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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 62 Lauder Way
Pelaw
Gateshead
Tyne & Wear
NE10 0BG

Applicants : Quay Park (Pelaw) Management Company
Limited (1) and Regisport Limited (2)

Respondents : Ms Laura Rebecca Sellers and
Mr Evan Ken Fung Liu

Case number : MAN/00CH/LIS/2011/0032

Date of Hearing : 27 March 2012

Type of Application : Determination of reasonableness of service
charge - Section 27A Landlord and Tenant
Act 1985 ("the Act").

The Tribunal : Mr W L Brown LL.B (chairman)
Mr A Robertson FRICS
Mr S Moorhouse LL.B

Date of decision : 25 June 2012

ORDER

The service charges for the Property for the years in question are as recorded in paragraph 33.

A. Background

1. By Order dated 18 October 2011 of Gateshead County Court proceedings in Claim Number 9GH03439 (the "County Court Proceedings") were transferred to the Tribunal and the Tribunal thereby had jurisdiction to determine the reasonableness of service charges claimed by the Applicants in respect of the Property for service charge years ending 31 December 2007 – 2011 inclusive (the "Application"). The determination is made under Section 27A of the Landlord & Tenant Act 1985 (the "Act").
2. Directions were made by the Tribunal on 16 December 2011 and 2 April 2012.
3. On 27 March 2012 the Tribunal carried out an external and internal inspection of the Property in the presence of the managing agent of the First Respondent.
4. A hearing was held on 27 March 2012 at AIT Kings Court Royal Quays North Shields NE29 6AR. The Applicant was represented by Mr Wilkinson of Counsel. Mr Liu attended in person and made representations for both Respondents.

B. The Property

5. From its inspection the Tribunal found the Property to be a 3rd floor flat in a 3 storey purpose-built building (the "Building") of brick construction comprising 123 units within a development (the "Development") with landscaped borders and lawned areas. There are communal accessways, carparking areas and an external bin store. The Tribunal found the Development to be reasonably well maintained.

C. The Parties and the Issue

6. The Second Applicant is the freehold owner of the Development. It played no part in the proceedings. The First Applicant is the management company of the Development and was represented by its managing agent Residential Management Group Limited ("RMG").
7. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Applicants in respect of the Property for service charge years ending 31 December 2007 to 2011 (inclusive).

D. The Lease

8. A copy of the Lease for the Property dated 22nd September 2006 was before the Tribunal. The Lease is for a term of 150 years less 1 day from 1st October 2004 at a yearly unchanging rent of £150.00.
9. There are various relevant covenants within the Lease as follows:

Clause 3 - *"Buyers Covenants*

The Buyer covenants with the Company and the Management Company and also as separate covenant with every other person who is the registered proprietor of any part or parts of the Development and the Estate and each and every part thereof and with the intention of binding the Property in the terms specified in the Third Schedule. "

Clause 5 – *"The Management Company covenants severally with the Company and the Buyer as follows:*

In relation to the Buildings and the Common Parts in the terms specified in Part I of the Fifth Schedule; and

In relation to the Amenity Areas in the terms specified in Part II of the Fifth Schedule."

Clause 6 – *"Maintenance Charge Covenants*

The Management Company and the Buyer each covenant with the other and the Company in the terms specified in Part I of the Sixth Schedule. "

Relevant extracts are as follows:

"Third Schedule

(Covenants by the Buyer)

1. Maintenance Charge, Rent, Interest and Taxes

a) (i) To pay to the Management Company the Maintenance Charge and the Rent on the days and in the manner herein provided without

any deduction (whether by way of set off lien charge or otherwise) whatsoever;

(ii) That in the event of the Maintenance Charge the Rent or any other sum payable in accordance with the terms of this Lease (or any part of parts of the same) remaining unpaid five working days after the same shall have become due (whether formally demanded or not) the Buyer shall pay interest at the rate of 4 per cent per annum above the Base Rate of National Westminster Bank plc prevailing from time to time or at the rate of 12% (whichever shall be the higher) upon the amount remaining unpaid from the date upon which it became due to the date of payment of such Maintenance charge or other sum being deemed to be rent recoverable by the Management Company as rent in arrear

.....

12. Expenses

To pay all expenses (including Solicitors costs and surveyors fees) incurred by the Company or the Management Company in the recovery of any arrears of Maintenance Charge or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 (or any statutory modification re-enactment or replacement thereof) notwithstanding that forfeiture is avoided (otherwise than by relief granted by the Court).

