FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AF/LSC/2020/0379**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 4 Camden Wood, 48 Yester Road, Chislehurst, BR7 5HR**
Applicant	**:**	**Craig Stephen Travis and Sanjukta Travis**
Representative	**:**	**In person**
Respondent	**:**	**Manorstyle Limited**
Representative	**:**	**Donald McClure (Company Secretary)**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Robert Latham** **Mark Taylor MRICS**
Date and Venue	**:**	**17 September 2021 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**24 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The Applicants provided a Bundle of Documents which totalled 146 pages.

Decisions of the tribunal

(1) The Tribunal finds that the interim service charges of £215.13 which were demanded on 12 June and 13 August are payable and reasonable.

(2) The Tribunal is satisfied that these have been demanded in accordance with the terms of the lease.

(3) The Tribunal finds that the service charge items specified in the Service Charge Account for the year ended 30 September 2020 are payable under the terms of the lease and are reasonable. However, the Respondent has failed to make any lawful demand for the balance of £227.76 which would otherwise be payable by the Applicants.

(4) The Tribunal determines that the Respondent shall pay the Applicants £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicants.

The Application

1. By an application issued on 9 December 2020, the Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable to the Respondent in respect of the flat which they occupy at Flat 4 Camden Wood, 48 Yester Road, Chislehurst, BR7 5HR ("the Flat").

2. The application was listed for hearing on 4 June 2021. The Tribunal was unable to determine the application as the Applicants had not prepared a Bundle of Documents in accordance with the Directions which had been given by the Tribunal. The Tribunal therefore treated it as a Case Management Hearing and issued further Directions. The Tribunal identified the following issues to be determined:

   (i) The timing of charges and interval (whether annual or quarterly) of service charge demands on account for service charge years 2019-20, 2020-21 and in all future years ("**Issue 1**").

   (ii) The reasonableness and payability of charges for year 2019-2020 in respect of (a) Building Insurance; (b) Gardening and (c) Accountancy fees ("**Issue 2**"). The respective position of the parties is set out in a Scott Schedule (at p.43-44).

   (iii) whether an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2020 or Section 20C of the 1985 Act. The Respondent confirmed that it does not intend to pass on any of its costs either against the Applicants or through the service charge.

(iv) whether the Respondent should be required to refund to the Applicants the tribunal fees of £300 which they have paid.

The Hearing

3. The Applicants appeared in person and both gave evidence. The Respondent was represented by Donald McClune, the Secretary of the Respondent and lessee of Flat 1. He was assisted by Mr James Keenan, the lessee of Flat 5. Both gave evidence. Mrs Mary McClune and Mrs Ekaterina Keenan observed the hearing.

4. It was apparent that there is considerable ill will between the parties. Mr and Mrs Travis have no confidence in the manner in which the Respondent Company is being managed. Mr Travis was a director, but resigned in October 2020. Mrs Travis was reluctant to focus on the issues that the Tribunal has been asked to determine, and sought to take every opportunity to ventilate further allegations of misconduct against her fellow lessees. The Tribunal was not willing to permit her to do so.

5. The jurisdiction of the Tribunal under the 1985 Act is restricted to determining the payability and reasonableness of any service charges which have been demanded. This requires the Tribunal to determine whether these charges have been demanded in accordance with the terms of the lease. It is not the role of the Tribunal to carry out an audit of how this Building has been managed or to usurp the jurisdiction of the Companies Court in respect of the management of the Respondent Company.

The Background

6. Camden Wood is a substantial Victorian building. The lease for Flat 4 is dated 10 November 1982. Shortly after the leases were granted, the lessees acquired the freehold of the building and established the Respondent Company. Each lessee is both a shareholder and a director of the Company.

7. On 6 July 2006, the Applicants acquired the leasehold interest in the Flat. The Flat has two bedrooms. Over the past five years, there have been four different firms of managing agents. To appoint one unsatisfactory managing agent might be regarded as a misfortune; to appoint four over such a short period suggests that the fault rather lies elsewhere.

