



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

Case Reference : **MAN/00CX/LSC/2018/0011 & 0012**

Property : **(1) Flats 4, 6, 7, 8, 11, 14 & 15
(2) Flat 2
9, Vincent Street, Bradford BD 1 2PJ**

Applicants : **VINCENT STREET (BRADFORD)
MANAGEMENT COMPANY LIMITED**

Respondent : **(1) BLUE MARLIN LIMITED
(2) PEDRO'S PROPERTIES LIMITED**

Type of Application : **Section 27A, Landlord and Tenant Act 1985**

Tribunal Members : **A M Davies, LLB
A Rawlence, MRICS**

Date of Decision : **26 March 2019**

DECISION

1. For each flat at 9 Vincent Street, Bradford owned by it, each Respondent shall pay the Applicant a service charge of one fifteenth of £8,262 (£550.80) for the period 14 July 2014 to 13 December 2015.
2. Pursuant to section 20C Landlord and Tenant Act 1985 the Applicant's costs of this application shall not be added to the service charge account.
3. In the event that any administration charge may have been payable to the Applicant under the terms of the lease, it shall be extinguished pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

REASONS

BACKGROUND

1. In or about 2008 B & C Properties Limited embarked on the conversion of its property at 9 Vincent Street into an apartment block. The company's building contractors were GB Properties (North) Limited and Astoria Properties Limited, both owned and managed by Mrs Churchill. The project ran into financial difficulties, owing Astoria Properties Limited a considerable sum. Mrs Churchill eventually accepted in settlement of the debt: the freehold interest in 9 Vincent Street, a basement flat in the property, and the only issued share in the Applicant, which was intended to manage the building.
2. A liquidator was appointed for Astoria Properties Limited on 27 October 2014. There were no funds for distribution to creditors.
3. Between September 2009 and February 2014 B & C Properties Limited, represented by its owner and manager Mr Brian Graves, granted leases of all flats in the property other than the basement flat. The First Respondent Blue Marlin Limited was the first leaseholder of flat numbers 4, 6, 7, 8, 11, 14 and took an assignment of flat 15. The Second Respondent Pedro's Properties Limited was the first leaseholder of flat 2. There were two other leaseholders with interests in flats at the property. None of the leaseholders became members of the Applicant management company.
4. On 13 December 2015 the Respondents and other leaseholders at 9 Vincent Street took over management of the building through the new management company they had set up: Vincent Street RTM Company Limited ("RTM").

THE COUNTY COURT ACTION

5. On 1 August 2017 the Applicant (represented by Mrs Churchill) issued County Court proceedings against the Respondents for payment of their contributions, under the terms of their leases, to the service charges incurred in relation to the building since 2010. The sum claimed from the First Respondent was £36,213, and from the Second Respondent, £4,526. The Respondents are part of the same group of companies, Centaur Property Group Limited, and have been jointly represented by the group's solicitor throughout.
6. Following a hearing on 30 October 2017, District Judge Wood sitting in the Harrogate County Court struck out those parts of the claim that referred to service charges accruing prior to (1) 13 August 2014 and (2) the dates of the Respondents' leases. As the lease dates are all prior to 13 August 2014, that date is the start date for any service charge claim by the Applicant, and the transfer of management functions to Vincent Street RTM Company Limited on 13 December 2015 is the end date.

7. After some transfers to other county courts, on 5 February 2018 the Applicant's claim was transferred to this Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("LTA 1985").
8. Mrs Churchill is said to have applied, or to be intending to apply, to have the Harrogate County Court order set aside, as she was not present at the hearing at which it was made. However no further order has been made as yet.

THE LAW

9. Section 27A of LTA1985 provides that an application may be made to the Tribunal for a determination as to what service charges are payable, by whom and to whom. The Tribunal will seek to ensure that the level of service charges is reasonable, given the standard of service provided.

