



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

Case Reference : CHI/29UD/LIS/2013/0079

Property : 13 Kestrel Place
Waterstone Way
Waterstone Park
Greenhithe
Kent
DA9 9TW

Applicant : Samnas Limited

Representative : J B Leitch LLP

Respondents : Mr. A.R. Evans
Ms J.L. Hilling

Representative : Mr. S. Cornwall

Type of Application : Landlord and Tenant Act 1985
Liability to pay service charges Section 27A
Limitation of costs Section 20C
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002
Liability to pay administration charges

Tribunal Members : Judge R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Mr. P.A. Gammon MBE BA

**Dates and venues of
Hearing** : 23rd October 2013
10th March 2014
Chatham

Date of Decision : 18th March 2014

DECISION

Background

1. Samnas Limited ("the landlord") commenced proceedings in the County Court (Claim No. 3QT15255) against Mr. A.R. Evans and Ms J.L. Hilling ("the tenants") and that claim was transferred in part to the Tribunal for a determination in respect of service charges and administration charges.

2. On 23rd September 2013 the Tribunal carried out an inspection and a hearing was commenced. Present at the hearing were the tenants represented by Mr. Cornwall, Mr. Allison of counsel representing the landlord, Mr. Cooper and Mr. Campbell of the managing agents Mainstay.

3. Some evidence was heard and at 3.20 pm those present were then given the opportunity to see if they could reach a settlement. At 5.00pm the Tribunal was told that agreement in principle had been reached and that Mr. Allison was waiting for a telephone call from his client to sign off the matter. It was agreed that the proceedings would be stayed for two weeks for a consent order to be sent to the Tribunal.

4. A consent order was not received and the Tribunal was informed that although a settlement had been agreed on 23rd September 2013, there had then been disagreement as to the terms.

Hearing 10th March 2014

5. The matter was listed for hearing on 10th March 2014 and the hearing was attended by Mr. Allison of Counsel on behalf of the landlord, Mr. Campbell from Mainstay and Mr. Cornwall on behalf of the tenants.

6. Mr. Cornwall explained that the tenants were unable to attend but that Mr. Evans could be contacted by telephone.

7. Mr. Allison and Mr. Cornwall addressed the Tribunal about the negotiations which had taken place on 23rd September 2013. It was agreed that no details of the agreement had been written down and signed but a figure had been agreed to be paid in instalments and, relying on a handshake, the tenants had made two payments which had been accepted by the landlord's agents in part payment of the agreed sum.

8. It was clear that Mr. Cornwall did not agree the terms of the consent order as drafted and as a result his submission was that there had been no agreement to settle the matter and that the Tribunal still had jurisdiction to make a decision and should do so.

9. However, the basis for Mr. Cornwall's objection to the draft consent order was less clear.

(a) At first he was very concerned that the order gave some sort of immunity to the managing agents because a statement was included that the settlement was made without admission of liability by the managing agents. The

Tribunal is aware that settlements are often made on the basis that there is no admission of liability or wrongdoing by the parties or their agents but in any event Mr. Allison had no objection to the removal from the order of the mention of the managing agents.

(b) Mr. Cornwall stated that on 23rd September 2013 he had had discussions with Mr. Allison, Mr. Campbell and Mr. Cooper and it had been agreed that a settlement should be made on the basis of a formula determined by another Tribunal when dealing with another property at the development. However, he now considered that the formula from the previous decision had not been applied, he now saw that other things had happened and that a different formula was required. Mr. Cornwall did not make his position entirely clear but he appeared to be saying that although he had reached an agreement with the landlord's representatives on 23rd September 2013, he now realised that a different formula should have been applied in this case.

(c) Mr. Cornwall then stated that the settlement figure as agreed was intended to include everything shown on the tenants' statement dated 8th August 2013 (at pp 65 and 66 of the landlord's bundle of documents). Mr. Allison submitted that the settlement figure as agreed included all the sums shown on that account except for the last two items which were in respect of professional fees of £1,179.00 and £974.00 dated 22nd March 2013 and 28th June 2013 respectively. He showed the Tribunal and Mr. Cornwall his copy of the statement and indicated a line which he had drawn above the last two items. It was agreed by Mr. Allison and Mr. Cornwall that those two items were not included in the County Court claim which had been transferred in part to the Tribunal but that the tenants could challenge those items; if necessary by making an Application to the Tribunal.

