



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

**Case reference** : **LON/00BG/LAC/2015/0006**

**Property** : **25 Artemis Court, Homer Drive,  
London, E14 3UH**

**Applicant** : **Vivek Agarwal**

**Representative** : **None**

**Respondent** : **Cyclops Wharf Residents Company  
Ltd.**

**Representative** : **Parc Properties Management Ltd.**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay an administration charge**

**Tribunal members** : **Judge Robert Latham  
Trevor Johnson FRICS**

**Date and venue of  
hearing** : **11 May 2015 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **11 May 2015**

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**DECISION**

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The Tribunal determines that the administration charge of £690 demanded on 22 January 2015 is payable.

## **The Application**

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“Act”) as to the amount of administration charges payable. The application raises a single issue, namely whether a service charge demanded by Parc Property Management Ltd (“the managing agents”) on 22 January 2015 is both payable and reasonable. The demand is at p.11 of the Bundle. £90 relates to the charges incurred by the managing agents and £600 by their solicitors, in corresponding with the Applicant concerning an alleged breach of covenant, namely the use of the premises at 25 Artemis Court, Homer Drive, E14 3UH (“the premises”) for alleged business purposes.
  
2. On 19 March 2015, the Tribunal gave Directions:
  - (i) The application is to stand as the Applicant’s statement of case (at p.1-10 of the Bundle).
  
  - (ii) The Respondent has filed a statement of case (at p.71-74) with a number of supporting documents (p.75-154).
  
  - (iii) The Applicant has filed a statement in reply (at p.155-157) with a number of further documents (at p.158-226).
  
  - (iv) The Applicant has filed an extensive Bundle of Documents.
  
  - (v) The Tribunal directed that the application was to be determined on the papers. Neither party has requested an oral hearing.

## **The Lease**

3. The Lease is at p.227-276 of the Bundle. Pursuant to the First Schedule, paragraph 1.3, the tenant has covenanted that:

“No building on the premises shall be used or be permitted to be used for the purpose of manufacture trade or business of any description or for any other purpose save that of a private residence for a single household ....”
  
4. The Respondent relies on Clause 8.15 in support of its claim for an administration charge, by which the tenant covenants:

“to pay to the Manager all expenses it may incur in .... Enforcing any obligation of the Lessee whether or not proceedings are taken and whatever the outcome of such proceedings”.

## **The Background**

5. The property is a one bedroom flat. The leasehold interest was assigned to the Applicant in about May 2009. The Respondent asserts that it first became concerned that the Applicant was using the premises for business purposes in early 2012. On two occasions, inspections were carried out in respect of a water leak. On each occasion, there were four people in the property allegedly sitting at the table with laptops. The estate manager spoke to the Applicant and contends that the Applicant indicated that the individuals were trainees and had only used the premises on two occasions. The Respondent was willing to give the tenant the benefit of the doubt and no further action was taken. The Tribunal has not seen any written communication relating to this.
6. In March 2014, an inspection was again carried out due to a further water leak. On this occasion, six individuals were seen apparently sitting working on laptops. Subsequent inquiries confirmed:
  - (i) that the property was registered at Companies House as the registered office for businesses known as Malti Trading Property Limited (p.123) and Strand of Silk Limited (p.142).
  - (ii) the property was specified on the website of [www.strandofsilk.com](http://www.strandofsilk.com) as the correspondence address for the business (see p.124). A further extract from the web-site is at p.138-9. The subject property was given as a return address.
  - (iii) Details of Strand of Silk Limited were also provided on "amazon.co.uk" which gave the subject property as the correspondence address (p.137)
7. The Applicant has also produced a copy of the contract between Shimal Trading and Malti Trading Limited, dated 1 April 2011. The subject premises are given as the address for Malti Trading Limited. This is described as a sourcing agreement with a company in India. Reference is made to sending samples, presumably to the subject premises.
8. On 11 March 2014 (p.119), the managing agents first wrote to the Applicant about the alleged use of the premises for business purposes. On 14 March (p.120), the tenant sought clarification of the alleged breach. On 26 March (at p.121), this was provided. On 28 March (p.125), the Applicant conceded that the subject property was the registered office for Malti Trading Limited and that had been used as a "returns" address. However, "the returns address that you mentioned in your second attachment has been advised to my company and they have since changed the same".

