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

Case Reference : CAM/26UG/LSC/2014/0125

Premises : 7 Reed Place, Bloomfield Road,
Harpenden, Herts,
AL5 4DE

Applicant : Maunder Taylor
Michael Maunder Taylor (lay
representative)

Respondent : Denis Healy
Unrepresented

Date of Transfer : 25th November 2014

Type of Application : Determination of the reasonableness
and payability of service charges,
pursuant to section 27A of the
Landlord and Tenant Act 1985

Tribunal : Judge J. Oxlade
D. S. Brown MRICS
Judge F. Davey

**Date and venue of
Hearing** : 17th April 2015
10 Alfred Place, London
WC1E 7LR

DECISION

For the following reasons, the Tribunal finds as follows:

- (i) The sum of £1086.75 was reasonably incurred by and is payable to the Applicant in respect of the fees and disbursements incurred by Bruce Roderick Maunder Taylor, as shown in invoices dated 28th February 2011 to 27th January 2012, inclusive,
- (ii) The claim is transferred back to the County Court, and will wish to determine as an outstanding issue the question of what outstanding debt (if any) remains for the Respondent to discharge, as per paragraph 24 below

REASONS

Background

1. On an application made by Mr. Healy ("the Respondent"), the Leasehold Valuation Tribunal ("LVT") made an Order on 11th November 2010 ("the Order"), appointing Bruce Roderick Maunder Taylor of Maunder Taylor Chartered Surveyors ("the Applicant") to be the receiver and manager of 1-8 Reed Place ("the property"), with effect from 4th January 2011.
2. His functions and duties were set out in the Directions Order ("Directions Order"), which at the time was to secure the rebuilding and repair of the property comprising 1-8 Reed Place, limited to restoring it to sound and structural condition and with "the original accommodation".
3. The Directions Order had made specific provision for the remuneration of the Applicant's fees and reasonable costs (paragraph 7), including disbursements, to be recoverable from the Tenants of the flats in the property "in such reasonable and proper proportions to be determined by the Manager in accordance with clause 3(g) of the lease, to include payments in advance which shall reasonably be required".

Current Dispute

4. The current dispute concerns the recovery from the Respondent of the Applicant's fees and disbursements, which by an amended claim made on 15th January 2013 was £2898 (plus interest) for invoices dated 28th February 2011 to 27th January 2012.
5. The Tribunal invited the claim to be transferred to it, because recovery of the fees was by collection of service charge (over which the Tribunal has jurisdiction under section 27A of the 1985 Act), in view of the Manager being appointed by the Tribunal, and the Tribunal's extensive knowledge of the building, the Order, and the history of the matter. Accordingly, by consent on 25th November 2014 the County Court sitting at Central London made an Order transferring the claim to the Tribunal for our determination.

The Applicant's Case

6. The Applicant's case is set out in witness statements made by Michael Maunder Taylor dated 21st January and 26th February 2015, and his oral evidence given on 17th April 2015.
7. The Applicant relies on an agreement reached at a preliminary meeting that took place on 21st January 2011 between the leases of most of the flats, and the Manager, consequent on the Order of appointment having been made. The salient points were condensed into minutes of meeting.
8. The minutes show the progression of the discussion that day, which started out with an intention to progress the repair/reconstruction of the property,

necessitating the instruction of Engineers to offer an expert opinion (“expert’s report”). It was agreed that the lessees of the three flats most affected by movement (flats 6-8) would – if the expert advised that rebuilding/repair of the three flats takes place – split all costs and fees three ways.

9. However, as the meeting progressed the parties agreed to look at redevelopment of the whole site, which might result in 5 houses being built, and the Respondent indicated that he would be content with financial return - instead of his flat being rebuilt for his occupation. The parties then agreed to put the expert’s report on hold so that a planning application to redevelop the whole site could be progressed. The parties further agreed that subject to a financial appraisal, Mr. Healy would contribute/benefit by 1/8th or be bought out.

