



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

Case reference : **LON/00AW/LSC/2015/0411**

Property : **359, Point West, 116 Cromwell
Road, London, SW7 4XA**

Applicant : **Point West GR Limited**

Representative : **Fladgate Solicitors**

Respondent : **Lo Liang Yih Jung and Lo Kai Ling**

Representative : **-**

Type of application : **Section 27A Landlord and Tenant
Act 1985 - determination of the
reasonableness and payability of
service charges**

Tribunal members : **Mrs H C Bowers BSc (Econ) MSc
MRICS
Mrs R Turner JP**

**Date and venue of
paper determination** : **20 January 2016
10, Alfred Place, London, WC1E
7LR**

Date of decision : **20 January 2016**

DECISION

For the reasons given below, the Tribunal finds as follows:

- That the service charges being claimed and totalling £23,516.56 are reasonable and payable

REASONS

Introduction:

1. This is an application, dated 10 September 2015 made by Point West GR Limited (the Applicant) under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to the payability and reasonableness of service charges for the service charge years 2009 to 2015. The application relates to 359 Point West, Cromwell Road, London, SW7 (the flat).
2. The current application was made at the same time as an application for 363 Point West. A Case Management Conference (CMC) was held on 6 October 2015. Mr Dillon of counsel represented the Applicant, but there was no representation or attendance from either of the Respondents. Directions were issued on 6 October 2015, by which it was directed that the two applications would be heard together as a paper determination, unless any of the parties requested an oral hearing. A request was received that the Respondent for 363 Point West required a hearing. It was therefore further directed that these two cases would be considered separately and the current application would still proceed to a paper determination.

The Law:

3. A summary of the relevant legal provisions is set out in Appendix 1 to this decision.

Background:

4. At the CMC it was explained that the Respondents did not appear to challenge the service charges but simply wished to pay by instalments. In support of this submission, Mr Dillon produced a letter dated 20 March 2015. Indeed included in the bundle at page 198 is a hand written note that is undated, other than a date stamp for receipt on 20 March 2015. This hand written note stated "*Regarding the overdue invoices, I am currently working with financial advisers who will have a plan worked out in two weeks. I shall be in touch accordingly to arrange payments*". This note is signed by Kai Ling Lo (Flat 359).
5. It was explained that the outstanding balance as at 1 June 2015 was £25,563.02.
6. The Directions required that the Applicant should carry out disclosure by 20 October 2015. That disclosure was to provided the Respondents with

copies of all relevant service charge accounts and estimates for the years in dispute, audited and certified where so required by the lease, together with all demands for payment and details of any payments made.

7. It was further directed that the Respondents were required to send to the Applicant by 3 November 2015 a schedule setting out any item in dispute and to provide the reason for the dispute, what sum, if any, the Respondents would pay for the disputed items. This schedule was to be accompanied by copies of any alternative quotations and other documents relied upon, a statement setting out any submissions in the case and any witness statements. On receipt of the Respondents documentation, the Applicant had an opportunity to make any response by 17 November 2015. The Applicant was responsible for the preparation of the Tribunal's bundle and were directed that any schedule detailing any disputed items, together with any relevant invoices and relevant accounts were to be provided by 8 December 2015.

The Lease:

8. The Respondents hold the leasehold interest in 359 Point West under a lease as dated 19 August 1998 for a term that runs from 1 January 1998 to 3 May 2126. The lease identifies Point West London Limited as the Landlord and Lo Liang Yih Jung and Lo Kai Ling as the Tenant.
9. Within the definitions section of the lease, the 'Accounting Period' is defined as 1 April in one year to 31 March in the following year. It also sets out the service charge percentages as 0.158% for the total estate expenditure and 0.193 % for the total residential expenditure. Clause 3 sets out the obligation on the Tenant to pay the additional sums as set out in clause 5(4) of the lease. Clause 5 (4) is the covenant by the Tenant to pay the service charge and makes reference to Fifth Schedule. The Fifth Schedule sets out the service charge mechanism. This makes provision for the payment of an interim service charge to be paid quarterly on 1 January, 1 April, 1 July and 1 October in each year. There are the usual provisions for the recover of any service charge expenditure which is in excess of the interim payment and for any surplus amounts to be credited to future accounts or to be set aside for the reserve fund.

Inspection:

10. Due to the nature of this application and the absence of any submissions on behalf of the Respondents, the Tribunal dealt with the matter on the papers received and did not make an inspection of the flat or the development.

The Determination:

11. This case was set down for determination of the issues during the week commencing 4 January 2016. However, the Tribunal delayed its decision, whilst awaiting confirmation from the lawyers representing the Applicant that there had been full compliance with Direction 8 of the Directions

dated 6 October 2015. On receipt of that confirmation from Faldgate LLP the Tribunal proceeded to make its determination.

Representations:

Applicant's Case:

12. The Applicant's statement of case sets out the relevant lease provisions. It then schedules the service charge sums demanded for 2009 to 2015 of £24,051.81, sums paid of £535.25, leaving a balance of £23,516.56.
13. There is a witness statement from Satish Lakhani, who is employed by SRL Accountancy and Bookkeeping Services Limited and acting as an account manager for Pointwest Management Services Ltd. It is explained that the Respondents have been in arrears since 1 April 2008 and copies of the service charge statement for the flat and invoices are provided. Reminders as to payment of the arrears were sent out on 20 October 2014 and 11 March 2015. There was a response from the Respondents by means of a handwritten note. This was referred to in paragraph 4 of this decision. There is also a note of a telephone conversation with one of the Respondents, who for convenience calls herself Karen. This telephone conversation took place on 4 April 2015 and stated that a sum of £4,000 would be paid by 17 April 2015 and the remainder within either two weeks or months. A final reminder was sent of 22 April 2015. Included in the bundle are copies of all the relevant service charge demands and the reminder notices. All these documents have been sent to the subject address.

Respondents' Case:

14. There were no representations made by the Respondents or on their behalf.

Tribunal's Decision:

15. The Respondents have not engaged in this process to any extent. All the invoices for service charges were sent to the subject address and it is noted that in the Application form the address given for the Respondents is also the subject flat. The evidence of a handwritten note from one of the Respondents on 20 March 2015 seems to be in response to the reminders for late payments and suggests that they were on notice of the problems and appear to have received communication on the case. It just appears that they have not engaged in the current application. They have not complied with the Directions and the Tribunal can only take this as the Respondents having no dispute with the service charge sums.

16. From the documentation on the file, it is apparent that Point West is a significant building on Cromwell Road. The Charges Register for the building under title number BGL26695 has 730 entries. There is extensive car parking at the development and flats up to at least the eighteenth floor. This is a building that will have significant services. The annual service charges being claimed from the Respondents range from £2,618.55 in 2010 to £5,209.82 in 2015. Whilst the Tribunal has no specific details of the service charge accounts, it would appear that very generally the annual service charge are within a range that would be expected for this type of development. Accordingly and due to the lack of any dispute on the part of the Respondents the Tribunal determines that the service charges being claimed and totalling £23,516.56 are reasonable and payable. In coming to this decision the Tribunal emphasises that this decision is made on the unique facts of this case that there are no submissions from the Respondents about the level of the service charges. This decision should not impact upon the matters being considered for 363 Point West, which will be considered on the evidence in that case.

Chairman: *Helen C Bowers*

Date: *20 January 2016*

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix 1

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 of 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 Liability to pay service charges: jurisdiction

(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 subject of determination by a court, or
 - (d) has been 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.