9. On 1 May 2014 (p.126), Charles Russell LLP, the Solicitors acting for the Respondent, sent a pre-action letter. On 30 April, the Solicitors had telephoned the Strands of Silk customer service number and the subject property was still being given as the correspondence address. The Applicant was required to remedy the breach and provide (i) proof of change of registered office of both companies; (ii) proof of change of on-line details for both companies; (iii) an undertaking that the property was not being used for business purposes and (iv) access for an inspection.
10. On 12 May (p.147), the Applicant sought further information from the Respondent. He asserted that the premises were only being used as a registered office for the companies. There was further correspondence dated 19 May (p.148), 29 May (p.149), 17 June (p.153), 23 June (p.154), 26 June (p.214), 9 July (p.215), and 31 July (p.216).
11. On 18 July, the Respondent inspected the premises. There was no evidence that the subject property was still being used for business purposes. The subject property is no longer being given as a correspondence address for either of the two companies. However, the Respondent points out that Strand of Silk Limited give no other address for the return of goods. On 31 July (p.216), the Solicitors informed that the Applicant that the landlord would be taking no further action in respect of the alleged breach of covenant.
12. The Applicant's position is as follows:
  - (i) No business was being conducted in the premises in March 2014 when the landlord carried out its inspection. The Applicant had rather invited his colleagues to lunch. However, the Applicant was not present as he had "stepped out of the house for a short duration". The inspection had only lasted some 5-7 minutes. The Applicants accepts that his guests may have had their laptops open and been "chatting about their work commitments or discussing about their personal affairs". The Applicant highlights the difference in wording used by the landlord in letters dated 26 March 2014 (at p.121) ("sat at desks working on computers") and 9 July 2014 (at p.215) ("sat around a dining table"). He provides a set of photographs indicating that it would be practically impossible for six people to sit around his dining room table with laptops.
  - (ii) The Applicant accepts that the subject property remains the registered office of the two companies. He contends that this has not constituted a breach of the covenant and that the Respondent have accepted this situation. This is not strictly correct. In their letter of 23 June 2014 (at p.154), the Solicitors state that the use of the subject property as a registered office was not the only factor, but one of many pieces of evidence contributing to the belief that the property was being used for the purposes of a business.

(iii) The Applicant contends that the use of the subject property as a return address was an error which was promptly corrected.

### **The Tribunal's Decision**

13. The Tribunal is satisfied that the Respondent was entitled to conclude that there was prima facie evidence that the Applicant was using the premises for his businesses in breach of the terms of his lease. It was not only being used as the registered office of two companies, it was also being used as a correspondence address. We note that whilst that address has now been removed from then internet, no other return address has been identified. The Applicant asserts that the subject property is being used as the registered officer of his "employer's company". The Tribunal does not understand why this is necessary.
14. Against this background, the Tribunal is satisfied, on the balance of probabilities, that it is more likely that the six people present at the property in March 2014 were there for business purposes, rather than for a social meal. We have regard to the events in 2012 when the managing agents were able to deal with the matter informally.
15. The Tribunal does not accept that the landlord's actions are intended to distract from its failure to address the water leak. It seems that the original leak was remedied in 2012 by works to the balcony. A separate leak arose in 2014 which has also been resolved.
16. The Tribunal is therefore satisfied that the landlord has incurred costs in enforcing the term of the Applicant's lease which prohibits him from using the demised premises for business purposes. The relevant demand for the administration charge was accompanied by the requisite Summary of Rights and Obligations. Given the extent of the correspondence that was required before the matter was settled to the satisfaction of the landlord, the Tribunal is satisfied that the administration charge is reasonable. We note that the subject property was still being used as a correspondence address on 30 April 2014. The Respondent sets out how the administration charge is computed at [16] and [17] of its statement of case. The applicant does not take issue with this. Indeed, the Solicitor's charge of £175 per hour is modest when compared with the Applicant's stated billing rate of £400 per hour.

**Judge Robert Latham**

**11 May 2015**

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

#### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

#### **Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a 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 the subject matter of an application under sub-paragraph (1).