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

Case Reference : **MAN/OOBY/LSC/2012/0086**

Property : **356 Waterloo Quay, Liverpool L3 0BU**

Applicant/Claimant : **Regent Management Limited**

Representative : **Mr P Aslett, Counsel, instructed
by Bury & Walkers LLP**

Respondent/Defendant: **Mr H Perry**

Representative : **None**

Type of Application : **Landlord and Tenant Act 1985 section
27(A)(1) and section 20C ("the Act")**

Tribunal Members : **Mr G. C. Freeman
Mr I James MRICS**

**Date and venue of
Hearing** : **2 October 2013
Family and Civil Court, Vernon
Street, Liverpool L2 2BX**

Date of Decision : **2 October 2013**

DECISION

Decision

The Respondent/Defendant is debarred from taking any further part in proceedings before the Tribunal.

At the date of issue of proceedings in the County Court, the service charge claimed of £6332.80 was payable by the Respondent/Defendant to the Applicant/Claimant

No order for costs is made.

No order under section 20C of the Act is made.

Preliminary

1. The Applicant/Claimant ("Regent") has issued proceedings in the Leeds County Court against the Respondent/Defendant ("Mr Perry") for unpaid service charge in respect of the Property. The claim number is 1LS05049. The amount claimed is £6332.80, interest, court fees and managing agent's fees of £60.00. The amount claimed represents service charge due from 1 January 2006 to 1 May 2011.
2. Mr Perry entered a Defence on 4 July 2012. On 21 May 2012 District Judge Hanratty sitting at the Liverpool County Court ordered that the issue of what service charges are payable by Mr Perry be transferred to the Leasehold Valuation Tribunal pursuant to section 31C of the Landlord and Tenant Act 1985 and the Civil Procedure Rules 56PD.52. (now replaced by section 174 and Schedule 12 of the Commonhold and Leasehold Reform Act 2002 and CPR PD 56 Para 15).

The Lease

3. Mr Perry is the registered proprietor of the leasehold interest in the Property. A copy of the Lease dated 10th November 2000 accompanied the court file. The Lease is made between Mersey Docks and Harbour Company of the first part Barratt Homes Limited of the second part Regent of the third part and Mr Perry of the fourth part.
4. It is not disputed that the lease provides for a service charge to be payable.

Inspection

5. The Tribunal inspected the common parts of the development of which the Property forms part on the morning of the hearing. It consists of a former grain warehouse converted into apartments from about 1990 to 1996 at East Waterloo Dock, Waterloo Road, Liverpool, L3 0BH. Further new build flats were subsequently erected in eight blocks on the northerly and westerly side of the dock. The Property is situated in a new-build block. The freehold of the Property is held by the Mersey

Docks and Harbour Company who agreed with Barratt Special Projects Limited for its redevelopment for residential flats. Subsequently Mersey Docks and Harbour Company Limited and Barratt Special Projects Limited granted long leases of individual flats to owners in return for a ground rent. Regent joined in such leases to covenant for the maintenance of the common parts of the Property in return for payment of service charges. The original former warehouse and part of the grounds are managed by a Right to Manage Company.

6. Mr Perry pointed out numerous defects which he alleged, illustrated non-compliance by Regent of the covenants on its part in the lease and the lack of provision of services. These may be summarised as follows:-
 - The electric access gate to the development was not working.
 - Unroadworthy cars were parked in allocated parking areas.
 - Bare areas of vegetation.
 - Dog faeces on the external common areas.
 - Weeds in cultivated areas and dock walls.
 - Peeling paintwork on bicycle storage areas.
 - Replacement/alterations to doors and windows.
 - No warning signs and lack of rescue equipment near the dock.
 - Post-boxes in poor repair.
 - Erection of satellite dishes.
 - Dirty exterior stonework.
 - Exterior lighting units do not work
 - Moss on roofs.
 - Marks on interior carpets.
 - Old, unsightly furniture deposited outside flats (not in common areas).

The Law

7. The relevant law is set out in the attached appendix.

Directions and Hearing

8. The Tribunal issued directions on 26th October 2012 following a pre-trial review hearing on 19th October 2012. Paragraph 1 of the directions required Regent to prepare and serve a bundle of documents including a statement of case, accounts, budgets, invoices and other information within 21 days.
9. Within 35 days of receiving the bundle Mr Perry was to provide a statement in reply to Regent's bundle and to identify which items of expenditure Mr Perry considered unreasonable and why. The directions stated that non-compliance with the Directions may prejudice a party's case and that non-compliance could result in dismissal of the application in accordance with Regulation 11 of the Leasehold Valuation Tribunals (England) Regulations 2003. These

regulations were revoked on 1st July 2013 and replaced by the regulations referred to in the Appendix.

