



10668

**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KF/LSC/2014/0102, 5 & 9

Properties : Flats A, B & E, 50 Brightwell Avenue,
Westcliff-on-Sea,
Essex SSo 9EE

**Applicant
Represented by** : Seamoat Ltd.
Mr. L. Gibson, solicitor's agent (Brady)

Respondents : Steven Alan Clark (A)
Talmor Property Developments Ltd. (B)
Christine Paulette Baker (E)

Represented by Mr. R. Plant, solicitor (Tolhurst Fisher LLP)

**Date of transfer from
the county courts at
Southend & Nottingham** : 2nd September 2014 (A)
23rd October 2014 (B)
3rd November 2014 (E)

Type of Application : To determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (lawyer chair)
Roland Thomas MRICS
John Francis QPM

**Date and venue of
hearing** : 17th March 2015, Park Inn by Radisson,
Church Road, Southend-on-Sea,
Essex SS1 2AL

DECISION

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1. In respect of the amount claimed by the Applicant from the 1st Respondent, Steven Alan Clark in the county court sitting at Southend-on-Sea under claim no. AoXV5233, the decision of the Tribunal is as follows:-

	<u>Claim(£)</u>	<u>Decision(£)</u>
Ground rent	150.00	No jurisdiction
Service charges 01/07/11	1,234.00	1,234.00
Service charges 01/07/12	1,105.15	556.20
Service charges 01/07/13	1,301.00	1,301.00
01/07/2012 building works charge	451.44	451.44
13/07/2011 balancing service charge	1,482.26	867.04

13/07/2011	balancing building works	<u>258.37</u>	<u>258.37</u>
		5,982.22	4,668.05

Thus the amount owed is £4,668.05 plus any ground rent.

2. In respect of the amount claimed by the Applicant from the 2nd Respondent, Talmor Property Developments Ltd. in the county court sitting at Southend-on-Sea under claim no. AOXV5234, the decision of the Tribunal is as follows:-

	<u>Claim (£)</u>	<u>Decision (£)</u>
Ground rent	200.00	No jurisdiction
Service charges 01/07/11	1,234.00	1,234.00
Service charges 01/07/12	1,105.15	556.20
Service charges 01/07/13	1,301.00	1,301.00
01/07/2012 building works charge	451.44	451.44
01/10/2010 balancing service charge	1,284.99	731.30
13/07/2011 balancing service charge	1,482.26	867.04
13/07/2011 balancing building works	<u>258.37</u>	<u>258.37</u>
	7,317.21	5,399.35

Thus the amount owed is £5,399.35 plus any ground rent.

3. In respect of the amount claimed by the Applicant from the 3rd Respondent, Christine Paulette Baker in the county court sitting at Nottingham under claim no. AOXV5231, the decision of the Tribunal is as follows:-

	<u>Claim (£)</u>	<u>Decision (£)</u>
Ground rent	200.00	No jurisdiction
Service charges 01/07/11	1,234.00	1,234.00
Service charges 01/07/12	1,105.15	556.20
Service charges 01/07/13	1,301.00	1,301.00
01/07/2012 building works charge	451.44	451.44
01/10/2010 balancing service charge	1,284.99	731.30
13/07/2011 balancing service charge	1,482.26	867.04
13/07/2011 balancing building works	<u>258.37</u>	<u>258.37</u>
	7,317.21	5,399.35

Thus the amount owed is £5,399.35 plus any ground rent.

4. The Tribunal does not make an order pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant's costs of representation before this Tribunal being a relevant cost for including as part of a future service charge. It considers that the question of costs is properly left to the court to deal with.
5. These matters are now transferred back to the county courts sitting at Southend-on-Sea and Nottingham respectively under the above case numbers to enable any party to apply for any further order dealing with those matters which are not within the jurisdiction of this Tribunal or any other matter not covered by this decision including interest, costs and enforcement, if appropriate.

