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

Case Reference : LON/OOAB/LAC/2013/0001

Property : 95 Hewetts Quays, 26-32 Abbey Road,
Barking, Essex, IG11 7BE

Applicant : Mr R Fadahunsi

Respondent : Hewitts Quay Management Company
Ltd.

Type of Application : Leasehold Management

Tribunal Members : Robert Latham
Susan Coughlin MCIEH

**Date and venue of
Hearing** : Paper Hearing determined on 26 June at
10 Alfred Place, London WC1E 7LR

Date of Decision : 8 July 2013

DECISION

- (1) The Tribunal determines that it has no jurisdiction to determine this application, this matter having been the subject of a determination by a Court. The Respondent issued proceedings claiming the variable administration charge and service charge arrears in a dispute in the Romford County Court (2IR67592). On 13 March 2012, the County Court gave Judgment for the Claimant in the sum of £7,870.66. This Order has not been appealed or set aside. Our jurisdiction is excluded by Paragraph 5(4)(c) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

- (2) The Tribunal makes no order for the reimbursement of the tribunal fees paid by the Applicant.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

The Application

1. The Applicant seeks a determination pursuant to Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether an administrative service charge of £7,954.32 is payable and reasonable. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").
2. The Respondent has filed the main bundle. Reference to this will be prefixed by "R.__". The Applicant has also filed some documents, which will be prefixed by "A.__".
3. On 6 February 2013, the Tribunal gave directions (at R.7). The Tribunal identified the following issue to be determined, namely whether the Applicant is liable to pay all or part of the administration claimed in the sum of £7,954.32. The Applicant attended the hearing; the Respondent did not.
4. It was envisaged that there should be an oral hearing. However, the Applicant has been tardy in complying with the directions and reluctant to pay a hearing fee. On 1 May 2013 (at R.10B), the Tribunal directed that the case be dealt with on the papers.
5. The Applicant's Statement of Case, dated 9 May 2013, is at R.6A. He denies that he is liable for the sum of £7,954.32. He refers to his letter of 12 March 2013 (at A.0). He refers to the County Court judgement, dated 13 March 2012 (at R.6C). Despite this judgment, he offers to pay £3,977.16.
6. The Respondent's Statement of Case, dated 24 May 2013, is drafted by Counsel, Ms Gourlay (at 6F). The Respondent refers to the County Court judgment of 12 March 2012. It states that this was entered "unprompted" by the County Court (at [25]). It does not know how the judgment figure has been calculated. The Respondent's solicitors have written to the court for an explanation ([26]). However, we have not been provided with copies of this correspondence. The Respondent asserts that the judgment does not relate to the costs of the 2009 application (at [41]). It explains how the costs of £7,954.32 have been computed. It concludes that they are reasonable and payable. The

Respondent has also filed a witness statement from Mr Stephen Tomlinson, dated 19 April 2013 (at R.41).

7. The Applicant has filed a Reply, dated 31 May 2013 (at R.6U(i)). He restates that his first argument is that the sum of £7,954.32 claimed by the Respondent has been decided by the County Court.
8. There is a complex history to this case. There has been a proliferation of proceedings. The costs incurred are becoming disproportionate. We must consider the Order made by the County Court in context of that history.
9. The relevant legal provisions are set out in the Appendix to this decision.

The Background

10. The Applicant and his wife are lessees of Flat 95 Hewetts Quay ("the premises"). This is a two bedroom flat in a modern residential block comprising 22 flats. The Applicant derives his interest under a lease dated 20 May 2004 (at R.11).
11. On 7 May 2011, a Leasehold Valuation Tribunal ("LVT") chaired by Dr Helen Carr determined LON/OOAB/LAS/2009/0658). The application was issued by the landlord and the LVT was asked to determine whether service charges of £1,680.00 and £1,920.00 were payable for the years 2008 and 2009. The substantive issue was whether the tenants were obliged to pay the service charges because they had been unable to occupy their flat because of a leak from the mains water pipe. The landlord's Loss Adjuster had secured alternative temporary accommodation for the tenants. The LVT found that the service charges were payable. The LVT was sympathetic to the plight in which the tenants had found themselves. The LVT was also concerned at the manner in which the landlord had handled the application. The LVT was not asked to determine any application under Section 20C of the 1985 Act in respect of the cost of the proceedings. Neither did the landlord apply for any reimbursement of the tribunal fees that they had paid.
12. The Tribunal also had to deal with a number of procedural issues. The landlord had issued proceedings in the Ilford County Court in respect of the unpaid service charges. The LVT had been concerned whether it retained jurisdiction to determine the application. It was persuaded to do so when assured that the County Court proceedings had been adjourned generally pending the determination by the LVT. The tenants also sought to argue variously that the claim had been dismissed by the LVT, that the application had been withdrawn by the

landlord, and that the landlord had waived its claim for service charges. None of these arguments found favour with the LVT.

