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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AE/LSC/2012/0820

Property : Kings Court & Carmel Court, Kings Drive, Wembley HA9 9JQ

Applicant : Goldplaza Limited (1)
Southcoast Watchfair Limited (2)
Apexbrook Limited (3)
Apexbrook (1999) Limited (4)
Esther Harouni (5)
Belinda Adams-Pearce (6)

Representative : Mr Bates of Counsel

Respondent : Mr Robert Robertson

Representative : Mr Petts of Counsel

Type of Application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : Judge O'Sullivan
Ms S Coughlin
Mrs L Walter

venue of Hearing : 24 September 2013 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 1 December 2013

DECISION

Decisions of the tribunal

- (1) The Respondent has conceded that the pre-purchase arrears for the period 2003-2008 are not payable by the Applicants.
- (2) The tribunal finds that the demands for the contributions to the reserve fund are valid demands made in accordance with the lease.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord is limited to passing 50% of its costs of the tribunal proceedings to the lessees through any service charge

The application

1. The Applicants seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the hearing the Applicants were represented by Mr Bates of Counsel and the Respondent was represented by Mr Petts of Counsel. Mr Harouni, a leaseholder and one of the Applicants also attended. For the Respondent also in attendance was Mr Osborn, a director of Crabtree Property Management.

The background

4. The property which is the subject of this application is a development known as Kings Court and Carmel Court, King's Drive, Wembley HA9 9JQ. Kings Court contains five blocks of flats and Carmel Court contains three blocks.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The freeholder of the property is Wisestates Ltd. The Respondent to the application, Mr Robertson, is a tribunal appointed manager, appointed for a term of 5 years from May 28, 2009. The applicants are leasehold owners of various flats at the property.

The issues

7. The application before the tribunal was issued in December 2012 and raised numerous issues. However many of the issues raised have been dealt with by the Respondent or conceded and have thus fallen away. In addition some of the issues raised were held to fall outside of the jurisdiction of the tribunal following a hearing which considered the tribunal's jurisdiction on 27 March 2013. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the Applicants are liable to pay service charges for the period 2003-2008; and
 - (ii) Whether the Respondent has the power to demand a contribution to a reserve fund.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Pre-purchase arrears

9. The tribunal heard that the Respondent had demanded service charges from the applicants for periods which predate their ownership. The Applicants had challenged their liability to pay.
10. At the commencement of the hearing it was conceded by Mr Petts for the Respondent that it accepts that the Applicants are not liable for any service charges falling due before they became registered owners.

Pre-purchase arrears - the tribunal's decision

11. The issue of the pre purchase arrears has been conceded and thus the tribunal simply records that the Respondent has conceded that no service charges can be payable pre registration of the leasehold title. It is noted that this issue was in fact the meat of the case and some £270,000 of service charges have now fallen away.

Reserve fund

12. The issue of the reserve fund was whether the Respondent had made a proper demand for a contribution to the reserve fund in accordance with the terms of the lease.
13. The tribunal was provided with a sample lease for both Kings Court and Carmel Court. Both are to the same effect insofar as is relevant.

14. The service charge year (the "Maintenance Year" is a calendar year to 31 December.
15. By no later than December in each year there must be calculated the Annual Maintenance Provision which comprises:
 - (i) The estimated costs of complying with the Sixth Schedule during the Maintenance Year; plus
 - (ii) An "appropriate amount" towards a reserve fund for certain of the matters mentioned in the Sixth Schedule; plus
 - (iii) Certain (limited) arrears for any previous years
16. That calculation then produces a sum of money known as the Aggregate Maintenance Provision and the tenant must then pay a proportion of that money (called the "Maintenance Contribution") by two instalments on 1 January and 1 July in each year. There is then an end of year balancing process.
17. However Counsel for the Applicants say that this is not what has been done. It is said that rather than demanding one sum the Respondent demands two sums, a "normal" service charge and a contribution to a reserve fund. Counsel submits that this is not what the lease provides for and thus there is no right to demand a reserve fund payment in this manner.

Reserve fund- the tribunal's decision

18. The tribunal determines that proper demands have been made for the contributions to the reserve fund in accordance with the provisions of the lease.

Reasons for the tribunal's decision

19. The tribunal was referred to a sample invoice at page 326 of the bundle and all invoices were confirmed to be in the same format. The invoice contained a demand for both the general service charge and a contribution to the reserve fund. Although they were shown as separate amounts a total due was also shown. The tribunal was satisfied that a demand in this form did comply with the provisions of the lease and indeed was of the view that a demand in this form would have been envisaged by the lease. A leaseholder receiving such an invoice can clearly see the amount demanded in respect of both general service charge and the reserve fund and the total demanded. It was not

persuaded by the argument that to be valid a demand would have to be for a consolidated amount only.

Application under s.20C

20. At the hearing, the Applicants applied for an order under section 20C of the 1985 Act. The Applicants' grounds for the application were that the issue of the application and the concession in relation to the pre purchase arrears was a considerable victory totalling some £278,268.44. In addition major works were conceded and the application was said to be plainly necessary given the approach adopted by the Respondent. In reply Mr Petts submitted that much of the application had been "knocked out" such as the issues of the insurance refund and the legal fees. In relation to the pre purchase arrears the tribunal heard that the manager had been appointed in 2009 and had experienced difficulties in obtaining disclosure. The manager had eventually had no choice but to accept that the files were lost and concede the arrears. Mr Petts submitted that by and large the application had been struck out, appropriate concessions had been made at an early stage in relation to the major works and the manager had acted reasonably in the proceedings.

21. The tribunal considered the application under section 20C carefully. It is clear that the Applicants have attempted to resolve matters before issuing the application. On the interim decision on jurisdiction the Applicants were successful on the single most important issue and the Respondent had conceded sums just under £300,000. Some of the issues raised however had been ruled as outside of the tribunal's jurisdiction. The tribunal also took into account the fact that the Respondent was a tribunal appointed manager who knew nothing of the various assignments and had no option but to concede the issue of the pre-purchase arrears. It also considered the fact that the tribunal had found that the reserve fund demands were valid. Accordingly the tribunal determines that an order be made under section 20C of the 1985 Act, so that the Respondent may pass 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: S O'Sullivan

**Date: 1
December
2013**

Appendix of relevant legislation

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 -
 - (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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (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 court, residential property tribunal or the Upper 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.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.