documentation relating to the Applicant's claim in the County Court.
13. The Tribunal have considered the issues on the whole of the written evidence and the oral and written submissions now before them, have had regard to their own inspection and, applying their own expertise and experience, have reached the following conclusions on the issues before them.
14. The Applicant provided details of the service charges which had been levied, supported by relevant documentation and explanations for expenditure having been incurred. The Respondents have produced no evidence to suggest that the service charges 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, although the Respondents raised a Defence to the County Court claims in the following terms:

'With regard to the service charges that we have been charged by Rumford Investments Ltd. We requested a breakdown of the charges on several occasions during telephone conversations but nothing was ever received. We particularly required the breakdown as the charges were significantly excessive as to what would be expected for these apartments compared to others in the market. As well as a breakdown of the charges we requested management accounts for each individual unit so we could see how charges had been allocated to the units however this again was not provided. To conclude we feel the charges are significantly excessive and no justification has been provided for these charges which has lead to non-payment by ourselves.'
15. The Respondents' Defence is in general terms and, although comparable evidence is referred to, none has been submitted to the Tribunal. The Applicant has submitted significant information to the Tribunal in compliance with the Directions. The Respondents have made no comment on that information, save in relation to the issue raised in paragraph 17 below, and that was made long after the closure of the timescale in the Directions. In these circumstances, the Tribunal finds that there is no merit in the Respondents' Defence.
16. Mr Armstrong submitted that the Applicant's detailed statement of case, coupled with the supporting information provided in compliance with the Directions, was

sufficient, in the absence of any sustainable challenge by the Respondents, to discharge the burden of proof as to the reasonableness of the service charges and their payability by the Respondents. He relied on **Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25** in which it was held that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs claims that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations.

17. Ms Hodson said that the Respondents accepted that the services provided and the costs charged for the services were reasonable, but that they took issue with the inclusion in the service charges for the individual flats comprising the Property of management/administration charges, interest and other charges which might have been included in the service charges for the Property as a consequence of a failure by the Applicant to apportion any payments made by the Respondents to the appropriate flat, including the two flats leased by the Respondents which are not the subject of the present application. This appears to have occurred because sums of money paid by the Respondents do not seem to have been made by reference to any particular flat(s). Ms Hodson also referred to difficulties which the Respondents say that they have had as a result of a failure by the Applicant to note a change of correspondence address. The Tribunal has seen no evidence in relation to the change of address and is unable to comment further.
18. In the light of the submissions made by the parties, the Tribunal concludes that the Respondents have raised no sustainable issues as to value for money in relation to any of the individual costs recharged other than in respect of those mentioned in the preceding paragraph. The Tribunal are aware from their own experience and knowledge that the service charges 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 accepts Mr Armstrong's submission that the Applicant has discharged the burden of proof as to the reasonableness of the standards of the services and the costs incurred.
19. The Tribunal find, therefore, that the service charges generally for the years 31 December 2009, 2010 and 31 March 2011 are reasonable and that the Respondent is liable for payment of the sums demanded in each of those years.
20. The issues raised by the Respondents which are recorded in paragraph 17 above do raise arguable points. The issues were not raised prior to the Respondents' request for an adjournment on 19 September 2012 and have not been addressed by either party by way of detailed pleadings, evidence or submissions. The Tribunal is, therefore, unable to adjudicate on the issues. Mr Armstrong accepted, on behalf of the Applicant, having taken instructions, that, even though the issues had not been raised in accordance with the Directions, the interests of justice might demand that consideration is given to them. The Tribunal agree that they should, if necessary, adjudicate on the issues. It was agreed by the parties that there was scope for negotiation and settlement without the further involvement by the Tribunal, although the Tribunal would be prepared

to consider the issues further, if necessary, with the benefit of evidence and submissions from both parties.

21. The Tribunal, therefore, directs that the parties exchange information and negotiate in relation to the sole outstanding issues identified above and report the outcome of such negotiations to the Tribunal no later than 21 November 2012; and that either party be at liberty to apply further under the present application if the outcome of the negotiations does not result in a mutually satisfactory solution, but not further or otherwise. This will ensure that an opportunity is given to the parties to reach a mutually acceptable solution and, in any event, provide for the Tribunal's involvement to be brought to a conclusion.
22. The Tribunal would not expect that any application by the parties pursuant to the above Direction would give rise to a need for a further inspection of the Property or for an oral hearing. The Tribunal further directs, therefore, that any further application in this matter is determined on the papers unless either party requests an oral hearing for justifiable reasons.

COSTS

23. Mr Armstrong made an application to the Tribunal on behalf of the Applicant for costs and the reimbursement of fees. The application was not resisted by Ms Hodson.
24. The Tribunal has 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.'

25. The Tribunal find that the Respondents in this particular case have failed to engage fully with the process throughout the proceedings. They have failed to comply with the Directions and only raised an arguable point two days before the

Tribunal was due to determine the proceedings. That point had not been raised earlier and the Respondents' acceptance at the hearing of the general reasonableness of the service charges ran counter to the Defence lodged in the County Court which concluded that the Respondents 'feel the charges are significantly excessive and no justification has been provided for these charges which has lead to non-payment by ourselves.' If the position taken by the Respondents at the hearing had been adopted earlier, the Applicant need not have addressed in great detail the matters covered in the pleadings prepared in response to the Directions. The sole issue now remaining for resolution might (as now accepted by the parties) have been resolved by negotiation, thus rendering an application to the Tribunal unnecessary.

26. Having regard to these matters, the Tribunal has concluded that the Respondents have acted unreasonably. In these circumstances, it would be appropriate to award costs. The Tribunal awards costs of £500.00 to be met by the Respondents.
27. 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).'
28. The Tribunal has no evidence in this case that the circumstances in Regulation 9(2) are met and, for the reasons given in paragraphs 25 and 26 above, direct that the Respondents reimburse the fees incurred by the Applicant, that is, the £150.00 hearing fee.

Signed.....

P J Mulvenna

Chairman

25 September 2012