.....

Sixth Schedule

Part 1

1. Estimate

The Management Company shall as soon as practicable after the 1st day of January in each year prepare estimates of the sums to be spent by it on the matters specified in Part II of this Schedule (Estimated Management Costs) for such year in respect of:

(a) Expenditure relating specifically to the Buildings and the Common Parts pursuant to the provisions of Part I of the Fifth Schedule; and

(b) Expenditure relating to the Amenity Areas pursuant to the provisions of Part II of the Fifth Schedule; and shall forthwith thereafter notify the Buyer of such Estimated Management Costs

2. Payment

The Buyer shall within 14 days of the receipt of demand therefore pay to the Management Company the Maintenance Charge

3. Account and Adjustment

The Management Company shall in respect of each calendar year keep accounts of the sums pent by it on the matters specified in Part II of this Schedule ("Actual Management Costs") in relation to the Parts I and II of the Fifth Schedule and shall as soon as reasonably practicable after the end of each calendar year notify the Buyer of the Actual Management Costs incurred during such year and the amount of the Estimated Management Costs for the current year notified to the Buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account any excess for deficiency in the Actual Management Costs incurred in the preceding year.

Part II

(Expenditure to be recovered by means of the Maintenance Charge)

1. Covenants

The Sums spent by the Management Company of and incidental to the observance and performance of the covenants on the part of the Management Company contained in the Fifth Schedule and Part I of this Schedule.

.....

10. Administration

The costs of administering the Management Company including the costs of preparing and auditing accounts the expenses of the Directors and the Secretary the printing and sending out of notice circulars reports or accounts the holding of meetings and all fees payable to any statutory body or any other body.

11 Reserve Fund

Such sum as the Management Company shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected future substantial capital expenditure including (without prejudice to the generality of the foregoing) the external decoration of the Property and the Buildings and the Resurfacing of the roads and footpaths comprised in the Amenity Areas and Commons Parts.

Seventh Schedule

8. Maintenance Charge

(a) The proportion of the Maintenance Charge applicable to the Property in relation to the Buildings the Common Parts and the Amenity Areas shall apply only as from the date of construction by the Company of the final flat or dwelling within the Development.

(b) Prior to the date specified in paragraph 8(a) of this Schedule the proportion of the Maintenance Charge applicable to the Property in relation to the Buildings the Common Parts and the Amenity Areas shall be the amount of such Maintenance Charge as is attributed by the Company or the Management Company to the Block divided by the number of Flats within the Block.

(c) The Company may at any time prior to the construction of the final flat or dwelling within the Developments vary the number of flats or dwellings to be constructed within the Development and/or vary the specification thereof and (if required as a result thereof) shall also vary by notice to the Buyer the proportion specified in Part III of the Sixth Schedule Provided that any such variation shall be reasonable in the context of the change to the Development and shall be calculated on the same basis as the original proprietor.

The percentage contribution for the Property applicable to the Maintenance Charge is 1.58%.

E. The Law

10. The relevant law is to be found in the Act.

11. Section 18 of the Act states

Meaning of “service charge” and “relevant costs”

(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.....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.*

12. Section 19 of the Act states

Limitation of service charges: reasonableness

(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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

- 1. Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise. "*

13. Section 27A of the Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to Leasehold Valuation Tribunal for a determination whether 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 Leasehold Valuation Tribunal for a determination whether, if costs were incurred for service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would,*

- 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.*

F. The First Applicant's Case

14. The First Applicant relied upon papers produced in the County Court Proceedings, claiming a money judgment for unpaid service charges for the years in question, including its Amended Particulars of Claim and witness statement of Sarah Handy of RMG dated 17 October 2011. In addition it produced a witness statement of Simon Tisseyre of RMG dated 12 April 2012 and a Statement of Case dated 12 April 2012.
15. It expressed concern that it was unable adequately to respond to the Respondents' objections to payment of service charges for the Property, alleging that the Respondents had failed to engage in the proceedings, in particular in not producing a Scott Schedule in accordance with the Tribunal's directions of 16 December 2011.
16. In general terms its position was that services had been provided in accordance with the Lease, to an adequate standard and consequential charges claimed were of a reasonable amount.
17. It stated that the Lease permitted (at clause 11 of Part II Sixth Schedule) the operation of a reserve fund. A reserve fund is claimed in each year at issue as part of the annual service charge. In oral evidence it was stated that in each service charge year at issue there also had been a surplus.
18. It asserted that while initial correspondence had been sent to a previous address of the Respondents, when this error had been brought to its attention the correct address had been used and the Respondents were fully on notice of matters within the proceedings and the service charges at

issue, not least having attended hearings within the County Court Proceedings.