10. As those two items were not included in the County Court claim they could not have been transferred to the Tribunal and the Tribunal would not have jurisdiction to deal with them in these proceedings. However, whether they were intended by the parties and their representatives to be included in the settlement figure is relevant in coming to a decision as to whether or not the items which are included in these proceedings have been agreed by the tenants.

11. The tenants were unable to be present on 10th March 2014 but at the suggestion of Mr. Cornwall a telephone call was made to Mr. Evans using the speakerphone facility. Mr. Evans confirmed his identity and was asked by the Tribunal to provide his recollection of the terms of the settlement reached on 23rd September 2013. He stated that he and Ms Hilling understood the sum was in full and final settlement of what was in the case bundle from when they moved in to September 2013 and that a line had been drawn through the last two items.

12. The Tribunal considered the evidence and submissions in respect of the settlement. The evidence of Mr. Evans supported to a large extent the account given by Mr. Allison that the settlement had included the service charges and other sums up to and including the half yearly service charges payable in advance for the period 1st March to 31st August 2013 but not the two items in

respect of professional fees of £1,179.00 and £974.00 dated 22nd March 2013 and 28th June 2013 respectively.

13. The hearing was resumed and the Tribunal announced that on a balance of probabilities the Tribunal found that there was an agreement on 23rd October 2013 and that the settlement figure did not include the two items in respect of professional fees of £1,179.00 and £974.00 dated 22nd March 2013 and 28th June 2013 respectively. The Tribunal had no powers to interfere in that settlement. Consequently, as there was an agreement by the tenants in respect of the service charges and other sums detailed in the tenants' statement dated 8th August 2013 (at pp 65 and 66 of the landlord's bundle of documents) excluding the two items in respect of professional fees of £1,179.00 and £974.00 dated 22nd March 2013 and 28th June 2013 respectively, the Tribunal did not have jurisdiction to consider the service charges and other sums which had been transferred from the County Court for determination. The tenants may challenge those two items in respect of professional fees if they wish to do so; if necessary by making an application to the Tribunal. The Tribunal wishes to make it quite clear that nothing in this decision should be taken as an indication that such an application would be either successful or unsuccessful.

14. There is before us an application for an order under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"). We find that it is just and equitable in the circumstances not to make such an order because there was an agreement in place and that should have been an end of these proceedings before the Tribunal.

15. Mr. Allison made an application for the significant costs which had been incurred since the hearing on 23rd September 2013. He referred to Rule 13 of the Tribunal Procedure (First-tier)(Property Chamber) Rules 2013 and Section 29(4) of the Tribunals, Courts and Enforcement Act 2007. He made the application on two bases. Firstly, against the tenants who, he submitted, had acted unreasonably in continuing to proceed after agreeing to a settlement and secondly against Mr. Cornwall for a wasted costs order. Such an order may be made against a legal or other representative and Mr. Cornwall falls into the category of "other representative". Mr. Allison pointed out that on the telephone Mr. Evans seemed clear and what he said did not agree with what Mr. Cornwall had said.

16. Mr. Cornwall submitted that the proceedings were not about him and that he was not entering into that. He had been honest and was representing the tenants. He had not been party to the full discussion and would not be pulled into a dispute where the tenants were not able to be present. He suggested that the landlord wanted to attack him for dealing with such proceedings and helping residents.

17. A copy of the draft order was produced by Mr. Allison and he and Mr. Cornwall agreed that that was the document which had been produced after 23rd September 2013 and had been disputed. A copy of the order is annexed to this decision.

18. The Tribunal thought long and hard before reaching a decision on the application for costs. The tenants had not had the opportunity to make their own representations in response to the costs application. They were represented by Mr. Cornwall but such representations as he made in relation to the costs applications did little, if anything, to assist the tenants. His representations amounted more to a defence of his own position.

