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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KG/LSC/2016/0032**
Property	:	**107 Caspian Way,** **Purfleet,** **Essex RM19 1LA**
Applicant **Represented by**	:	**Church Hollow (Purfleet) Management Co. Ltd.** **Simon Purkis of counsel (PDC Legal)**
Respondent	:	**Mr. Ajibola Olumuyiwa Omilabu** **Self representing**
Date of Transfer from the county court	:	**26th April 2016**
Type of Application	:	**To determine reasonableness and payability of service and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen Moll FRICS** **Lorraine Hart**
Date and Place of Hearing	:	**10th August 2016 at Basildon Magistrates' Court, Great Oaks, Basildon, Essex SS14 1EH**

DECISION

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1. In the court proceedings transferred to this Tribunal, the Applicant claims:-

Service charges		£
Estate charge in advance for 01.06.15 – 31.05.16		215.47
Int. Comm. Area in advance	"	597.61
Buildings costs in advance	"	427.72
Reserve fund in advance	"	3.28
Reserve Int. Comm. Area in advance	"	217.36
Reserve Buildings costs in advance	"	245.20
		1,706.64

Administration charges	
Reminder fee	25.00
Land Registry search	21.00
Legal fee	192.00
Administration fee	48.00
	1,992.64

2. In respect of the amount claimed by the Applicant from the Respondent, the Tribunal finds that £1,992.64 is reasonable and payable by the Respondent.

3. All matters relating to court fees and costs incurred in the county court (said to be £720.00 bringing the total claim to £2,712.64) are transferred back to the county court sitting at Basildon under claim no. C26YJ305.

Reasons

Introduction

4. This is a claim brought in the county court by the Applicant management company, to recover service charges and administration charges from the Respondent who is the current long leaseholder of the property. Such property is part of a large development of 365 dwellings which appear to have been erected in over several years commencing in 2004 or thereabouts. By the Order of Deputy District Judge Oldham dated 26th April 2016, the court transferred the claim to this specialist Tribunal for it to determine the reasonableness and payability of such charges.

5. There has been a previous claim for the payment of service charges etc. incurred before 1st June 2015 being claim no. B93YJ465 in Bow County Court. Judgment was entered. An application was made to set aside the judgment which was successful but a condition was made that a defence be filed by 6th October 2015. The Tribunal was told at the hearing that this was not done which meant that the judgement was, in effect, reinstated. A further application to set aside the judgement was made which was dismissed. Mr. Omilabu explained that he is taking that decision to the High Court. It matters not so far as this case is concerned as this Tribunal is limited to considering those matters transferred to it as set out in the decision above.

6. The only defence filed by the Respondent in these county court proceedings is dated 24th February 2016. It is just over 3 pages long with single spaced small font printing and contains challenges to the service charges and administration charges in general terms only.

7. There is no copy of this defence in the bundle prepared by the Applicant for the Tribunal hearing. It was sent to the Tribunal by the court when the case was transferred. However, there are no paragraphs which seek to suggest that any specific amount of service charge etc. is unreasonable. The defence contains the following paragraph which gives a 'flavour' of the dispute:-

"18. *The whole matter has been configured by RMG and their*

solicitors to mislead and defraud. PDC Solicitors pulled wool over the eyes of the court. PDC Solicitors and PDC Limited are one and the same. They are despicable and fraudulent vehicle of deceit. They have lied and lied again in order to gain advantage in court"

8. The bundle of documents supplied to the Tribunal for the hearing contains copious correspondence and e-mail exchanges. In one section of correspondence (page 167) there are accusations made by the Respondent and comments in reply by or on behalf of the Applicant dated 30th October 2015 as follows. They do, perhaps, deal with the fundamental issues in this case and are set out as follows. RMG Ltd. are the Applicant's managing agents:-

Respondent's comment
"1. *The service provided by RMG is of a general nature. But they are charging me based on the floor space of my apartment. You don't clean my flat. You only sweep the floor of the general area which is common to all residents. So why am I being charged double what the others are paying? Even then, the sweeping of the floor is done once a week."*

Applicant's reply
"The service charge budget is based on a percentage, all units pay a different percentage, and the percentage payable is stated in the lease/transfer. The Developer 'Bellway Homes' worked out the percentage payable based on the square footage of each flat, this is common practice for leasehold properties. You pay a higher percentage if your flat is bigger. Cleaning of all hallways is done once a week."

