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

Case reference : LON/00BE/LSC/2103/0673

Property : Flat 27 St Saviours Wharf, 23-25
Mill Street, London SE1 2BE

Applicant : St Saviours Wharf Company Ltd

Representative : Management Exclusive LLP, t/a
Currell Management

Respondent : Anne Pounds

Type of application : Liability to pay service charges

Tribunal members : Judge Nicol
Mr M Cairns MCIEH
Mr P Clabburn

Date and venue of hearing : 9th January 2014 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 9th January 2014

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the service charges sought in this application are not payable for the reasons set out below.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the Applicant may not seek to recover any of their costs of these proceedings through the service charge.

The application

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the following service charges are payable by the Respondent:-
 - a) £1,040.50 demanded in 2011, being the final instalment towards the cost of a major works project for roof repairs and the external decoration of the building at St Saviours Wharf;
 - b) Reserve fund contributions of £1,594.57 and £1,941.96 demanded in 2012 and 2013 respectively; and
 - c) Payments of £1,062.89 and £2,168.02 demanded in 2012 and 2013 respectively on account of future service charge expenditure.
2. The Respondent disputed whether these charges had been properly incurred. In particular, she challenged whether the Reserve fund had been properly used over the years – she claimed the fund had been used regularly to fund over-expenditure and service charge surpluses seemed to have been put into the Reserve fund instead of being credited to the lessees under cl.5.03 of the lease. However, the Respondent also disputed the Applicant's right to demand any service charges at all. In the event, the Tribunal determined this issue in favour of the Respondent and that was determinative of the entire application so that there was no need to consider the other points raised.
3. The Tribunal heard submissions and evidence on behalf of the Applicant from Mr Michael Paul and Ms Elizabeth Hurry of Currell Management and Mr Hugh Dawson, one of the Applicant's directors and from the Respondent on her own behalf.

The Background

4. On 9th February 1988 the Respondent's predecessors-in-title were granted a lease of a fourth floor flat at Flat 27 St Saviours Wharf, 23-25 Mill Street, London SE1 2BE for a term of 125 years from 25th December 1981. The other parties to the lease were the freeholder (currently the Manhattan Lofts Corporation) and St Saviours Wharf Management Ltd, a lessee-owned management company created especially to arrange the management of the building on behalf of all 47 lessees.
5. Clause 7 of the lease puts all of a long list of management obligations on St Saviours Wharf Management Ltd, including maintenance of the structure, utilities, common parts, TV aerial, fire safety equipment, any entryphone system and the lift, reimbursement of the Lessor for payment of the insurance premium, employment of managing agents, accountants and other contractors or professionals and calculating and

recovering service charge payments, including for a reserve fund, from the lessees.

6. Unfortunately, for reasons which are not apparent, St Saviours Wharf Management Ltd became dormant. For many years now it has not carried out any management functions and has submitted the minimum of information to Companies House. Some of the lessees formed another company called St Saviours Wharf Lessees Ltd. They were initially appointed the managing agents in place of the previous agents who had gone out of business but then they actually appointed their own agents. In 1998 they appointed Ms Elizabeth Hurry as the agent. St Saviours Wharf was her fourth or so property to manage and her firm has since evolved into Management Exclusive LLP, managing around 30 properties under various trading names. The current trading name is Currell Management.
7. In 2007 it was suggested that the lessees could seek to purchase the freeholder's interest. Instead, the freeholder agreed to grant an intermediate lease to a lessee-owned company which could then grant an extended 999-year lease to each of its members. The Applicant company was formed for this purpose by 46 of the lessees – only the Respondent did not participate. Manhattan Lofts Corporation granted a lease to the Applicant on 8th October 2008. The extended leases were granted in 2009 – again the Respondent was the only one not part of the new arrangements.
8. It was intended by both companies that St Saviours Wharf Lessees Ltd would hand over management to the Applicant. The Applicant sent out a letter dated 6th November 2008 notifying lessees of the grant of the head lease and of the new address to which all “future payments of ground rent and service charge” were to be paid. The Respondent did not receive this letter and claimed to the Tribunal that the Applicant had fraudulently created it after the event but there was no evidence for such a serious allegation.
9. In the event, it took some time to arrange the transfer of management between the companies. It was only on 2nd December 2011 that the Applicant felt able to notify all the lessees by letter that, with effect from 1st January 2012, they would be collecting all service charges and warning them to amend their payment details.
10. By this time, the Respondent had become unhappy with the management service and had queried her service charges in correspondence. She lives in Ireland on a farm but says that she has no problem with receiving post other than from the Applicant and their agents. She says that some demands have not been received as well. The Applicant issued the current application on 22nd September 2013.