19. Although the Tribunal found as a fact that an agreement in the terms submitted on behalf of the landlord had been reached, that decision was reached only after hearing argument and evidence and was not a foregone conclusion at the start of the hearing on 10th March 2014. It is unfortunate that Mr. Allison, Mr. Cooper and Mr. Campbell did not make a written note of the basic terms of the settlement and have it signed by or on behalf of the parties on 23rd September 2013. As a result, they must bear some of the responsibility for the proceedings having to continue. For these reasons the Tribunal was not satisfied that the criteria existed to justify the making of a costs order against the tenants or Mr. Cornwall but the criteria came close to being satisfied and parties should bear in mind the removal of the limit from the amount of costs which the Tribunal may award and the financial consequences for parties and/or their representatives.

Decision

20. The following decisions are made by the Tribunal:

(a) The Tribunal does not have jurisdiction to deal with the matters transferred from the County Court because there had been an agreement between the parties.

(b) The making of an order under Section 20C of the 1985 Act is refused.

(c) The making of an order for costs against the tenants or Mr. Cornwall is refused.

Appeals

21. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

22. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

23. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

24. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)

IN THE DARTFORD COUNTY COURT

BETWEEN

GAMNAS LIMITED

Claimant

and

(1) ANTHONY RICHARD EVANS
(2) JENNIFER LESLEY HILLING

Defendants

TOMLIN ORDER

BEFORE [DEPUTY] DISTRICT JUDGE sitting in the Dartford County Court,
Court House, Home Gardens, Dartford, Kent, DA1 1DX.

UPON this claim having been referred back to the Dartford County Court by the First Tier
Tribunal Property Chamber, Southern Region at the request of the parties.

AND UPON the parties having agreed to the terms set forth in the confidential Schedule
hereto.

AND UPON it being recorded that the Defendants admit that the service charges and
administration charges applied on their account from the date of their lease up to and
including 1 March 2013 are payable to the extent that the sum of £3,000.00 (after all
payments currently shown on that account) remains outstanding and payable by the
Defendants to the Claimant.

~~AND UPON there being no admission of liability or fault by the Claimant or its managing~~

IT IS BY CONSENT ORDERED THAT:-

1. All further proceedings in this claim and the Defendants' Counterclaim be stayed except for the purposes of effecting the terms of the Schedule.
2. There be liberty to apply as to the implementation of this order.

DATED this day of November 2013

.....
Solicitors for the Claimant

J B Leitch LLP
10 Duke Street
Liverpool
L1 5AS

(Ref: 28/S20335)

.....
Anthony Richard Evans
(Acting in Person)

.....
Jennifer Lesley Hilling
(Acting in Person)

SCHEDULE

1. The Defendants shall pay to the Claimant the total sum of Three Thousand Pounds (£3,000.00) ("the Settlement Sum") in full and final settlement of the claim and Counterclaim herein in respect of Service Charges and Administration fees levied to the Defendants' account (as annexed hereto) from the date of the lease to issue and all further such sums up to and including 1 March 2013.
2. For the avoidance of doubt, the settlement set out herein is without prejudice to the operation of the service charge provisions included within the lease of 13 Kestrel Place, Waterstone Way, Dartford, Kent, DA9 9TW ("the Property") (dated 14 September 2007). Accordingly, further balancing charges may yet be applied to the Defendants' account at the end of the relevant service charge period in accordance with that lease.
3. The Settlement Sum shall be paid to the Claimant by the Defendants by monthly instalments as follows:-
 - i) First payment of Five Hundred Pounds (£500.00) to be paid to the Claimant's Solicitor by 5.00pm on Friday 25 October 2013, the receipt of which the Claimant hereby acknowledges.
 - ii) The remaining balance of the Settlement Sum, namely Two Thousand Five Hundred Pounds (£2,500.00), to be paid by the Defendants in equal monthly instalments thereafter by 5 payments of Five Hundred Pounds (£500.00) each on the last Friday of each month, starting on 29 November 2013 such payments to be made direct to the Claimant's managing agent from time to time, currently Mainstay Residential Limited.
4. The Claimant and the Defendants will each use their best endeavours to cooperate and procure an appropriate system to prevent the lighting in the communal areas at the block of which the Property forms part from being lit all day. For the avoidance of doubt, it is agreed that the cost of such system is to be agreed in advance and will not be contributed to by the Claimant without its express consent. It is recorded that it is intended that the Defendants will organise the installation of (and payment for) an appropriate system and that the Claimant will not unreasonably refuse consent to such installation and that the cost of any such works will not form part of the annual service charge (the same not being recoverable as part of the service charge under the terms of the lease).

