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

Case No: CHI/24UP/LSC/2012/0075

Re : 103 Thyme Avenue, Whiteley, Fareham, Hampshire PO15 7GJ

Applicant Panos Simou c/o Lawcomm Solicitors

Respondent Whiteley K (no.2) Management Co Ltd  
c/o RMG Limited

Date of Application 9 May 2012

Date of Inspection 14 August 2012

Date of Hearing 14 August 2012

Venue Holiday Inn, Cartwright Drive, Titchfield, Fareham,  
Hampshire PO15 5RJ

Representing the parties The Applicant represented himself in person

The Respondent was represented by Mr J S Latta MRICS,  
assisted by Jessica Leggate and Claire Gibson, all of the  
managing agent RMG Limited

Members of the Leasehold Valuation Tribunal:

P J Barber LL.B	Lawyer Chairman
P D Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision: 10<sup>th</sup> September 2012

**Decision**

1. The Tribunal determines in accordance with the provisions of
  - a. Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) - that reasonable sums for actual and/or estimated service charges payable by the Applicant to the Respondent are :
    - i. for 2010 the sum of £301.80
    - ii. for 2011 the sum of £291.40
    - iii. for 2012 the sum of £312.33
  - b. Section 20C of the 1985 Act – that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

## Reasons

### Introduction

2. This was an application made by Mr Panos Simou (the Applicant), the lessee of 103 Thyme Avenue, Whiteley, Fareham, Hampshire PO15 7GT ("the Property") for determination of the reasonable service charges payable by the Applicant to the Respondent, for the years 2010; 2011 and 2012.
3. The issues for determination by the tribunal are whether certain service charges respectively for the service charge years ending 31 December 2010 and 31 December 2011, and also the estimated service charges for the year ended 31 December 2012, are reasonable and payable. However some of the sub-headings for service charges were in any event not disputed and accordingly the focus of the hearing was in regard only to disputed elements of the service charges.
4. The Lease of the Property was granted on 30 June 2005 and made between Bovis Homes Limited (1) Dilip Kumar Chudasama and Kalpesh Chudasama (2) Whiteley K (No.2) Management Company Limited (3), for a term of 999 years from 30 September 2003 ("the Lease").
5. Residential Management Group Limited ("RMG") has been the managing agent since, or since shortly after, the date on which the Lease of the Property was granted, including at all material times during the period in which the disputed charges arise.

### Inspection

6. The tribunal's inspection took place only in the presence of the Applicant Mr Simou, and Ms Jessica Leggate for the Respondent.
7. The entire development, of which the Property forms a part, is extensive; however, for the purposes of service charges, the Property is included with (and adjoins) 6 flats arranged over 3 floors known as Forrester House and 2 other flats known respectively as 1 Rowan Close and 36 Rowan Close. The Property is a first floor flat constructed adjacent to Thyme Avenue, and located above 2 garages, separated by an open archway through which vehicular access may be obtained from the road and leading to a block surfaced courtyard area which includes parking spaces and a brick built bin / cycle store. Nos 1 and 36 Rowan Close are first floor flats similar in construction to the Property, located above garages around the other sides of the courtyard. There are limited garden areas comprising strips of grass around the edges of the courtyard and certain shrubs and small trees planted around the periphery of the site. The Property is brick built with a pitched and tiled roof and has its own independent ground floor entrance at the front, close to the road. There was a certain number of weeds in evidence within the garden areas generally, and some of the larger shrubs / trees had reached the stage at which some significant pruning and cutting back was needed. The growth on shrubberies located within the courtyard area at the rear of the Property, made access to the gas meter for the Property, located at ground level underneath a small hatch, somewhat difficult. A brief internal inspection of the Property was carried out; it comprises ground floor entrance with staircase leading directly to a lounge, with kitchen adjoining via an open archway; there were 2 bedrooms, one en-suite and a bathroom. The Applicant advised that the gas boiler serving the Property is located in the single garage below the Property.

### Hearing & representations

8. The hearing was attended by Mr Simou, and Mr J S Latta represented the Respondent with some assistance from Ms Jessica Leggate, and Ms Claire Gibson who was in attendance to observe. The tribunal asked Mr Latta at the outset to explain an apparent discrepancy as between the proportion of service charges being levied in practice (6.0858% : comprising 5.6758% for the flat

and 0.41% for the garage), contrasted with the service charge proportions as specified for the Property in the 7<sup>th</sup> Schedule of the Lease (3.2302% : comprising 2.9602% for the flat and 0.27% for the garage). Mr Latta said that the entire estate at Whiteley comprised of properties managed by various different management companies, apart from the Respondent and that there appeared generally to be a certain disparity as regards the percentages used for service charge purposes, and those as specified in the leases, but the point had not previously been formally questioned by others. Mr Latta added that this was a practical issue and pointed to the fact that the percentages used in the Lease do not total 100% for the properties concerned; Mr Latta added that the higher percentages used in practice, were those which had always been used since the development was completed and it appeared there had been some disparity between the practical arrangements set up for service charge collection from the outset, as compared with the percentages as expressed in many of the leases generally for the estate. The tribunal asked whether the mechanism contained in the Lease for varying the percentage or proportion as expressed in Clauses 7.2.1 and 7.2.2, had ever been followed; Mr Latta did not know whether any such variation procedure had been exercised and could produce no evidence that it had.

