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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 : Flat 15, Dunes House
1 Fairhaven Road
Lytham St Annes
FY8 1QT

Applicant : Dunes House Management Company Limited

Respondents : Mr G A Wilmott & Mrs J L Wilmot

Case numbers : MAN/30UF/LSC/2013/0005

Dates of Reference : 17 January 2013

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

The Tribunal : P J Mulvenna LLB DMA (chairman)
W T M Roberts FRICS

Date of decision : 10 May 2013

ORDER

That the service charges generally and other charges levied by the Applicant for the years ended 31 December 2011 and 2012 are reasonable and payable by the Respondents.

DETERMINATION AND REASONS

INTRODUCTION

1. Dunes House Management Company Limited ('the Applicant') lodged a claim in the County Court seeking the payment from Mr Glyn Alan Wilmott and Mrs Janet Lesley Wilmott ('the Respondents') of specified charges for services and related matters, including administration charges and legal fees, for the years ended 31 December 2011 and 2012 in respect of Flat 15 Dunes House, 1 Fairhaven Road, Lytham St Annes, FY8 1QT ('the Property'). On 17 January 2013, at Oldham County Court, an Order was made by District Judge Fox for the matters to be referred to the Leasehold Valuation Tribunal.
2. The Property comprises a self-contained, penthouse flat on the third floor of a purpose-built, four storey development, built of brick under a tile roof in or around 2003, containing 14 residential units ('the Development'). The common parts comprise an entrance hall with a lift and stairs; landscaped areas; and car parking areas with designated spaces for residents.

3. The Respondents have a leasehold interests in the Property held under an underlease made between (1) Langtree Homes Limited, (2) the Applicant and (3) Roger Ancell White and Diane White on 14 March 2003 for a term of 999 years (less 20 days) from and including 1 May 1892 ('the Underlease').

THE INSPECTION

4. The Tribunal inspected the common parts of the Development externally and internally on the morning of 10 May 2013. The Applicant was represented by Mrs D Sharman. The Respondents were neither present nor represented. The Tribunal found the Development to be maintained to a reasonable standard.

THE PROCEEDINGS

5. Directions were issued by a procedural chairman on 18 February 2013. The Applicant complied with the Directions, but the Respondents did not. As the Respondents had not complied with the Directions, the procedural chairman directed on 9 April 2013 that, unless an oral hearing was requested by either party, the matter be determined on the papers. Neither party requested an oral hearing.
6. The Tribunal were satisfied that the Respondents had, through their solicitors, Stirling Law, been given adequate notice of the proceedings and of the date and time of the proposed inspection and hearing. The Tribunal proceeded, therefore, to consider the issues on the basis of the papers provided by or on behalf of the parties.
7. In doing so, the Tribunal draws no adverse inference in relation to the substantive issues under consideration from the failure of the Respondents to attend the inspection or the hearing but observes that they have lost an opportunity to address the matters before the Tribunal.

THE LAW

8. 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 UNDERLEASE

- 9. The Underlease contains 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

- 10. The Tribunal 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, including the Respondent's Defence dated 5 September 2012.
- 11. The Tribunal have considered the issues on the whole of the written documentation placed 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.
- 12. The Applicant provided details of the service and other 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 and other 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.
- 13. The Respondents raised a Defence to the County Court claims which essentially denied that the sums claimed had formally been demanded and claimed that proper accounts had not been produced. The Respondents' Defence is in general terms and no supporting evidence 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. In these circumstances, the Tribunal finds that there is no merit in the Respondents' Defence.
- 14. The Tribunal has not seen the demands in question and it is by no means certain that they complied with The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 or The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007. The Tribunal is aware, however, of the decision in *Birmingham City Council -v- Keddie & Hill [2012] UKUT 323 (LC)* in which it was held that a leasehold valuation tribunal had no jurisdiction to determine issues not raised by the application. Compliance with the regulations mentioned above has not been raised by the Respondents and, in the circumstances of the present case, the Tribunal can see no reason to take this point further.

15. The Tribunal has determined that, whatever the position in relation to the demands, the Respondents have had notice of all the claims made by the Applicant and have failed to respond in a manner which would raise an arguable challenge. In reaching their decision in this respect, the Tribunal has had regard to *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 is 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. The Tribunal is not satisfied that the Respondents in the present proceedings have established a prima facie case.
16. In the light of the foregoing, 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. 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 notes that some payments have been made by the Respondents, but is satisfied that there were levels of arrears which justified the Applicant's taking action and charging for the consequential legal and administrative costs incurred, none of which are unreasonable in terms of their nature or amount. The Tribunal find, therefore, that the service charges generally for the years ended 31 December 2011 and 2012, and the related charges for each of those years, are reasonable and that the Respondents are liable for payment of the sums demanded in each of those years.

COSTS

17. 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.'

18. The Tribunal considered that the general words 'otherwise unreasonably' in paragraph (2)(b) of the provisions must be construed as having a meaning in the same nature as the preceding specific words 'frivolously', 'vexatiously', 'abusively' and 'disruptively' and that there must be behaviour of that nature to engage the provisions. The Respondent's behaviour in respect of the proceedings did not cross that threshold and could not be said to be unreasonable. In any event, the prospects of success of the application required a measured consideration of the evidence and the Tribunal did not consider that the Respondents' failure to comply with the Directions or otherwise to engage with the Tribunal process prejudiced the Applicant, save in relation to the payment of a hearing fee which is considered below. In these circumstances, the Tribunal has determined that it would not be appropriate to award costs in this case.

Signed.....

P J Mulvenna

Chairman

10 May 2013