.....
Solicitors for the Claimant

J B Leitch LLP
10 Duke Street
Liverpool
L1 5AS

(Ref: 28/S20335)

.....
Anthony Richard Evans
(Acting in Person)

.....
Jennifer Lesley Hilling
(Acting in Person)

To: Mr A Evans and Ms J Hilling
 13 Kestrel Place
 Waterstone Way
 Stone
 Kent
 DA9 9TW

Mainstay Residential Limited
 Whittington Hall
 Whittington Road
 Worcester
 WR5 2ZX

Landlord: Samnas Limited
 Tenant Ref: WAPOSSEVAN
 Property: 13 Kestrel Place

Effective date: 8 Aug 2013

Prepared: 8 Aug 2013

| Posted | Description | Period from | Period to | Charges | Receipts | Unsettled |
|-------------|---|-------------|-------------|----------|----------|-----------|
| 13 Jan 2011 | Service Charge btwd | | n/a | 1,568.16 | | 1,387.73 |
| 1 Mar 2011 | Half Year Greenbelt S/C in Adv | 1 Mar 2011 | 31 Aug 2011 | 69.43 | | |
| 1 Mar 2011 | Half Year Estate S/C in Adv | 1 Mar 2011 | 31 Aug 2011 | 62.92 | | 62.92 |
| 1 Mar 2011 | Half Year Kestrel Place S/C in Adv | 1 Mar 2011 | 31 Aug 2011 | 329.36 | | 329.36 |
| 1 Mar 2011 | Half Year All Private Apartments S/C in Adv | 1 Mar 2011 | 31 Aug 2011 | 61.12 | | 61.12 |
| 1 Mar 2011 | Half Year All Apartments S/C in Adv | 1 Mar 2011 | 31 Aug 2011 | 149.73 | | 149.73 |
| 15 Mar 2011 | Late Payment Fee - Arrears 2 | | n/a | 48.00 | | 48.00 |
| 28 Mar 2011 | Late Payment Fee - Arrears 3 | | n/a | 48.00 | | 48.00 |
| 1 Sep 2011 | Half Year Greenbelt S/C in Adv | 1 Sep 2011 | 29 Feb 2012 | 69.43 | | |
| 1 Sep 2011 | Half Year Estate S/C in Adv | 1 Sep 2011 | 29 Feb 2012 | 72.52 | | 72.52 |
| 1 Sep 2011 | Half Year Kestrel Place S/C in Adv | 1 Sep 2011 | 29 Feb 2012 | 272.29 | | 272.29 |
| 1 Sep 2011 | Half Year All Private Apartments S/C in Adv | 1 Sep 2011 | 29 Feb 2012 | 62.08 | | 62.08 |
| 1 Sep 2011 | Half Year All Apartments S/C in Adv | 1 Sep 2011 | 29 Feb 2012 | 155.49 | | 155.49 |
| 1 Mar 2012 | Half Year Greenbelt S/C in Adv | 1 Mar 2012 | 31 Aug 2012 | 69.43 | | |
| 1 Mar 2012 | Half Year Estate S/C in Adv | 1 Mar 2012 | 31 Aug 2012 | 72.52 | | 72.52 |
| 1 Mar 2012 | Half Year Kestrel Place S/C in Adv | 1 Mar 2012 | 31 Aug 2012 | 272.29 | | 272.29 |
| 1 Mar 2012 | Half Year All Private Apartments S/C in Adv | 1 Mar 2012 | 31 Aug 2012 | 62.08 | | 62.08 |
| 1 Mar 2012 | Half Year All Apartments S/C in Adv | 1 Mar 2012 | 31 Aug 2012 | 155.49 | | 155.49 |
| 3 May 2012 | All Apts S/Charge Deficit Y/E 31/08/11 | 1 Sep 2010 | 31 Aug 2011 | 28.91 | | 28.91 |
| 3 May 2012 | Estate S/Charge Surplus Y/E 31/08/11 | 1 Sep 2010 | 31 Aug 2011 | -3.56 | | |
| 3 May 2012 | Kestrel Place S/Charge Surplus Y/E 31/08/11 | 1 Sep 2010 | 31 Aug 2011 | -116.91 | | |
| 3 May 2012 | Private Apts S/Charge Surplus Y/E 31/08/11 | 1 Sep 2010 | 31 Aug 2011 | -15.43 | | |
| 16 Aug 2012 | Greenbelt Service Charge Credit to 14/08/12 | | 14 Aug 2012 | -208.29 | | |
| 1 Sep 2012 | Half Year All Private Apartments S/C in Adv | 1 Sep 2012 | 28 Feb 2013 | 64.75 | | 64.75 |
| 1 Sep 2012 | Half Year Kestrel Place S/C in Adv | 1 Sep 2012 | 28 Feb 2013 | 293.22 | | 293.22 |
| 1 Sep 2012 | Half Year Estate S/C in Adv | 1 Sep 2012 | 28 Feb 2013 | 35.08 | | 35.08 |
| 1 Sep 2012 | Half Year All Apartments S/C in Adv | 1 Sep 2012 | 28 Feb 2013 | 166.36 | | 166.36 |
| 11 Oct 2012 | Late Payment Fee - Arrears 2 | | n/a | 48.00 | | 48.00 |
| 29 Nov 2012 | Late Payment Fee - Arrears 3 | | n/a | 48.00 | | 48.00 |
| 8 Jan 2013 | INT Land Registry Fee | | n/a | 3.00 | | 3.00 |
| 8 Jan 2013 | INT Solicitor Referral Fee | | n/a | 96.00 | | 96.00 |
| 18 Feb 2013 | Estate S/C Surplus Y/E 31/08/12 | 1 Sep 2011 | 31 Aug 2012 | -27.67 | | |
| 18 Feb 2013 | Kestrel Place S/C Deficit Y/E 31/08/12 | 1 Sep 2011 | 31 Aug 2012 | 48.86 | | 48.86 |
| 18 Feb 2013 | All Apartments S/C Deficit Y/E 31/08/12 | 1 Sep 2011 | 31 Aug 2012 | 36.23 | | 36.23 |
| 18 Feb 2013 | Private Apartments S/C Surplus Y/E 31/08/12 | 1 Sep 2011 | 31 Aug 2012 | -16.86 | | |