The Issue

11. The first item claimed (see paragraph 1(a) above) was demanded from the Respondent by St Saviours Wharf Lessees Ltd. The other two were demanded by the Applicant. Neither is the Company as defined in the lease who has been given the management functions under clause 7 of that lease. However, the Applicant points to clause 8.06 of the lease:-

... at any time and from time to time during the term hereby granted the Lessor may by notice in writing to the Company the lessee and the other Owners undertake all or some of the obligations of the Company under Clause 7 hereof. Such notice shall specify the period during which it is to remain in force which period may be of fixed duration or may continue until terminated by further notice in writing and shall further specify by reference to Clause 7 hereof and the sub-clauses thereof the obligations to which it relates during such period as such notice shall remain in force the references in Clauses 5 and 7 of this Lease to the Company shall be construed as though they were references to the Lessor so far as the obligations specified in the said notice are concerned and the obligation of the Lessee to pay the Company shall be converted into an obligation to pay the Lessor all as provided in Clause 5

12. The opening paragraph of the lease states that "the Lessor" includes the person "for the time being entitled to the reversion immediately expectant on the determination of the term hereby created." With their 2008 lease, the Applicant satisfies this definition and so is capable of having the Company's management functions under clause 7 transferred to it.

13. By letter dated 12th December 2013 the Applicant notified all lessees,

As you are aware since St Saviours Wharf Co Limited acquired the headlease they have been undertaking all the services which the Management Company was obliged to perform under the terms of the lease. In accordance with Clause 8.06 of the terms of your lease please note that St Saviours Wharf Co Limited continues to undertake all the obligations of the Management Company referred to in Clause 7 of your lease until further notice.

14. The Tribunal would hold that this letter constitutes the written notice under clause 8.06 save that it is irrelevant to the current application. All the service charges claimed pre-date this letter. There is no basis for claiming it should have retrospective effect.

15. In that event, the Applicant seeks to rely on their letter of 2nd December 2011 (see paragraph 9 above). However, it is clear to the Tribunal that that letter was not written in contemplation of clauses 7 and 8.06 but

for the practical reason that lessees needed to be told to re-direct their payments towards the service charges. Moreover, clause 8.06 requires express reference to clause 7, to which obligations under clause 7 are being transferred and to the period of time during which the transfer is to be effective. The letter of 2nd December 2011 contains none of this. Therefore, it is not effective to transfer any management functions to the Applicant.

16. The Applicant argued that full compliance with the terms of clause 8.06 was a mere technicality which could be overlooked in the light of the involvement and knowledge of all lessees, including the Respondent, in the events which had led to this point. The Respondent claims not to have received the invitations to meetings and residents association newsletters which would have kept her so informed but the Tribunal does not need to rule on that. The fact is that such a transfer of management functions deprives the Respondent of a valuable opportunity to participate in the company which her lease specified as the body which manages her property. The deprivation of such rights should only be permitted by strict compliance with the terms of her lease.
17. On the Applicant's case, the earliest they were entitled to demand service charges was 2nd December 2011. The first item (see paragraph 1(a) above) pre-dated even that. St Saviours Wharf Lessees Ltd never had a right under the lease to demand any service charges and so the first item cannot be payable under any interpretation of the lease or the relevant letters. The other two items were demanded at a time when the Applicant had yet to acquire the right to demand service charges and so they cannot be payable either.

Costs

18. The Respondent sought an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant should not be permitted to recover their costs of these proceedings through the service charge. Assuming the Applicant has the right to recover costs in this way, the Tribunal is satisfied that such an order should be made. The Applicant made a clear and fundamental error for which there is no excuse. It was not difficult for them to comply with the lease but they failed to do so. This application should not have been made.

Name: NK Nicol

Date: 9th January 2014