13052

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UD/LSC/2018/0055**
Property	:	**3 Chantry Road,** **Bishop's Stortford,** **CM23 2SB**
Applicants	:	**Peter Grimley (flat 1)** **Mr. and Mrs. W Price (flat 2)** **Pamela Townsend (flat 5)** **Caroline Rutherford and Richard Waight (flat 6)** **Nicola Tait (flat 7)** **James Kennard (flat 9)** **Mr. and Mrs. N Freeborn (flat 10)** **Mr. and Mrs. D Shaw (Penthouse)** **Peter Horton (Coach House)**
Respondent	:	**Emery House Property Ltd.**
Date of application	:	**4th September 2018**
Type of Application	:	**To determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

---

1. The service charge 'invoice' for £680.00 on account of service charges dated 1st April 2018 for Apartment 7 attached to the application form is not proved to be reasonable. The administration fee of £170 in the 'statement of account' dated 15th May 2018 is therefore not reasonable. Similar invoices and administration fees claimed in respect of other flats are also not reasonable. Therefore, none of these monies are payable.

2. Furthermore, if the demands for service charges and administration charges were not accompanied by summaries of the rights and obligations of tenants pursuant to section 21B of the **Landlord and Tenant Act 1985** ("the 1985 Act") and Schedule 11 of the **Commonhold and Leasehold Reform Act**

2002 ("the 2002 Act"), then nothing would have been payable in any event.

3. No order as to costs save that the Tribunal makes orders pursuant to section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act preventing the Respondent from claiming any amount for representation within these proceedings as part of any future service charge or administration charge.

Reasons

Introduction

4. This application has been made by a number of long leaseholders of flats in the property with the freeholder as Respondent. The property is said to be a large Victorian house converted into 12 flats and a penthouse in the main building. There is said to be a separate coach house with its own freehold which shares some management costs. Unless the coach house is let on a long lease, the Tribunal would have no jurisdiction over that part of the management costs as it only has jurisdiction to adjudicate on disputes between landlords and tenants.

5. One 'demand' for service charges on account plus a further 'demand' for the same service charges with interest i.e. an administration charge, added are disputed.

6. The Tribunal made a directions order on the 21st September 2018 timetabling the case to a determination. As the argument seemed to be based only on contractual matters the Tribunal said that it would be content for the case to be determined on the basis of the papers and written representations. The appropriate notice was given with a clear proviso that if a party wanted an oral hearing then one would be arranged. For the same reason, the Tribunal indicated that it would not need to inspect the property but would consider any request for an inspection. No application has been made for either an inspection or an oral hearing.

7. The directions order stated that a single bundle of documents had to be filed. It is sad to note that the relationship between the parties appears to have broken down to such an extent that the Applicants have filed a substantial bundle including a short statement from the Respondent signed by E J McEleney. This has necessitated the Tribunal members having to read many statements, e-mails, minutes of meeting etc. which are really quite irrelevant to the matters within the jurisdiction of this Tribunal.

8. For this reason, the Tribunal will not be recounting all the various ancillary points raised. However, all parties can be rest assured that the Tribunal has spent a great deal of time reading everything that has been submitted.

9. In essence, the Applicants are wanting the Tribunal to investigate the conduct of Mr. McEleney and determine whether he or the freeholder, of which he is a shareholder and director, is guilty of breach of contract, breach of company law or the torts of nuisance and/or negligence. This is an expert Tribunal

whose sole task is to say whether particular service charges and administration charges are reasonable and payable. Any dispute about a possible breach of contract or company law must be dealt with by the civil courts in terms of claims for a declaration, injunction or damages.

The Lease

10. Two copy leases have been supplied in the bundle both relating to Plot 9 (postal number 7). It is not disputed that the Respondent is the freehold reversioner. It is a modern tripartite lease with Emery House (Bishop's Stortford) Management Company Ltd. being responsible for managing the property. Tucked away in the bundle at page T17-5 is a copy of the minutes of meeting held on the 22nd August 2016 that passed a Special Resolution changing the name from Emery House (Bishop's Stortford) Management Company Ltd. to Emery House Management Company Ltd.

11. Assuming that all the leases are in the same terms, they are fairly standard modern tripartite leases with the management company undertaking all the repairs and maintenance and passing on the cost to the long leaseholders by way of a service charge which can be collected in advance with reconciling accounts prepared at the end of each service charge year. The landlord arranges insurance.

12. The lease in the bundle is dated 19th July 2012 and is for a term of 125 years from 1st January 2011 with an increasing ground rent. There is some discussion in the papers that some of the long leaseholders contributed to the purchase of the freehold and part of the agreement was that they did not pay ground rent. However, there appears to be a dispute about that. The tenant agrees to pay a percentage of the service charges incurred which is split into 2 different shares.