THE LEASES

10. The Respondents' leases are in the same form. The term is 999 years from 1 January 2009, and the ground rent is £150 per year.
11. At clause 3 the tenant covenants to pay his proportion of the service charge quarterly in advance. There is provision at paragraph 8 of Schedule 3 for the proportion payable by each tenant to be varied, if the number of units in the property increases or decreases. In the same schedule the Applicant is required to prepare an annual account "*as soon as convenient after the end of each Financial Year*", and there is provision for any overpayment to be credited to the tenant in the following quarter. The service charge is to represent the cost to the Management Company of providing the services set out at Schedule 1, including "*all proper fees charges and expenses payable to such [managing] agents or such other person who may be managing the Development...*"
12. Under clause 5.1 of the lease, the cost of insuring the property is to be incurred by the Landlord and paid as Insurance Rent by the Management Company to the Landlord. Despite clause 5.3 of the lease, which makes provision for the Tenant to pay Insurance Rent directly to the Landlord on demand, it is common ground between the parties that such insurance costs are included in the Service Charge. The Tribunal was told that the present RTM company includes insurance costs in its service charge accounts.
13. Clause 4.2 of the lease contains a covenant on the part of the Landlord "*to observe and perform the covenants on the part of the Management Company.....for any period during which the Management Company fails to do so or during which time there is no Management Company.*" At Clause 8.3 the Tenant "*shall take all reasonable and necessary steps to become a member of or shareholder in the Management Company at all times that the benefit of this Lease is vested in him.*"

THE PROPERTY

14. The Tribunal inspected the common parts of the property briefly prior to the hearing in the presence of Mr Fernbank of the Respondent, the Respondents' counsel Mr Blackwood, a representative of the Respondents' solicitors, and the Respondent's caretaker or agent. The Applicant did not attend but indicated at the hearing that she had no objection to the inspection in her absence.
15. The common parts, on 3 floors, consist only of a bin store, corridors, stairs and fire doors, with lighting as appropriate. The corridors and stairs are not in good order, well decorated, or clean. The property is in a fairly insalubrious area of Bradford. There have been problems with damage to the front door, and the back door is permanently sealed against unlawful entry.

THE HEARING

16. At the hearing the Respondents were represented by counsel, and Mr Churchill spoke for Mrs Churchill, who was also present. The Tribunal had the benefit of a comprehensive bundle of documents supplied by the Respondents.

THE APPLICANT'S CASE

17. Mr Churchill explained that the basis of the claim was (a) the considerable amount of money he said Mrs Churchill, as Landlord of 9 Vincent Street, had loaned to the Applicant between 2010 and 2016 in order to maintain and insure the property, and (b) reimbursement for cleaning and management services provided by Mrs Churchill for which she had not yet been paid by the Applicant. While some payments had been recouped by the Applicant from other leaseholders within the property, the Respondents had not contributed to the common expenditure.
18. Because of financial difficulties, the leaseholders had, to a man, refused to become members of the Applicant or to take any part in its management functions. The procedures set out in the lease for the retention of financial records and preparation of annual accounts had not been followed by the Applicant. Mr Churchill explained that he and his wife had suffered severe financial losses over the project, and had not had funds to employ a solicitor, accountant or professional managing agent.
19. Between January and March 2016, shortly after the RTM company had taken over management of the building, Mrs Churchill determined to try to recoup for the Applicant, and therefore indirectly for herself, some of the expenditure she had incurred on behalf of the leaseholders. She put together a series of simple annual accounts for the Applicant, which were lodged at Companies House, and sent a document headed "invoice" to each of the Respondents, setting out her claim for the sums for which she subsequently sued in the County Court.
20. This Tribunal is only seised of those claims that relate to service charge costs incurred over a 17 month period to 13 December 2015.

Repairs	769
Electricity	758
Insurance	1445
Management	<u>3700</u>
Total	8262

31. COSTS

The Respondents requested a section 20C LTA 1985 order, which is granted. They also requested an order that, to the extent that any administration charge might otherwise be payable, it would be extinguished pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This is also granted.

32. Any other claim in respect to costs will be the subject of a further application.

26. Repairs: with no supporting documentation, Mrs Churchill's accounts show £1916 spent on repairs and maintenance in the service charge year to 31 March 2015 and £246 in the following year. These sums taken as an average over 37 weeks in the service charge year to 31 March 2015 and over the following 37 weeks to 13 December 2015, amount to £1538.46 in that period. The Tribunal heard from Mr Fernbank that there were regular problems with the front door, and the nature of the building is that repairs, replacement of light bulbs etc will be needed from time to time. The Tribunal halves the average figure to take account of the fact that there is no independent evidence of what was spent and when, and allows £769 as being a reasonable figure for this element of the management costs.