Respondent's comment
"2. *Why am I being charged in advance? I thought this is a payment for services rendered to the residents? If I am going to be charged in this manner, why are we not being provided with a statement showing what was collected and what was spent?"*

Applicant's reply
"As per the lease, service charges are payable in advance. At the beginning of each financial year residents are sent the service charge budget and demands, and the end of the financial year residents are sent copies of the service charge accounts. Additional copies can be provided."

Respondent's comment
"3. *Can you please show me this contract was advertised before RMG was appointed to clean the estate? Was due diligence followed before this appointment was made?"*

Applicant's reply
"RMG were originally appointed by Bellway Homes when they were the Directors for the development. As the site has now been handed over into Residential control, the Resident Directors are happy with the service

being provided by RMG and therefore we will continue to manage Church Hollow"

Respondent's comment
"4. *Lastly, Bellway told me and the other residents that once we moved in, we will be able to setup a Residents Management Association that will do what RMG is currently doing. Based on this understanding, I purchased my apartment? Why are we not anywhere near setting up a management company for the residents*"

Applicant's reply
"*Church Hollow (Purfleet) MCL has already been handed over into residential control, has been since 2012. Two Resident Directors were appointed in 2012. Two new Directors have been appointed following the recent AGM that was held On Thursday 22nd October 2015*"

9. In accordance with the Tribunal's directions, the Applicant has filed an 8 page statement in reply to the defence. The Respondent was ordered to look at the evidence filed and to then file and serve a statement setting out exactly what he was now challenging, why and what he would consider to be a reasonable amount. He has filed just over a 5 page statement dated 18th June 2016 at page 231 in the bundle. Unfortunately, much of this statement and the exhibits refer to the previous proceedings and are not relevant to the issues to be determined by this Tribunal. Those parts of it which are relevant to these proceedings deal, once again, with general accusations against the Applicant rather than specifics. No evidence is produced by the Respondent by way of comparable costs on other estates in respect of any service charge he disputes.

10. Following a request from the Tribunal to the Applicant's solicitors a week before the hearing, copies of the estate service charge accounts were provided to the Tribunal and to the Respondent immediately, from which it could be seen how much the actual service charges and reserve fund had been in the 3 years prior to the 1st June 2015. Using the percentages set out in the lease, the figures for the property including insurance would have been:

	Service charges (£)
Up to 31st May 2013	1,445.81
Up to 31st May 2014	1,359.32
Up to 31st May 2015	1,688.56

It is relevant to say that the reserve fund has reduced over that period from £274,247.00 (divided by 365 is £751.36 per property) in 2013 to £236,888.00 (£649.01 per property) in 2015. In fact the proportion of the reserve in respect of this property will be a slightly higher amount.

The Inspection

11. The members of the Tribunal inspected the property and the grounds of the development in the presence of the Respondent and Kerri Baxter from RMG. It is

a varied residential development with a mixture of houses and flats. All appeared to be of brick/block construction under concrete tiled pitched roofs with uPVC windows. There are parking spaces for each flat and further parking around the development. The estate roads (as opposed to the residents' car parks) have been adopted.

12. At the rear of the block in which this flat is situated and across the north/western boundary is a high chalk cliff which is netted. The cliff is higher than the blocks and is part of the development which means that the management company has to maintain the cliff including the wire protective netting installed all along it and the vegetation including trees along the bottom and top.

13. The estate seemed to be in generally good condition. The members of the Tribunal saw inside the common parts leading to the subject property. The carpets were good. One of the walls was in need of decoration but generally the condition was not bad. They also saw inside the subject property itself. A long hallway leads to the large lounge off which is the kitchen area. There is a double door leading to the dining room. There are 3 bedrooms, one of which has an en suite, and a family bathroom. The Tribunal was not able to see any of the bedrooms or the dining room as Mr. Omilabu said that there were people in them.