13. On 29 February 2012, the Respondent issued their claim in the County Court seeking payment of the sum of £14,139.61 (2IR67592). A copy of the Claim Form has been filed with the Tribunal. The claim for £14,139.61 is made up of the following sums:

(i) £7,954.32 relating to the costs incurred in respect of the LVT proceedings. These are claimed pursuant to Clause 5.9 of the lease which permits the landlord to claim on an indemnity basis all costs, fees, charges, disbursements and expenses, incidental to the necessary or attempted recovery of arrears of service charges. This is the variable administrative charge which we are asked to determine. This claim includes the following: (a) Solicitor's fees: £2,351.19; (b) managing agent's fees: £3,274.38; (c) Counsel's fees: £2,078.75 and (d) LVT filing and hearing fee: £250.

(ii) £5,551.00 for arrears of service charges for the years 2009, 2010, and 2011.

(iii) £634.29 in respect of interest on the arrears.

14. The Respondent asserts ([24] at R.6I) that the Applicant filed a Defence, dated 10 March 2012. We do not have a copy of this Defence.

15. The Respondent also asserts that the Applicant filed an Acknowledgement of Service, dated 10 March 2012, on 13 March 2012 ([23] at R.6I). The Tribunal does have on file page 1 of "Form N9A Admission (specified amount)". The Applicant describes himself as an accountant. He admits the amount of £5,551.00, presumably the outstanding service charges. The Respondent asserts that on page 2, he offered to pay sums of £1,500 in April, July, October and December.

16. The critical document for this Tribunal is the "Judgment for the Claimant (after determination)", dated 13 March 2013. This is judgment for a money claim of £7,455.66 and costs of £415. The judgment debt of £7,870.66 is to be paid at £173.80 per month.

17. This judgment has not been appealed or set aside. The respective positions of the parties in respect of this judgment are as follows:

(i) The Respondent does not know how the judgment figure has been calculated. Their Solicitors have written to the court for an explanation ([26] at R.6I). It suggests that it does not relate to the variable administration charge in dispute ([41] at R.6L). However, it is apparent that it relates to more than the £5,551.00 arrears of service charges which the Applicant seems to admit.

- (ii) The Applicant suggests that the claim for the variable administration charge of £7,954.32 had been rejected by the Court and had been reduced to £415. This cannot be correct. The costs order clearly relates to the costs of the County Court proceedings.
18. It is not for this Tribunal to go behind an Order made by the County Court. On the face of it, it resolves all claims brought by the Respondent in 2IR67592. If any party seeks to challenge the Order, it is open to them to do so. The Respondent brought this claim. It is for the Respondent to progress their claim. There is no obligation on a defendant to do so. There is no evidence before this Tribunal that the Respondent has done anything to either set aside or appeal this Order. We note that this Order was made over 14 months ago.
19. Unfortunately, matters did not rest here. On 10 April, the Applicant issued an application before a LVT seeking a determination pursuant to Section 20C in respect of the costs of the proceedings before the first LVT (LON/OOAB/LLC/2012/0002). This was determined by a LVT, also chaired by Dr Helen Carr, on 5 November 2012. The Applicant appeared in person. The Respondent was represented by Derrick Bridges & Co who had instructed Counsel, Ms Gourlay, in connection with these proceedings. The tenant raised a procedural argument that the parties had agreed that each side should bear their own costs. This argument was rejected. The LVT noted that the landlord had been wholly successful in the earlier claim. Whilst the LVT had been critical of their conduct, these concerns were not sufficient to make it just and equitable to make an order in favour of the Applicant. The LVT was aware of the judgment made by the Romford County Court. However, it noted that the status of this judgment was not relevant to the application before the LVT.
20. In his current application form, the Applicant complains how on 7 December 2012 the Respondent sent a further demand for £7,954.32 (see R.6). This seems to be the demand at R.6E which claims arrears of £14,998.92 despite the Order made by the Romford County Court. The Respondent admits that this demand for the sum of £7,954.32 was made (see [2] at R.6F).
21. On 6 February 2013, the Tribunal gave directions for the determination of this matter. The Applicant appeared in person. The Respondent company did not attend. It is a matter of great regret that it did not attend. Had it done so, it could have explained why it had issued the demand of 7 December 2012, despite the Order made by the Romford County Court on 13 March 2012, and what steps, if any, it was taking to set aside or appeal that Order. The application could have been adjourned, whilst the Respondent took any necessary steps in respect of the County Court proceedings. The Tribunal could also have investigated the possibilities of mediation, a means of bring the parties together and avoiding further unnecessary litigation and expense.

