



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

Case Reference : CHI/43UC/LIS/2017/0014

Property : 21 Temple Road, Epsom, Surrey KT19 8EY

Applicants : Malcolm Langford (1)
Youssef Ali (1A)
Mojahid Ali(2)
Katherine Burgess (3)
Sanjay Jagutpal (4)
Gaetano Inversa (5)
MRS Brothers Ltd (6)
Eszter Boross (7)

Representative : Malcolm Langford
Sanjay Jagutpal
Eszter Boross

Respondent : South London Ground Rents Limited

Representative : Pier Management

Type of Application : Liability to pay service charges

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 31 January 2018

DECISION and FURTHER DIRECTIONS

Background

1. The Applicant sought a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for service charge years 2008/9, 2009/10, 2012/13 and 2013/14.
2. Reference was made in the application to two previous Tribunal determinations and queried whether the sums had been demanded in accordance with S.20B and if payable under the terms of their leases.
3. At the Case Management Hearing on 7 September 2017 it became apparent that the Applicant's inclusion of years already determined by the Tribunal (CHI/43UC/LIS/2010/0057) was due to the overpayments that had been determined not being repaid.
4. I explained that the Tribunal's jurisdiction was to determine the appropriate amount to be paid by way of service charge but that the power to order recovery of sums paid lay with the County Court.
5. As years 2008/2009 and 2009/ 2010 have already been determined the Tribunal's jurisdiction only extends to service charge years 2012/2013 and 2013/2014
6. Mr Bland for the Respondent explained that his client had owned the property since 2 April 2013 and Pier's direct involvement ceased when the RTM company took over in September 2013. He had received little paperwork from the previous managing agents, Salter Rex and other than a closing reconciliation had no accounts or receipts.
7. It was agreed that the Applicants would prepare their statement of case on the documents already available to them including reference to previous Tribunal decisions.
8. Directions were made on 7 September 2017 indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received and the matter is therefore determined on the papers received.
9. The Directions required the Applicants to set out their case in a written statement to which the Respondent could respond.
10. In a statement dated 11 October 2017 the Applicants made the overall point that the demands had not been received within 18 months of being incurred and as such were not payable in accordance with S.20B Landlord and Tenant Act 1985.
11. In case this argument failed they went on to challenge 5 heads of expenditure for 2012/2013 and 6 for 2013/14. Of the total expenditure on

these items of £14,906.88 the Applicants indicated that they were happy to pay £5,160.63.

12. The Applicants challenged these amounts due to lack of receipts and in some cases excessive costs. They further indicated that the accounts did not reflect the fact that the RTM company took over part way through 2013/14.
13. In a reply dated 15 November 2017 Pier Legal Services acknowledged receipt of the Scott Schedule but said that no evidence of fact had been provided. In the absence of receipts they relied on the audited accounts certified by Warren D Miskin FCA and pointed out that the raw documents should now be in the control of the RTM company.
14. Attached to their reply were copies of all documents relating to the RTM handover and reconciliation.
15. In the Applicants' response of 29 November 2017 they said that their previous statement included evidence of fact and that year end accounts did not provide sufficient detail to confirm reasonable service charges. They said that they had asked both Pier Management and their predecessors Salter Rex to inspect the receipts/invoices but this did not occur.
16. They confirmed that the raw documents had not been provided to them and that Salter Rex had indicated that they had been transferred to Pier. The Applicants have the documents from the commencement of the RTM company on 1 September 2013 and the cost of services they have incurred has assisted them in determining whether the costs incurred in the previous 2 years were reasonable or not.

The Lease

17. A copy of the lease for Flat 4 has been provided and it is assumed that all others are in similar form.
18. Clause 13(a) of the Fourth Schedule requires the Less to pay 12.5% of the costs referred to in the Eighth Schedule. Clause 13(b) requires the Management Company to estimate the likely expenditure at the beginning of each service charge year and for Lessees to pay that amount in two instalments on 29 September and 25 March of each year.
19. Clause 13 (c) requires the Lessees to pay the balance on receipt of accounts ascertaining the actual expenditure for the past year any excess being credited to the Lessee on the Management Company's books.

The Law

20. 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 provision 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.

Evidence and Decision

21. The parties have not been assisted in making their respective cases by the apparent lack of documents. Amongst the documents that have been provided are those relating to the transfer to the RTM, the transfer between Salter Rex and Pier as well as some in relation to the service charges which are the subject of this application.
22. At divider 3.1 page 67 [3.1/67] is a demand for a balancing charge for Flat 7 dated 13 June 2013 showing the amount demanded on account for 2012/13 together with the balancing charge.
23. At [3.1/68] is a demand dated 13 October 2015 for "Pre RTM Freeholder SC Loan" and "Pre RTM Freeholder Insurance Loan" in respect of Flat 7. There is a similar demand in respect of Flat 4 [3.2/2]
24. From the audited accounts it seems that for 2012/13 there was a budget of £10,816 and an actual spend of £11,931.88 [3.1/15]. These amounts also appear in the demand dated 13 June 2013.
25. For 2013/14 the audited accounts show a budget of £7,344 and an actual spend of £5,351.78 [3.1/10] The budget figure is supported by the half year demand dated 25 March 2013 of £459 [3.2/52] ($£459 \times 2 \times 8 = £7,344$)

S.20B Decision

26. It is unfortunate that the Respondent has not addressed this prime contention of the Applicants in any way. However, despite this omission the Tribunal has considered what evidence is available in the bundle to support the Applicants' argument.

