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HM COURTS & TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL****Commonhold and Leasehold Reform Act 2002 - Schedule 11****Landlord and Tenant Act 1985 – Section 20C**

Properties: 12 & 12A Veronica Way, Little Sutton,
Ellesmere Port CH66 1TB

Applicant: Roger William Sheldon

Respondent: Proxima GR Properties Ltd

The Tribunal: Laurence Bennett
Alan Robertson

Date of determination: 11 May 2012

Application

1. Mr Roger William Sheldon applies under Paragraph 5 of Schedule 11 to the Commonhold Leasehold Reform Act 2002 for determination of a administration charges relating to 12 & 12A Veronica Way, Little Sutton, Ellesmere Port CH 66 1TB (the "Properties") requested by Proxima GR Properties Ltd.
2. Mr Sheldon seeks an order under Section 20C of the Landlord and Tenant Act 1985 in respect of costs recoverable by Proxima GR Properties Ltd, the Respondent.

Preliminary

3. The Applicant and Respondent are the respective owners of the Lessors and Lessees interests in the Properties created by the leases mentioned below.
4. The application was received on 17 November 2011.
5. Directions made 16 December 2011 by a Vice President of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submissions of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
6. Each party provided submissions and documentary evidence to the Tribunal.
7. The Tribunal convened on 11 May 2012 without the parties to make its determination.

The Law

8. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-

- 1(1) In this part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
- (a) for or in connection with the grant of approvals under his lease, or application for such approvals,
 - (b) for or in connection with the provisions of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

- 1(3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –
- (a) Specified in his lease, nor
 - (b) Calculated in accordance with a formula specified in his lease

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

- 5 (1) An application may be made to a leasehold valuation tribunal for 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

9. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

10. The first commencement date was 30 September 2003

11. Section 19(i)(a) of the Landlord and Tenant Act 1927 provides that leases with covenants not to assign, underlet etc shall be deemed to be subject: "To a proviso to the effect that such licence or consent is not to be unreasonably withheld but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent;"

The Leases

12. The Applicant provided a copy of a lease dated 25 April 1985 and made between Barrett Chester Ltd (1) and Deborah Anne Myerscough (2) relating to plot 25 now 12a Veronica Way. The lease of 12 Veronica Way is stated as in common form as for the other properties in the block in which these flats are located.
13. The third schedule to the lease paragraph 6(i) states: "The Lessee shall not sublet the whole or any part of the demised premises save that an under letting of the whole of the demised premises (with the prior written consent of the Lessor and any mortgagee of the demised premises) is permitted in the case of a term certain not exceeding 3 years let at a rack rent."
14. The third schedule to the lease paragraph 7 states: "The Lessee shall within 28 days of the date of every assignment grant of Probate or Administration Assent Transfer Mortgage Charge Discharge Order of Court or other event or document relating to the term give notice thereof in writing to the Lessor and pay to it a fee for registration calculated at the rate of 0.1% of the Notice Value of the demise premises"

Evidence and submissions

15. The Applicant acknowledges that each Property has been sublet and that consent under the lease was necessary. The Applicant subsequently obtained consent from the Respondent by its agents Estates & Management Ltd to whom they paid a fee.
16. The Applicant considers that the fee of £135 for consent is excessive and unreasonable and a registration fee of £85 although stated on behalf of the Respondent less than the registration fee set out in the lease is also unreasonable and queries the method of calculation.
17. The Applicant has referred the Tribunal to decisions of the Eastern Region LVT which have subsequently been appealed. The outcome of the appeal is now published at [2012] UKUT (LC) and includes the conclusion of George Bartlett QC, President of the Upper Tribunal that in respect of an administration charge for consent to under-letting in similar circumstances "That a fee greater than £40 plus VAT could not be justified."
18. The Respondent's submissions are made by their agents Estates & Management Ltd and refer to decided cases and sets out the steps taken by "trained administrators under the supervision of qualified legal staff", that it administers some 300,000 properties and "therefore a fee for dealing with administration process is fixed in advance at what is believed to be a fair market figure taking into account the amount of work necessary"
19. The Respondent addresses its authority to require a fee under Section 19(i)(a) of the Landlord and Tenant Act 1927 and refers to LVT decisions supporting its contention that the registration fee is not a variable administration charge falling within the Act and thus within the Tribunal's jurisdiction.
20. The Respondent's submissions include: "The Respondent makes no claim for their costs to be paid from the service charge fund so 20C will not apply."

21. The Applicant's comments on the Respondent's submissions dispute the acceptability of a standard charge and the necessity and observance of the steps specified as resulting from a request for consent.

Tribunal's conclusions with reasons

22. We accept as was not disputed that the charge for consent to sublet is a variable administration charge falling within Paragraph 1(1)(a) of Schedule 11 to the Act. It is payable to the extent that it is reasonable as a condition for consent under Section 19(i)(a) of the Landlord and Tenant Act 1927.

23. The facts indicate nothing unusual regarding these sublettings of the whole of flatted premises. We find no indication of surrounding circumstances such as arrears of rent, breaches of covenant or other outstanding tenant's obligations save for the initial letting without consent. Once applied for this should have been a matter of routine, indeed, consent was granted without objections raised.

24. We have noted the Respondent's submissions but are mindful of the Upper Tribunal's decision quoted above and conclude that the sum of £40 plus VAT should be payable. As in the contemporaneous Upper Tribunal decision of the President, George Bartlett QC [2012] UKUT 3 (LC) a case similar to this, the steps could be considered "A list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or that were in fact done in the case under consideration."

25. We query whether a subletting under the terms of an assured tenancy falls within the requirement for registration set out in the third schedule to the lease paragraph 7. It is not specifically stated and we do not construe the Lease as to require registration in these circumstances noting that the requirement is triggered by events of greater permanence and affect upon the title. If we are incorrect and registration is required we accept as submitted by the Respondent that the fee for such is not an administration charge as defined by the Act and that the Tribunal does not have jurisdiction to make a determination under paragraph 5 of Schedule 11 to the Act.

26. It is plain that a registration fee is not for a matter that falls within subparagraphs b, c or d of paragraph 5 of the Act. It is also not within subparagraph a as it is not payable ... for or in connection with the grant of approvals under (the) lease". The fee is payable in respect of notice.

27. In summary, if a Notice fee is payable such fee is not an administration charge within the Act. It does not fall within the terms of the statutory definition, consequently, the Tribunal does not have jurisdiction to make a determination under paragraph 5 of Schedule 11 to the Act.

Section 20C

28. Section 20C Landlord and Tenant Act 1985 states:

- (1) A tenant may take 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 court or leasehold valuation tribunal or the Lands Tribunal, or in connection with arbitration proceedings, 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.

- (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.

29. We have considered The Applicant's request for an order under Section 20C of the Landlord and Tenant Act 1985. We make no finding whether the Lease permits recovery of the Lessor's costs incurred in this application by way of service charge. However, taking into account that the subject matter of this application relates to determination of charges payable, that both parties have been put to expense and that the application is partially successful, we do not find it appropriate that the Lessor should recover costs in addition. We make the order requested also noting that the Respondent has stated it will not seek to recover costs.

Order

30. The fee payable for consent to the subletting of each of the properties shall be £40 plus VAT (per property).

31. The Applicant's request for determination of registration fees is refused as they are not an administration charge within the meaning of Section (1) of Schedule 11 of the Commonhold and Leasehold Reform act 2002 and the Tribunal does not have jurisdiction.

32. The Lessor shall not treat costs in relation to the application as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessee.



L J Bennett
Chairman
11 May 2012