



9055

Properties: Flat 7 Regent Gate
Flat 11 Kings Walk
Crown Street Kettering Northamptonshire NN16 8JD & 8JF

Applicant & Freeholder: Powell & Company (Brighton) Limited

Respondent: Saaghar Posh Mashad

Respondent's Solicitor: Crofts Solicitors, 4 School Lane, Kettering, NN16 0DR

Application: Application for a determination of the reasonableness and liability to pay administration and service charges (Section 27A Landlord and Tenant Act 1985)

Application for an order for costs pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002

Date of Transfer from the Court: 6th December 2012

Date of Hearing: 21st March 2013

Tribunal: Dr JR Morris (Lawyer Chair)
Mr D Banfield FRICS
Mr P Tunley

Attendance:

Applicant: Mr S Powell, Applicant's Representative

Respondent: Mr S Posh Mashad, Respondent

DECISION:

- The Tribunal found that the Respondent did not dispute the amount of the estimated Service Charge of £1,020.00 for the period 25th March 2012 to 24th March 2013 and that the two Interim Charges of £510.00 for this period had now been paid.
- The Tribunal determined that the Respondent was liable for the estimated Service Charge in respect of the period from the 11th August 2011 (the date of Completion of the Lease) to the 24th March 2012 (i.e. 226 days) for 7 Regent Gate at a daily rate of £2.57 and therefore the estimated Service Charge of £580.82 is payable by the Respondent to the Applicant when properly demanded.
- The Tribunal determined that the Respondent was liable for the estimated Service Charge in respect of the period 13th October 2011 (the date of

Completion of the Assignment of the Lease) to 24th March 2012 (i.e. 163 days) in respect of 11 Kings Walk at a daily rate of £2.57 and therefore the estimated Service Charge of £418.91 is payable by the Respondent to the Applicant when properly demanded.

- The Tribunal found that the demands for payment of the estimated Service Charges issued by the Applicant were for incorrect amounts and were confusing. The Administration Charges in respect of the enforcement of these demands were determined to be unreasonable and therefore not payable by the Respondent to the Applicant.
- In the Tribunal's opinion the Respondent had acted unreasonably because he had failed to comply with any of the Tribunal's Directions. The matter could have been dealt with more expeditiously had the Respondent presented a written Statement of Case as directed, therefore the Tribunal made an Order for costs of £250.00 to be paid by the Respondent to the Applicant towards the costs the Applicant has expended in connection with these proceedings, pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002
- This case is transferred back to the Kettering County Court under their case reference numbers 2QT82286 and 2QZ40304 relating to 7 Regent Gate and 2QT82276 and 2QZ39712 relating to 11 King's Walk so that either party can apply for any order relating to costs, interest or enforcement which is not within the jurisdiction of this Tribunal

REASONS

Application

1. This Application is made by way of transfer from Kettering County Court of claim number 2QT82286 and subsequent claim number 2QZ40304 relating to 7 Regent Gate and claim number 2QT82276 and subsequent claim number 2QZ39712 relating to 11 King's Walk by District Judge Murdoch on 6th December 2012 for a Leasehold Valuation Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service and administration charges.

Issues

2. The issues are the same for both Flats and are identified from the Court papers as being the reasonableness and payability of:
 - the estimated service charge for the financial year ending 24th March 2012 and for the estimated service charges for the financial year ending 24th March 2013.
 - the administration charges incurred in respect of non-payment of service charges.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"

- (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, improvement 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 of 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 period*

5. Section 19 Limitation of service charges: reasonableness

- (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.*
- (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.*

6. Section 20B Limitation of Service Charges: time limit on making demands

- (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 the demand for payment of the service charge 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.*

7. Section 21B Notice to accompany demands for service charges

- (1) *A demand for the 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.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*

- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *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.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

8. Section 27A Liability to pay service charges: jurisdiction

- (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.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) the person by whom it would be payable,*
 - (b) the person to whom it would be payable,*
 - (c) the amount which would be payable,*
 - (d) the date at or by which it would be payable, and*
 - (e) the manner in which it would be payable.*

9. Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 states:

- (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) ... (not relevant to this matter)*
 - (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 an enactment other than under this paragraph.*