Reasons

Introduction

6. The 3 claims which are dealt with in this decision arise because the long lessees in the Applicant freeholder's property have not paid service charges and/or ground rent. The courts purported to transfer the claims to this Tribunal which they do not have the power to do. The Tribunal has therefore inferred that the question transferred for determination in each case is "*the payability and reasonableness of service charges and/or administration charges*".
7. The claim forms in each case give very little detail of how the claims are made up and the defences in all 3 claims are the same i.e.
 - (1) *The Defendant admits the claim for ground rent which has been remitted to the Claimant*
 - (2) *The Defendant denies that the service charges as claimed are reasonable and/or recoverable and seeks inspection facilities pursuant to the provisions of Section 22 Landlord and Tenant Act 1985*
 - (3) *The Claimant was aware as to a dispute with regard to service charges prior to the issue of these proceedings and the Defendant seeks an order pursuant to Schedule 12 Paragraph 3 of the Commonhold and Leasehold Reform Act 2002 for transfer of the matter to the First-Tier Tribunal (Property Chamber) for determination as to whether a service charge is or will be payable, the amount payable, to whom and by whom payments should be made and the timing and method of such payment*
 - (4) *The Defendant further asserts that an order should be made pursuant to Section 20c of the Landlord and Tenant Act 1925 (sic) to the effect that the costs incurred by the Claimant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable*
8. The Tribunal considered that all 3 cases should be heard together for the obvious reason that they all relate to the same service charges and administration charges for the same property and consistency is clearly beneficial.
9. It should be recorded that the preparation for this hearing, with both parties represented, has been bad. One of the directions ordered the Applicant to file a statement of case setting out "*its justification in principle and in law for the disputed service demands made....This should attach a single sheet of A4 paper for each flat setting out exactly what is allegedly owed to include the date incurred, a full description of the item claimed, the amount and any payments made*". Whilst it is appreciated that the defences contained no detail whatsoever, the statement of case contains very little detail and the single sheets of A4 paper which are presumably those at pages 299, 300 and 301 in the bundle give practically no detail at all save for the sort of brief descriptions set out in the decision above.
10. Some 2 months before the hearing, details of the Respondents' cases became clear and yet there was no subsequent evidence in the hearing bundle dealing specifically with those allegations. It is accepted that the directions order did not

make provision for any subsequent statement, but it must have been clear to those representing the Applicant that the Tribunal would want to know what the Applicant's case was and consent would readily have been given for an additional statement and single A4 sheet as mentioned above.

11. The Respondents' statement of case is dated 16th January 2015 and this, for the very first time, sets out the sort of detail which should have been in the defences. If the Tribunal had known, for example, that the insurance premiums were being disputed, it would have issued specific directions asking for the claims record for the building, details of any commissions paid and exactly how the Applicant obtained competitive insurance on the open market. Such information was therefore not available to the Tribunal in the hearing bundle.
12. There is a witness statement from the Respondent Christine Baker dated 22nd January 2015 wherein she refers to a meeting when the Respondents were able to see some of the supporting documentations for the claims in September 2014. Quite why this had not been done before is not clear. However, what the statement does not do is say whether any of the issues have been resolved or what they took from the inspection.
13. There is also an experts report filed on behalf of the Respondents from Richard J F Vickers MRICS at page 311 in the bundle. It is unsigned and does not contain the usual certificate of an expert witness that he acknowledges his duty to the Tribunal. Indeed, the endorsement seems to indicate that this report was only intended to be seen by the Respondents. This report is not very helpful in many respects as it just comments that certain charges seem to be high.
14. With regard to management fees, the report, at page 313 in the bundle, says that they 'appear to be high and do not reflect the service provided'. Surprisingly, Mr. Vickers says "*Management fees are normally charged as a percentage of the service charge bill and in my opinion 15% would be a reasonable charge*". He claims to have had considerable experience in property management since 1997. However, the well known RICS Service Charge Residential Management Code in paragraph 2.3 on page 7 says to managing agents "*Your charges should be appropriate to the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income*". The reason for this is to avoid service charges being increased artificially so that the percentage fee will be increased as a result.
15. Finally, the bundle prepared for the Tribunal, with its 605 pages, contains many duplicated and irrelevant documents, vague and unidentifiable computer printouts etc. This has caused the Tribunal a great deal of extra work at public expense. Further, the pages were not copied on both sides which created almost twice the paper necessary for the bundle even if all the pages had been necessary.

