

11723



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

**Case Reference** : CHI/18UB/00HC/LSC/2016/0011

**Property** : Flat 12 Eastern House, Landemann Circus, Weston-super-Mare BS23 2NH

**Applicant** : Derrick & Yvonne Price

**Representative** :

**Respondent** : Eastern House (WSM) Management Company Ltd

**Representative** :

**Type of Application** : Payability of service charges under s.27A and limitation of service charges under s.20C, Landlord and Tenant Act 1985

**Tribunal Members** : Judge A Johns QC

**Date of Decision** : 23 May 2016

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**PAPER DETERMINATION**

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## Introduction

1. Derrick & Yvonne Price (“the Prices”) are leaseholders of a two-bedroom flat, Flat 12, in the block known as Eastern House, Landemann Circus, Weston-super-Mare, Avon BS23 2NH (“the Block”). The landlord of the Block is Eastern House (WSM) Management Company Ltd (“the Company”), a residents’ management company limited by guarantee.
2. By this application to determine the payability of service charges, the Prices challenge an item entitled “provision for company remuneration” in the 2015/2016 service charge accounts. The item is in the sum of £870 of which the Prices’ share is £43.50. They also ask for an order that the Company’s costs of these proceedings are not to be treated as relevant costs in determining the amount of service charge.

## Procedure

3. The Prices indicated by the application that they would be content with a paper determination. The case has proceeded in that way with directions being given:
  - 3.1 On 16 February 2016 identifying the issue for determination as “Whether the lease permits ‘provision for company remuneration’ to be charged to the service charge for 2015/2016 and future years and recovered from the lessees”.
  - 3.2 On 3 March 2016 for a statement of case on that issue from the Company and a further statement of case in answer from the Prices.
4. Statements of case were duly submitted in accordance with those directions and the Tribunal has had careful regard to those in reaching its determination.

## Jurisdiction

5. By s.27A of the Landlord and Tenant Act 1985 (as amended by the Transfer of Tribunal Functions Order 2013) the Tribunal may determine whether service charge is payable and in what amount.

## Lease and factual background

6. The lease of Flat 12 dated 30 June 2000 (“the Lease”) is made between the original lessees, Anthony & Amanda Keen, Countryside Residential (South West) Ltd as developer and original lessor, as well as the Company.
7. The role of the Company appears from recital (C) to the Lease:  
“So as to preserve and secure the proper and efficient management of the Block the Developer has entered into an agreement with the Company for the Company to purchase the freehold interest in the Block within 2 months of the completion of the grant of the last lease of a flat in the Block and the adjoining block or 30 July 2005 whichever shall be the sooner ...”.

8. The reference to the adjoining block appears to be a reference to Hewish Court, Landemann Circus. The Company owns that adjoining property comprising 6 flats as landlord in addition to holding the Block.
9. There is a lessee's covenant in clause 3 to pay service charge to the Company, being a proportion of the "Annual Maintenance Provision".
10. By paragraph 2 of Part II of the Fourth Schedule to the Lease, the Annual Maintenance Provision comprises, so far as material:
  - (i) the expenditure estimated as likely to be incurred in the Maintenance Year by the Company for the purposes mentioned in the Fifth Schedule together with
  - (ii) ...
  - (iii) a reasonable sum to remunerate the Company for its administrative and management expenses in respect of the Block such sum to be referred for determination by an independent Chartered Accountant appointed on the application of the Company by the President of the Institute of Chartered Accountants in England and Wales acting as an expert.
  - (iv) ...".
11. Subparagraph (iii) is the provision upon which the Company principally relies for recovery of the disputed item, though it did point in its statement of case to the Fifth Schedule of the Lease in the alternative.
12. It will be noted that subparagraph (i) refers to the purposes mentioned in the Fifth Schedule. Those purposes include such matters as repair and decoration of the Block but also, by paragraph 5 of the Fifth Schedule, the following:
 

"To make provision for the payment of all costs and expenses incurred by the Company-

  - (a) in the running and management of the Block and the collection of rents and service charges in respect of the flats therein and in the enforcement of the covenants and conditions and regulation contained in the Leases of the flats in the Block and
  - (b) ...
  - (c) in the determination of the Company's remuneration referred to in Paragraph 2(iii) of Part II of the Fourth Schedule
  - (d) in the preparation and audit of the Service Charge accounts
  - (e) in the payment of the costs fees and expenses paid to any Managing Agent appointed by the Company".
13. Assignment of the term created by the Lease is to be on the basis that the assignee applies for membership of the Company (clause 10(d) in the Third Schedule). The members of the Company are the lessees of the 14 flats in the Block and the lessees of the 6 flats comprising Hewish Court.
14. The disputed sum of £870 is broken down by the Company as follows:
 

Accountancy fees – year end (in lieu of audit) £500  
 Company secretary – associated costs £200  
 Filing costs – companies house & HMRC £20  
 Meetings and Notices (AGM etc) £50

Other administrative costs – postage, printing, stationery etc £100.