Description and Inspection of the Subject Property

10. The Tribunal inspected the Building of the development in which the Properties are situated in the presence of the Applicant's Representative, the Caretaker and the Respondent. The Building is situated between Regent Street, Crown Street, and Kings Street, Kettering. The Building was originally a bakery and food warehouse, which has been converted into 24 flats. The old bakery, which is now Kings Walk, is a three-storey brick structure with pitched slate roof, which abuts the old food warehouse. The old food warehouse, which is now Regent Gate, is a two-storey brick structure with a pitched slate roof. Within each structure there are 12 flats. Both structures have Crittal style metal windows and form a single Building. At the Kings Walk end of the Building there is a yard with a covered area, which affords parking for a number of vehicles. Vehicular and pedestrian access to the yard is from Kings Street. The Regent Gate end of the Building has an undercroft which was originally a loading bay and which provided both vehicular and pedestrian access from Regent Street. The loading bay provides limited parking. The yard and the loading bay are not connected for vehicles although they are for pedestrians. In the yard there is a bin area where there are 2 Euro bins. Both the yard and loading bay are gated. The gates are wired to operate electronically but the automation no longer works.
11. At the Kings Walk end of the Building there were 4 flats on the ground floor under a covered area with upvc lanterns set in the roof. There is a metal staircase to the roof of the covered area, which acts as a walkway. From this walkway are two wooden staircases each of which is covered by an upvc and glass structure giving access to the first and second floors. For each staircase there is a short flight of stairs to two first floor flats with a further dogleg stairs to two flats on the second floor. A separate metal staircase leads to the loading bay of the two-storey food store, which has been converted into 6 flats on the ground floor and six on the first floor. The ground floor flats are around what was the loading bay. Above the bay at first floor level is a wide walkway which gives access to the six second floor flats of the Building. In the roof over the wide walkway is a glass lantern giving light to the first floor walkway and down to the ground floor loading bay.
12. Between the Kings Walk and Regent Gate there is a mezzanine area from which access to the basement under the Building can be obtained. This is a common area, which at one time housed a gym. The area is currently locked as it gives access to the services for the Building and until the area is re-developed and the services enclosed this part is secured for safety reasons. It was noted that each flat is metered for its own services and that there is a separate meter for the common parts.
13. Externally the Building facing the street is in fair condition. The brickwork has been re-pointed and the metal windows painted. The external parts facing the yard are shabby and betray the very poor standard of the conversion. The two upvc and glass staircases are not aesthetically in keeping with the Building. Externally, they and the walkway above the yard with its lanterns were at the time of inspection in fair condition. The doorways around the yard on the ground floor are unattractively flush with the wall rather than recessed. Internally the staircases are dirty. The area opposite where the bins were now stored had been a bin store which had been burnt down and the evidence of the fire on the wall remained.

14. Internally the area around the loading bay on the ground floor and around the walkway above at first floor level is unattractive and poorly converted. The flat doors are not in keeping with the Building. Internally the area between Kings Walk and Regent Gate was dirty and shabby. The Tribunal was not able to obtain access to the basement as a key was not available but as both parties described it as being an empty "dark and dank cavern" the Tribunal accepted their opinion.
15. The Tribunal noted the common areas of the yard, with its walkway and two upvc staircases, the loading bay, with its wide walkway above and the mesne access to the basement as being aesthetically disappointing, utilitarian and neglected. The Applicant pointed out that the Building did not meet with current Building standards. He said that only one flat was owner occupied, all the others being sub-let, and that the sole owner-occupier acted as a caretaker for the Building as required by the insurance company.

Background

16. The old bakery (now Kings Walk) and food warehouse (now Regent Gate) had been purchased and converted by Templewood Estates Limited a developer who had subsequently got into financial difficulties and has been put into liquidation. The Creditors had put the Building into the hands of Receivers, JH Gershinson and LJ Brooks of Allsop LLP Residential Management (ARIM). The Receivers had sold the freehold of the Building to the Applicant at auction on the 16th April 2012 and is held under Title Number NN49889 at the Land Registry (A copy was provided).
17. The Respondent had purchased a new long lease of Flat 7 Regent Gate under Title Number 30788. The Completion Date for the purchase of the Lease was 11th August 2011. The Respondent had also purchased the Assignment of an existing long lease of 11 Kings Walk under Title Number 282368. The Completion Date for the purchase of the Assignment of the Lease was 13th October 2011. (Copies of both Land Registry Entries were provided)