The Inspection

16. The members of the Tribunal inspected the outside of the property and the internal common parts. Brightwell Avenue is a typical residential street of terraced houses in Westcliff-on-Sea built in the first half of the 20th century. It is within walking distance of a reasonable range shops and a theatre. It is just

about within walking distance for a reasonably fit person of Westcliff and Southend-on-Sea town centres and railway stations with lines into central London. There are good bus services.

17. In fact this property is an end terraced house which has been extended and converted into 5 flats. There is a gap where number 52 should be which leads the Tribunal to the assumption that perhaps that property was bombed in the second world war. The front part of the building appears to be of brick construction under a concrete interlocking tiled pitched roof. The rear extension is of brick/block construction with a pitched roof running rearwards. There is a roof extension at the front with a dormer window to the rear and a window in the front gable end.
18. The exterior decorative order of the property is poor. Whilst most of the windows are uPVC, there are some wooden ones which need replacing. The other exterior wood work such as barge boards etc. are badly flaking and in urgent need of repair/maintenance. The interior common parts consisted of a small hallway on the ground floor and a staircase to the 1st floor and then one leading to the 2nd floor, both of modest proportions. They appeared to have been decorated and re-carpeted within the last few years but, as often happens with tenanted properties, they were even now starting to look 'grubby'.

The Lease

19. Despite the directions order stating that only a sample lease was to be put in the bundle if all 3 leases were the same, all 3 were copied into the bundle. They are in the same terms. They are for terms of 99 years and in clause 3(2) the lessee covenants to pay, on the 1st July in each year, money on account of the landlord's anticipated expenditure for the forthcoming year. It then provides for a reconciliation at the end of the year.
20. There are the usual covenants on the part of the landlord, in clause 4, to maintain the common parts and structure of the property and to insure it. As no issue is raised in the defence about the payability of any item of service charge, these reasons will not repeat the relevant provisions in the lease.
21. The Fifth Schedule sets out what can be claimed as a service charge plus a managing agent's charges.
22. Clause 4(5) says that the obligations of the landlord e.g. to maintain the building etc. are subject to the lessees paying the service charges.

The Law

23. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
24. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

25. Despite the Applicant's managing agents describing their charges for sending out section 20 (of the 1985 Act) letters as 'administration fees', these are not administration charges as defined in the **Commonhold and Leasehold Reform Act 2002**.

The Hearing

26. The hearing was attended by those who had attended the inspection. The Applicant was represented by Mr. L. Gibson, a solicitors' agent, and the Respondents were represented by a solicitor, Mr. R. Plant. The Tribunal attempted to make some sense of the figures by pointing out that there did not appear to be any challenge to the requests for money on account and reconciliations or the way in which the requests for payment for the building works had been made, bearing in mind that the monies requested did not add up to the same figure as the invoices in the bundle. In other words the Tribunal invited the parties to say anything about these matters in case they were asking for decisions to be made thereon. There was no response.
27. Another preliminary issue raised was that the demands for payment did not include the statutory information required by section 21B of the 1985 Act. However, there was one demand in the bundle which included the information and the submission on behalf of the Applicant was that every notice had been sent with the statutory information. There was no strong reaction to that from or on behalf of the Respondents. The Tribunal concluded that the managing agents are very well established and manage a large number of properties. On balance, it was determined that such notices were sent with the demands.
28. Thus, the Tribunal concentrated on the specific challenges to particular figures claimed by the Applicant which can be summarized as being the management fees, insurance, the fees of HR Surveyors and the fees called administration fees charged by the Applicant's managing agents for serving the section 20 notices. At some stage there was also a challenge to the claims for repairs undertaken by C2 Maintenance Ltd. but the first claim for £196.50 was for clearing out the gutters. This seemed to be reasonable as far as the Tribunal was concerned.
29. The only other claim was for £435.22 for work undertaken following the risk assessment undertaken by HR Surveyors which included fitting a smoke alarm. One of the Respondents said that a smoke alarm was fitted and the opposition to this claim seemed to lose momentum. For the avoidance of doubt, the Tribunal did find that this work had been done and the charge seemed to be reasonable.
30. The only witness to give evidence was Mr. John Galliers from BLR Property Management who are the managing agents. Whilst he did his best, the amount of information available to him was limited despite using the luncheon adjournment to make telephone calls to try to fill some of the gaps. Bearing in mind that the Respondents' arguments had been set out in full some 2 months before the hearing, the Applicant was still unable to provide significant evidence on important issues. The Tribunal, in these reasons, will set out the cases and discussion on each of the points in issue.
31. As far as **management fees** are concerned, all parties accepted that the view of