15. The sum sought from the Prices, being £43.50, represents one twentieth of this item. When it is remembered that the Block together with Hewish Court make up twenty residential units, such proportion means that the Prices are not being asked to contribute to such part of the Company running costs as can be said to be referable to Hewish Court.

#### Parties' cases

16. It will be apparent that the question is one of interpretation of the Lease, in particular of the provision in subparagraph (iii) of paragraph 2 in Part II of the Fourth Schedule to the Lease.
17. The Prices' case on that question is that these are costs for running the Company instead of costs "in respect of the Block". They say that, if the provision is as wide as the Company contends, it could be used to recover any expense whatever at the whim of the landlord.
18. The Company rejects that interpretation of subparagraph (iii) and contends that the purpose of the words "in respect of the Block" is not to exclude expenditure that can be said to be costs incurred in running the Company but rather to exclude costs incurred in respect of the Company's other property, namely Hewish Court. The Company also points out that if it cannot meet its running costs out of service charge then it would be placed in the position of depending on voluntary contributions for its survival.

#### Discussion

19. Interpretation of the Lease is, like the interpretation of any contractual document, a matter of identifying the intention of the parties from the words used having regard to the context including the commercial context.
20. Taking that approach, in the judgment of the Tribunal the disputed item is within subparagraph (iii) of paragraph 2 in Part II of the Fourth Schedule, and is therefore payable as service charge, notwithstanding that it can be described as the running costs of the Company.
21. The Tribunal's reasons for that conclusion are these:
  - 21.1 It is hard to see how the natural meaning of the words used would exclude expenses on the ground that they can be said to be running costs of the Company. On the contrary, the expenses covered are widely expressed as "administrative and management expenses"; the only restriction being that they be "in respect of the Block". That restriction is apt not to exclude a type of expense, such as company costs, but rather an expense incurred for a different object, such as in relation to a different property and is readily explained by the Company's ownership of Hewish Court.
  - 21.2 The width of the disputed clause is underlined by subparagraph (i) of paragraph 2 in Part II of the Fourth Schedule and the Fifth Schedule to the

Lease. The arrangement of the Fourth Schedule, with subparagraph (i) ending with the words “together with”, indicates that the expenses covered by subparagraph (iii) are in addition to those set out in the Fifth Schedule such as the costs and expenses incurred in the running and management of the Block.

- 21.3 The context means that running costs of the Company ought to be recoverable as service charge. That context is a scheme under which the leaseholders of the Block and Hewish Court are to own the freehold through the vehicle of the Company of which they are all members. It would be plain from the outset of that scheme that the Company will incur some running costs, for example those necessary to comply with the companies legislation. It would also therefore be plain that without such costs being recoverable as service charge the scheme would be unworkable; depending, as it would, for its survival on voluntary contributions which may or may not be forthcoming.
- 21.4 There is no real force in the Prices’ suggestion that the provision could be abused at the whim of the Company. It is subject to the express restriction that the expenditure must be in respect of the Block and any charge made would also be limited by the reasonableness requirements of s.19 of the Landlord and Tenant Act 1985.
22. This conclusion means that the Company’s alternative case under the Fifth Schedule does not arise.
23. As to the application under s.20C of the Landlord and Tenant Act 1985, given the Tribunal’s conclusion that the disputed item is payable, the Tribunal does not consider it just and equitable to prevent recovery by way of service charge of the Company’s costs, if any, of these proceedings insofar as it may be entitled to them under the Lease. That application is therefore dismissed.

#### Summary of decision

24. From the above, the Tribunal decides that:
- 24.1 The Lease does permit ‘provision for company remuneration’ to be charged to the service charge for 2015/2016 and future years and recovered from the lessees.
- 24.2 The s.20C application is dismissed.

#### Appeal

25. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
26. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
27. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for

an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge A Johns QC

Dated 23 May 2016