



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

Case Reference : CHI/45UC/LSC/2019/0097

Property : Basement flat, 6 Park Road, Bognor Regis
PO21 2PX

Applicant : Jane Woolley & Zara Woolley

Representative :

Respondent : 6 Park Road Residents Limited

Representative : Wannops LLP

Type of Application : Determination of liability to pay and
reasonableness of service charge

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 17th June 2020

DETERMINATION

Background

1. The Applicant seeks a determination of their liability to pay towards certain service charge costs relating to expenses incurred in respect of internal communal areas.
2. Various sets of directions have been given including a preliminary decision on the 8th January 2020. This decision determined that the Applicant was only entitled to challenge service charges from 1st January 2014 onwards. The decision contained the reasons for the same.
3. The Applicants are the owners of the leasehold interest in the self-contained Basement flat (“the Flat”). Their flat is one of 4 flats within 6 Park Road, Bognor Regis (“the Building”). The Respondent is a company in which the Applicants are a member which owns the freehold and manages the Building.
4. The point at issue is whether or not the Applicant should contribute towards expenditure incurred in respect of the internal parts of the main part of the Building which serve the three flats. The Applicant states that as their flat is entirely separate with its own entrance it should not contribute towards the same.
5. The Application has led to a mass of paperwork with various sets of directions and applications having been made. Ultimately an electronic bundle was supplied by the Applicants and references in [] are to pages within that bundle.

Determination

6. The tribunal has carefully considered all of the documents within the bundle. In particular reference is placed upon the preliminary decision [191-199] and the lease for the Flat which is at various places in the bundle but we refer to [32-46].
7. On behalf of the Respondent Ms S Redding has filed 2 statements. Likewise two statements are filed by the Applicants. A large number of other documents have been filed and the bundle runs to some 314 pages.
8. There is some dispute as to when exactly the Applicants acquired their interest save it is accepted the Flat has been owned either by the Applicants or family members for very many years. Neither party has supplied Land Registry entries, but little turns on this point. It is common ground that the Applicants have been the

registered proprietors of the leasehold interest in the Flat for all the relevant period being since 1st January 2014.

9. The preliminary decision also clarified that essentially for the whole of the relevant period the Respondent had been responsible for the Building.
10. It is also common ground as identified in paragraph 14 of the preliminary decision that the Respondent does not adhere to the service charge mechanism within the lease. What appears to take place (and has done it would appear since some point in the 2000's) that each leaseholder pays a monthly sum which is used to pay expenditure. It would appear limited accounts are prepared.
11. The Applicant does not challenge this mechanism per se. The Applicant contends in the past whilst they would make the usual monthly payments at each year end (the service charge year being a calendar year) they would be refunded monies spent on expenditure relating to the communal areas in the house. The Applicant suggests that this is because they had no access to this area, the Flat being entirely self-contained with its own entrance.
12. The Applicant says this process stopped many years ago. For personal reasons little regard was paid by the Applicants to this until more recently. Initially the Applicants ceased making payments and questioned the position. Certain payments have been made after threats of action being taken.
13. The Respondents position is that they are entitled to claim such sums. They initially challenged the tribunals jurisdiction on various grounds which were adjudicated upon in the preliminary decision already referred to. This did limit the period of time which the Applicants could challenge.
14. The starting point is the lease. The parties agree the relevant lease is that within the bundle which is dated 31st March 1983 and made between Thomas Francis Hellyer and Trevor Phillip Hellyer & Martin Christopher Hellyer.
15. The relevant covenants by the leaseholder are contained within clause 2(19) of the lease [39-42]. The mechanism for collection of service charges and what is included is a familiar one. An interim charge may be demanded at the start of the service charge year, being 1st January in each year, an estimated amount. At the year end, upon accounts being produced any balancing payment shall be made and if a surplus this shall be carried over. Clause 2(19)(2) sets out how the relevant proportion shall be calculated. We are told that each flat contributes one quarter of the expenditure.
16. Clause 19(2)(1)(a)-(e) sets out what expenditure shall be included. Clause 19(2)(b) states that the service charge shall include:

“The costs and expenses of keeping the corridors hallways staircases and access properly decorated carpeted and tidy and lit and the doorbells in working order.”

17. The lease defines the Flat as part of the Building which is the entirety of 6 Park Road.
18. In this tribunals judgment it is clear that the Flat is required to contribute to all expenditure properly incurred by the Respondent. This includes decorating, cleaning, carpeting and lighting the communal areas. It is not unusual in leasehold property for one lease to contribute to items which it could argue it has no use for.
19. There appears to be no challenge as to the reasonableness of the charges. The challenge is simply the Respondents ability to recover the same.
20. As a result of the above finding the application must be dismissed.
21. The Respondents have suggested the application should never have been bought as Clause 2(19)(1) suggests any dispute should be determined by a surveyor nominated under the terms of this clause. As indicated in the preliminary decision the tribunal does not accept this point. Such provisions within a lease can never usurp a party’s rights to seek determination by the court or tribunal.
22. The Applicant has also sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The purpose of such orders are to limit the recoverability of any costs from a leaseholder in bringing matters to the tribunal. Such remedies are always discretionary and simply because an application has been successful or a party has failed is not determinative of the making of such an order. Considering matters in the round and the outcome that the application has been dismissed the tribunal declines to make any such orders.

Judge D. R. Whitney

RIGHTS OF APPEAL

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.

2. 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.
3. 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.
4. 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