13. Of relevance to the service charge demands, any claim for service charges on account is referred to in Schedule 3, Part 1 and such payments have to be reasonable expectations of service charges likely to be incurred. Interest is payable on unpaid service charge demands but only at the limited rate of 3% above The Royal Bank of Scotland base lending rate.

14. Clause 7.3.1 is the clause relied upon by the Respondent allowing it – so it says – to take over management from the management company. That can only happen when the management company shall "*make default in the performance of any of the covenants on its part herein contained*" or "*shall cease to exist*".

The Law

15. Section 27A of the 1985 Act says that an application can be made to this Tribunal for a determination as to whether a service charge is reasonable and/or payable. There are similar provisions relating to administration charges as defined by paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002**.

16. Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act permit the Tribunal to make orders preventing a landlord from recovering its costs of representation within Tribunal proceedings as part of any future service charge or administration charge.

Discussion

17. The Respondent's case is set out in a statement at page E1 in the bundle. It is quite short. The Tribunal has, as has been said, read the whole bundle but it will only refer to those matters which are relevant to its jurisdiction. As to the ability of the Respondent to manage the property, the statement says "*the previous managing agent resigned in July 2014 and PM Estates were appointed as managing agents by EHML without landlord or tenant knowledge or approval. When I discovered that Community Funds were covertly transferred from a secure bank account to an unsecured bank account owned by PM Estate, I intervened regularly in the management of Emery as I am entitled to do in accordance with the terms of the leases*".

18. This statement summarises all that is said by the Respondent about the issue and it seems very clear from the statements filed by or on behalf of the Applicants that there has been continued interference by the Respondent and/or Mr. McEleney since then in matters which are nothing to do with PM Estates. The leases do not say as Mr. McEleney suggests. There has to be a specific failure to perform a specific covenant or the management company must cease to exist. Neither Mr. McEleney nor the Respondent has explained why, several years after the PM Estates event, there is suddenly a claim for an undisclosed service charge on account for the period 1st April 2018 to 30th September 2018.

19. As to that demand, Mr. McEleney states that "*our objective is to manage and administer the Emery on a sustainable basis apart for* (sic) *adjustments for inflation with the management fee payable to Emery House Property Ltd. and capped at £2,000 per annum. It was not possible, or required under the terms of the leases to provide precise details of future expenditure, particularly due to neglect of problems such as the perilous state of the front steps last winter*".

20. He then refers to the definition in the leases of Provisional Service Charges i.e. "*such half yearly amount as in the reasonable opinion of the Manager (or in default the Landlord) fairly represents one half of the Service Charge for the current Accounting year*". The problem with this is firstly that the Respondent must show why it has assumed responsibility for management when the management company appears to be actively managing the property. Secondly when the Tribunal directs the Respondent to set out "*its justification in law and in practice for the service charges demanded*" and "*attach copies of service charge demands compliant with the*" 1985 Act, it should have done just that. It has done neither.

21. In other words, the Respondent has been ordered to justify its actions and has failed to do so. It has failed to give any explanation for why it is now

interfering with management and why it is of the view that the demand is reasonable i.e. how does it calculate the figure of £680? It can only be reasonable if it is based on some factual information.

22. Further, the interest claimed does not appear to bear any relationship to the base lending rate of the Royal Bank of Scotland even if interest was payable on the monies claimed.

Conclusions

23. The sad state of affairs set out in the papers cannot be resolved by this Tribunal. All it can do is determine whether particular service charges and administration charges are payable. Those identified by the applicants are the claims for service charges in the sum of £680 and administration charges of £170 which are presumably both claimed from each long leaseholder. The Tribunal is satisfied that neither are payable for the reasons stated.

24. As has been said, the complex issues raised because of various people being members and/or shareholders and/or directors of both the landlord and the management company with Mr. McEleney, in particular, appearing to assume some sort of overseeing role whilst now even trying to claim a management fee against the wishes of others was going to be a recipe for disaster.

25. Both 'sides' appear to have been taking legal advice and they will no doubt have been told that unless future conduct is agreed in writing and such agreement is stuck to, things will become very expensive in terms of litigation costs. An experienced and independent managing agent would appear to be necessary with a clear agreement about who would be authorised to liaise with such agent without interference from anyone else.

Costs

26. The Applicants seek orders preventing the Respondent from claiming costs of representation as part of a future service charge or administration charge. The Respondent's attention was drawn to this in the directions order referred to above and its representations were invited. No comment has been made. The Tribunal must determine whether it would be just and equitable for the landlord not to be able to recover the costs of representation. In view of the determination made in this case it is deemed just and equitable for such orders to be made as requested.

Bruce Edgington

.....

Bruce Edgington
Regional Judge
16th November 2018

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.