8. This Tribunal is required to determine the service charges payable for the financial year 1 October 2019 to 30 September 2020. In September 2019, VFM Procurement were appointed to manage the Building. Their contract was terminated on 1 April 2020, when the Respondent assumed responsibility for its management.

9. In 2016, the Respondent sold a plot of land for £14,000. This has provided the Company with a reserve from which to fund any shortfall in the service charge account. The Applicants are critical of the manner in which the Respondent has handled this reserve. However, this is not a service charge reserve fund for the purposes of the 1985 Act.

10. This fund must be distinguished from any service charge contribution paid by a lessee pursuant to the terms of their leases. The lease permits the Respondent to establish a reserve fund. Section 42 of the Landlord and Tenant Act 1987 requires a landlord to hold any such contribution on trust for the contributing tenants. Any such fund should be identified in the Service Charge Accounts.

Issue 1: The Interpretation of the Lease

11. The Applicant's lease is dated 10 November 1982 (at p.118-145 of the Bundle). The lease is granted for a term of 99 years from 25 March 1982. The lease was granted by Robert Dennis Lloyd in 1982, before the Respondent Company was established.

12. By Clause 3(e), the Lessee covenants to "contribute and pay on demand" their proportion of all costs, charges and expenses from time to time incurred or to be incurred by the Lessor in performing and carrying out the obligations under Part VI of the Schedule to the lease. It is common ground that the Applicants are liable for 11% of the external expenditure and 21.25% of the expenditure relating to the maintenance of the internal common parts. Flats 1 and 1A do not have the benefit or contribute to the maintenance of the internal common parts. The Tribunal was told that in 2019/20, the lessees maintained the internal common parts, so the expenditure only relates to service charges for which the Applicants are liable to pay 11%.

13. Parts V, VI and VII of the Schedule relate to the operation of the service charge. The Service Charge Year is 1 October to 30 September (Part 6, paragraph 8). Part V makes provision for the payment of an advance service charge. In the first year (1982/3), there is a fixed payment of £50, excluding insurance. Thereafter, on 30 September, the Lessee covenants to pay "a fair and reasonable interim payment" on account of the service charge contribution that will be required for the following year.

14. Part VI specifies the Lessor's obligations in respect of the repair, maintenance and insurance of the Building. The Lessor covenants to keep service charge accounts (Paragraph 8) which are to be prepared and audited by a qualified accountant (Paragraph 9).

15. Paragraph 8 provides that "an account shall be taken" on 30 September. Within two months of this date, the Lessor shall serve on the Lessee a notice in writing in respect of the service charge accounts together with

an estimate of the amount required for the following year (Paragraph 10):

(i) If the expenditure exceeds the budgeted expenditure, the Lessee shall pay their share of the shortfall within 14 days of service of the notice (Paragraph 11(a)).

(ii) If the expenditure is less than the budgeted expenditure, the Lessor has the option of either refunding the surplus to the Lessee or crediting it to their service charge account for the following year (Paragraph 11(b)).

16. Paragraph 12 specifies various powers which are reserved to the Lessee which include powers to:

(i) operate a reserve fund ((a));

(ii) to engage managing agents ((g));

(iii) where no managing agents are engaged, to charge a management fee not exceeding 15% of the total expenditure.

17. The position of Mrs Travers with regard to the payment of an interim service charge was not entirely clear. At times she suggested that no interim service charge was payable. She then suggested that this was restricted to the figure of £50 increased by inflation. It became apparent that her real concern was that the Respondent's interim service charge was neither fair nor reasonable, but that the budget had rather been "bloated". The Applicants have only been willing to contribute to the bills which they have considered to have been properly incurred (see their record of payments at p.58-59). No service charge regime can be operated on this basis.

18. Mr McClune conceded that VFM Procurement had not issued any demand for an interim service charge whilst they managed the Building between 30 September 2019 and 31 March 2020. Having assumed responsibility for the management of the Building on 1 April 2020, the Respondent had issued interim service charge demands on 28 June and 13 August 2020. In future years, the Respondent proposed to issue quarterly interim service charge demands in December, March, June and September.

