



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

Case Reference : **LON/OOAR/LSC/2017/0342**

Property : **20 Natasha Court Mimosa Close Harold Hill Romford RM3 8GU**

Applicant : **Norseman Holdings Limited (A company incorporated in Gibraltar)**

Representatives : **Mr M. Shrimpton (Legal Consultant)**

Respondent : **Warwick Court (Harold Hill) Management Company Limited**

Representative : **Mr Terry Gallivan of Counsel**

Type of Application : **For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**

Tribunal Members : **Judge Professor Robert M. Abbey
Mr C. Gowman MCIEH (Professional Member)
Mr Duncan Jagger MRICS (Chartered Surveyor)**

Date and venue of Hearing : **1 October 2018 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **9th October 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that:-

2013-2018

The service charge years for this period amounting to £8294.36 are determined by the Tribunal as being fair and reasonable and properly payable by the Applicant.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable to the respondent in respect of service charges payable for services provided for **20 Natasha Court Mimosa Close Harold Hill Romford RM3 8GU**, (the property) and the liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

3. The applicant was represented by Mr Shrimpton, a legal consultant and the respondent was represented by Mr Gallivan of Counsel.
4. The tribunal had before it a trial bundle of documents prepared by one of the parties in accordance with previous directions. Additional copy paperwork was made available to the tribunal on the day of the hearing that was seen and approved by all parties and therefore added to the trial bundle. One such document was a copy of a Property Management Agreement and made between the respondent and their managing agents Residential Management Group (RMG). This agreement clearly confirmed that any money received by RMG was to be held on trust in a separate designated bank account. Thus it was quickly established that RMG demanded and collected service charges for the respondent and that all such monies were properly held in trust.
5. Legal precedents were also made available to the tribunal. Previously, the Respondent submitted a skeleton argument and the Applicant sought to submit a skeleton argument at the start of the hearing. The applicant asserted that there was confusion caused by inconsistent directions made prior to the hearing that caused the applicant to seek to submit a skeleton argument on the day of the hearing. The Tribunal decided that the Directions made were both clear and unequivocal. In

particular the Directions dated 14 August 2018 and made by Judge Powell made it plain that the skeleton arguments were to be filed and served by 4pm on 24 September 2018. In the light of the applicants failure to comply with this clear direction the Tribunal decided to not allow the late submission of the applicant's skeleton argument.

The background and the issues

6. The property which is the subject of this application comprises a purpose built block containing 6 flats. This is the hearing of an application by the Applicant to determine liability to pay and reasonableness of service charges for the years 2013-14 to 2016-17. The applicant's case in respect of the years 2008-09 to 2011-12 was struck out by Judge Andrew on 31 May 2018 for want of jurisdiction. By virtue of Judge Powell's Order dated 14 August 2018 the applicant was debarred from relying on any evidence, document or matter not served upon the respondent by 20 July 2018 as required by Direction No. 2 of Judge Andrew's Order dated 31 May 2018, as shown at page 23 in the trial bundle.
7. Neither party requested an inspection and the tribunal did not consider that an inspection was necessary in the light of the detailed and extensive paperwork in the trial bundle; nor would it have been proportionate to the issues in dispute.
8. The applicant tenant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their cost by way of a service charge. The applicant tenant must pay a proportion stipulated in their lease for the services provided.
9. There was no dispute between the parties about the terms of the leases in that the parties accepted that this service charge was properly chargeable under the lease terms.
10. The issues the applicant raised covered the reasonableness and payability of the service charges demanded by the respondent and carried out on behalf of the respondent by agents RMG. At the hearing it quickly became clear that the amount or total of the service charge was not in dispute. It was the payability of the service charge that the applicant was challenging. Accordingly the tribunal was able to make a finding of fact that the total amount of the service charge claimed by the respondent was accurate in the sum of £8294.36.
11. Subsequently at the hearing much turned upon the payability of the service charge as more particularly set out below.

