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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KF/LSC/2012/0135

Property	:	**135a Leighton Avenue, Leigh-on-Sea, Essex SS9 1PZ**
Applicant	:	**Michael William Stapleton**
Respondent	:	**Sarum Properties Ltd.**
Date of Application	:	**22nd October 2012**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Roland Thomas MRICS** **David Cox**
Date and venue of hearing	:	**6th February 2013, The Court House, 80 Victoria Avenue, Southend-on-Sea SS2 6EU**

DECISION

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1. The Tribunal refuses the Respondent's application for an adjournment.

2. The Tribunal finds that in respect of the amount claimed by the Respondent from the Applicant, the sum of £714.65 is reasonable and payable on the assumption that there is an implied term of the lease that the lessees in the building of which this property forms part should contribute half each to the landlord of the cost of insurance. Having said that, this Tribunal has no power to make such a declaratory order although a county court would presumably take note of this decision and its reasons.

3. None of the administration charges claimed are payable.

4. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent claiming its costs of representation before this Tribunal as part of any future service charge demand.

5. The Tribunal refuses the Applicant's request for an order to be made that the

Respondent pay him £500 in 'wasted' costs pursuant to paragraph 10 of Schedule 12 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act")

Reasons

Introduction

6. The Applicant purchased a leasehold interest in the property in April 2007 at auction. The Respondent is the freehold owner. Neither were parties to the original lease.

7. In his application, the Applicant simply says that he wants this Tribunal to determine the reasonableness and payability for "all years" without giving any detail. He also seeks an order pursuant to Section 20C of the 1985 Act preventing the Respondent from claiming its costs of representation before this Tribunal. He also points out that there is no provision in the lease for the recovery of such costs anyway.

8. A bundle has been supplied but it is not in accordance with the Tribunal's directions. There is no copy of the application form or the directions order. What is clear from the copy documents supplied is that neither party appears to have been particularly pro-active in trying to sort out the difficulty which has arisen between the parties. It is clear that the Applicant was made aware of some arrears of service charge almost immediately after the auction. His solicitors confirm this in a letter dated 10th April 2007 although the amount and the Applicant's position with regard thereto are not clear from that early correspondence.

9. In essence, the Respondent's case in the bundle is that there are substantial arrears of service charges totalling £3,395.47 which go back to a time before the Applicant's purchase of his leasehold interest. The Applicant, in turn, says that he has not received sufficient detail of the claim and the Respondent says that it has sent statements of account which, it claims, are sufficient. There is no indication from the papers as to whether the Applicant has exercised his right to inspect the books of account and copy invoices. As he is a well known chartered surveyor in the Southend area dealing with work involving long leases, the Tribunal assumes that he is aware of his rights in that regard.

10. From the documents supplied in the bundle it seems that the following monies are claimed to be due and reasonable:-

date	item	demands	credits	balance
		£	£	£
18.09.05	balance b/f	3,575.01		3,575.01
21.12.05	interim service charge	185.52		3,760.53
30.06.06	year end balance to 31.12.05		170.63	3,589.90
13.04.07	interim service charge	187.24		3,777.14
18.06.07	debt reminder charge	18.00		3,795.14
24.07.07	case preparation charge	40.00		3,835.40

26.07.07	year end balance to 31.12.06		162.02	3,673.12
24.06.07	year end balance to 31.12.07		157.87	3,515.25
08.12.08	charges written off		556.20	2,959.05
08.12.08	case preparation charge		40.00	2,919.05
08.12.08	debt reminder charge		18.00	2,901.05
03.06.09	year end balance to 31.12.08	205.00		3,106.05
03.09.09	debt reminder charge	21.00		3,127.05
29.09.09	case preparation charge	40.00		3,167.05
01.06.10	year end balance to 31.12.09	31.68		3,198.73
14.04.11	year end balance to 31.12.10	196.74		3,395.47

11. The day before the hearing, the Respondent produced further documents claiming insurance premiums totalling £535.90 for the 3 latest years commencing, respectively, 29th September 2010, 2011 and 2012. This makes the total amount they want paid to be £3,931.37.