The Lease

14. The bundle of documents supplied for the Tribunal includes what purports to be a copy of the lease which is dated 15th June 2007 and is for a term of 125 years from the 1st September 2004 with an increasing ground rent. The landlord is Bellway Homes Ltd., the Applicant is the management company and the Respondent is the lessee.

15. The presence of this document is particularly relevant because the Respondent denies having seen it before (page 232). It is certified as a true copy by Anderson Cook, who are said to be property lawyers. It purports to be executed by the landlord and the management company at page 83. If this is correct, then it is a copy of the original lease. The Respondent makes the point that it is not signed by him. If it is the original lease, then that would be right. He would execute the counterpart and the landlord would be in possession of that. The original (signed by the landlord and the management company) and the counterpart (signed by the Respondent as tenant) would have been exchanged on completion of the lease.

16. The Respondent does not seek to produce what he considers to be the lease. His conveyancers, his building society or the Land Registry will have copies which could easily have been obtained. The fact that he has not produced anything and the fact that the document produced is certified as being "a true and complete copy" of the lease, leads the Tribunal to the view that it is a copy of the original lease and is binding on the Respondent. Its terms will therefore be considered.

17. There are the usual provisions, in such a tri-partite lease, for the management company to keep the structure and common parts decorated and in repair. The landlord is to insure. The cost of this is the service charge and the management

company can recover such service charge from the lessee in proportions which are set out. As is common with large developments, there are different percentages for different categories of such charges i.e. Estate Costs (.274%), Buildings Costs (.6338%) and Internal Communal Area Costs (.6837%). These descriptions are defined.

18. The service charge regime is in Schedule 6 which provides for the management company to produce a certificate each year, as soon after the end of the management company's financial year as is practicable, setting out the service charges incurred. This is to be signed by the management company or the managing agents. There is a provision for the management company to collect monies on account of those anticipated in the future on the 1st January and 1st July in each year. There must then be a reconciliation with any over payment being credited against future service charges.

19. As far as administration charges are concerned, the managing agents statement refers to clause 4.7 in the lease which enables solicitors and surveyors fees to be collected "*incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred or in contemplation of proceedings under section 146 or 147 of that Act...*". This is a reference to the provisions relating to forfeiture of the lease and such a reference is not appropriate because it is the management company which brings these proceedings. Only the landlord can forfeit the lease, not the management company.

20. Having said that, clause 6.2.1 enables the management company to appoint a managing agent and pay that agent's fees including the discharge of the cost of collecting the rent and service charges. This would include those items claimed, subject to a determination as to reasonableness.

The Law

21. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

22. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction under section 27A of the 1985 Act to make a determination as to whether such a charge is payable.

23. Similar provisions apply under the **Commonhold and Leasehold Reform Act 2002** in respect of administration fees and the Tribunal's jurisdiction to determine their reasonableness and payability.

24. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."

The Hearing

25. The hearing was attended by those who were at the inspection plus Simon Purkis of counsel representing the Applicant. The Tribunal chair started the hearing by asking Mr. Omilabu whether he was in fact just challenging the contribution to the reserve fund. He said that he was challenging the whole claim. When asked for specifics, he could not give any save for making general comments about the amount the managing agents were making and the cleaners were being paid for the little work they did etc. He was pressed by 2 members of the Tribunal to be specific about exactly which charges he was talking about and what he would expect to pay and he could not.

26. The chair then asked him about the lease. He insisted that he had not signed anything and the copy lease in the bundle did not have has signature. He was asked whether he had been to his solicitors to ask what he had signed and he said that he had not. He was asked whether he had gone to his solicitors at the time and asked what he was committing himself to and he did not answer. He just said that he had bought 'off plan' and from time to time had been asked for money which he had paid.

27. He then repeated the assertion made in his statement that he had never seen any end of year accounts to see what was in the reserve fund or what had actually been spent. He was then told about the letter written to the Applicant's solicitors a week before the hearing asking for the end of year accounts. He said that he had seen the Tribunal's letter but no reply or copy accounts which contained the missing information. The Tribunal chair gave him his copy. It then transpired in subsequent discussions that he had actually received these accounts but he had not looked at them. The Tribunal chair took him through them and pointed out where the reserve fund etc. was. Asked whether he wanted some time to look at them, he said that he did not.