10. The final minute records an agreement that the Manager would involve himself as little as possible – to save costs – and that it would be dealt with by Michael Maunder Taylor at a lower hourly fee. Further, it recorded that “whilst dealing with the Order, those costs will be split 2/3rd Mr Synott and Mr. Rafferty, and 1/3rd to Mr. Healy, but to be reviewed if and when the procedure moves to full development considerations i.e. outline planning permission obtained” (“the fee agreement”).

11. It is this fee agreement which the Applicant says gives rise to the claim against the Respondent for 1/3rd of the costs at £2898 (plus interest), as opposed to 1/8th of the costs at £1086.75.

Oral Hearing

12. An oral hearing was arranged for the Tribunal to sit in the London Panel, at Alfred Place. The Respondent had indicated that he would prefer a telephone hearing, which also suited the Applicant, and so arrangements were made for this to take place; both were provided with details as to how to “phone in” to join the hearing at 11am. The dialling-in details of this were changed at the last minute, and provided to both parties by email the day before the hearing. The Applicant “phoned in” at 11am, but the Respondent did not. At the Tribunal’s request the Applicant made telephone enquires of the Respondent, as did the Tribunal. The panel office in Cambridge did not receive any ‘phone call from the Respondent to say that he could not get through, to join in. Having satisfied ourselves that we had done all that could reasonably be done to secure the Respondent’s attendance, the hearing took place in the Respondent’s absence, starting 15 minutes later than scheduled, at 11.15 am. By way of post-script we should add that in the 3 weeks subsequent to the hearing the Respondent has not made contact with the Tribunal to say that he was deprived of being heard that day nor has he provided any reasons why he was unable to participate.

13. The Applicant’s reliance on the fee agreement was confirmed in the oral submissions made on 17th April 2015; Michael Maunder Taylor (“MMT”) said absent of reliance on this fee agreement, the proper division was 1/8th, as per the provision in the lease, so £1086.75.

14. The Tribunal asked MMT to consider the implication of section 27A(6) of the 1985 Act¹ on the Applicant's reliance on an agreement made by the Respondent to pay fees. Having considered it, he immediately conceded that the fee agreement could not form the basis of the claim, and that the claim would be limited to 1/8th of the fees. He had in place an agreement with the other lessees that if the Tribunal held that each pay 1/8th, then that it what would happen.

15. Mindful of Mr. Healy's absence and the points he had made in correspondence, the Tribunal explored with MMT what the costs represented, how they were incurred, and what plans was being pursued at the time of incurring the costs; this was relevant because the Order in force at that time was for rebuilding the three flats; it was only later on 13th December 2013 that the Tribunal approved an amendment to the Order, with the consent of all parties, that the site would be redeveloped. MMT said that at the time the lessees wanted to pursue a dual strategy: to rebuild according to the Order (plan A) and to redevelop the whole site (plan B). To minimise costs, the lessees negotiated behind closed doors, and it was left to MMT to pursue plan A. The costs incurred in respect of these invoices related to plan A, although some of the work was also useful to progress plan B. One of the invoices detailed a topographical/site investigations/asbestos survey, but in the end this was not done as the parties made it clear that they did not wish to pursue plan A, and so the relevant amount was credited to the Respondent, and formed the basis of a credit note (page 37). None of the invoices involve time spent on seeking planning permission for plan B, for the simple reason that this was left to the freeholders, and the Manager played no part in this process. Though the Manager did on some occasions meet the other lessees, this was not because of favouritism or preferential treatment, rather that several lessees dropped into the office, rather than doing business over the 'phone. Costs were initially incurred in checking the site, and making sure it was secure (post-demolition); in due course the Synott/Rafferty alliance said that they would do so, to save incurring costs.

The Respondent's Case

16. The Respondent's case was set out in letters dated 22nd and 29th January 2014, and a copy of the Appellant's supplementary skeleton argument, attached to which was a copy of a statement of account ("SOA") addressed to the Respondent showing entries on 29th October 2010 and 5th November 2010.

