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

Case Reference : **LON/00AB/LSC/2013/0469**

Property : **107 Fanshawe Avenue, Barking,
Essex IG11 8RF**

Applicant : **Raman Limited**

Representative : **Circle Residential Management
Limited (Managing Agents)**

Respondent : **Mr Vidmantas Piliciauskas (Flat A)**

Representative : **None**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mr John Francis QPM – Lay
Member**

**Date and venue of
Paper Determination** : **29 October 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **04 November 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that Respondent is not liable to pay any sum to the Applicant, in respect of the interim service charge demanded for the year ending 31 March 2014.

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 charges payable by the Respondent in respect of the service charge year ending 31 March 2014.
2. The tribunal received the application 04 July 2013. The application named both leaseholders, Poloplace Limited (Ground Floor Flat) and Vidmantas Piliciauskas (First Floor Flat), as Respondents.
3. Directions were issued at a pre-trial review on 06 August 2013.
4. The application against Poloplace Limited was withdrawn on 07 October 2013, following receipt of a signed Consent Order dated 24 September 2013, agreeing the reasonableness of the service charges. Accordingly the only remaining Respondent is Mr Piliciauskas.
5. On 08 October 2013, the tribunal wrote to the remaining parties advising that the case would proceed to a paper determination. Neither of the parties has objected to this or requested an oral hearing. The paper determination took place on 29 October 2013.
6. The relevant legal provisions are set out in the Appendix to this decision.

The background

7. The property which is the subject of this application is 107 Fanshawe Avenue, Barking, Essex IG11 8RF (“the Building”) and comprises of two flats. The Respondent is the leaseholder of the First Floor Flat at the Building (“the Flat”). The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondent holds a long lease of the Flat. This requires the Applicant to provide services and the Respondent to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below, where appropriate.

The issues

9. The application relates to the Respondent's liability to pay and reasonableness of the budgeted service charges for the year ending 31 March 2014. The sum that has been demanded from the Respondent as an interim (advance) service charge is £1,120. The date of the demand was 10 June 2013 and the payment date was stated to be the 24 June 2013.
10. The Applicant served a detailed statement of case and bundle of supporting documents, dated 11 September 2013 in accordance with the directions. The Respondent did not serve a statement of case.
11. On 21 October 2013, the tribunal wrote to the Applicant's managing agents, Circle Residential Management Limited ("Circle") inviting representations as to the Applicant's ability to recover interim service charges under the terms of the lease. That letter was also copied to the Respondent. Circle responded in a letter dated 25 October 2013 and the Respondent also provided further representations in an email from his letting agent, AV Estates Limited, timed at 10.49am on 29 October 2013.
12. The Applicant produced a hearing bundle that included its statement of case, the leases for both flats at the Building, the service charge budget for 2013/14, the service charge demand dated 10 June 2013 and other relevant documents. The tribunal considered all of the documents in the bundle, the letter from Circle dated 25 October 2013 and the email from AV Estates Limited dated 29 October 2013 when making their determination.

The lease

13. The lease is dated 21 August 2008 and was made between Whiteville Property Developments Limited (1) and the Respondent (2). It is for a term of 99 years from 25 March 2008. The service charge provisions are to be found at clause 2 (3) and are set out below:

Clause 2(3)(i)

To pay the Lessor by means of yearly payments payable on the 24th of June in each year, a service charge equal to one half of the expenses of:

- (a) Repairing cleansing building and maintaining the main walls timbers and main structure (including the foundations) of the Building the roof chimney stacks gutters and rainwater pipes used*

or to be used in common by the occupiers of the Flat and the occupiers of other Flats in the Building

- (b) Repairing cleansing building and maintaining all party walls or party roads fences pathways passages sewers drains pipes and watercourses and other easements servicing the Flat and the Building*
- (c) Cleansing decorating repairing and lighting of the common passageways staircases lifts (if any) entrance halls landings and access ways to all the flats in the Building and in particular (but without prejudice to the generality of the foregoing) and the front garden area and the side entrance thereto shown edged blue on the plan annexed hereto*
- (d) Insurance of the Building in the full value thereof against loss and damage by fire and by aircraft and by articles dropped or falling therefrom and such other risks as the Lessor shall deem to be advisable*
- (e) Employing Managing Agents to manage the Building and a firm of Chartered Accountants to prepare a management account.*

Clause 2(3)(ii)

- (a) The amount of the service charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a certificate (hereinafter called "The Certificate") signed by the Lessor's auditors or accountants or managing agents (at the discretion of the Lessor) acting as experts and not as arbitrators annually and so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned*
- (b) The expression "the Lessor's financial year" shall mean the period from the 1st day of April in each year to the 31st day of March of the next year or such other annual period as the Lessor may in its discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the said Building shall be made up*
- (c) A copy of The Certificate for each financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee*
- (d) The Certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's*

financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and other charges hereinbefore covenanted to be paid and The Certificate (or a copy thereof duly certified by the person to whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

