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

Case Reference : CHI/19UH/LAC/2013/0011

Property : 5, Barton Lodge, 17 The Folly,
Cerne Abbas, Dorset DT2 7JY

Applicant : Mr and Mrs G Coward

Representative :

Respondent : Barton Lodge (Cerne Abbas)
Management Limited

Representative :

Type of Application : Administration Charges:
Commonhold and Leasehold Reform Act
2002

Tribunal Members : Judge D. Agnew

**Date and venue of
Hearing** :

Date of Decision : 6th November 2013

DECISION

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DECISION AND REASONS

Decision

1. The Tribunal finds that none of the Administration Charges claimed by the Respondent from the Applicant are currently payable as no summary of rights and obligations has yet been served with the demand for payment.
2. If the Respondent were to rectify the situation by re-submitting the demand for payment accompanied by the appropriate summary of rights and obligations, the Tribunal finds that the managing agent's fee of £250 plus vat would be reasonable, as would the managing agent's fee for photocopying charges. However, the Tribunal finds that the Applicants are not liable to pay the fees of Mr Fielder or Mr Darby
3. The Tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that the Landlord may not add the cost of these proceedings onto any future service charge.

Background.

5. On 15th July 2013 the Applicants applied to the Tribunal under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to the liability for and reasonableness of certain Administration Charges claimed against them by the Respondent.
6. The Applicants are the long lessees of apartment 5 at Barton Lodge and the Respondent which is a tenant-owned management company is the freeholder. In the main this application concerns the costs of dealing with a previous application to the Tribunal by the Applicants under section 27A of the Landlord and Tenant Act 1985 as to the liability for and reasonableness of certain service charges. The power to claim such costs, it is said, is provided for in the Applicant's lease. The Applicants dispute that any of the costs are payable.

The Application

7. The Applicants refer to the Tribunal for determination the following invoices issued by the Respondent:-
 - a) a photocopying charge under invoice number 821 dated 22nd November 2012 for £30 plus vat (total £36)
 - b) a charge for interest on unpaid service charges numbered 858 dated 19th June 2013 in the sum of £39.28

c) an invoice numbered 861 dated 18th June 2013 for time spent in dealing with the aforesaid claim under section 127A of the 1985 Act. This is for a total of £5535.20 and is broken down as follows:-
The managing agents' fee of £250 plus £50 vat
A director's fee (Mr Fielder) of £3360.20
A director's fee (Mr Darby) of £1875.

8. Directions were issued by the Tribunal for the matter to be dealt with by way of a determination on the basis of written representations under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and neither party objected to that procedure. Written representations were received from both parties.

The Lease.

9. By clause 34.4 of the Applicants' lease the lessees covenant with the Seller (the freeholder) and with the Manager (the Respondent) separately "to pay all costs and expenses in connection with the Landlord and Tenant Act 1985 including any legal costs incurred in successfully seeking a declaration that the Estimated Service Charge and/or Service Charge is reasonable".

The Law

10. Paragraph 2 of Schedule 11 provides that "a variable administration charge is payable only to the extent that the amount of the charge is reasonable".
11. Paragraph 1(1) of the said Schedule to the 2002 Act states that an administration charge means "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
a) not applicable
b) not applicable
c) not applicable
d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
12. Paragraph 5 of Schedule 11 to the 2002 Act states that "an application may be made to a leasehold valuation tribunal [now the First-tier Tribunal (Property Chamber)] for a determination whether an administration 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.
13. Paragraph 4(1) of Schedule 11 to the 2002 Act provides that " a demand for payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in

relation to administration charges.” Paragraph 4(3) states that “a tenant may withhold payment of an administration charge which has been demanded of him if sub-paragraph (1) is not complied within relation to the demand.”

13. Section 20C of the Landlord and Tenant Act 1985 provides that “A tenant may make an application for an order that all or any of the costs incurred.... by the landlord in connection with proceedings before a [tribunal].... 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.....”. By section 20C(3) it is provided that “the....tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances”.

The Applicants' case.

14. The first point the Applicants make is that no summary of tenants' rights and obligations was served upon them with the demand for payment as required by paragraph 4(1) of Schedule 11 to the 2002 Act and that therefore no such charges are currently payable.
15. With regard to the Managing Agents fees they point to the comments contained in the determination dated 7th February 2013 that the attendance of the representative of the Respondent's managing agents, Mrs Bowden of Dickinson Bowden, at the hearing was arguably unnecessary as she had played little part in the proceedings and was unable to produce information or documentation when required.
16. The Applicants say that Mr Fielder's and Mr Darby's fees are unreasonable and, in any event they have not given a breakdown of those fees as required by the directions issued by the Tribunal.
17. With regard to the interest charged in respect of unpaid service charges, the Applicants point out that this was the second such invoice replacing the first one and that this one was addressed to Mrs Coward alone. They say that the amount of service charges unpaid will have changed as a result of the Tribunal's decision in the previous case and imply that the new figure does not bear relation to the accounts that need to be revised in accordance with the earlier determination. This has not yet been done.
18. As for the photocopying charges, the Applicants say that the copying was not supplied to them until after the time had passed for them to submit their written case to the Tribunal in the earlier case and that the charge is therefore unreasonable.

The Respondent's case

19. The Respondent did not address at all the allegation that the summary of tenants' rights and responsibilities had not been served with the demand for payment.

