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

Case reference : **LON/00BJ/LSC/2016/0367**

Property : **Flat 58, Moira court, Balham High Road, London, SW17 7AQ**

Applicant : **Grandpex Co Ltd**

Representative : **Miss Doran of Counsel**

Respondents : **(1) North Shore Properties Ltd
(2) Mrs Joyce Annor Opoku**

Representative : **(1) Did not attend and was not represented
(2) In person**

Type of application : **For the determination of the reasonableness of and the liability to pay service charges**

Tribunal members : **Judge I Mohabir**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **22 March 2017**

DECISION

Introduction

1. This is an application made by the Applicant for a determination of the Respondents' liability to pay and/or the reasonableness of service charges for the period ending 31 December 2007 to 31 December 2016.
2. The First Respondent is still registered as the legal owner of 58 Moira Court, Balham High Road, London, SW17 7AQ ("the property"). It is a company that was registered in the British Virgin Islands. It went into administration on 19 January 2010 and exited the administration in July 2014. Apparently, the First Respondent was struck off in the British Virgin Islands for failure to file the required annual returns.
3. The property is subject to a lease dated 26 October 1971 made between Britpal Ltd and Neville Earnest Decruz and Judith Arlington Decruz for a term of 99 years from 24 November 1948 ("the lease"). The Applicant is the current freeholder.
4. By clause 2(6) of the lease, the lessee covenanted to pay a service charge contribution for the costs incurred by the lessor in relation to the general repair and maintenance of the building.
5. It seems that on 16 May 2008, the Second Respondent took an assignment of the lease from the First Respondent and paid a purchase price of £285,000 for the lease with a mortgage in favour of Mortgage Express. Unfortunately, the firm of solicitors acting for the Second Respondent on the purchase were subject to an intervention by the Law Society and she was never registered as the legal owner or the charge in favour of Mortgage Express. The position remained unresolved despite the Second Respondent instructing a number of firms of solicitors in the intervening years.
6. The Applicant continued to serve service charge demands on the First Respondent as the legal owner of the property, which remained unpaid. Eventually, on 5 October 2016, the Applicant made this application to

the Tribunal seeking a determination on the Respondents' liability to pay and/or the reasonableness of the service charge arrears claimed. These are set out at page 10 of the application and need not be repeated here as they are self-evident.

7. On 22 November 2016, the Tribunal issued substantive Directions. These have been complied with by the Applicant whereas neither Respondent has not.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The hearing in this case took place on 22 March 2017. The Applicant was represented by Miss Doran of Counsel. The Second Respondent appeared in person. The First Respondent did not attend and was not represented.
10. The Second Respondent explained that she had not complied with the Tribunal's Directions because she had attempted unsuccessfully to instruct a number of firms of solicitors to deal with this matter. She had only recently managed to instruct a firm of solicitors, Amphlett Lissimore, to deal with the registration of her ownership of the property.
11. By a letter dated 27 February 2017, Amphlett Lissimore wrote to the Tribunal enclosing a copy of the executed Transfer made between the First and Second Respondents but it appears that no application has been made as yet to the Land Registry to register the Second Respondent as the legal owner of the property. Therefore, at present, she has no more than a beneficial interest. As such, the letter accepts that it is common ground between the parties that the Second Respondent is not contractually liable under the lease for the service charge arrears claimed.

12. Furthermore, as Miss Doran correctly submitted, the disposition to the Second Respondent could not operate as a matter of law until the registration requirement of section 27(2) of the Land Registration Act 2002, namely the transfer, had been complied with. Arguably, therefore, the Second Respondent had no *locu standi* in these proceedings to challenge the service charge arrears claimed by the Applicant. In any event, the Second Respondent had not filed any evidence at all to challenge the service charges.

13. Accordingly, given that the application was unopposed, the Tribunal was bound to find that the First Respondent remained contractually liable to pay the service charges claimed and that the total arrears claimed for the years ending 31 December 2007 to 31 December 2015 in the sum of £8,212.30 and the estimated sum of £978.34 for the year ended 31 December 2016 are reasonable.

Name: Judge I Mohabir **Date:** 22 March 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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, improvements 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 for 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 or later period.

Section 19

- (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 provisions 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.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.