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

Case Reference : CHI/21UC/LSC/2017/0065

Property : Flat 7 Belvedere Court, 12 St Annes Road,
Eastbourne, East Sussex BN21 2HH

Applicant : Elmbirch Properties PLC

Representative : Mr Taylor, Remus Management

Respondent : Mr. M. Marzban

Representative :

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge D. R. Whitney
Mr. N. Robinson FRICS

Date of Hearing :

Date of Determination : 16th February 2018

DETERMINATION

BACKGROUND

1. An application was made on behalf of the Applicant who is the freeholder of Belvedere Court, 12 St Annes Road, Eastbourne ("the Property") by their agent Remus Management. The application was for a determination of the liability to pay and reasonableness of various service charges owed by Mr Marzban the owner of the leasehold interest in Flat 7 at the Property.
2. A telephone case management hearing took place at which all parties were represented. It was agreed that the service charges to be determined were for the service charge year 2010/2011 to 2015/2016. Mr Taylor on behalf of the Applicant conceded that charges for earlier years which may still be outstanding were not recoverable as more than 6 years had elapsed.
3. Both parties complied with the directions and the tribunal had a hearing bundle. References in [] are to the page numbers within the hearing bundle.

THE LAW

4. The relevant law is set out in section 27A of the Landlord and Tenant Act 1985.

INSPECTION

5. Immediately prior to the hearing the tribunal inspected the Property together with Mr Taylor. Mr Marzban did not attend the inspection.
6. The Property is a late 1960's, early 1970's purpose-built block of flats of brick construction with a flat roof. The general appearance is of a well maintained block of its period. In the basement of the flats are a number of garages with a separate block of garages running parallel. Above the garages are 4 storeys of flats. The block consists of 22 flats and 14 garages. Mr Marzaban's flat has the benefit of a garage located within the separate block.
7. Along the North East boundary the tribunal noted there was a wall which had collapsed. It was clear that this was being managed as safety fencing was present. The gardens and grounds of the Property were all well maintained and tended. There was in the top North Western corner of the Property was a bin store containing wheelie bins. The bin store was clean and tidy. The external pathways were served by security lighting.

8. Internally the communal hallways were all clean and tidy. The tribunal travelled in the lift to the top floor of the building. It was apparent that in the recent past the lift must have been refurbished. In the top corridor there was some evidence of historical water ingress. On the ground floor was a notice board with a signing in sheet for the cleaners.

HEARING

9. The hearing was attended by both Mr Taylor and Mr Marzban.
10. The tribunal agreed with the parties that there was no issue as to Mr Marzban's liability to pay under the terms of his lease. Essentially his dispute for each of the years in question was limited to three heads of expenditure:
 - Gardening
 - Cleaning
 - Management fees
11. Both parties agreed that these were the issues to be determined by the tribunal. It was agreed that Mr Marzban would put forward his case first to the tribunal and it was explained to Mr Marzban is at any time he required a break in proceedings he should ask and the tribunal would endeavour to accommodate the same. Further the tribunal reminded the parties as to its jurisdiction and the limits this placed on it. The tribunal confirmed that once the years were determined neither party would be able to go back and argue any other elements of the service charge in any of the affected years.
12. Mr Marzban suggested that the suggestion his account has not been at zero since 2004 is wrong. He suggests that Remus has not properly undertaken the exercise of producing accounts and budgets and that he had tried to resolve the matter with Remus informally including visiting their Brighton office.
13. Mr Marzban referred to [54] and his suggestion was that a reduction for the management fees for the period in question of £9,000 would be reasonable. He explained this is due to the fact that in his opinion the service received has been poor. He referred to documents not being available and in particular problems with the electric supply. The suggestion of a £9,000 reduction was a figure he had arrived at but could give no real explanation as to how he arrived at this figure. He accepted that if the management had been properly undertaken the fee was reasonable and he would have paid the same.
14. Mr Marzban gave various examples of poor management. Notably he referred to the fact that a window in the communal stairwell which was rotten had been replaced with UPvC. His view was that such work

should not have been undertaken without the agreement of all leaseholders and the cost incurred was too high (see [75]).