12. The bundle includes service charge accounts in whole or in part for 2000 – 2011 inclusive. The accounts for 2000 refer to major works in the total sum of £4,027.26 and a structural engineer's fees of £1,881.35 being incurred in the year up to 31st December 2000. There is no indication in the accounts of what those works are although the documents submitted the day before the hearing include the Section 20 consultation documents and contractors invoices.

13. In 2001, the only expenditure seems to be insurance and accountancy. In the years 2002, 2003 and 2004, the pattern appears to have been very similar. There is a claim in 2003 for a risk assessment in the sum of £88.13 although the Tribunal notes from page 72 in the bundle that a letter has been written to the Applicant dated 8th December 2008 which appears to show £44.12 being credited back to Mr. Stapleton for 'health and safety' in 2003.

14. The statement of account set out above starts with a balance of £3,575.01 as at the 18th September 2005. In the 2005 service charge accounts there is, for the first time, a balance sheet which starts off, as would be usual in a balance sheet, with assets consisting of monies allegedly due from the lessees of £4,643.65 and then other items leaving a total assets position of £5,606.43. The largest liability is an overdrawn bank balance of £5,133.38. There is no indication as to how the brought forward 'balance' of £3,575.01 is made up.

15. After 2005, the various debits and credits in the service charge accounts are as set out in the statement above. Apart from an asbestos inspection in 2008 and three lots of health and safety work, the charges seem to consist solely of insurance and accountancy. The health and safety items appear to be risk assessments in 2003, 2008 and 2010. As has been said, the 2003 figure seems to have been credited back to the Applicant.

The Inspection

16. The members of the Tribunal considered the bundle of documents before the hearing and decided that an inspection of the property was not needed.

17. As described by the Respondent, the property is a 3 storey mid-terraced house of rendered brick construction under a tiled roof. The property was said to have been converted in 1984 and 135a is a maisonette on the first and second floors. There is a single communal front entrance door.

The Lease

18. The bundle contained a copy of the counterpart lease which is dated 19th October 1984 and is for a term of 99 years from the 25th June 1984 with an increasing ground rent.

19. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and the Applicant is liable to pay half of the total charges for the building. There is also an obligation on the landlord to insure the building but, oddly, there is no obligation on this lessee to pay anything towards this. This seems to have been an obvious drafting error and the Tribunal has no doubt that a court would imply a term into this lease that the two lessees should contribute half each to the insurance premium. It would not make any sense for the landlord to be required to insure the building without the ability to reclaim the premium from the lessees when the ground rent was likely to be substantially less than such premium. The evidence suggests that at least the lessee of the subject property has in fact made such payments on a voluntary basis.

20. There is no provision for payment of service charges in advance and no provision to allow the landlord to claim for management fees, accountancy fees or administration charges save for those incurred in preparation for the service of a notice of proposed forfeiture under Section 146 of the **Law of Property Act 1925**. There is no suggestion that the Respondent has decided to do so in this case.

The Law

21. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs' and which "*are incurred*".

22. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

23. Section 20C of the 1985 Act enables the Tribunal to make an order that a landlord is prevented from recovering its costs of representation before this Tribunal as part of any service charge.

24. Section 8 of the **Limitation Act 1980** says that the time limit for claims on a specialty i.e. payable under the terms of a deed, as in this case, is 12 years. If

the service charges had been claimable as rent, which they are not, then the limit would have been 6 years (Section 19).

25. Paragraph 10 of Schedule 12 to the 2002 Act enables a party to claim what are sometimes called 'wasted' costs i.e. those incurred unnecessarily because the other party has behaved unreasonably in connection with the proceedings themselves.

The Hearing

26. The hearing was attended by the Applicant only. The position is that 2 days before the hearing, a letter was received from Fiona Barnett from the Respondent's managing agents' Salisbury office to say that she had, that "*...morning, suffered an injury that impedes my mobility. I have taken medical advice that my injured ankle must be rested and I cannot therefore travel to the hearing in Southend-on-sea.*" She requested an adjournment. She does not say what the injury is or the length of the adjournment she seeks.