20. The Respondents maintain that the managing agent's fee of £250 plus vat for the work done in connection with the previous case is reasonable and included advising the directors on how to proceed and attending the Pre-trial Review and the hearing itself. They take issue with the Tribunal's earlier comments that Mrs Bowden's attendance was arguably unnecessary.
21. With regard to Mr Fielder and Mr Darby's fees the Respondent described in general, but not detailed terms the work in which they were engaged in answering the application. Mr Fielder produced, in confidence, a copy of one of his pay slips. It is said that Mr Fielder's fee was based on a daily rate commensurate with his salary but the hourly charging rate or the amount of time spent on each category of work is not given (save to say that "significant time was spent".. Mr Darby's daily rate is quoted at £1250 and that he spent 1.5 days on this case, but no detail of the work done is given.
22. With regard to the interest calculation, the Respondents say that this has been recalculated following the Tribunal's previous determination.
23. With regard to the invoice for photocopying charges the Respondent says that no timescale was provided by the Applicants within which the copy documents were required, that they were produced at the Applicants' request, involved a certain amount of time in locating the documents requested and the charges are reasonable.
24. The Respondent opposes a section 20C order being made but on the misapprehension that such an order would mean that the Applicants would be re-imbursed their costs at the expense of all 19 members of Barton Lodge.

The Determination

25. The Tribunal has treated the fees claimed by the Respondent the subject of these proceedings as Administration Charges coming within paragraph 1(1)(d) of Schedule 11 the 2002 Act. This is on the basis that in responding to the tenants' section 27A application, the Respondent was indirectly maintaining that the Applicants were in breach of the covenant to pay service charges by not having paid them. It is arguable that this is stretching the wording of paragraph 1(1)(d) too far but the paragraph is couched in very wide terms and does include amounts payable *indirectly* (emphasis added) in connection with a breach of covenant by the tenant. Furthermore, the Respondents did not argue that the charges in question were not administration charges but on the contrary adopted the concept that they were.
26. Next, the Tribunal considered whether the Respondent is entitled to claim the fees in question under the lease and decided that it is. Clause 34.4 of the lease is very widely drawn and in the Tribunal's opinion the covenant to pay "all costs and expenses in connection with the

Landlord and Tenant Act 1985” particularly in the context of the rest of the clause which refers specifically to the Estimated Service Charge or the Service Charge is sufficient to give the Respondent the ability to recover costs incurred in responding to an application under section 27A of that Act.

27. The Respondents did not respond at all to the allegation that no Summary of tenants’ rights and obligations was served with the demand for payment. The Tribunal, therefore, has no reason to doubt that what the Applicants say in that regard is correct. Consequently, none of the amounts claimed by way of fees are currently payable by the Applicants. Should the Respondent remedy the situation by serving a valid notice of tenants’ rights and obligations the following determination will apply.
28. The Tribunal accepts on reconsidering the matter, that it was not unreasonable for Mrs Bowden to attend the Pre-trial Review and the hearing, even though, in the event, her participation in the same was limited. For the amount of time that these two attendances alone took up, the Tribunal considers that a fee of £250 plus vat is reasonable and, if the summary of rights and responsibilities is served with a fresh demand, that sum will be payable by the Applicants.
29. The photocopying charges of £36 inclusive of vat are not unreasonable and, again, subject to the service of an appropriate notice of tenants’ rights and responsibilities, will be payable by the Applicants.
30. The Tribunal has already stated in its determination of 7th February 2013 that the charge for interest on late payment of service charge is not a matter within the Tribunal’s jurisdiction. That is a matter for the County Court if the parties cannot agree the matter but it is to be hoped, bearing in mind the amount involved, that sense will prevail and that it will not be necessary for the matter to have to go to the County Court.
31. That leaves the fees of Mr Fielder and Mr Darby. Irrespective of the fact that no notice of tenants’ rights and responsibilities has been served in respect of these matters, the Tribunal finds that they are not payable by the Applicants for the following reason. The Tribunal finds that they are not costs of the Respondent company itself. They constitute the expense of time of two directors of the company. It is trite law that a company is a legal entity in itself distinct from its directors. There was no evidence that these directors had a service contract with the company by which they were entitled to charge the company for their time. It would be surprising if, in the case of a tenant-owned management company that would be the case. The directors are expected to give of their time without remuneration. Neither are the directors employed by the company whereby the time taken on this case would have detracted from the time that could have been spent on other matters for the company. There was no evidence that Mr Fielder

who is an employee of another company and who is paid a salary lost any earnings as a result of the time he spent on this case.

32. Even if the Tribunal had found that the fees of the two directors were chargeable to the Applicants, there is insufficient detail as to what precisely was done and how long each activity took, contrary to the Tribunal's directions, to have enabled the Tribunal to make a detailed assessment as to the reasonableness of the fees. What is clearly unreasonable is for Mr Fielder to base his claim on his exceptionally high salary when, had a qualified lawyer been instructed to do the work, his or her charging rate would have been considerably less.
33. In conclusion, therefore, for all the reasons stated above and irrespective of whether or not a fresh demand is made together with a notice of tenants' rights and obligations, the Tribunal finds that the claim in respect of both Mr Fielder's and Mr Darby's fees are not payable by the Applicants.

D. Agnew (Judge)

Appeals

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.