9. The hearing then proceeded and each of the disputed sub-headings or elements of service charge only, for each of 2010; 2011 and 2012 were addressed one by one.

10. Disputed Service Charge Elements : 2010-2012

(A) Gardening : Mr Simou said that his dissatisfaction over the gardening was the primary reason for his having made the application; he said that gardening activity to the area immediately in front of his entrance door had to all intents and purposes stopped in 2009. Mr Simou said that access to his front door, along the paving stones, was impeded and he had had to carry out some pruning himself. Mr Simou also submitted that gas meter readings had been impeded by shrubs not being kept adequately trimmed. Mr Latta expressed some sympathy but pointed to monochrome photographs at Pages 176; 181; 236 & 237 in the Bundle which he said provided evidence that gardening had occurred. Mr Latta accepted that the gardening contractor, Andersons may have fallen short of the required standard this year but that this was not so in either of 2010 or 2011.

(B) Directors Insurance : Mr Simou submitted that such insurance would cover only breaches of statutory duty and that it was reasonable to expect a professional managing agent to comply in any event with statutory duties, without need for separate insurance cover. Mr Simou accepted that the 7<sup>th</sup> Schedule in the Lease allows for such insurance costs within the service charge, but he remained of the view that it should only be necessary if lay persons took on the directors' roles. Mr Latta submitted that there is no insurance for 2012 since RMG have been advised that their normal PII policy will cover this risk; there is provision in the 2012 estimates but this may well be adjusted and deleted on year end, in the certified actual accounts, if no lay persons take on the director roles.

(C) Insurance Valuation : Mr Simou expressed concern that the amount of cover purchased had been greater in any event than the sum as recommended in the insurance valuation report; he added that a reputable broker could have advised, without separate cost being incurred for a report. Mr Latta explained that RMG are in some difficulty given that the freeholder has failed to provide any response in regard to the report recommendations and consequently RMG feel obliged to maintain the current insurance arrangements. Mr Latta added that there has been only one insurance report in the period and the cost has merely been spread, resulting in this item appearing in the service charge. However the cost appeared in this case to have been split as to one ninth for each of the residential units within the service charge grouping. The tribunal noted that this was accordingly a different percentage apportionment again, from the percentages as mentioned in Paragraph 8 above.

(D) Management Fees : Mr Simou made no representations on the amount of the management fees as such; his only concern being as to the appropriate percentage apportionment of same within his service charges. Mr Latta submitted that the fees were in any event at a rate which was very reasonable on a per unit basis.

(E) Audit & Accountancy : Mr Simou submitted that the division of such charges should in his view be on an equal basis as between flats and garages; he had no issues regarding the total charge. Mr Latta submitted that the fundamental question was regarding the correct percentage split which ought to be applied.

(F) Directorship Fees : Mr Simou considered that as a professional management company was being paid to manage, then why should directorship fees be paid in addition to RMG, whilst the directors were from among its staff? The tribunal asked Mr Latta to point to the provision in the Lease authorising these payments and he referred to Clauses 8 & 12(a) in the 6<sup>th</sup> Schedule. Mr Latta added that as a matter of style, RMG simply preferred to show elements of their work separately within the service charge, rather than being aggregated entirely within the management fee.

(G) Legal & Professional : Mr Simou said he had never been told what this element related to and added that much time could have been saved if only RMG had previously answered questions he had raised, not only about this, but regarding other elements of charging over the course of time. Mr Latta said that this charge, which is only in the 2012 estimate service charges, is on a contingency basis to cover the pursuit of service charge arrears, and may in due course be subject to adjustment when actual expenditure is known.

(H) Company Secretary : as previously, Mr Simou questioned why this was a separate charge from RMG's general management fee. Mr Latta said this is a specialist area of work covering for example, company returns, maintenance of company records, statutory correspondence and compliance with legislative requirements; again it was a matter which RMG prefer to show separately for service charge purposes but RMG would be happy if a resident came forward to take on the role at no charge.

(I) Health & Safety Inspection : Mr Simou questioned why the amount for this being charged, was the same for each of the Forrester's House flats as his flat, when the Lease specifies different service charge percentages respectively for each. Mr Latta submitted that these inspections had been conducted during each of 2010 & 2011; they were in his view important and needed annually, to assess risks and hazards and generally ensure compliance with the law. Mr Latta accepted that there could be a divergence of view as regards the actual frequency of such inspections.