The Leases

18. A copy of the Lease for Flat 7 Regent Gate dated 11th August 2011 was provided which was between Templewood Estates Limited (In Liquidation) acting by its Receivers (1) and the Respondent (2). The Lease is for a term of 125 years from the 1st January 2008.
19. A copy of the Lease for Flat 11 King's Walk dated 31st January 2008 was provided which was between Templewood Estates Limited (1) and the Ronald Robert Moss (2). The Lease is for a term of 125 years from the 1st January 2008.
20. The Leases were in similar form although not all the terms were identical the relevant provisions identified as follows were:
21. Clause 3 (9) of the Leases states that the Tenant covenants:
 - (a) Not in any circumstances whatsoever to assign or underlet or part with or share possession or grant any licence of part of the Demised Premises.
 - (b) Not during the last seven days of the term to assign underlet or part with the possession of the whole of the Demised Premises without first obtaining the consent in writing of the Landlord which consent shall not be unreasonably withheld or delayed.

- (c) Upon every assignment charge transfer underlease or other Instrument affecting or evidencing any transmission or devolution of the Demised Premises or of any estate or interest therein:
- (i) to give notice in duplicate to the Landlord's solicitors for registration within one month from the date thereof and to pay a reasonable registration fee of at least £50 plus VAT for each such registration; and
 - (ii) to procure upon every assignment or transfer or underlease for a term in excess of three years such party enters into a direct covenant with the Landlord to observe and comply with the covenants herein contained such Deed of Covenant to be in the form required by the solicitors to the Landlord provided always that the Landlord will not be required to receipt the notice to confirm or accept the same nor the Deed of Covenant if there are any arrears of ground rent or Service Charge or there is any material breach of covenants.

22. Clause 3 (17) and Schedule 3 of the Leases sets out the Tenant's covenant to pay the Service Charge and the wording of the clause is virtually the same in both Leases. The Tenant covenants to pay to the Landlord the Tenant's share of the "Total Expenditure" as stated in Schedule 3. The Clause and Schedule provide that an "Interim Charge" shall be made on the 25th March and 29th September in each year on account of the "Service Charge" attributable to the flat, which is a "fair and appropriate proportion of the "Total Expenditure". The "Total Expenditure" means all reasonable and proper costs and expenses whatsoever incurred by the Landlord acting reasonably in any accounting period in carrying out its obligations under Clause 4."

23. Clause 4 of the Lease sets out the obligations of the Landlord and the wording of the clause was the same in both Leases. The Clause includes covenants:
- To repair, maintain renew uphold and keep in good and substantial repair and condition:
 - The structure of the Building
 - The Common Parts
 - The boundary walls and fences
 - To paint as appropriate
 - To insure
 - To keep clean and where appropriate lighted the common parts and to keep clean the windows in the common parts
 - To employ a caretaker, at the Landlord's discretion
 - To employ managing agents, at the Landlord's discretion
 - To maintain any communal television

Evidence

Applicant's Case

Flat 7 Regent Gate

24. The Applicant produced an account for the Service Charge and Administration Costs claimed for Flat 7 Regent Gate as follows:

Date	Amount £	Description
16/04/12	936.32	Arrears from previous freeholder
16/04/12	510.00	Interim service charge 16.04.12 – 28.09.12

	-357.23	Credit from previous managing agent
23/07/12	360.00	Fee for summons
23/07/12	70.00	Court Fee
	1,519.09	Amount claimed
12/09/12	510.00	Interim Service Charge 29.09.12-24.03.13
30/10/12	60.00	Late payment fee
06/11/12	360.00	Fee for Summons
11/03/13	60.00	Court Fee
	-500.00	Payment Received
	-520.00	Payment Received
	1,489.09	Total outstanding

