

12303



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

**Case Reference** : **LON/00AH/LAC/2017/0012**

**Property** : **Flat 1 Beta Court, 119 Sydenham Road Croydon CR0 2EZ**

**Applicant** : **Solarbeta Management Company Limited**

**Representatives** : **Mr Pandit (Solicitor)**

**Respondent** : **Adetinuoke Akindele**

**Representative** : **Mr Akinbisehin**

**Type of Application** : **Reasonableness of and liability for service charges and/or administration charges under the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002**

**Tribunal Members** : **Professor Robert M. Abbey (Solicitor)  
Sarah Redmond MRICS (Chartered Surveyor)**

**Date and venue of Paper Based Decision** : **16th August 2017 at 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **24th August 2017**

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**DECISION**

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## **Decisions of the tribunal**

1. The Tribunal determines that £4,645.80 legal costs or fees are reasonable.
2. The reasons for our decision are set out below.

## **The application and procedural background**

3. The applicant has made an application for a determination as to liability to pay an administration charge or for the variation of a fixed administration charge pursuant to the terms of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
4. The applicant is the management company set up to manage the block in which the property is located and where the leaseholder of the property held under a long lease is the respondent. The lease of the property is dated 30 November 2006 and is for a term of 125 years from the 1<sup>st</sup> January 2006 and the applicant is the original lessee.
5. The applicant's claim covers legal costs incurred in tribunal proceedings under case reference LON/OOAH/LSC/2016/0443. At a directions hearing on 20 June 2017 Judge Andrew listed four issues. First whether the costs are a variable administration charge within the meaning of Schedule 11 of the 2002 Act, secondly if so whether they are payable under the terms of the lease, thirdly whether the previous decision made under the above reference precluded the recovery of costs and finally whether the costs are reasonable in amount.
6. The relevant legal provisions relating to this matter are set out in the Appendix to this decision and rights of appeal made available to parties to this dispute are set out in an Annex.

## **The hearing and decision**

7. Both the parties attended at the hearing and both made detailed submissions as to the matter of the claim for legal costs including the reasonableness of the proposed charges.
8. The first issue raised at the directions hearing was whether the costs are a variable administration charge within the meaning of Schedule 11 of the 2002 Act. On considering the terms of the statute the tribunal was satisfied that the costs were indeed a variable administration charge in that the costs are an amount payable by the tenant in addition to the rent which is payable, directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord or in connection with a breach (or alleged breach) of a covenant or condition in his lease. Furthermore a variable administration charge under the Act means an administration

charge payable by a tenant which is neither specified in the lease, nor calculated in accordance with a formula specified in the lease as is the case in this claim. At the previous hearing under the reference mentioned above it was decided that the respondent had not paid service charges and was ordered to do so and therefore this decision gave rise to this costs claim. Accordingly the costs are a variable administration charge.

9. The second issue identified by Judge Andrew was whether they are payable under the terms of the lease. In that regard, the applicant referred the tribunal to various lease clauses but also in the decision made in the previous hearing under the reference mentioned above, it was stated at paragraph 61 of the determination that "In our view paragraph 8 of the fourth schedule to the lease is clearly sufficiently wide enough to cover such legal costs....". On reviewing this paragraph this enables the enforcement of a proper contribution to the Management Company's expenses by all persons required to contribute. In the light of this and the other lease provisions as to the payment of costs the tribunal was satisfied that the costs claimed were payable under the terms of the lease of the property.
10. The third issue that arose from the directions hearing was whether the previous decision made under the above reference precluded the recovery of costs. The tribunal was of the view that on careful consideration of the previous decision that there was nothing in it that precluded recovery and that therefore the claim could proceed.
11. The fourth and final issue was whether the costs are reasonable in amount. The applicant supplied the tribunal with a bill of costs to be assessed along with details of the hourly rates for the lawyers involved in the work set out in the bill of costs. The relevant hourly rates were at grade D (110 per hour) and Grade A (£200 per hour). The bill of costs itemised various activities and then listed a description of work done for each activity followed by an amount of costs calculated on minute units so that one unit for the grade D fee earner would be claimed at £11.00. The solicitor's fees amounted to £2675 plus VAT (of £535) and copying charges of £681 and Counsel's fees of £1000 plus VAT (of £200) giving a Grand Total of £5091 being claimed by the applicant.
12. The tribunal listened carefully to the submissions made by the parties as to reasonableness of the costs and looked carefully at the bill of costs and also raised its own concerns with the applicant with regard to some elements of the claim. It looked at the item numbers as listed in the bill of costs from 1 through to 10 and dealt with each item in turn.
13. Item 1 was approved as drawn. Each item was separately listed and showed what the activity was and on what day and how many specific units of time were involved. This was an open and transparent method of listing the activities and seemed to the tribunal to be an appropriate and reasonable methodology to adopt. Thus the tribunal considered that all elements of

item 1 were reasonably charged. Item 2 was Counsels fee and VAT and were again approved as drawn as representing a reasonable amount for the work involved. Item 3 was much like item 1 and was therefore approved by the tribunal as drawn.

14. Items 4, 5, 6 and 7 were not listed in the same manner as the items that preceded them. These items referred to "Routine" letters or emails (other than those already accounted for) but with no actual entries, and for 5 which related to "Defendant" where the profit costs were confusingly listed as nil. The tribunal felt that these items were neither open not transparent and could not be related to particular activities as could be seen in items 1 to 3. In these circumstances the tribunal did not consider these charges for items 4 to 7 to be reasonable and therefore disallowed them.
15. Item 8 listed work for the band A fee earner at the higher fee level. When scrutinised by the tribunal the applicant confirmed that there was an error in the banding as one activity "email from client with documents upon instruction reviewed" should not have been charged at the higher rate as this was carried out by the band D fee earner. This therefore meant that these charges would be reduced by £107 to £110. In the light of this change the tribunal was then able to approve the charges as amended for item 8.
16. Finally the photocopying charges at item 10 were approved as reasonable, (at 25p per page) and item 9 being VAT was going to be reduced to follow the reduction in the legal costs set out above. Thus the total deductions amounted to £371 with VAT thereon of £74.20 giving a total of reduced costs and VAT of £445.20. After deducting this amount, the substituted Grand Total was £4645.80. (Thus the three final column totals would be (1) VAT at £660.80, (2) Disbursements of £1681 and finally (3) costs at £2304.) Therefore subject to these changes the tribunal was able to find the amended and reduced charges to be reasonable and thus payable by the respondent.

**Name:** Judge Professor Robert  
M. Abbey

**Date:** 24<sup>th</sup> August 2017

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11**

#### **Administration charges**

##### Part 1 Reasonableness of administration charges

##### Meaning of “administration charge”

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

2 A 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).

## 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.



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