Mr. Vickers was wrong i.e. managing agents followed the RICS recommendation and charged fixed fees per flat per annum. The Tribunal put it to the parties that in its considerable experience, managing agents charged within the range of £150-250 per flat per annum in the Southend/Westcliff area. It was clear from the RICS guidance that such fixed fee would include overheads, the cost of arranging buildings insurance and the cost of preparing and sending out service charge accounts and demands. It also included visiting the property.

32. In this case, BLR charged not only a fee, but also a substantial accountant's fee for preparing service charge accounts, postage, asking the Land Registry for information and what it called bank charges. No evidence was supplied of any bank charges and Mr. Galliers' evidence was that this was part of the figure charged by Barclays Bank for the whole of the Applicant's portfolio of properties which was considerable.
33. For this particular property, management did not involve the provision of insurance or any cleaning or gardening. All that had happened during the period covered by this claim was that BLR had arranged assessments from HR Surveyors and work by C2 Maintenance and both those organizations, according to Mr. Galliers, were part of the same organization as BLR. The person from HR Surveyors who dealt with the work on this property was a surveyor called Alex Blanyard who was salaried.
34. There was also some work proposed for decorating the exterior and common parts but this has been claimed separately. The Tribunal's decision is that the reasonable management fee for BLR to charge for each of the years in issue is £200 inclusive of VAT without all the additions.
35. As far as **Building insurance** is concerned, Mr. Galliers' evidence was that BLR does not deal with insurance. That is dealt with by the Applicant direct who employs an insurance broker to arrange insurance for the whole of the Applicant's portfolio of properties about half of which are within the M25 and others are all over the country including such places as Manchester. When asked what evidence there was to support the required 'threshold' for approving portfolio policies i.e. that it was arranged with an insurance office of repute, during the normal course of business and having tested the market on a reasonably frequent basis, he was unable to say much.
36. He said that as far as he knew the market was tested every year and that the broker received about 25% of the premium but dealt with claims. However, he was unable to confirm definitely that this was the case. The Tribunal's experience is that the market is usually tested every 2 or 3 years with incremental increases in the meantime. Mr. Galliers was asked to say what other commissions were paid as the landlord would presumably not arrange insurance for no remuneration. He would or could not answer that question. He made enquiries over the lunch adjournment but could give no additional information.
37. As far as any claims record was concerned, Mr. Galliers volunteered the information that the only claim he was aware of was last year when the roof leaked. He was not able to give the size of the claim.