25. Estimated Service Charge Accounts were provided for the periods 25th March 2012 to 24th March 2013. These itemised the estimated Service Charge costs for the year ending 31st March 2013, which totalled £24,480.00. Apportioned between the 24 flats this gave an estimated annual service charge of £1,020.00 and an Interim Charge of £510.00.
26. The Applicant's Representative provided a copy of the particulars of Claim from the County Court, which confirmed that he had purchased the Building at auction on 16th April 2012. He stated that under the previous management by ARIM no Service Charge payments were collected although Service Charge demands had been issued.
27. A copy of a Service Charge Demand dated 27th March 2012 was provided, which had been issued by ARIM. The demand was for payment of the Interim Service Charge 29th September 2011 to 24th March 2012 in the sum of £464.28 and for two previous allegedly unpaid Interim Charges of £464.28 for the periods 29th September 2010 to 24th March 2011 and 25th March 2011 to 28th September 2011 in the sum of £936.32, the total amount payable being said to be £1,400.60. The Applicant's Representative conceded that this Service Charge Demand was incorrect as the Lease was new and therefore the outstanding amount payable should only have been £936.32 for the two full interim Charges of £464.28 each for the periods 25th March 2011 to 28th September 2011 and 29th September 2011 to 24th March 2012. He later said that this sum was further reduced, as mentioned below, by £357.23 to take account of the period 25th March 2011 when the first Interim Charge fell due to the 11th August 2011 when the Lease began.
28. A statement was also provided which was headed ARIM's Expenditure at Crown Street. This itemised the actual expenditure for the periods 24th March 2011 to 28th September 2011 and from the 29th September 2011 to the 16th April 2012. The total expenditure was £21,998.61 apportioned equally between the 24 flats at £916.61. The Applicant's Representative stated that this was £19.71 less than the estimate; nevertheless he had continued to demand the full Interim Charge already demanded, as any overpayment would be credited to the Leaseholder when the accounts were drawn up at the end of the financial year.
29. The Applicant's Representative stated in the Particulars of Claim confirmed at the Hearing that his managing agents, Carvalho Concept Limited, had issued a service charge demand for a Service Charge of £1,446.32 together with a summary of tenants' rights and obligations on the 16th April 2012. The £1,446.32 comprised an Interim Charge of £510.00 for the period 25th March 2012 to 28th September 2012 and £936.32 of the unpaid ARIM demand (the sum of £464.28 for the period 29th September 2010 to 24th March 2011 having been deducted as being incorrect). A

reminder was sent on 30th April 2012 and a final reminder on 8th May 2012. This was reduced by £357.32 following discussions with the previous freeholder's solicitors, Berwin Leighton Paisner LLP to take account of the Lease not commencing until 11th August 2011. A number of e-mails between the Applicant and the previous freeholder's solicitors, Berwin Leighton Paisner LLP were provided and were dated on and around the 28th June 2012. An amended demand was sent on 16th July 2012. Copies of all demands referred to were provided.

30. In response to questions from the Tribunal the Applicant's Representative referred to a letter dated 8th October 2012 to the Respondent in which he stated the expenditure of £21,998.61 under the previous management was passed to the new freeholder in the contract transferring the Building to him. The Applicant's Representative also stated that the ARIM and the previous freeholder's solicitors had led him to believe that the outstanding Service Charges of £21,998.61 could be reclaimed from the leaseholders.
31. The Tribunal noted that the emails between the previous freeholder's solicitors, Berwin Leighton Paisner LLP and the Applicant appeared to state that Completion Statements issued for 7 Regent Street were incorrect in relation to both ground rent and service charges. The Applicant's Representative submitted that this is often the case and that the final amounts for service charges have to be settled after completion. In response to the Tribunal's questions the Applicant's Representative said that he was not able to produce any documentation from either ARIM or Berwin Leighton Paisner LLP stating that the Completion Statement from them to the Respondent's Solicitors was provisional or that it excluded any service charges, which were to be paid after Completion. The Tribunal drew attention to the Completion Statement from the Respondent's Solicitors to the Respondent, the invoice from ARIM for the Registration Fee in accordance with Clause 3 (9) of the Lease and the confirmation from the previous freeholder's solicitors, Berwin Leighton Paisner LLP that Clause 3 (9) of the Lease had been complied with and the copies of the Land Registry Entries showing that the Lease had been registered and by implication that Clause 3 (9) of the Lease had been complied with. Copies of these documents had been provided. The Tribunal commented that these documents went on to show that all payments had been made up to the date of Completion i.e. the 11th August 2011.

Flat 11 King's Walk

32. The Applicant's Representative stated in written representations that the Respondent had an assignment of the Lease of Flat 11 King's Walk and that therefore he was liable for any service charge arrears under the Lease irrespective of whether they were due to his own failure to pay or the previous tenant's failure to pay. The Applicant produced an account as follows:

Date	Amount £	Description
16/04/12	1,400.59	Arrears from previous freeholder
16/04/12	510.00	Interim service charge 16.04.12 – 28.09.12
23/07/12	360.00	Fee for summons
23/07/12	70.00	Court Fee
	2,350.59	Amount claimed
12/09/12	510.00	Interim Service Charge 29.09.12-24.03.13
30/10/12	60.00	Late payment fee
06/11/12	360.00	Fee for Summons