17. The Respondent made the following points:

- the Applicant had refused to acknowledge payment on account by the Respondent of £1000, shown in the SOA and said he exhibited evidence of payment of £2,300, which also read that "total payments were we think £2,000",

¹ "An agreement by the tenant of a dwelling (other than post-dispute arbitration agreement) is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence, of any question which may be subject to an application under subsection (1) or (3)."

- the Applicant had not appreciated the difference between Management fees and all other charges, and had sued for both,
- the Applicant conspired with other lessees to defraud tenants, lied, blocked the sale of No. 7, refused to follow the Tribunal's instructions,
- he had refused to accept ground rent,
- the Applicant had pursued 1/3rd of the costs, rather than 1/8th, and he asked why Synott/Rafferty had agreed to pay the costs of other tenants but not the Respondent,
- why should tenants pay for further site investigations when 6 had been done over the years,
- the Applicant failed to follow procedural steps, causing him loss,
- the topographical/asbestos survey, site investigations, planning and demolition were not management charges,
- the Applicant relied on an agreement, which was provisional,
- the report giving rise to demolition did not recommend it, rather it said that consideration should be given to demolition.

Relevant Law

18. The Tribunal has jurisdiction by virtue of section 27A of the 1985 Act to consider the reasonableness of costs incurred by way of service charges, and which provides as follows:

s27A(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.

(1) Subsection (1) applies whether or not any payment has been made".

19. The service charge provision in the lease is as follows: Clause 3(g) of the lease provided that the lessee was to "bear and pay a reasonable proportion (to be assessed by the Surveyor for the time being of the Lessor) towards the expense of maintaining, supporting, rebuilding, cleansing, and repairing all copings, brickwork, stonework, sewers, drains, pipes... party walls, party structures roofs, boundary walls, fences, appurtenances belonging to used or capable of being used by the Lessee in common with the Lessor or other Lessees which demised premises adjoin or of which they form part and also will pay a proper proportion of the cost of repairing and maintaining the floor dividing the upper maisonette from the lower maisonette such proportion in case of dispute to be determined by the Lessor's surveyor".

Discussion

20. The starting point is that section 27A(6) of the 1985 Act precludes the Applicant's reliance on the fee agreement reached at the meeting as to how the costs would be shared; the point was conceded when put to MMT.

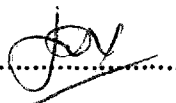
21. The terms of the lease must therefore be considered, and which by 3(g) provide that the Respondent do pay a "reasonable proportion". At 3(h) the lease is specific about a 1/8th contribution to the costs of maintaining and repairing a concrete wall and interwoven fence, those parts of the building of which the demised premises for part of a right of way, and the costs of maintaining garden lands. The cost of the works being considered by the Tribunal related to items giving rise to mutual support. There is no logical basis for assessing the reasonable proportion of these costs in any other way that in accordance with 3(h). Indeed both parties concede that 1/8th is a reasonable proportion: the Applicant did so orally, and the Respondent did so in correspondence dated 24th September 2012 (page 45 of the bundle) in which he says "I am prepared to pay 1/8th. Let me know."

22. Although the Respondent says that some costs were incurred pursuing Plan B, and others unnecessarily for other reasons, the Tribunal explored this at the hearing with MMT, and was satisfied that all costs related to Plan A (or were of mutual benefit to both plans) and were reasonably and necessarily incurred in pursuing Plan A. That which the Respondent was concerned about (topographical/asbestos/demolition) was not carried out and was then credited to the Appellant's account.

23. The Tribunal therefore finds that the Respondent is liable to pay 1/8th of the costs of the works giving rise to the invoices the subject of this claim, and so the Respondent's liability is £1086.75, which was reasonably incurred and payable in accordance with clause 3(g) of the lease.

Set Off

24. The Respondent's case is that he paid £1000 on account, and so his liability is largely discharged. However, the Tribunal's function is not to determine what service charges have actually been paid. No doubt if this is not resolved between the parties, then this point will be determined by the County Court.

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Judge J. Oxlade

7th May 2015