Summary of the applicant's argument

12. In essence the applicant says that the service charges are not payable as a consequence of three issues. First who paid the charges and the proof of payment, secondly the effect of s.47 of the Landlord and Tenant Act 1987 and finally an issue regarding the nature of the management company being a dormant company. Dealing with the first issue, the tribunal had the benefit of the evidence of Kerri Baxter a senior property manager at RMG, a company she had been employed by for over 11 years. This evidence will be referred to below. In essence the applicant says that it has not seen any invoices to back up the services charges claimed by the respondent and wanted confirmation of who actually made the payments.
13. Secondly, the applicant asserted that s.47 of the Landlord and Tenant Act 1987 had not been complied with by the applicant and that as a consequence the respondent cannot seek payment of the service charges. This argument will be considered in detail below.
14. Finally, the applicant asserted that because the respondent was a dormant company its business model did not comply with company's legislation. The applicant conceded that a dormant company could issue service charges demands, and could litigate. However the applicant said that once it started to "trade" it ceased to be dormant. The applicant took the view that because the respondent was conducting significant accounting transactions it was in breach of legislation affecting companies and therefore it was not lawful for the company to claim and collect service charges.

Summary of the respondent's argument

15. The respondent says that the evidence from Kerri Baxter answers the applicants first point. As to the effect of s.47 the respondent argued that there had been compliance with the statute and put forward various authorities to support this assertion. These will be reviewed below where necessary. On the dormant company issue the respondent made a forceful argument to rebut the applicant and this too will be considered below.

Decision

16. As set out in paragraph 12 above the tribunal is required to consider three main issues, Dealing first with the question of who paid the charges and the proof of payment, the evidence of Kerri Baxter was of specific assistance to the tribunal. She confirmed that the directors of the management company gave instructions to RMG to make payments. She referred the tribunal to page 59 in the trial bundle as being an example for audited accounts for the respondent management company. On that page were columns of figures showing budget and actual expenditure. So for example for general repairs and maintenance the budget figure was £1200 while the actual charge was £2174 for

2013. These were audited accounts signed off by Thomas David on behalf of the company's Chartered Accountants and Statutory Auditors. In completing these accounts the auditors confirmed that they checked to see if entries in the accounting records were supported by receipts other documentation or evidence that they inspected. In the light of these audited accounts the tribunal was completely satisfied that the services charges were genuine and properly incurred and properly paid by RMG for and on behalf of the respondent.

17. The second main issue was in relation to s.47 of the Landlord and Tenant Act 1987. This provides that –

47 Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

18. So, in essence this requires that any demand for payment from a Landlord to a Leaseholder must include two pieces of information, the name and address of the Landlord. If the two pieces of information required by Section 47 are not provided to a Leaseholder then payment of the amount referred to in the service charge demand is not due and not payable. In *Beitov Properties Ltd v Elliston Martin* [2012] UKUT 133 (LC) it was held that the address required to be provided in a demand for payment must be the landlord's actual address and an agent address is not sufficient.
19. The tribunal was shown a specimen demand issued by the agents RMG. This was to be seen at page 56 of the trial bundle. On what was headed as an invoice there were three references to the landlord as being "Warwick Court (Harold Hill) MCL". The address was quoted as being "RMG House Essex Road Hoddesdon EN11 0DR". Kerri Baxter confirmed that this was in fact the registered office for the respondent. So, the full name of the respondent is Warwick Court (Harold Hill) Management Company Limited while the demands had the respondent down as Warwick Court (Harold Hill) MCL and it is this discrepancy that the applicant says means that the respondent has not complied with s.47 and therefore cannot seek payment of the service charges. The applicant says the liability is strict and exact; the full company name must be displayed. In reply the respondent said that there had been sufficient compliance with s.47 and that the identity of the landlord is clear from the detail set out on the paperwork.
20. To support this contention counsel for the respondent produced authorities including *Mannai Investment Co Ltd v. Eagle Star Assurance* [1997] UKHL 19. This case related to a different form of notice to that in this dispute but the House of Lords did consider how a reasonable recipient would have understood a notice. This would have parallels with this dispute. Would a reasonable recipient be in any doubt about the identity of the landlord because the invoice showed MCL instead of Management Company limited? When reflecting upon this the tribunal noted that the legal consultant for the applicant readily conceded that the use of "Ltd" was acceptable instead of "Limited" in a company title.
21. Accordingly even the applicant was able to concede that the title need not appear in full. The tribunal decided that the identity of the landlord was in no doubt and that any reasonable recipient seeing "Warwick Court (Harold Hill) MCL" along with an address that was the registered office for the management company could be in no doubt whatsoever as to whom the service charge demand was made on behalf of. The specimen invoice mentioned above included the words "notice is hereby given pursuant to the Landlord and Tenant Act 1987 sections 47 & 48 and Commonhold and Leasehold Reform Act 2002 that all notices (including notices in proceedings) may be served upon the landlord: Warwick Court (Harold Hill) MCL RMG House Essex Road Hoddesdon EN11 0DR". In the light of this unequivocal wording the tribunal was

satisfied that this was quite enough to satisfy the requirements of s.47. (The tribunal also noted that in the lease of the property there is a definition of the "Management Company" being Warwick Court (Harold Hill) Management Company Limited which would support the view that the applicant should understand what MCL stood for.)