06/11/13	60.00	Court Fee
23/11/12	-500.00	Payment Received
11/03/13	-520.00	Payment Received
	2,320.59	Total outstanding

33. As with 7 Regent's Gate, Estimated Service Charge Accounts were provided for the periods 25th March 2012 to 24th March 2013. These itemised the estimated Service Charge costs for the year ending 24th March 2013, which totalled £24,480.00. Apportioned between the 24 flats this gave an estimated annual service charge of £1,020.00 and an Interim Charge of £510.00.
34. The Applicant's Representative referred to his Particulars of Claim from the County Court in which he stated that ARIM had sent out Service Charge Demands but had not collected any payments. A copy of a Service Charge Demand dated 27th March 2012 was provided, addressed to Mr R Moss in relation to 11 King's Walk, which had been issued by ARIM. The demand was for payment of the Interim Service Charges for the periods 29th September 2010 to 24th March 2011, 25th March 2011 to 28th September 2011 and 29th September 2011 to 24th March 2012 in the sum of £1,400.59 (£464.28 for each period).
35. The Applicant's Representative also referred to the statement headed ARIM's Expenditure at Crown Street for the periods 24th March 2011 to 28th September 2011 and from the 29th September 2011 to the 16th April 2012 for the Building of which the share apportioned to 11 King's Walk was £916.61.
36. The Applicant's Representative then referred to the Particulars of Claim in which he stated that his managing agents, Carvalho Concept Limited, had issued a service charge demand for a Service Charge of £1,910.59 together with a summary of tenants' rights and obligations on the 16th April 2012 for 11 King's Walk. The sum comprised the arrears of £1,400.59 for the Interim Service Charges for the periods 29th September 2010 to 24th March 2011, 25th March 2011 to 28th September 2011 and 29th September 2011 to 24th March 2012 and the Interim Charge of £510.00 for the period 25th March 2012 to 28th September 2012. A reminder was sent on 30th April 2012 and a final reminder on 8th May 2012. He said that subsequently demands were sent both for the Second Interim Charge and the Administration Charges as set out in the account provided. Copies of all demands referred to were provided.
37. The Applicant's Representative again referred to the letter dated 8th October 2012 to the Respondent in which he stated the expenditure of £21,998.61 under the previous management was passed to the new freeholder in the contract transferring the Building to him and re-iterated his point that ARIM and the previous freeholder's solicitors had led him to believe that the outstanding Service Charges of £21,998.61 could be reclaimed from the leaseholders.
38. As for 7 Regent's Gate, the Tribunal noted that there had been an exchange of e-mails between the previous freeholder's solicitors, Berwin Leighton Paisner LLP, and the Applicant in which it appeared that both the Applicant and Berwin Leighton Paisner LLP were of the view that Completion Statements issued for 11 King's Walk were incorrect in relation to both ground rent and service charges. The Applicant's Representative reiterated his submission that final amounts for service charges have to be settled after completion. However he was not able to produce any documentation from either ARIM or Berwin Leighton Paisner LLP stating that the Completion Statement from them to the Respondent's Solicitors was provisional or that it excluded any service charges, which were to be paid after Completion. The Tribunal again drew attention to the Completion Statement from the Respondent's

Solicitors to the Respondent, the invoice from ARIM for the Registration Fee in accordance with Clause 3 (9) of the Lease and the confirmation dated 9th March 2012 from the previous freeholder's solicitors, Berwin Leighton Paisner LLP that Clause 3 (9) of the Lease had been complied with and the copies of the Land Registry Entries showing that the Lease had been registered and by implication that Clause 3 (9) of the Lease had been complied with. Copies of these documents had been provided.

39. The Applicant's Representative submitted that if the estimated Service Charges were payable then the Administration Charges were reasonable.

