



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : LON/OOBK/LSC/2013/0835

Property : 61 WESTBOURNE COURT ORSETT
TERRACE LONDON W2 6JU

Applicant : PEGASUS INVESTMENT COMPANY
LIMITED

Representative : Ms W Mathers of Counsel and Mr A Moss
rent administrator of the Applicant
Mr T Dimmer. The Applicant's ara
manager attended later

Respondents : MR S SHAHRILARMOLK (1)
MR M N JANNATI (2)

Representative : The Respondent did not attend and was
not represented

Type of Application : SECTIONS 27A LANDLORD AND
TENANT ACT 1985 ("1985 Act")

Tribunal Members : JUDGE T RABIN
MR M TAYLOR FRICS
MRS L WEST

Date and venue of Hearing : 12th May 2014 10 Alfred Place, London
WC1E 7LR

Date of Decision : 12th May 2014

DECISION

The application

1. The Tribunal was dealing with an application pursuant to s.27A of the 1985 Act as to whether the service charges demanded during service charge years 2010-2012 and estimated service charges for 2013 are reasonable and payable by the Respondent. The application relates to 61 Westbourne Court Orsett Terrace London W2 6JU("the Flat"). The Applicant is the head leaseholder of the building of which the Flat forms part ("the Building").The first named Respondent is the beneficial owner of the Flat under a Deed of Trust and the second named Respondent is the registered proprietor who was subject to bankruptcy proceedings in 2009.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. In view of the nature of the claim it was determined that an inspection was not necessary.

The Hearing and Evidence

4. The application was heard on 12th May 2014. The Applicant was represented by Ms W Mathers of Counsel accompanied by Mr A Moss, rent administrator for the Applicant. Neither Respondent attended and there were no submissions from either of them.
5. Ms Mathers opened the proceedings by pointing out the Respondents had both failed to make any representations regarding their reasons for not paying the service charges. She then set out the parameters that the Tribunal must consider, having regard to the following judicial guidance:

“ The landlord in making his claims for maintenance contributions will no doubt succeed unless a defence is served saying that the standard or the costs are unreasonable “ **Yorkbrook Investments Ltd v Batten 1986**

“ The wise claimant should, no doubt, come to the Tribunal or the County Court prepared to give a general account, supported by broad documentation to establish the overall reasonableness of the service charges. If the tenant complains about a particular specified item, the landlord or management company will have to deal with that item in the detail necessary to meet the point that appears to be being raised. “ **Regent Management Ltd v Mr Thomas Jones 2009**
6. Mr Moss produced audited accounts for service charge years 2010-2012 inclusive and a demand for on account service charges for six months from 29thSeptember 2013-24th March 2014 at £599. This was consistent with on account demands for previous years. Unfortunately Mr Moss was unable to answer any of the Tribunal member’s questions

relating to the specific items in the accounts despite having been involved with the Property since 1985. The Tribunal was obliged to rise in order that an appropriate witness could be asked to attend. This was a waste of the Tribunal's time and public money.

7. Mr T Dimmer, the Applicant's area manager, attended at 11.20 am and he was well versed in matters relating to the management of the Property. The Tribunal asked for clarification on a number of issues that appeared in the accounts and were satisfied in general terms that proper management procedures were in place and that the charges were reasonable. Specific points included:

- There was no budget for 2013/4 in the bundle but a charge of £599 for six months was made. Mr Dimmer explained that a budget had been prepared based on previous years' accounts and had been unchanged during the period in question
- Although the Tribunal was concerned that the level of communal electricity was high, Mr Dimmer described the Property's communal areas and the use of the lift in a nine storey building. The demand was based on demands. Overall the charges were reasonable for the type of building
- There were long term agreements for the lift and boiler maintenance but since the charge per flat was less than £100, there was no need for consultation
- Mr Dimmer explained that there was an insurance broker part of the Freshwater group and that this broker arranged insurance. This was reviewed annually in the market. The Applicant was paid commission but this was part of the premium. The cost of the annual insurance was reasonable
- The management fee was set at £17,495 equivalent to £180 per flat. This had increased to this level in 2010 and has remained constant since then. This was at the lower end of management charges and reasonable
- The accountants' fees were reduced over the years in question. Mr Dimmer explained that they had been reduced by the accountants adopting a more efficient method of preparing the accounts. The accounts are certified each year as required by the lease
- Mr Dimmer said that there had been no major works undertaken during the period in question.

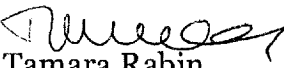
8. The Tribunal had received no comments from the Respondents and both had failed to participate in the proceedings and had ignored the Tribunal's directions. Neither attended the hearing and no reason was given.

The Tribunal's decision

9. The Tribunal finds that all the service charges demanded during the years in question are reasonable and payable. It is not within the Tribunal's jurisdiction to determine which of the Respondents is responsible for payment. The sums are overdue and payable immediately.

Refund of Fees

10. The Applicant sought refund of the application fee of £150 and the hearing fee of £190. The failure of the Respondents to engage with the Applicant meant that there was no alternative for the Applicant other than to take proceedings against the Respondents. Their further failure to comply with directions meant that a hearing was inevitable. In the circumstances the Tribunal order refund of both the application and hearing fees. These are also payable immediately.


Judge Tamara Rabin

12th May 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.
- (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).