G. The Respondents' Case

19. The Respondents had provided within the County Court Proceedings a document headed "Written Statement" sent to the Court under cover of a letter dated 9 May 2011. Mr Liu indicated in the hearing that the comments it contained remained effective. Therefore the particular objections, concerning the Development (but which did not refer to a particular year of charge), were as follows:
20. The common areas had not been kept in a good state of repair – for example a post box had been left improperly attached and plaster on internal walls damaged by furniture had been left unrepaired.
21. Windows had not been cleaned regularly.
22. Cleaning of internal communal areas had been poor.
23. Lights in communal areas were not kept in good working order.
24. Behaviour of tenants occupying certain flats in the Building was not properly controlled.
25. The bin store had not been kept tidy.
26. Remedial works concerning these matters had been undertaken only recently.
27. Mr Liu for the Respondents submitted to the Tribunal an e-mail dated 24 April 2012 containing representations which had been copied to the First Applicant. This was submitted late according to the time limit fixed by the Tribunal's directions of 2 April 2012. The Tribunal had regard to the representations where they were in reply to the statement of Mr Tisseyre, but otherwise disregarded content concerning matters that the Respondents could and should have raised within the Tribunal's timetable.

H. The Tribunal's Findings and Decision on the Section 27A Application

28. The Tribunal first determined that the Applicants were able to claim a service charge in accordance with the Clause 3 and the Third Schedule. The Tribunal found that the description in the Lease of "Maintenance Charge" is for charges in respect of services provided in accordance with clauses 5 and 6 of the Lease.

29. The Tribunal noted that the Third Schedule of the Lease permits charges to be based upon estimates. The Tribunal noted that although the Lease permits and requires adjustment for actual expenditure compared to budgeted sums charged, this exercise had not taken place in any of the years at issue.
30. While the proportion of the annual service charge of the Development is set by the Lease at 1.58% the First Applicant's documents disclosed that throughout the Respondents had been charged 0.98%.
31. There were a number of discrepancies in the information provided to the Tribunal by the First Applicant concerning figures for the amount of the service charges. The Tribunal was able to have regard to some information regarding actual expenditure for the years at issue, save for 2011. The information produced in support of budgeted amounts did not match the budget sums charged to the Respondents. The Tribunal was unable to conclude which figures were correct. However the amounts shown on the service charge invoices were consistently less than those which could be identified as actual expenditure of the First Applicant on suppliers and service providers.
32. Having regard to the Respondents' representations the Tribunal was unable to identify sufficient evidence such as to persuade it that the services had not been provided, were of an inadequate standard or that relating charges were excessive. The Tribunal understands that the Respondents may feel frustrated that remedial works they had sought in respect of the Development may have been undertaken only within a short period of time before the hearing; however the Respondents had failed to provide evidence for the Tribunal to persuade it that the charges rendered were unreasonable.
33. Therefore, the Tribunal finds that the following amounts as understood to have been invoiced to the Respondents to be reasonable for the service charge years in question, separating amounts invoiced for services from sums for the reserve fund:

Year	Service charge £	Reserve fund £
2007	650.47	86.25
2008	634.15	86.25
2009	934.01	86.25
2010	855.98	57.33

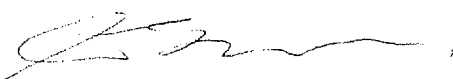
2011

936.99

86.25

34. As the Order transferred the County Court Proceedings to the Tribunal with no limitation on its terms of referral the Tribunal has jurisdiction to consider other charges claimed within the County Court Proceedings levied on the Respondents by way of debt recovery charges, administration charges for pursuing the alleged debt and Land Registry fees. These are charges provided for by paragraph 12 of the Third Schedule of the Lease. Having found that service charges were reasonably incurred and of a reasonable amount the Tribunal found that those supplementary charges arising from the failure by the Respondents to make any payment were recoverable and in the amounts claimed.

35. The Tribunal leaves to the County Court Judge determination on the matter of the fees of the County Court Proceedings and costs in them.

Signed: 

Date: 25 June 2012

W.L. Brown
Chairman