Continued

To: Mr A Evans and Ms J Hilling
 13 Kestrel Place
 Waterstone Way
 Stone
 Kent
 DA9 9TW

Mainstay Residential Limited
 Whittington Hall
 Whittington Road
 Worcester
 WR5 2ZX

Landlord: Sammas Limited
 Tenant Ref: WAPOS8EVAN
 Property: 13 Kestrel Place

Effective date: 8 Aug 2013
 Prepared: 8 Aug 2013

| Posted | Description | Period from | Period to | Charges | Receipts | Unsettled |
|-------------|---|-------------|-------------|----------|----------|-----------|
| 1 Mar 2013 | Half Year All Apartments S/C in Adv | 1 Mar 2013 | 31 Aug 2013 | 166.36 | | 166.36 |
| 1 Mar 2013 | Half Year Estate S/C in Adv | 1 Mar 2013 | 31 Aug 2013 | 35.08 | | 35.08 |
| 1 Mar 2013 | Half Year Kestrel Place S/C in Adv | 1 Mar 2013 | 31 Aug 2013 | 293.22 | | 293.22 |
| 1 Mar 2013 | Half Year All Private Apartments S/C in Adv | 1 Mar 2013 | 31 Aug 2013 | 64.75 | | 64.75 |
| 22 Mar 2013 | Professional Fees | 22 Mar 2013 | 22 Mar 2013 | 1,179.00 | | 1,179.00 |
| 28 Jun 2013 | Professional Fees | 28 Jun 2013 | 28 Jun 2013 | 974.00 | | 974.00 |

Totals: 6,792.44 0.00 6,792.44

Brought forward from previous statement: 0.00

Balance to pay: 6,792.44

Please make cheques payable to Mainstay Payments Limited