38. The claims for buildings insurance were £3,144.31, £3,329.50 and £3,591.51 for the 3 years covered by this dispute which were split between the 5 flats in the building. The Respondents produced quotations from Aviva, Liverpool Victoria and a Property Owners Amlin Insurance Quotation from Miles Smith in the sums of £1,523.71, £2,471.11 and £1,380.76 respectively. The first 2 were for the 1 year period commencing mid 2014 and the 3rd was undated. They all appeared to be for landlord's insurance covering similar values as the Applicant's insurance. However the first 2 did not cover terrorism and the 3rd did not mention it.
39. In the Tribunal's experience, landlords do now cover terrorism which is reasonable and can be obtained at relatively little extra cost. As the Applicant has known that this item was being disputed for some 2 months and has chosen not to produce clear evidence as to the way in which it obtains its portfolio insurance, the Tribunal considers that it can use its own knowledge, experience and the evidence to assess whether these premiums are reasonable. It concludes that they are not. Whether this is due to not arranging the insurance in accordance with normal course of business, to excessive commissions or excessive loading of risk from other properties in the portfolio is not known.
40. The Tribunal's decision is that a reasonable premium for this property is £2,000 per annum for the 3 years in question. This reflects (a) the addition of terrorism cover, (b) the fact that it is not necessary to find the 'cheapest' quote, (c) the fact that the only known claim was last year which post dates the years in question and (d) averages out over the 3 year period.
41. Finally, the Tribunal turns to the issue of the fees charge by **HR Surveyors and the decoration works**. There are 2 sections of work to be considered. Firstly, HR Surveyors were asked to undertake assessments of the risk to inhabitants of fire or any asbestos in the building. They were also asked to undertake an insurance revaluation. For some reason, which the Tribunal could not understand, a full fire risk assessment was undertaken in each of the 3 years in question at a cost of well over £500 a time in a building where the internal common parts consist of a small entrance hall and a stairwell with no fire extinguishers to maintain.
42. In the Tribunal's view, only one was needed in the relevant period. BLR should have inspected in each year and if their inspector had a copy of the risk assessment report, he or she would be able to just check to see that there had been no change and test the fire alarm. Any change or suspicion may have prompted another risk assessment but that would certainly not be automatic. There is a case for saying that all these assessment could have been undertaken in one visit. However, the Tribunal will give the benefit of the doubt to the Applicant by agreeing that the person who undertakes a safety inspection may not necessarily be the same person who undertakes an insurance valuation. As no information is given about how the charges are calculated, the Tribunal agrees that an insurance valuation is reasonable at a figure of £460 and the risk assessments for both fire and asbestos at a single figure of £480 both of which include VAT.
43. Finally, there is the question of decoration works. The evidence was that the original proposal was to undertaken internal decoration and fitting of new

carpets. At the same time external decoration work would be undertaken at a figure of about £19,000. A fee note was raised by HR Surveyors to cover the initial taking of measurements (£587.50) and then a further invoice to cover all the remaining works to produce a specification, tender documents, arranging the tendering process and the supervision of such works (£2,842.54). For some reason which was not entirely clear to the Tribunal, it was decided to only deal with the internal works which went ahead at a cost of £4,390.00 although it is not clear whether this was intended to include VAT.

44. One or two years later, the Applicant decided to go ahead with the outside decoration and a further invoice from HR Surveyors to deal with the consultation work has been produced in the sum of £1,717.20. However, Mr. Galliers said that this work did not proceed because there was an application for the right to manage company to take over management of the building.
45. Thus it is clear that substantial works were invoiced but not all the work was undertaken. Doing the best it can, the Tribunal determines that a charge can be made for the section 20 consultation for the internal decoration works. The specification and tender documents for this work would have been minimal and the supervision would have been one or possibly 2 visits just to check everything. Using a surveyor from north London was clearly inappropriate and too costly. Again, using its experience and knowledge, the Tribunal assesses the total cost of taking measurements, dealing with the tender process and supervising the internal decoration works plus re-carpeting would be £900 including VAT.
46. The Tribunal was not satisfied that the other work charged for by HR Surveyors was undertaken. If it was, it was unreasonably undertaken bearing in mind the decisions not to proceed with any external decorations.
47. Finally, BLR have charged £345 and £540 respectively for just sending out the section 20 notices which they describe as 'administration fees'. Mr. Galliers said that this was because of the risk they take in possibly not getting the notices correct. This is clearly unreasonable. The risk of the tender not being undertaken properly is solely that of HR Surveyors. If BLR are undertaking the preparation and service of section 20 notices, they presumably know what they are doing. If not, they should not be doing it. If there is a mistake, the Supreme Court has now ruled that the only reason why retrospective consent should be not given for a failure to comply with section 20 is prejudice to the lessees. If the full consultation has been undertaken save for wrongly worded section 20 notices, it is difficult to imagine what prejudice there could be.
48. Sending out 10 letters i.e. 1 for each flat for each of the 2 stages (assuming that the cheapest quote is accepted) should come within the management fee. The fees charges are unreasonable.