27. The Tribunal chair saw this letter in the evening and asked for a telephone call to be made pointing out that she had not said what was wrong or how long she wanted which causes the chair some concern. It was also pointed out that one of the reasons given in the evidence for it being convenient for these particular agents (Remus) to be instructed by the Respondent to manage this property was that they had a Chelmsford office which was within reasonably close proximity to Southend-on-Sea. It was presumed, from this assertion, that the administration of this account was undertaken at Chelmsford.

28. On the next day the Tribunal's Regional Manager spoke to Ms. Barnett who said (a) that her injury was to her ankle ligaments (b) that she would not be able to drive for at least 4-6 weeks, (c) that only senior managers attended LVT hearings and (d) that she would be able to give the Tribunal a lot of background information which, by implication at least, was not in the bundle.

29. In the meantime, the Applicant had written to the Tribunal office strongly objecting to the adjournment. He said that (a) he had consistently been asking for details of the claim and supporting material but these had still not been given and (b) the Respondent was saying that the lease extension for this property would not be completed until all the service charge arrears were paid. The terms for this lease extension had been determined by the Tribunal on 13th December 2012. If there was any unreasonable delay, the Applicant would be forced to make a completely unnecessary application to the county court for a vesting order. By the combined effect of Sub-sections 48(3)-(6) of the **Leasehold Reform, Housing and Urban Development Act 1993** an application to the court for a vesting order had to be made between 2 months and 4 months after the Tribunal's determination. Thus, an adjournment of the sort of time being requested would leave very little room for manoeuvre, even if Ms. Barnett was able to drive after 4-6 weeks which was by no means certain.

30. When Ms. Barnett was spoken to she was aware of the points being made by

the Applicant and her response was simply to say that she had nothing to do with the lease extension as it was being dealt with by the Respondent direct.

31. The Tribunal chair therefore caused a letter to be sent to her that day expressing sympathy as to her injury, pointing out that the lease extension point was a valid one, that the Respondent was a company and there had been time to instruct counsel or a solicitor and that Remus has a Chelmsford office and could therefore send someone. The letter also expressed concern at the proposal that further background information was going to be given in contravention of the Tribunal's directions order.

32. The chair also pointed out that the Tribunal's procedural regulations dictated that an adjournment could only be granted by a full Tribunal and there was insufficient time for the Tribunal to meet to discuss this issue before the hearing. Thus it would consider the application to adjourn at the hearing and arrangements should be made for someone to attend.

33. The Respondent's response to that was to send a 40 page e-mail to the Tribunal office including the Section 20 consultation documents and invoices from 2000, a submission on insurance, copy invoices for insurance for the last 3 years to be added to the claim and a copy of a previous LVT decision.

34. At the hearing, the Applicant continued his opposition to the adjournment. The Tribunal's case worker had not been into the Tribunal office and did not have a copy of the e-mail. However, the actual message was read over to the Tribunal chair by telephone. It assumed that an adjournment would be unlikely, attached the further documents and said that the material had not been produced before "*...as there was a distinct lack of clarity from Mr. Stapleton as to what specifically he was challenging*". The Applicant said that he could not be clear about what he was challenging because he had no details of the claim or any supporting documents. However, having been sent these documents the previous day, he was able to produce copies to the Tribunal which it considered.

35. At that stage, the Tribunal considered the application to adjourn. It was very concerned that Article 6 of the European Convention should be complied with. Would the Respondent have a fair hearing if the Tribunal proceeded? The Tribunal concluded that it would in these particular circumstances and it should refuse the adjournment. The unfortunate accident to Ms. Barnett had occurred on the morning of Monday 4th February which gave her time to make arrangements for the Respondent to be represented by someone else from Remus or by a solicitor or counsel. The hearing bundle was only 86 pages long and would have been about 100 pages if it had been properly prepared which meant that anyone 'picking this case up' would not have much to read. Further, the Tribunal was concerned as to why the Respondent company or a substantial firm of managing agents such as Remus did not have someone else who could have stepped in to help or at least a junior member of staff who could have driven Ms. Barnett to the hearing.

