

10587



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

Case Reference : **BIR/00GL/LIS/2014/0014**

Property : **Apartment 51, Lancashire Court,
Federation Road, Burslem,
Stoke on Trent, ST6 4HX**

Applicant : **Sadlers Park Management
Company Limited**

**Applicant's
Representative** : **Mr A Tolson**

Respondent : **Mr R Hickey**

Type of Application : **Application under Section 27A (and
19) of the Landlord & Tenant Act 1985
for determination of the liability to
pay and reasonableness of service
charges and an application under
Schedule 11 of the Commonhold &
Leasehold Reform Act 2002 for a
determination as to liability to pay and
reasonableness of a variable
administration charge.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P Ellis LLB**

Date and venue of : **18th November 2014 at Stoke on Trent**

Date of Decision : **02 DEC 2014**

DECISION

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1. BACKGROUND

- 1.1 This Application has been referred to the Tribunal by order of District Judge Darbyshire sitting at Reading County Court on 17th December 2013. The transfer of the relevant papers to the Tribunal took place on 3rd June 2014.
- 1.2 The Applicant is Sadlers Park Management Company Limited and the Respondent Leaseholder is Mr Roger Hickey.
- 1.3 The Applicant is the Management Company administering the development. The landlord is Countryside Properties (Northern) Ltd, Countryside House, The Drive, Brentwood, Essex, CM13 3AT.
- 1.4 The Respondent is the leaseholder of Apartment 51 Lancashire Court, Federation Road, Stoke on Trent, ST6 4HX.
- 1.5 The Applicant has issued proceedings in the County Court for recovery of unpaid service charges and administration fees. The Tribunal issued directions on 7th August 2014 following which various submissions were made by both the Applicant and the Respondent.

2. THE LEASE

- 2.1 The property is held under a lease dated 19th September 2006 between Countryside Properties (Northern) Limited whose registered office is at Countryside House, The Drive, Brentwood, Essex, CM13 3AT and Mr Roger Hickey of Flat 51 Lancashire Court, Burslem, Stoke on Trent, Staffordshire, ST6 4HX.
- 2.2 The lease is for a term of 250 years from 1st January 2006.
- 2.3 The Fifth and Sixth Schedules of the lease detail the maintenance responsibilities of the Lessor and the Second Schedule details the Lessee's obligations. The Fourth Schedule details the basis of computation of the service charge.

3. THE LEGAL FRAMEWORK

- 3.1 Under Section 27A of the Landlord & Tenant Act 1985, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-
 - (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

- 3.2 Section 19 the 1985 Act provides that service charges must be reasonable for them to be payable.

“Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:*

and the amount payable shall be limited accordingly.”

- 3.3 A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41). It was also stated in Gilje above “The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum”.

- 3.4 If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.

- 3.5 The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100).

- 3.6 Administration charges are dealt with under Schedule 11 of the Commonhold & Leasehold Reform Act 2002.

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

2A 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.*

Notice 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 administration 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).*

4. THE PROPERTY INSPECTION

- 4.1 The Tribunal inspected the property prior to the Hearing in the presence of Mr A Tolson, Counsel for the Applicant and Mr R Wills of Mainstay, who are the Managing Agents for the development. The apartment known as 51 Lancashire House was unavailable for inspection. Consequently the inspection was restricted to the common parts.
- 4.2 Lancashire House comprises of a modern block of self-contained flats part of which is over six floors with the subject property being on the third floor. There are two similar blocks, both having access via electric gates to substantial shared asphalt car parking areas and limited gardens, which comprise of lawns, trees and shrubs.

- 4.3 Mr Wills informed the Tribunal that there were in total 15 blocks on the site, although the two largest were Lancashire Court and Manchester Court, which both had access off Federation Road.
- 4.4 Mr Wills explained to the Tribunal that the service charge was made up of 3 parts.
- (1) The charges attributable directly to Lancashire House.
 - (2) The charges which were applicable to Lancashire House and Manchester Court including the car parking, immediate garden areas and electric entrance gates.
 - (3) An estate charge, which covered the whole of the site.
- 4.5 The Tribunal carried out an inspection of the common areas, both internally and externally. Lancashire Court benefits from a lift to the six storey area and there are two separate stairwells. The flats have a shared post box room and outside bin stores. There is also an external pumping station, which serves both Lancashire Court and Manchester Court and an electric substation. It was confirmed that the properties were built around 2006.
- 4.6 The Tribunal noted that the grounds and car parking areas were in good condition and well-maintained. Internally, the common areas were clean and well-maintained, although ongoing decoration was required to some parts.