Conclusions

49. The Tribunal takes all these matters into account and also an open letter written by the Respondents' solicitors to the Applicant's solicitors on the 4th June 2014 starting at page 485 in the bundle. It confirmed that all the ground rents had been paid and asked for much of the information needed by the Tribunal but which was not supplied. It asked for copies of the various risk assessment

reports, copies of the section 20 notices, copies of the invoices for the works undertaken and details of insurance commissions. No doubt the court will want to see this letter when considering any costs order.

50. The decisions can be summarised as follows:-

<u>Description</u>	<u>Claim (£)</u>	<u>Decision (£)</u>
Service charges 04/07/11		
Budget figure	1,234.00	1,234.00
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Service charges 01/07/12		
Accountancy	308.04	nil
Bank charges	40.00	nil
Insurance	3,591.51	2,000.00
Ordering from Land Registry	17.20	nil
Management fees	1,470.00	1,004.00
HR Surveyors asbestos survey	222.00	nil
HR Surveyors risk assessment	540.00	480.00
Postage etc.	40.00	nil
Transfer from sinking fund	<u>(703.02)</u>	<u>(703.02)</u>
Total: £5,525.73 – one fifth =	1,105.15	
New total: £4,668.05 – one fifth =		556.20
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Service charges 01/07/13		
Budget figure	1,301.00	1,301.00
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01/07/2012 building works charge	451.44	451.44
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01/10/2011 balancing service charge		
Accountancy	248.70	nil
Bank charges	31.25	nil
HR Surveyors fire risk assessment	528.75	nil
HR Surveyors insurance re-valuation	460.00	460.00
Insurance	3,329.50	2,000.00
Management fees	1,017.74	1,000.00
HR Surveyors section 20 work	587.50	nil
C2 Maintenance – repairs	196.50	196.50
Postage etc.	<u>25.00</u>	<u>nil</u>
Total: £6,424.94 - one fifth =	1,284.99	
New total: £3,656.50 – one fifth =		731.30
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13/07/2011 balancing service charge:-		
Accountancy	279.40	nil
Bank charges	25.00	nil
Insurance	3,144.31	2,000.00
Management fees	1,091.58	1,000.00
Ordering from Land Registry	18.00	nil
HR Surveyors risk assessment	592.80	nil
HR Surveyors – section 20 works	1,800.00	900.00
C2 Maintenance Ltd – repairs	435.22	435.22
Postage etc.	<u>25.00</u>	<u>nil</u>
Total: £7,411.31 - one fifth =	1,482.26	
New total: £4,335.22 – one fifth =		867.04
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13/07/2011 balancing building works charge		

51. These are the figures set out in the decision above. As far as costs are concerned, the Tribunal leaves these matters to the court. However, it is noted that the terms of the defence were not disclosed until January 2015 despite the Respondents having had a chance to inspect such evidence as was available to the managing agents in September 2014. Furthermore, the Respondents knew that something would have to be paid for insurance, for at least one risk assessment and for an insurance revaluation. Thus, it is also of particular note that no evidence was given to the Tribunal of any open offer being made or any payment having been paid or tendered for the amount the Respondents accepted must have been payable as their assessment of a reasonable figure.

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Bruce Edgington
Regional Judge
20th March 2015