27. Electricity: Mr Churchill told the Tribunal that electricity was supplied to the common parts at all times, and was paid for by direct debit. However no invoices were received from the electricity supplier at any relevant time. The Tribunal accepts the modest figures for electricity shown in the statements of account, which apportioned for the 37 weeks to 31 March 2015 amount to £386.28, and for the subsequent 37 weeks, £371.48, making a total of £757.76 for electricity costs.

28. Insurance: the Respondents told the Tribunal that they had not been able to obtain insurance details from Mrs Churchill, and had therefore insured their own interests in their leasehold flats in the building. Nevertheless, the Applicant had insured the building for the year ended 5 March 2015 for a premium of £2276.38, and the interests of third parties or the leaseholders' mortgagees were, where relevant, noted on the policy. The cost from 14 July 2014 to 4 March 2015 (33 weeks) was £1445. Mrs Churchill did not claim that the Applicant had paid for insurance beyond 4 March 2015.

29. Management: Mr Churchill explained that the Applicant's management of the building had been charged at £50 per week, although no invoice had been produced other than the annual statement which Mrs Churchill had headed "invoice". In addition, the accounts show a sundry expenses entry which Mr Churchill said was to cover office sundries, minor purchases and postage, and also an annual charge of £500 for preparing accounts. The Tribunal considers that the Applicant is entitled to charge for managing the building but that that charge should include work on accounts and the sundry expenses. On that basis, £50 per week is a reasonable sum and for the 74 week period in question amounts to £3700.

CONCLUSION

30. The contribution for each flat in the building should be one fifteenth, to include the 14 leasehold flats (there is no flat 13) and Mrs Churchill's basement flat. Each Respondent is therefore to pay a service charge for the 17 month period in question amounting to one fifteenth of the following:

	£
Cleaning	1590

THE RESPONDENTS' CASE

21. Mr Blackwood for the Respondents denied that the sums claimed by the Applicant had been expended on its behalf by Mrs Churchill. He pointed out that despite directions orders and many requests, the Applicant had not been able to produce receipts or invoices to support the sums said to have been paid or the costs said to have been incurred. The only direct documentary evidence of expenditure was an invoice from insurance brokers giving £2276.38 as the premium payable for the 12 months following 5 March 2014.
22. The Respondents pointed out that there was no third party corroboration of the sums Mrs Churchill was seeking to have reimbursed to her by the Applicant, or indeed of any management or other work having been carried out, except an undated statement by Mr Brian Graves, who was not present at the hearing. Mr Fernbank said that he was unaware that either Mrs Churchill or the Applicant had carried out any cleaning, repairs or other work at the property.

DECISION

23. Having heard Mr Churchill and having read the Applicant's statements and documents, the Tribunal accepts that Mrs Churchill and the Applicant carried out management and other duties at the property, and that the Applicant has not been reimbursed by the Respondents for the cost of such duties. The Tribunal considers that the Respondents have had the benefit of some level of expenditure at the property during the period prior to the transfer of management functions to their RTM company, and that it is fair and reasonable to expect them to pay a contribution towards it.
24. Figures have been provided by the Applicant in its annual accounts. No figures have been supplied by the Respondents to show what the service charge costs have been under RTM management, except that Mr Fernbank said that the cleaners now charge £9 per hour. The Tribunal has considered whether the Applicant's figures are reasonable in the light of the size and quality of the building and has made its determination in relation to each element of expenditure as follows.
25. Cleaning: Mrs Churchill claimed that she had attended the property to clean the common parts 3 times a week in the service charge year ending 31 March 2015. Her charge for this, as shown in the statements she prepared subsequently, was £40 per week, although she did not produce weekly or monthly invoices. From 14 July 2014 to the end of the service charge year is 37 weeks, and the cleaning charge for that period was therefore £1480. In the period 1 April 2015 to 13 December 2015 Mrs Churchill said that she was unable to carry out cleaning to the same extent, and her charge, as shown in the account she prepared, is only £110. The Tribunal therefore assesses the Applicant's cleaning costs to which the Respondents should contribute at £1590.