19. The Tribunal is satisfied that the lease makes provision for the payment of an interim service charge. That demand could have been demanded as early as 30 September 2019 for the service charge year 1 October 2019 to 30 September 2020. The interim service charge should reflect what the landlord (or its managing agent) determines to be "a fair and reasonable" payment in respect of the anticipated expenditure for the year. The sums to be included in any budget, will inevitably be estimates. The landlord

(or its managing agent) has a margin of discretion as to what levels of expenditure should be properly included.

20. The Tribunal is further satisfied that on a proper construction of the lease, the landlord is not restricted to making a single demand for an interim payment on 30 September of each year. This is rather the earliest date on which it could be demanded. Further, it is open to the landlord to collect it in four equal quarterly instalments. Were a tenant to prefer to stick to the letter of the lease and make a single annual payment when the first quarterly demand is made, it is most unlikely that the landlord would object.

Issue 2: The Service Charges Payable for 2019/20

21. From 1 October 2019, VFM Procurement was responsible for managing the Building. It had been appointed by the Respondent in August 2019. Its appointment ceased on 31 March. From 1 April 2020, the Respondent assumed responsibility for the management of the Building. During its period of management, VFM Procurement did not issue any demands for interim service charges for 2019/20. However, it did collect the service charges which were due for 2018/9 (see p.72-77). It also arranged for the Building to be insured. On 6 April 2020, the Applicants service charge account had a zero balance (p.76). However, they had made no payment for the 2019/20 service charge year.

22. In their application, the Applicants state that they "are shocked that a group of unqualified individuals on the basis of majority can take over the management of a block of 7 flats and demand funds without any means of redressal". It was not a group of individuals, but rather the Respondent, that assumed responsibility for the management of the Building. The lease permitted it to do so. The Respondent Company is managed by the directors. All the lessees are both shareholders and directors. The Board of Directors must act in the best interests of the Respondent Company. Any service charges levied must also be reasonable. The Applicants give no credit to the fact that their fellow lessees have managed the Building on a voluntary basis, without payment.

23. Having assumed responsibility for the management of the Building, the Respondent prepared a budget of £7,498.84 for 2019/20 (at p.90-92). The Applicants suggest that the budget was "bloated". We do not accept this and are satisfied that the budget is reasonable. On the basis of their 11% liability, the Respondent could have charged an interim service charge of £825 for the year. The Respondent rather decided to issue two quarterly demands of £215.13 dated 14 June 2020 (at p.87) and 13 August 2020 (at p.88). The Applicants have paid these sums under protest.

24. The Respondent arranged for Bells Accountants ("Bells") to produce audited service charge accounts for the years 2017/8, 2018/9 and 2019/20. These were provided on 16 December 2020 (see p.103). The Tribunal has only been provided the Accounts for 2019/20 (at p.62-66). This is the only service charge year which the Tribunal has been asked to consider. It would seem that managing agents have prepared accounts for previous years, but that these have not been audited as required by the lease. The Applicants suggest that Bells should not have been appointed as their registered address is the same as that used by a company owned by Mr and Mrs Keenan. The Applicants have not produced any evidence that Bells have failed to audit the accounts in a professional manner or that their appointment was improper.

25. The service charge expenditure for 2019/20 is £5,982, of which the Applicant's 11% share would be £658.02. They have paid interim service charge demands of £430.26, and are liable to pay an additional sum of £227.76. However, the Respondent has not yet issued a formal demand for this sum.

26. In their Scott Schedule (at p43-44), the Applicants challenge three items. First, they challenge the sum of £2,750 which is charged for the insurance of the Building. They claim that they have been charged twice: first by VFM Procurement, and secondly by the Respondent who has included it in the service charge accounts.

27. We reject this contention. Only one policy was taken out to insure the Building in 2019/20. The invoice from the brokers is at p.49. The invoice was settled by VFM Procurement on 2 March 2020. They paid for it from the Respondent's reserves. The Respondent was entitled to pass this on as a service charge expense for 2019/20. There is no element of double payment.