27. The lease requires that at the beginning of each year an estimate is made of forthcoming expenditure which if exceeded is recovered by way of a demand for a balancing charge following production of year end accounts. Where the budget has not been exceeded a balancing charge demand is unnecessary.
28. For 2012/13 there were on account demands together with a balancing charge demand on 13 June 2013. The Lessees were therefore notified of both the likely and actual expenditure within 18 months of the commencement of the service charge year. **As such 20B has no application.**
29. With regard to 2013/14 again there were interim demands but in this case a balancing charge was unnecessary. In *Gilje v Charlegrove Securities Limited* [2003] 1 All ER 91 (High Court, Chancery Division) Etherton J said that S.20B had no application where a balancing charge had not been made. **S.20B does not therefore apply to 2013/14.**
30. Turning now to the heads of expenditure set out on pages [3.1/4+5] the challenges made in most cases are twofold, lack of receipts and excessive or inappropriate cost.
31. I must first of all indicate that the lack of receipts is not in itself a bar to recovery through the service charge. A receipt may assist in providing evidence of expenditure but it is no more than that. In this case we have audited accounts which in the case of 2013/14 are supported by the Service charge ledgers at 3.2/44+70.

Management fees

32. Where the ledgers and the accounts for 2013/14 differ is in respect of management fees. Whilst the end of year account indicates a cost of £2,544 for the year the ledgers show interim payments being made to Salter Rex on 14 May, 28 September and 24 December 2013.
33. Pier tell us that their client acquired the property in April 2013 and that Pier's involvement ceased when the RTM took over in September 2013 who instructed Prime Management. It may be that Salter Rex continued in their role for a period but that cannot continue for some 6 months after the RTM took over and whilst Prime Management were also acting.
34. Doing the best I can **I therefore allow 2 quarters management fees totalling £1,272 for 2013/14**

Building Repair 2012/13

35. The challenge is to expenditure of £1,032 which the Applicants say is the responsibility of the adjoining property. In evidence they rely on an email from Ideal Properties Ltd indicating that "we have never been 100% sure that the cost should be split" [3.1/73] and a reply from Prime

Management saying "the information I have would suggest that the maintenance should fall to 23 Temple Road"

36. I am asked to determine liability for this cost from this inconclusive exchange of views between a recently instructed manager for the RTM company and the manager of adjoining flats. The evidence is not persuasive and I reject it **and allow the charge in full.**

Cleaning 2012/13

37. The Applicants' grounds for a reduction are that the costs they now pay are significantly less. No evidence is given as to the respective cleaning specifications and there has been no suggestion that the cleaning did not meet the required standard. As such **I determine the full amount is payable.**

Gardening 2012/13

38. Once again the Applicant's evidence is that they now pay less. This is not in itself persuasive and **I determine the amount is payable in full.**

Insurance 2012/13

39. The Applicant now pays an insurance premium of £1,232 instead of £3,784.85. No details of cover has been provided by either party and without evidence that the policies are on a "like for like" basis **I am not able to determine that a reduction should be made.**

Insurance Claim 2012/13

40. The Applicants challenge £876 on the grounds that this was due to an accident and was the subject of a claim against the perpetrator. There is no indication in the accounts or an explanation given by the Respondent when this was a clearly identified challenge and as such **I disallow the sum in its entirety.**

Cleaning 2013/14

41. The Applicants claim a 6 month reduction on their proposed cost for the previous year. For the reasons given above I am not prepared to reduce the claim simply due to lower costs being obtainable and considering the amount claimed is approximately one third of the previous year **I allow it in full.**

Electricity 2013/14

42. The Applicant requests a reduction of £26.78 based on 6 months of the annual estimated charge of £150.00. In view of the actual charges being somewhat less than that estimated **I determine a charge of £75 is payable.**

Gardening 2013/14

43. The Applicant requires a reduction of 6 months on the previous year's estimate of £1,000. I agree that a reduction for the shorter period should be given but base that on the actual cost for the preceding year. **I allow £850.00.**

Insurance Claim 2013/14

44. The Applicants challenge £1,000 as unexplained. Again there is no indication in the accounts or an explanation given by the Respondent when this was a clearly identified challenge and as such **I disallow the sum in its entirety.**

Management Fee 2013/14

45. See para 34 above.

Balancing Charge 2013/14

46. This is the demand referred to at para 23 above for Freeholder Loans. S.18 of the Landlord and Tenant Act 1985 clearly defines what may be charged as service charges. Loans are not included within the definition and as such **I determine they are not payable by way of service charge.**

Summary

47. I determine the following amounts are due and payable for the service charge years indicated;

2012/13		
	Building Repair	£1,032.00
	• Cleaning	£1,618.49
	• Gardening	£1,700.00
	• Insurance	£3,784.85
	• Insurance claims	nil
	• Total 2012/13	£8,135.34
2013/14		
	• Cleaning	£546.00
	• Electricity	£75.00
	• Gardening	£850.00
	• Insurance claims	nil
	• Management Fee	£1,272.00
	• Balancing charge	nil
	• Total 2013/14	<u>£2,743.00</u>
	• TOTAL	<u>£10,878.34</u>

48. Demands in advance have been made at £10,816 for 2012/13 and £7,344 for 2013/14 a total of £18,160.00 indicating that a credit of £7,281.66 in favour of the lessees should be given.

S.20.C

Further Directions

49. The Applicant applied for an order under S.20C. Neither party has addressed this in their respective statements and I therefore give both parties 14 days to submit their reasons to the Tribunal for supporting or opposing such an application

D Banfield FRICS
31 January 2018

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.