- (e) The expression “the expenses and outgoings incurred by the Lessor” as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure herein before described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rata to the demised premises*
- (f) As soon as practicable after the signature of The Certificate the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may require*
- (g) It is hereby agreed and declared that the Lessor shall not be entitled to re-enter under the provision in that behalf hereinafter contained by reason only of non-payment by the Lessee of any such interim payment as aforesaid prior to the signature of The Certificate but nothing in this clause or these presents contained shall disable the Lessor from maintaining an action against the Lessee in respect of non-payment of any such interim payment as aforesaid notwithstanding that The Certificate had not been signed at the time of the proceedings subject nevertheless to proof in such proceedings by the Lessor that the interim payment demanded and unpaid is of a fair and reasonable amount having regard to the prospective service charge ultimately payable by the Lessee*

(h) *Provided always and notwithstanding anything herein contained it is agreed and declared as follows: -*

(i) *That in regard to the commencement of the term hereby granted the service charge shall be duly apportioned in respect of the period from the date hereof to the ensuing 24th day of June.*

14. Having studied the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows:

Interim service charge for year ending 31 March 2014

15. The interim service charge demanded on 10 June 2013 was £1,120, being half the total anticipated expenditure for the Building for the year ending 31 March 2014. The anticipated expenditure was detailed in a budget issued by Circle dated 10 June 2013 and is set out below:

Health & Safety	£648.00
Buildings Insurance	£775.00
Sundry/Miscellaneous	£1.00
Year End Accounting	£186.00
Management fee	£630.00
TOTAL	£2,240.00

The tribunal's decision

16. The tribunal disallows the interim service charge in full. It follows that the tribunal determines that no interim charge is due from the Respondent for the year ending 31 March 2014.

Reasons for the tribunal's decision

17. The starting point is to consider whether the Applicant is contractually entitled to recover an interim service charge under the terms of the lease.
18. The tribunal were concerned that there was no provision for any interim charge and raised this with Circle in their letter dated 21 October 2013. In their letter of 25 October 2012 Circle stated "The

Applicant relies upon clause 3(ii)(e) as the provision in the lease which makes provision for payment of interim (advance) service charges. Please see highlighted extract of the lease for the relevant clause". In fact the extract from the lease that was enclosed with the letter covered clauses 2(3)(ii)(a) to (f). It appears that Circle rely on clause 2(3)(ii)(e).

19. *Clause 2(3)(ii)(e) concerns "the expenses and outgoings incurred by the Lessor", which are to be included in "The Certificate". It allows the Applicant to include "...such reasonable part of all such expenses outgoings and other expenditure herein before described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rata to the demised premises"*
20. The Certificate is the end of year account that details the service charge expenditure in the preceding accounting year, which runs from 01 April to 31 March. The Respondent is liable to pay 50% of the service charge expenditure shown in the Certificate, with payment becoming due on 24 June. It follows that the Certificate should be produced between the end of the financial year (31 March) and the payment day (24 June).
21. The effect of clause 2(3)(ii)(e) is that the Certificate can include a contingency or reserve provision for anticipated expenditure. However the clause does NOT entitle the Applicant to recover a separate, stand alone, interim service charge as was demanded on 10 June 2013. In the absence of any express provision in the lease, the Applicant is not contractually entitled to an interim charge.
22. The hearing bundle included Certificates (service charge accounts) for the years ended March 2011 and 2012 but no Certificate for the year ended March 2013. The tribunal have no way of knowing whether the Certificate for 2013 has any contingency or reserve provision. However this point has no bearing on the current application, as the Applicant is not seeking a determination of actual service charge expenditure for the year ended March 2013. Rather the application was confined to anticipated service charge expenditure for the current financial year.
23. The tribunal has determined that the Applicant is not contractually entitled to recover an interim service charge. This means there was no need for the tribunal to go on and consider the reasonableness of the anticipated service charge expenditure for the current financial year. The tribunal makes no finding as to the reasonableness of this anticipated expenditure.

Section 20C and refund of fees

24. The directions provided that any application for reimbursement of fees¹ would be dealt with at the hearing and that the parties may wish to make written representations on this and on any section 20C application in their statements or orally at the hearing. The application has been determined on paper, without a hearing.

25. The Respondent has not made any application section 20C of the 1985 Act and there was no application for a refund of fees by the Applicant. It follows that the tribunal has no power to make a section 20C order or order a refund of fees.

Name: Jeremy Donegan

Date: 04 November 2013

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “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) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an

administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).