5. THE PARTIES' EVIDENCE AND SUBMISSIONS

- 5.1 The Tribunal had received submissions from both the Applicant and Respondent. The Tribunal expressed its disappointment to the parties that submissions had not been made in compliance with the Directions in that the bundles were not indexed or paginated, which at times made it difficult to follow the parties' arguments.
- 5.2 By way of an opening submission, the Respondent submitted that the dispute related only to administration charges, which had been charged to him as a result of arrears in respect of service charge payments. He submitted that non-payment of the service charges was due to an error on the part of the Management Company and that since he purchased the flat, the total service charges should have been in the region of £6,000 whereas with the administration charges, he was being asked to pay approximately £10,000.
- 5.3 The Applicant had prepared a Scott Schedule in compliance with the Directions but unfortunately, the Respondent had not completed same. As the Scott Schedule detailed all the items, which were in dispute and comprised the unpaid service charges and administration charges, the Tribunal determined to consider the Scott Schedule with the parties and make a determination accordingly.

- 5.4 The Tribunal explained to the parties that its jurisdiction extended only to determining the reasonableness and liability to pay the service charges and administration charges, and it could not take into account amounts which had been, or were alleged to have been paid.
- 5.5 The Respondent confirmed that in 2009, Mainstay, the Managing Agents, informed the leaseholders that they could pay their service charges monthly to a company known as 'Premium Credit'. The Respondent had agreed to this but the documentation sent by Mainstay was, in the opinion of the Respondent, incorrect in that it requested monthly payments of £164 whereas the Respondent believed that they should be in the region of £103. At that time, the Respondent was aware of the charges for flats in the block as another identical flat had been purchased by his son and he considered that the charges for both flats should therefore be the same.
- 5.6 The Applicant's submission in respect of the various items is that the half yearly service charges in respect of both Lancashire Court and the Estate service charge are reasonable and have been agreed by the Respondent. The Respondent confirmed that the service charges themselves were not in dispute.
- 5.7 The Applicant therefore submitted that the only items in dispute were the administration charges. The Applicant further submitted that these were reasonable and proportionate in all cases and reflected costs and work carried out either by the Managing Agents or Solicitors instructed by the Managing Agents to recover the substantial service charge arrears.
- 5.8 The Respondent submitted that if the Managing Agents had not made an error in the original arrangement with Premium Credit over the monthly payment of the service charges then he would not have fallen into arrears and would not therefore have incurred administration and other charges. As such, the Respondent submitted that he should not be liable for payment of such charges as they were caused as a result of a mistake on the part of the Applicant.
- 5.9 The Applicant submitted that the lease provided for charges to be made and that it had been admitted by the Respondent that the service charges were reasonable. As the service charges had not been paid, it therefore followed that it was reasonable for the Applicant to charge administration charges for recovery of the outstanding amount.
- 5.10 The Applicant further submitted that the Respondent had failed to deal with outstanding amounts. He had arranged a payment of £80 per calendar month but this did not cover the arrears and accruing charges. As such, the administration charges were both reasonable and proportionate as they were necessary costs which could not be avoided.

- 5.11 The Respondent submitted that when Premium Credit sent out the renewal documentation in February 2011, there were no arrears on his account but that arrears had subsequently accrued due to an error on their part. As such, the Respondent submitted that it was unfair for him to be asked to pay administration charges.
- 5.12 The Respondent also submitted that when court proceedings were instigated, his payments of £80 per month were refunded to him and this had further exacerbated the situation. The Applicant submitted that the £80 per month, which was only a part-payment, was refunded to Mr Hickey pending legal advice as the Applicant did not wish to prejudice its position by accepting a part payment. The Tribunal questioned the Applicant as to whether it was reasonable for payments to be refunded for a period of 12 months or whether it should have been possible to obtain legal advice in a shorter time frame. The Applicant submitted that the time taken to obtain legal advice was reasonable.