36. The Tribunal was also conscious of the fact that the further hearing would be fixed to suit Ms. Barnett, the Tribunal members, the Applicant, the hearing venue and the case worker. Thus, it was likely to be very close to or beyond the end of the 4 month time limit before which court proceedings would have to be issued for a vesting order. Her attitude that this was nothing to do with her was far from helpful. Finally, the Tribunal considered that the information in the bundle from the Respondent was sparse and that it had clearly been the intention of Ms. Barnett to produce upwards of 40 pages of additional material on the day of the hearing which was bound to produce protest from the Applicant and which was likely to have been excluded. At least by proceeding with the hearing, this additional documentation was actually considered. It was in the interests of justice that the hearing proceed.

37. The Applicant was told of the Tribunal's decision and he then argued that of the 3 invoices for insurance over the last 3 years, the first was for £162.11 for the year commencing 29th September 2010 but it did not say where it had been sent and did not contain any of the statutory notices. As it was dated 7th September 2010, it fell foul of the 18 month rule as he had not had notice of it. The second 2 invoices were addressed to the Applicant but his address was said to be "Ian Singleton, Trethowans, London Road Park Office, London Road, Salisbury, Wiltshire SP1 3HP". The Tribunal happened to know that Trethowans is a well known firm of Solicitors in Salisbury. Mr. Stapleton had never heard of them and had no idea why the invoices had been addressed to them. He had not seen them before but accepted that the insurance premiums of £177.99 and £195.80 were reasonable.

38. The Tribunal asked whether the Applicant had any other comments to make on the claim and the documents now supplied. He did not, save to say that since he purchased in 2007, he had never been asked for permission to have access for any health and safety check. He added that he wanted to make a claim for costs pursuant to Schedule 12 of the 2002 Act in view of the behaviour of the Respondent in not supplying any meaningful evidence until the day before the hearing.

39. At the end of the hearing, Mr. Stapleton said that he had paid some monies to the Respondent direct. Bearing in mind his profession, the Tribunal was taken aback to hear that he could not say how much had been paid or what for. When asked for a 'ball park' figure, he could not give one. When asked if he wanted some time to check the figures with his office, this was declined. After questioning, the Tribunal concluded that the amounts he had paid must have been in respect of ground rent with which this Tribunal is not concerned.

Conclusions

40. Dealing firstly with the level of service charges, it is the Tribunal's decision that the 12 year limitation period prevents any consideration of the claim for the period before February 2001. This ruled out the major works claim for £4,027.26 and the engineer's fees of £1,881.35. Of the remainder of the claim, there was sparse evidence. Even the accounts were not independently audited.

There was therefore a serious question about whether any monies should be payable, particularly when 2 of the latest invoices for insurance had apparently been addressed to a firm of solicitors unknown to the Applicant.

41. The Applicant did not really want to comment on the earlier claims but left it to the Tribunal to come to a decision. The Tribunal members were therefore left to use their considerable combined knowledge and experience in the absence of invoice evidence to support the accounts provided. In the absence of any real evidence one way or the other and bearing in mind that Remus are a substantial firm of managing agents, the Tribunal gives them the benefit of the doubt so far as demands for service charges are concerned i.e. that they were made at the time stated and with the necessary statutory material. With regard to the first insurance claim which Mr. Stapleton said fell foul of the 18 month rule, the Tribunal noted that the remittance advice form which was a tear off slip on the bottom of the invoice contained Mr. Stapleton's correct name and address and it is therefore reasonable to infer that it had been sent to him.

42. Any claim for accountancy, debt reminder, case preparation and those prior to February 2001 are not payable because they are either not claimable under the terms of the lease or they are statute barred. Having said that, it is important to note that Remus did in fact seek to recover management and accountancy charges at one time although they did credit them back. However, it is noted that they are still trying to collect administration charges even after the lack of power in the lease has been noted by them as is evidenced by the credits in the statement of account above. This is verging on unprofessional conduct.