22. Directions were given. Various further directions have been required, largely because of the Applicant's failure to comply with the Directions. The Applicant makes reference to a family bereavement and ill health. It is also apparent that he has financial difficulties. The problem for him is that if he does not face up to his obligations under his lease, his financial burdens are likely to increase. He has accepted a lease under which his landlord has a wide right to claim the cost of recovering any arrears of service charges.

The Tribunal's Determination

23. Paragraph 5(4) of the 2002 Act precludes this Tribunal from determining any application "in respect of a matter which ... (c) has been the subject of determination by a court". The variable administration in dispute is one of £7,954.32. This sum, along with service charge arrears and interest has been claimed by the Respondent in County Court proceedings. On 13 March 2012, the County Court made a money judgement in respect of the claim. That Order has not been appealed or set aside. This Tribunal therefore has no jurisdiction to determine this application.

Application for Refund of Fees

24. The Applicant makes an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the application fee of £200. We are satisfied that this application should not have been made. We therefore make no order for this fee to be refunded.
25. The Applicant also applies for an order under section 20C of the 1985 Act. The Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The Respondent must accept its responsibility for progressing the proceedings which it issued in the Romford County Court. The Respondent seems to have ignored the Order made on 13 March 2012. We have determined this application over 14 months after this Order was made. There is no evidence that the Respondent has either set this Order aside or has successfully appealed it. This Order stands until such an application is successfully made. This application would not have been made, had the Respondent not issued its demand dated 7 December 2012. Had the Respondent attended the Directions hearing on 6 February 2013, the issue of jurisdiction could have been resolved. It would be wrong for the Applicant to face further legal costs because of the Respondent's failure to litigate in a proportionate manner.

The Next Steps

26. The dispute between the parties started with a dispute as to the liability of the Applicant and his wife to pay service charges in 2008 and 2009. The Applicant disputed his liability to pay these and failed. The LVT declined to make an order under Section 20C of the 1985 Act in respect of these proceedings. He must accept his liability to pay the reasonable costs relating to these proceedings.

27. The situation has been complicated by the current proceedings in the Romford County Court. The parties could expend further resources on further protracted litigation. They would be better advised to seek agreement as to (a) the current arrears of service charges; (b) any reasonable legal fees for which the tenants are liable; and (c) a repayment plan for the payment of any sums that are agreed to be due. Both parties should consider mediation.

Tribunal Judge: Robert Latham

Date: 8 July 2013

Appendix of Relevant Legislation

Commonhold and Leasehold Reform Act 2002

Section 158 – Administration charges

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

Schedule 11

Meaning of “administration charge”

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.

Reasonableness of administration charges

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

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notices in Connection with demands for administration charges

4(1) A demand for the 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.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to Pay Service Charges

5 (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).

Section 175

(1) A party to proceedings before a leasehold valuation tribunal may appeal to the Upper Tribunal (Lands Chamber) from a decision of the leasehold valuation tribunal.

(2) But the appeal may be made only with the permission of

- (a) the leasehold valuation tribunal, or

(b) the Upper Tribunal.

(4) On the appeal the Upper Tribunal may exercise any power which was available to the leasehold valuation tribunal.

Landlord and Tenant Act 1985

Section 20C – Limitation of service charges: cost of proceedings

- (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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9 – Reimbursement of fees

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).