6. DETERMINATION

- 6.1 The Tribunal therefore considered the Scott Schedule in detail with the parties. The submissions of both the Applicant and Respondent as detailed above cover the various items on the Scott Schedule and the Tribunal therefore determined the service charges and administration charges payable.
- 6.2 The Tribunal is satisfied that Clause 4.3 and 4.4 of the Fifth Schedule and Part 1 of the Sixth Schedule provide for the Lessee to pay to the Lessor the service charges in advance and any deficits in respect of service charges for the previous years.
- 6.3 The Tribunal is also satisfied that paragraph 1.2 of the Third Schedule provides for the lessor *"to pay to the landlord or the management company (as the case may) be on a full indemnity basis all costs and expenses incurred by the landlord or the management company or their respective solicitors in enforcing the payment of any rent or proportion of the service charge or service charge adjustment or additional contribution or other monies payable by the tenant under the terms of the lease"*. As such, the tribunal is satisfied that the Respondent was liable to pay administration charges.
- 6.4 It was agreed by both parties that Items number 1 – 13 inclusive, 15, 17, 18, 28, 29, 31, 32, 33 and 34 on the Scott Schedule were not in dispute.
- 6.5 With regards to Item 14 of the Scott Schedule, the Applicant submitted that the lease provided for a payment of additional fees for pursuit of the debt. The Applicant also confirmed that the fee was charged when the Applicant took action over and above rendering an ordinary demand for payment to a lessee. It was submitted that the amount charged was reasonable and proportionate. The Respondent disputed that the charge should have been made as the arrears were caused by an error on the part of the Managing Agents. Having considered the

matter, the Tribunal determined that the charge was allowed under the terms of the lease and was reasonable.

- 6.6 Item 16 on the Scott Schedule is in respect of another administration charge for a late payment fee of £48 and the parties both made the same submissions as in respect of Item 14. Having considered the matter, the Tribunal determined that the charge was allowed under the terms of the lease and was reasonable.
- 6.7 Item 19 on the Scott Schedule referred to an administration charge being a legal referral fee of £96. The Applicant confirmed that this fee was for the preparation of documents to send to solicitors. The Respondent submitted that the fee was unreasonable as the initial error was on the part of the Managing Agents. The Tribunal considered the matter and determined that the lease provided for payment of the administration fee in this case, which was reasonable.
- 6.8 Items 20 and 21 on the Scott Schedule refer to an administration charge being the legal referral fee of £96 and the cost of the solicitors' letter before action of £85. The Applicant submitted that the amounts were both necessary and reasonable and were provided for in the lease. The Applicant also submitted that with arrears running into several thousands of pounds, it was reasonable to incur relatively nominal charges with solicitors to try and recover same. The Respondent submitted that the amounts charged were not reasonable as they were not required. It was submitted that requests from the Respondent's solicitors to the Applicant's solicitors had been ignored. The Tribunal considered the items and determined that the amounts were reasonable and had been charged in accordance with the terms of the lease.
- 6.9 Item 22 of the Scott Schedule details interest in respect of the late payment of £190.42. The Applicant submitted that this was provided for in paragraph 1.1 of the Third Schedule. The Respondent submitted that he should not have to pay interest as the only reason he was in arrears was due to an error on the part of the Managing Agents. The Tribunal considered the matter and determined that the payment of interest was allowed under the terms of the lease.
- 6.10 Item 23 on the Scott Schedule relates to an administration charge for correspondence between the Applicant and Respondent's mortgage company. The Applicant submitted that it was reasonable for them to ascertain if the mortgage company would pay off the outstanding arrears. The Respondent submitted that he was unhappy that his mortgage company should have been contacted as, he had previously submitted, he did not believe the arrears had occurred due to a fault on his part.
- 6.11 The Tribunal considered this matter and determined that the sum of £250 for writing to a mortgage company was excessive and could have been avoided. It therefore disallowed this amount.

- 6.12 Item 24 on the Scott Schedule is for the sum of £6.65 being a late payment interest charge. Both parties made the same submissions as in respect of Item 22 and the Tribunal determined that the charge was permitted under the lease and was therefore chargeable.
- 6.13 Item 25 on the Scott Schedule in the sum of £245 is in respect of the court fee. The Applicant submitted that this was the court fee paid and that there was no alternative but to pay the fee when making an application to the court. The Respondent submitted that it should not have been necessary to make an application to the court due to the error on behalf of the Managing Agents. The Tribunal determined that paragraph 1.2 of the Third Schedule provided for the lessee to pay a court fee charge and that it was therefore allowable. The Tribunal determined by reference to the papers that the amount paid as a court fee was £245.
- 6.14 Item 26 of the Scott Schedule refers to an administration charge being solicitors' fees in the sum of £172.50. The Applicant submitted that this was both proportionate and reasonable and reflected the cost incurred by the Management Company following the instructing solicitors. The Respondent submitted that the charge was unreasonable as administration charges were not agreed payable if the Managing Agents had not made the original error with the documentation for Premium Credit. The Tribunal determined that the amount was payable under paragraph 1.2 of the Third Schedule of the lease and was reasonable.
- 6.15 Item 27 of the Scott Schedule is in the sum of £44.10 being late payment interest. Both parties confirmed that their submission in respect of this item were the same as in respect of Items 22 and 24 and the Tribunal determined that the charge was allowable under paragraph 1.1 of the Third Schedule of the lease and therefore payable by the Respondent.
- 6.16 Item 30 of the Scott Schedule in the sum of £40 was a legal cost being a court fee. The Applicant confirmed that this was a fixed fee payable to the court and was unavoidable. The Respondent submitted that had the Managing Agents not made the initial error with the arrangement to Premium Credit then this would not have been incurred and it should therefore not be expected to pay same. The Tribunal determined that the amount was payable under paragraph 1.2 of the Third Schedule of the lease.
- 6.17 The Tribunal therefore determined the amount payable as follows: -