43. The main problem for the Tribunal in trying to determine the amount due in this case is that there is no record of any payments having been made. It is self-evident that payments must have been made. It is said that in 2005 there were arrears of over £3,500 and yet in the statement at page 79 in the bundle dated 7th December 2012 (again addressed to Trethowans in Salisbury for some reason) which is quoted above, the amount then due is said to be £3,395.47. It is true that there had been a credit of about £550 but between 2005 and 2011, the claims for insurance premiums alone, as recorded in the accounts, came to £3,509.03 or, in respect of the subject property, one half of this amount i.e. £1,754.52. If no payments had been made, the amount now due would therefore be upwards of £5,000 not the much lower amount claimed.

44. The statement also refers to 'Year End Balancing' charges being recorded as receipts. The last one is for the year ending 31st December 2007 and the balance outstanding is then said to be £3,515.25 which is remarkably similar to the 2005 arrears figure of £3,575.01. It is clear that monies on account of service charges were actually demanded despite the lease not making any provision for such payments. The statement itself says so and the 2007 statement at page 68 in the bundle makes this clear. That statement also seems to show a payment of £185.52 having been made in 2005.

45. The only specific invoice evidence of service charges being incurred are the

Section 20 documents and invoices for the works in 2000 and 3 invoices for insurance for the last 3 years. The 2000 costs of some £5,908.61 or £2,954.31 per flat are now statute barred and irrecoverable. There is no record of how the 2005 arrears figure is made up but it is remarkably similar to the 2000 building works figure. The Tribunal concludes that, on the balance of probabilities, the arrears in 2005 were for the building works in 2000. Presumably there had been some dispute about them or an inability to pay on the part of the then lessee.

46. As at the end of 2007, the figure is virtually the same as in 2005 which indicates that the annual service charges being incurred were being paid. At page 72 in the bundle the letter written to the Applicant clearly admits that £849.84 had been wrongly charged to the service charge account between 1998 and 2007 for management fees, accountancy fees, time costs and the health and safety figure of £44.12 mentioned above. Some of this had already been credited back in 2003 but this left a credit due to the Applicant in the sum of £556.20.

47. The only claimable service charges since 2007 were the insurance premiums, the asbestos survey and the 2 health and safety checks. From the accounts the insurance premiums were £654.75 in 2008 and £465.87 in 2009. This totals £1,120.62 for the building or £560.31 for this flat which is almost exactly balanced out by the credit. The insurance claims for 2010, 2011 and 2012 set out above were accepted by the Applicant as being reasonable in the total sum of £535.90.

48. There is no explanation as to why the health and safety inspections in 2008 and 2010 were as high as £235 and £308.44 respectively when the one in 2003 was £88.13. Bearing in mind the 2003 figure and the Tribunal's knowledge and experience, it concludes that reasonable figures for the years 2008 and 2010 are £120 each. The common parts in this building are very limited. The fact that the Applicant did not receive a request for access is not particularly significant because the Respondent presumably has a key to the common entrance.

49. This just leaves the claim for £117.50 for the asbestos survey which the Tribunal finds to be reasonable. Thus the claims held to be reasonable and payable on the basis stated above i.e. that a court would declare that there is an implied term in the lease for the Applicant to pay half the insurance premiums, total as follows:-

Insurance 2010	£162.11
Insurance 2011	177.99
Insurance 2012	195.80
Asbestos check (½ of £117.50)	58.75
2008 and 2010 health & safety checks (½ of £240)	120.00
	£714.65

50. An order under Section 20C is made. There is actually no provision in the lease for the recovery of the costs of representation but attempts are now made from

time to time to include a claim for such costs as part of the costs incurred in the preparation and service of a forfeiture notice as stated above. Thus, and for the avoidance of doubt, this Tribunal makes the order requested. It is just and equitable that such an order is made.

51. No order is made pursuant to Schedule 12 of the 2002 Act. The Respondents have not been put on notice of such a claim; the Applicant has not quantified his claim and the Tribunal bears in mind that he is a self represented litigant and the Tribunal has found that monies are owing.

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Bruce Edgington
President
11th February 2013