(J) 5 Year Electrical Report / Postage / 10 Year Report : Mr Simou complained generally as regards what he saw as little information having been provided on these charges and a lack of communication by the Respondent. Mr Latta said that the electrical report does not address any interior aspects of the flats, only common parts such as the bin / cycle store; once again he said that a different percentage was being used to apportion the costs – in this case one-ninth per flat. The small postage cost of £5.56 in 2011 was also split as to one ninth for the Property. The 10 Year Report is to assess forthcoming areas for likely expenditure but in this case the cost was split as to 5.6758% for the Property.

11. Mr Latta and Mr Simou made their respective closing statements. Mr Latta admitted that there was clearly an issue regarding the percentage split to be applied in apportioning the service charges, adding that the management company will have to allow the panel to decide what is appropriate. Mr Latta added that the current basis for apportionment had, nevertheless, subsisted since day one. Mr Simou submitted that no variation notice in regard to his proportion of the service charges, had ever been given. Mr Simou added that the gardening was overwhelmingly the single greatest cause for

annoyance, adding that if an AGM had been held as was intended this year, then many of his concerns could have been addressed.

### Consideration

- 12 We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
- 13 Neither party produced any evidence of any variation notice having been given in respect of the proportion of service charge payable, as specified in the Lease. Accordingly the tribunal is of the view that the proportion as specified in the Lease, being 3.2302% (2.9602% for the flat and 0.27% for the garage) is the correct proportion to be used for the purposes of determining the service charge in each of 2010; 2011 and 2012.
- 14 No certified annual accounts and very few invoices and receipts have been produced and in the circumstances, the tribunal has had to make the best of the limited information which has been made available to it.
- 15 In regard to 2010 a total charge of £9,943.00 was levied in regard to the 9 properties. Although the amount of gardening is disputed, some had occurred and the charges appeared not unreasonable. The directors insurance and audit & accountancy charges appeared reasonable and the tribunal accepted the argument for the Respondent that these were simply shown separately in the accounts. Similarly the total management fee seemed not to be disputed. The insurance valuation is not accepted since it does not appear to relate to an actual valuation; accordingly £400.00 will be disallowed from the total in 2010. As regards the company secretary work, no evidence has been produced by the Respondent to verify such costs; whilst some work is accepted as having been likely, the total claimed of £400.00 will be reduced to £200.00. Finally the Health & Safety Inspection report was produced, although no invoice, but it is nevertheless accepted. Consequently the total of £9,943.00 for 2010 shall be reduced by £600.00 to £9,343.00. The proportion of this due to be paid by the Applicant shall be 3.2302% being £301.80.
- 16 In regard to 2011, a total charge of £10,988.00 was levied in regard to the 9 properties. Again the insurance valuation element will be disallowed, given that it does not reflect an actual cost. As for 2010, the gardening, management fees and audit & accountancy will be allowed. The directors fees of £402.00 will be disallowed given that there was no documentary evidence produced to verify who the directors actually were, no invoices, and no clear and detailed description provided as to what was done by them. As in 2010, the company secretary fee will be reduced, for 2011 from £430.00 to £215.00. Postage of £50.00 will be disallowed in the absence of clear and detailed evidence as to what was incurred. The 10 Year Report fee of £900.00 will be disallowed as no evidence was produced of the report, nor any invoice. Consequently the total of £10,988.00 for 2011 shall be reduced by £1,967.00 to £9,021.00. The proportion of this due to be paid by the Applicant shall be 3.2302% being £291.40.
- 17 In regard to 2012, the total estimate of £10,759.00 was levied in regard to the 9 properties. The gardening was admitted to be of a reduced standard than as required and accordingly shall be reduced by approximately 10% from £1,302.00 to £1,170.00. The directors insurance, management fees and audit & accountancy, will be allowed. The insurance valuation will be allowed given that for this year a report was produced. As in 2011, the directors fees of £437.00 will be disallowed. The legal & professional fees will be allowed; it was noted that these are on a contingency basis only and may be adjusted. As in 2011, the company secretary fee will be reduced from £437.00 to £220.00. No evidence of any health & safety inspection report was produced for 2012 and accordingly this sum of £436.00 will be disallowed. Consequently the total of £10,759.00 for 2012, shall be reduced by £1,090.00 to £9,669.00. The proportion of this due to be paid by the Applicant shall be 3.2302% being £312.33.

18 In regard to the application in respect of costs under Section 20C of the 1985 Act, the Tribunal took into full account all the written submissions made on behalf of each of the Applicant and the Respondent provided subsequent to the hearing, but reached the view, particularly in view of the disparity of charges being made in practice, as against those specified in the Lease, without recourse to the amending mechanism within the Lease, that none of the Respondent's costs should be regarded as relevant.

19 We made our decisions accordingly.

[Signed] P J Barber

Chairman

A member of the Tribunal  
appointed by the Lord Chancellor