Respondent's Case

40. The Respondent conceded that he received demands for the sums stated however he said that on receipt of the demands he had requested information from Carvalho Concept Limited and the Applicant as to what Service Charge they related. He said that he had been in e-mail correspondence from the 28th May 2012. As 7 Regents Gate was a new lease of an unfinished flat there would have been no service charges payable prior to his ownership. He had received no Service Charge Demand until those dated 27th March 2012 from ARIM and 16th April 2012 from Carvalho Concept Limited. He said the Service Charge demand of the 16th April 2012 for £1,446.32 was wrong. The Respondent said that he had told the Applicant this in his e-mail on 1st June 2012. He also referred to the email sent by his Solicitor on 13th June 2012 to which the solicitor attached a copy of a letter from the previous freeholder's solicitors, Berwin Leighton Paisner LLP confirming that clause 3(9) of the Lease had been complied with, and therefore all outstanding sums had been paid as at the date of Completion.
41. The Respondent referred to an email that he had sent to the Applicant on the 13th July 2012 stating that the figures given in the invoices were wrong and stating that he had to go to a solicitor "to prove the point" and asking "who is going to pay for your mistake?" The Respondent added that the figures "had no base, no periods attached to them and there is no explanation as to how they are reached". He said he had written 25 e-mails in respect of this matter.
42. The Respondent confirmed that he did not dispute the reasonableness of the Service Charges only their payability. He said that his case was that he was not liable for any service charge prior to the 11th August 2011 which was the date of Completion of the Lease in respect of 7 Regent Gate or the 13th October 2011 which was the date of Completion of the Assignment of the Lease of Kings Walk. He also said he did not dispute the amount of the estimated Service Charge and the two Interim Charges of £510.00 for the periods 16th April 2012 to 28th September 2012 and 28th September 2012 to 24th March 2013. However, all the demands he had received were wrong and the Applicant had given no explanation of the figures when requested.
43. The Respondent submitted that the Administration Charges were unreasonable because they were incurred on the basis of demands that were wrong and for amounts that were not payable. He said that there had been no need to go to court and he had requested mediation.

The Tribunal's Preliminary Findings

44. The Tribunal said that it was unlikely to find that the Respondent had any liability for the Service Charge prior to the to the 11th August 2011 which was the date of Completion of the Lease in respect of 7 Regent Gate or the 13th October 2011 which was the date of Completion of the Assignment of the Lease of Kings Walk for the

reasons already stated. However, there may be a liability for the costs incurred in respect of the period from the 11th August 2011 to the 16th April 2012 for 7 Regent Gate and for the period 13th October 2011 to 16th April 2012. The Tribunal accepted that although ARIM had provided their actual expenditure for the period 25th March 2011 to 16th April 2012 the accounts for this period had not yet been completed and therefore the Tribunal only considered the estimated service charge for the period 25th March 2011 to 24th March 2012. The total estimated service charge was £936.32 for each flat, which the Tribunal calculated gave a daily rate of £2.57. Neither party made submissions to the contrary.

Application for Costs

45. The Applicant made an Application for an order for costs pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 was made. The Applicant's Representative submitted that the Respondent had acted unreasonably because he had failed to comply with any of the Tribunal's Directions. The Applicant's Representative said he did not know what submission the Respondent might make and therefore had to produce bundles to cover all the issues and this had put him to considerable expense. He did not have a precise calculation but it was in excess of £500.00.
46. The Respondent said that the matter could have been resolved by mediation and if he had received a breakdown of the costs as requested.

Determination

7 Regent Gate and 11 King's Walk

47. The Tribunal considered the evidence. The Tribunal found that the Respondent was not liable on the evidence adduced for the Service Charge costs prior to the to the 11th August 2011 which was the date of Completion of the Lease in respect of 7 Regent Gate or the 13th October 2011 which was the date of Completion of the Assignment of the Lease of Kings Walk. The Tribunal found that no costs were outstanding as at the 11th August 2011 in respect of 7 Regent Gate and 13th October 2011 in respect of 11 Kings Walk based on the following evidence:
- the Completion Statement from the Respondent's Solicitors to the Respondent,
 - the invoice from ARIM for the Registration Fee in accordance with Clause 3 (9) of the Lease
 - the confirmation dated 9th March 2012 from the previous freeholder's solicitors, Berwin Leighton Paisner LLP that Clause 3 (9) of the Lease had been complied with and
 - the copies of the Land Registry Entries showing that the Leases had been registered and by implication that Clause 3 (9) of the Lease had been complied with.
48. Completion is an opportunity for the parties to ensure that all costs are paid to date and if any cost is outstanding then it is for the creditor party to withhold completion until the sum is paid. The wording of Clause 3(9) in this case confirms this point. The e-mails between Berwin Leighton Paisner LLP and the Applicant are after the event (i.e. Completion) and do not refer to an agreement and no evidence was adduced of any agreement to show that the Completion of either Property was subject to payment of a service charge as yet unpaid.

presented a written Statement of Case as directed. The Tribunal made an Order for costs of £250.00 to be paid by the Respondent to the Applicant towards the costs the Applicant has expended in connection with these proceedings.

JR Morris (Chair)

Date: 14th May 2013