10. Regent stated that it delivered its bundle to Mr Perry by 9th November.
11. Apparently Mr Perry did not receive the bundle. Regent sent a second bundle on 30th November 2012, following an email from Mr Perry to the Tribunal on 28th November stating that he had still not received Regent's bundle. Regent sent a third bundle to a different address provided by Mr Perry on 3rd December 2012. On the 11th January 2013, the Tribunal advised Mr Perry that Regent had done all that was necessary to serve the bundle. That meant that Mr Perry had 35 days in which to either:
 - Provide his bundle in accordance with the directions, or
 - Make an application for an extension of time to comply with the directions.
12. By email dated 15th January 2013, Mr Perry applied informally to the Tribunal for an extension of time to comply with the directions due to his father's illness. The Tribunal granted an extension to 1st February 2013.
13. On 30th January 2013 Mr Perry applied for a further extension of time for the same reason. The Tribunal granted an extension to 8th February 2013.
14. On 8th February Mr Perry applied for a further extension of time. The Tribunal granted a further extension to 22 February 2013. At this point, five weeks after Mr Perry received Regent's bundle, he demanded further documents from Regent. The Tribunal granted a further extension to 25th March 2013.
15. On 21st March 2013, Mr Perry requested a further extension of time to comply with the directions. The Tribunal decided not to grant Mr Perry's request and requested dates when he would be available for a hearing. No formal application was subsequently made by Mr Perry for either an amendment to the directions or further time to comply. No statement was provided by him outlining what part of the service charge was unreasonable and why.
16. Despite not having received Mr Perry's statement, Regent supplied two lever arch files of further documents to Mr Perry on 8th March 2013 purporting to supply to him documents which he alleged had not been previously disclosed.
17. At the hearing Mr Perry made an application for an adjournment in order to allow him to prepare his case including the preparation of a bundle of documents. He referred to other cases with which he was familiar, involving service charges at Waterloo Warehouse, although he

did not wish any reference to be made by the Tribunal to its previous decisions when deciding this case.

18. Mr Perry stated that he did not wish to disclose any documents to Regent until the last possible moment because that would give Regent what he considered to be an unfair advantage. He stated that he had still not received all the details he considered necessary in order to prepare his case. He complained that the service charge doubled in 2004 and felt that this was related to the loss by Regent of the management of the former warehouse at the time. He alleged that the service charge had increased by considerably more than the rate of inflation, but alleged that the costs of management had not increased proportionately.
19. Mr Perry felt that Regent should not have instructed Counsel to appear at the hearing as this involved unnecessary expense.
20. Mr Perry admitted that he had not complied with the directions but stated that he did not know the procedures involved in conducting his case. This was the reason for him not making an application for further time to comply with directions or to compel the production of further documents.
21. Regent applied for Mr Perry to be debarred from defending the proceedings by reason of his failure to comply with the Tribunal's directions, and that the costs of the application be borne by him.
22. Mr Perry also applied for an order to be made under section 20C of the Act.

The Tribunal's Findings

23. The Tribunal considered Mr Perry's application. They noted that he had been involved in other cases before the Tribunal and he was therefore not a complete novice in the procedures involved. By his own admission he was more familiar with conducting a case before the Tribunal than a completely lay litigant.
24. Mr Perry had been granted numerous extensions of time in which to comply with the directions. He had not done so. He claimed that he had not had the requisite information from Regent. The Tribunal considered that a litigant must play with the hand of cards he is dealt. Litigation is conducted on a "cards on the table" basis. It was unfair for Mr Perry not to disclose his case to Regent. This does not comply with the overriding objective which is to enable the Tribunal to deal with cases justly and fairly. If one party considers he is at a disadvantage, he should take appropriate advice. Ignorance is no excuse and the Tribunal cannot assist a party by advising him how to conduct his case or its merits. If a party does not take advice, he does so at his peril. Mr Perry has failed to co-operate with the Tribunal by not complying with its directions.

25. In the light of the above findings, the Tribunal decided not to grant Mr Perry's application to adjourn. Further adjournments would not be in the interests of justice. The Tribunal decided to grant Regent's application that Mr Perry be debarred from taking any further part in the proceedings before the Tribunal. Consequently the Tribunal decided that the service charges claimed by the Applicant/Claimant were reasonable.

Costs

26. Regent applied for costs to be paid by Mr Perry subject to a limit of £500 by virtue of Schedule 3 paragraph 3(7) of the Transfer of Tribunal Functions Order 2013. The Tribunal decided that Mr Perry's conduct was due more to ignorance than deliberate obfuscation. They therefore refused to make a costs order.

Section 20C of the Act

27. Some leases allow a landlord to recover costs incurred in connection with proceedings before the Tribunal as part of the service charge. Mr Perry made an application under s20C of the Act to disallow the costs incurred by Regent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
28. The Tribunal determined that as Mr Perry has not succeeded in his application and in view of his conduct, no order should be made.

APPENDIX

The Law

Service Charges

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

- (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 provides that

- (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 if the services or works are of a reasonable standard:and the amount payable shall be limited accordingly.

Section 27A provides that

- (1) an application may be made to a First-Tier Tribunal (Property Chamber) 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L

inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant’s case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

Striking out a party’s case

Part 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides:-

9(3) The Tribunal may strike out the whole or part of the proceedings or case if-

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(7) This rule applies to a respondent as it applies to an applicant except that-

(a) a reference to a striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them. . .

Section 20C of the Landlord and Tenant Act 1985

Section 20C provides that

(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 or the First-tier Tribunal (Property Chamber) 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 the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c)

(d)

(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.

Costs

The Tribunal has power to order the payment of costs by one party to the other by virtue of Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where that party has acted unreasonably in bringing conducting or defending the proceedings, or under section 29(4) of The Tribunals Courts and Enforcement Act 2007.

Schedule 3 paragraph 3(7) of the Transfer of Tribunal Functions Order 2013 provides that where the proceedings were started before the 1st July 2013 but continue after that date, an order for costs may only be made if, and to the extent that an order could be made prior to that date.