22. Finally, the applicant asserted that because the respondent was a dormant company its business model did not comply with company law. The applicant repeatedly asserted that because the respondent was trading and conducting significant accounting transactions that this was not possible as a dormant company under company law and as such was unlawful.

23. By section 1169 of the Companies Act (CA) 2006:

"(1) For the purposes of the Companies Acts a company is "dormant" during any period in which it has no significant accounting transaction.

(2) A "significant accounting transaction" means a transaction that is required by section 386 to be entered in the company's accounting records.

(3) In determining whether or when a company is dormant, there shall be disregarded—

(a) any transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in connection with the formation of the company;

(b) any transaction consisting of the payment of—

(i) a fee to the registrar on a change of the company's name,

(ii) a fee to the registrar on the re-registration of the company,

(iii) a penalty under section 453 (penalty for failure to file accounts), or

(iv) a fee to the registrar for the registration of a confirmation statement.

(4) Any reference in the Companies Acts to a body corporate other than a company being dormant has a corresponding meaning.

Section 386 CA 1989 insofar as relevant provides as follows:

“(1) Every company must keep adequate accounting records.

(2) Adequate accounting records means records that are sufficient—

(a) to show and explain the company's transactions,

(b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

(3) Accounting records must, in particular, contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.”

24. A dormant company (like any other company) is required to file annual accounts but is exempt in certain circumstances from having to file audited accounts, see ss. 448, 480 and 481 CA 2006. In law the consequences of a company being a dormant company are those prescribed by CA 2006, namely that certain but not all dormant companies (see s. 481 CA 2006) are exempt in certain circumstances from certain financial reporting requirements which would otherwise apply to them under CA 2006. As Counsel for the respondent rightly observed “A management company is entitled to be treated as a dormant company and to file dormant accounts because it does not own the money it holds, it is prevented from including those monies as its assets and has no tax liability. Given that the company is only “dormant” for tax and accounting purposes it has not been struck off the register and does not need to apply to be reinstated. There is nothing to prevent it from conducting litigation.”
25. The tribunal endorsed this view and entirely rejected the applicant’s submission that once the company “traded” it ceased to be dormant. Nothing the management company did was any way inconsistent with the dormant company status it had adopted. Any money collected by the management company was collected in effect on behalf of the tenants and held in trust as a consequence.

26. For all the reasons set out above the tribunal is of the view that the service charges are reasonable and payable and that the amount is approved as set previously and is due from the applicant to the respondent.

Application for a S.20c order and for costs

27. The tribunal is presently minded to take the view that it would not be just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. However, before making such an Order it gives the following **directions** regarding submissions. Accordingly, the respondent has 14 days from the date of the receipt of this decision to file and serve such submissions it wishes to make with regard to s. 20c. There after the applicant has 14 days from the receipt of the respondent's submission to file and serve its own submissions regarding s.20c. Thereafter the tribunal will issue its decision with regard to the s.20c application.
28. At the end of the hearing an application was mentioned but not made by the Respondent under Rule 13 of the Tribunal Rules in respect of the costs of the respondent. The Tribunal subsequently received a schedule of costs. The details of the provisions of Rule 13 are set out in the appendix to this decision.
29. The tribunal was also mindful of a recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. Before a costs decision can be made, the tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the tribunal to consider whether, in the light of unreasonable conduct (if the tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.
30. However, before making such a cost decision it gives the following **directions** regarding submissions. Accordingly, the respondent has 14 days from the date of the receipt of this decision to file and serve such submissions it wishes to make with regard to costs. Thereafter the applicant has 14 days from the receipt of the respondent's submission to file and serve its own submissions regarding costs. Thereafter the tribunal will issue its decision with regard to the costs application.

Name: Judge Professor Robert
M. Abbey

Date: 9th October 2018

Appendix of relevant legislation and rules

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 provisions 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 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.

20B Limitation of service charges: time limit on making demands.

- (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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [2013 No. 1169 (L. 8)]

Orders for costs, reimbursement of fees and interest on costs

- 13.—(1) The Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
 - (4) A person making an application for an order for costs—

- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
- (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
- (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

- (a) summary assessment by the Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
- (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc.) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph

(7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.