28. Secondly, the Applicants challenge the sum of £2,880 for gardening. Whilst this was included in the budget (at p.89), this sum was not expended. The Respondent state that gardeners were not available for much of the period due to Covid-19. The lessees therefore agreed to carry out the gardening on a voluntary basis, albeit that the Applicants did not assist with this. No charge appears in the final accounts for the year (see p.64). It is thus not a service charge for which the Applicants have been charged. The Applicant refer to an invoice for £1,750 from Ricky's Garden & Tree Care. However, this is dated 6 April 2021. This will appear in the 2020/21 Service Charge Accounts and is not part of the current application.

29. Thirdly, the Applicants challenge the sum of £1,200 allegedly charged for accountancy. Whilst the sum of £1,200 appears in the budget, only the sum of £924 appears in the Service Charge Accounts (see p.64). Bells prepared Service Charge Accounts for three years. Their fee of £250 for each year (+ VAT) is not unreasonable. The budget was based on Bells

producing a fourth set of accounts for 2016/7. They were unable to do so because of the lack of information in the handover documents. The Respondent had not obtained audited Accounts for 2017/8 and 2018/9; it was important that these should be obtained. The Tribunal notes that £540 had been included in the Service Charge Accounts for 2018/9 (p.56). However, nothing was included in the Service Charge Accounts for 2017/8. The Applicants have not challenged the charge of £540 which appears in the 2018/9 accounts. There has been no evidence of the invoice(s) to which this relates.

30. The Applicants complained an invoice of £7,821 for major works which had been settled by VFM Procurement had been transferred to the accounts for 2018/9. This is not a complaint that the Applicants have included in their Scott Schedule. At one stage, Mr Keenan suggested that the expenditure in 2019/20 had been £13,797.44 (see p.58). However, this is not confirmed by the audited accounts. The evidence adduced by both sides was confused and not entirely satisfactory.

31. The Tribunal has focused on the issues which we have been asked to determine which relate to the 2019/20 Service Charge Year. The Applicants' 11% share of the budget of £7,498.84 was £824.87. They have been charged, and have paid, interim service charges of £430.26. The Service Charge Accounts for 2019/20 are now available. The expenditure of £5,982 was significantly lower than that included in the budget. Their 11% share of the actual expenditure is £658.02. It is open to the Respondent to issue a further demand for the shortfall of £227.76. It has not yet done so.

Application under s.20C and refund of fees

32. At the end of the hearing, the Applicants applied for a refund of the tribunal fees of £300 which they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Whilst the Applicants have largely failed in their application, the Tribunal is concerned that the Respondent has not operated the service charge account in accordance with the terms of the lease. Audited service charge accounts for the years 2017/8, 2018/9 and 2019/20 were not obtained until 16 December 2020. It seems that audited accounts have not been obtained for 2016/7. In the circumstances, we are satisfied that it would be appropriate for the Respondent to refund 50% of the fees paid by the Applicants, namely £150.

33. Mr McClune confirmed that the Respondent does not intend to pass on any of its costs either against the Applicants or through the service charge. Therefore, it is not necessary to consider whether any orders should be made under either paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2020 or Section 20C of the 1985 Act.

The Next Steps

34. The Tribunal was concerned at the extent to which the relationship has broken down between the Applicants and their fellow lessees. The Respondent is entitled to manage the Building without the services of managing agents. However, the law in this area is complex and the Respondent's Board must ensure that service charges are demanded and audited accounts are maintained as required by the lease. Any reserve fund contributions should be kept in a separate account and held on trust for the lessees. The Board should consider obtaining professional advice on their obligations. The alternative is to appoint another firm of managing agents. Any such managing agents should be warned of the potential problems that they may need to confront. They may need to be assured that neither the Respondent nor any lessee/director/shareholder will unduly interfere in the day-to-day management of the Building. Their fees are likely to reflect the past problems that have arisen and the perceived problems of managing this Block.

Judge Robert Latham
24 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).