28. The Applicant put forward Mrs. Baxter who gave her evidence by producing the bundle and confirming that the answers to the questions raised by Mr. Omilabu in the exchange of e-mails referred to in the introduction of these reasons were correct. Mr. Omilabu was given the opportunity to question her, which he did. Nothing really arose from those questions and answers which assisted the Tribunal's decision save for the issue of credibility. He kept saying that he did not know that there were resident directors of the management company. Mrs.

Baxter said that she had personally hand delivered a newsletter to each property some time ago giving this information and even the e-mail addresses for the 3 resident and one non-resident owner directors. Mr. Omilabu accepted that he had seen the newsletter but could not recall seeing that information. Mrs. Baxter could not actually produce a copy. Mr. Omilabu was asked whether he was saying that the information was not there. He repeated several times, that all he was saying was that he couldn't recall seeing it.

29. It was only at the stage when the parties were giving their final submissions that things became clearer. Mr. Omilabu said that if the percentages of service charges in the lease were binding then he would have to accept that. He did not think he should be paying more than £1,200 per annum for service charges. No-one in adjoining towns would expect to pay more than that. He was asked whether he had specific evidence to put to the Tribunal about this but he did not.

30. Eventually, Mr. Omilabu said that he was an accountant and the problem here was that if he were in charge of the budgets and service charges, he would make sure that the figures were lower. It was put to him that if the budgets were lower but the end figures were the same, then he would have to make up the shortfall. His response seemed to be that there would simply be no shortfall.

Discussion

31. The Applicant's claim is for monies on account of service charges and in respect of administration charges which are set out in a series of invoices commencing at pages 100, 108 and 124 in the bundle. The claims are for a whole year commencing 1st June whereas the lease makes it clear that there are to be 2 claims on the 1st January and 1st July each year. The Tribunal will not deal with that issue any further but clearly RMG need to adjust their accounting procedures.

32. What sets this estate apart from some others is the very high figures being collected to top up the reserve fund. Apart from the £465.84 being collected to top up the reserves, the service charges themselves are certainly within the bounds of reasonableness in the experience of this Tribunal. Indeed, at £1,240.80 as the figure for the year ending 31st May 2015, Mr. Obilamu would seem to accept that. For example the figures for insurance and professional fees, including management fees, are certainly within the accepted range of reasonableness, assuming the terms of each supply contract are as one would usually expect.

33. It is agreed that the common internal parts are cleaned every week, that the gardens are attended to every month and that the trees are attended to every year. It is a fact that in many estates which the Tribunal members come across, the reserve funds are insufficient. This causes a shortfall of funds when large works are needed and embarrassment to leaseholders who do not have sufficient savings. With the chalk cliff, there is an unusual, possibly expensive, potential drain on reserves. Mrs. Baxter referred to the fact that in 2009, excessive rainfall had caused cracking to the cliff which had to be dealt with.

34. As far as the evidence is concerned, the Tribunal found that Mrs. Baxter was a

good and creditable witness. Unfortunately the same could not be said for Mr. Omilabu. The Tribunal simply did not accept that he had not signed the lease or seen it before. It was found that he had seen the end of year accounts before the hearing and the newsletter giving details of the directors. He had no answer to the Applicant's evidence and his position changed considerably during the hearing. He has made assertions, in writing, about the integrity and honesty of the managing agents of which he had no evidence whatsoever.

Conclusions

35. Taking the evidence into account, the Tribunal determines that both the service charges and the administration charges claimed are reasonable and payable. The Tribunal accepts that it has not dealt with each and every assertion made by Mr. Omilabu. It assures him that all the evidence and, in particular, his defence and statements have all been carefully considered. He simply came nowhere near satisfying the test in the **Schilling** case referred to above.

Costs and fees

36. The Tribunal will leave the general question of costs and interest within the proceedings to the court.

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Bruce Edgington
Regional Judge
12th August 2016

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.