Item No	Item	Applicant's Submission of Amount Due	Respondent's Submission of Amount Due	Tribunal Determination
1	Half year Lancashire Court Service Charge in advance for period 01/03/2011 to 31/08/2011	£453.82	£453.82	£453.82
2	Lancashire service charge deficit for year ended 31/08/2010	£119.00	£119.00	£119.00
3	Half year Lancashire Court service charge in advance for period 01/09/2011 to 29/02/2012	£451.34	£451.34	£451.34
4	Half year estate service charge in advance for period 01/09/2011 to 29/02/2012	£32.57	£32.57	£32.57
5	Additional estate charge for the period 01/09/2011 to 31/08/2012	£35.00	£35.00	£35.00
6	Estate service charge deficit for year ended 31/08/2011	£1.72	£1.72	£1.72
7	Lancashire Court service charge deficit for year ended 31/08/2011	£327.99	£327.99	£327.99
8	Half year Lancashire Court service charge in advance for period 01/03/2012 to 31/08/2012	£451.34	£451.34	£451.34
9	Half year estate service charge in advance for the period 01/03/2012 to 31/08/2012	£32.57	£32.57	£32.57
10	Half year Lancashire Court service charge in advance for period 01/09/2012 to 28/02/2013	£476.23	£476.23	£476.23
11	Half year estate service charge in advance for period 01/09/2012 to 28/02/2013	£33.76	£33.76	£33.76
12	Estate service charge deficit for the year ended 31/08/2012	£5.53	£5.53	£5.53
13	Lancashire Court service charge deficit for year ended 31/08/2012	£450.79	£450.79	£450.79
14	Administration charge – late payment fee	£48.00	NIL	£48.00
15	Administration charge – Land Registry fee	£4.00	£4.00	£4.00
16	Administration charge – late payment fee	£48.00	NIL	£48.00
17	Half year Lancashire Court service charge in advance for period 01/03/2013 to 31/08/2013	£476.23	£476.23	£476.23
18	Half year estate service charge in advance for period 01/03/2013 to 31/08/2013	£33.76	£33.76	£33.76
19	Administration charge – legal referral fee	£96.00	NIL	£96.00
20	Administration charge – legal costs – solicitor letter before action	£85.00	NIL	£85.00
21	Administration charge – legal costs	£172.50	NIL	£172.50

22	Administration charge – late payment interest	£190.42	NIL	£190.42
23	Administration charge – mortgage correspondence	£250.00	NIL	NIL
24	Administration charge – late payment interest	£6.65	NIL	£6.65
25	Administration charge – legal costs – court fee	£245.00	NIL	£245.00
26	Administration charge – legal costs – solicitors fees	£172.50	NIL	£172.50
27	Administration charge – late payment interest	£44.10	NIL	£44.10
28	Half year Lancashire Court service charge in advance for period 01/09/2013 to 28/02/2014	£482.79	£482.79	£482.79
29	Half year estate service charge in advance for period 01/09/2013 to 28/02/2014	£33.90	£33.90	£33.90
30	Administration charge – legal costs – court fee	£40.00	NIL	£40.00
31	Estate charge service deficit for year ended 31/08/2013	£11.66	£11.66	£11.66
32	Lancashire Court service charge deficit for year ended 31/08/2013	£151.48	£151.48	£151.48
33	Half year estate service charge in advance for period 01/03/2014 to 31/08/2014	£33.90	£33.90	£33.90
34	Half year Lancashire Court service charge in advance for period 01/03/2014 to 31/08/2014	£482.79	£482.79	£482.79
	TOTAL DUE			£5,730.34

6.18 This Determination is in respect of service charges and administration charges payable and does not take account of any amounts which may have been paid by the Respondent.

7. APPEAL

7.1 Any appeal against this Decision must be made to the Upper Tribunal (Lands Chambers). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)