15. Further he referred to the fact work was undertaken to a tree which led to damage to the bin store area. Subsequently another contractor was bought in to undertake repairs which were charged to the service charge. In his opinion this should not have been charged to the service charge account. Mr Marzban also submitted that the agents fail to properly prioritise the repairs in a way which makes them affordable to the leaseholders.
16. At this point the tribunal adjourned for lunch for approximately one hour.
17. On resumption of the hearing Mr Marzban addressed his objections to the costs of gardening. In essence his case was that the gardening undertaken is to a good standard but in fact such levels of gardening are not required. The gardeners visit 26 times a year [47]. Mr Marzaban suggested that the number of visits could be reduced and then there would be more money available for repairs. Further the costs of a gardener should not exceed £10 per hour.
18. Mr Marzban referred to the gardening specification [151]. He said this contained items the gardeners did not undertake such as pruning of trees which other contractors dealt with.
19. Turning to cleaning Mr Marzban seeks a reduction of 50% of the amounts charged. Again his view is that the level of cleaning is excessive.
20. He accepts that the standard is good but in his opinion a weekly visit is not required and substantial savings could be reached. He referred to the fact that in his opinion residents could inspect in between cleaning visits and undertake any cleaning required and therefore cut down on the costs. Further his view is that the costs charged is too high and a charge of £20 per visit would be sufficient. Mr Mazban referred to the fact that he is on a fixed income and feels the agents attitude to expenditure is cavalier.
21. Mr Taylor then set out the Applicants case.
22. He again confirmed that any monies owed for the period 2004 to 2010 were not being pursued and would be written off by the Applicant.
23. Sporadic payments had been made by Mr Marzban. The Applicant had tried to delay taking action as long as it could and only did so as a last resort.
24. Mr Taylor explained that the block had a designated property manager and an assistant. All accounts are audited and certified and calculated

on the actual spend. Mr Taylor is the regional manager. For the year 2015/2016 the charge was £197.50 per leaseholder.

25. He conceded that there had previously been an issue with regards to electricity billing and in fact the block had overpaid and a rebate was given. For this reason, the cleaners as part of their duties did now read the meters monthly and report these to his office. His firm now has a policy of not paying 2 estimated bills in a row to prevent problems arising.
26. Turning to the gardening in his opinion the specification as a standard specification. Typically the gardeners will only deal with trees not taller than 2 metres high. He made clear that the fees charged cover everything: provision of tools, materials, insurances etc. Typically his firm would re-tender every 24 months but given everyone appeared happy with the service received by the contractors on this block they had not.
27. Mr Taylor did accept the specification probably should not refer to knotweed and ground elder.
28. He accepted some sites do not have as many visits but such blocks generally don't have trees in the grounds. Certainly if the majority of leaseholders wished to reduce the number of visits the Applicant would look at this but this is not the position.
29. Again the cleaning was undertaken to a standard specification [152].
30. Given the block has vinyl floor tiles weekly cleaning is preferable in his opinion. Further they would never encourage or expect residents to undertake any cleaning given their lack of necessary insurance. He is satisfied that having regard to the block as a whole weekly cleaning is appropriate.
31. As to the cost again the contractors supply not just labour but materials and equipment together with all insurances. In his opinion the cost is reasonable.
32. Mr Taylor suggested all the costs are reasonable and if the tribunal agrees he requests reimbursement of the tribunal fees.
33. In closing Mr Marzban suggested the hearing was caused by a poor communication. He suggests he tried to communicate and would have been happy to resolve matters. He is a pensioner on a fixed income and costs have risen substantially.

DETERMINATION

34. The Tribunal thanks both parties for their measured and helpful submissions. In reaching its determination the tribunal had regard to

all the documents within the hearing bundle which it had read and considered.

35. The tribunal considered the submissions made by both parties.
36. Firstly the tribunal considered the gardening costs. The main thrust of Mr Marzbans argument was that the visits were too frequent. Whilst the tribunal understands his thinking it was not satisfied that the frequency of the visits was unreasonable. This is a decision for the Applicant and their agent. It was plain from the inspection that the grounds are very well maintained. Looking at the actual costs again we were satisfied these were reasonable and acknowledge the Applicants submission that the cost must cover not just labour but the supply of equipment, material and insurance.
37. In respect of the cleaning again the tribunal was satisfied that the cost was reasonable. The tribunal again acknowledges that the frequency is a matter for the Applicant and their agent to determine. The tribunal was not satisfied that weekly visits were unreasonable. The block was evidently well maintained and such a frequency is not unusual and again neither are the costs of the service.
38. This left the management charges. Again the tribunal was not satisfied that these should be reduced. Mr Marzban candidly admitted that the deduction he proposed had no real basis. His challenge appeared to be that the management was poor. As a tribunal we saw little to support this. The block was clearly well maintained and for that reason we determine the costs are reasonable.
39. Finally this leaves the question of the tribunal fees totalling £300. Whilst the application for both parties may have been inevitable the Applicant has been wholly successful. It is reasonable that Mr Marzban should be responsible for the tribunal fees and these may be added to any amounts it is found that he owes and should be paid within 28 days of any formal demand by the Applicant.
40. It is unfortunate that this case reached the tribunal. The tribunal always urges parties to communicate and we hope that Mr Taylor will as the managing agent ensure Mr Marzban is clear as to how and with whom he should communicate if he has any concerns. Turning to the matters raised by Mr Marzban the tribunal has every sympathy with him. The tribunal acknowledges that he is on a fixed income and increases in charges are difficult to manage. However sadly in a leasehold block of flats the agents cannot always base their decisions on such matters having to consider the block as a whole.

Judge D. R. Whitney