

11572



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

Case References : **LON/00AH/LSC/2015/0453**

Property : **Various flats at Woburn & Bedford
Court, Wellesley Road, Croydon
CR0 2AF**

Applicant : **Mr John Hay –Arthur**

Representative : **Arko Property Management Ltd**
**(1) Mr & Mrs Asare-Addo, 43
Woburn Court**
(2) Mr P Dixon, 73 Woburn Court
**(3) Ms Hope Zimba, 63 Woburn
Court**
**(4) Mrs Peregrino-Addo, 31
Woburn Court**
(5) Mr P Samuel, 45 Woburn Court
(6) Miss H Sims, 16 Woburn Court
**(7) Zakiyyah Bano Hussain, 11
Woburn Court**
**(8) Mr D Lombardo & Mrs J
Howard, 7 Woburn Court**
(9) Mrs B Obeng, 35 Woburn Court

Respondents :

Representative : **N/A**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charge**

Tribunal Members : (1) Judge Amran Vance
(2) Mr J F Barlow, FRICS

Date of Decision : 21 March 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that the following amounts are payable by the Respondents, by way of service charge, in accordance with their apportioned contribution under the terms of their respective leases:

2013/14 Service Charge Year: £78,140

2014/15 Service Charge Year (estimated): £126,337.22

Background

2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (the "1985 Act") as to the amount of service charge payable by the Respondents in respect of various flats at Woburn & Bedford Court, Wellesley Road, Croydon, CR0 2AF for: (a) actual costs incurred for the year ending 24 December 2014; and (b) the estimated costs for the year ending 24 December 2015. The amounts in question are the same as referred to in the previous paragraph.
3. It appears that the flats are located in a purpose built development comprising a mixture of freehold town houses, leasehold maisonettes and leasehold town houses comprising 80 units in total ("the Estate"). The Applicant states in his statement of case that the freehold and leasehold town houses do not pay towards the costs of incurred in respect of the maisonettes but they do contribute towards the insurance of the Estate and the upkeep of its grounds, roadways and forecourts.
4. The Applicant has stated that a precocious agreement had been entered into by the freeholder and the lessees to refrain from any non-essential works to the Estate given that it was the freeholder's intention to sell the Estate to a developer following which
5. Numbers in brackets and in bold below refer to pages in the hearing bundle supplied by the Applicant for the purposes of the tribunal's determination.
6. The relevant legal provisions are set out in the Appendix to this decision.
7. The tribunal has been provided with a sample lease for maisonette 1 and garage, 65 Wellesley Road which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

8. When this application was received there were 67 lessees named as Respondents ("the Original Respondents"). By the date of a case management hearing ("CMH") on 19 November 2015 a number of the original Respondents had been removed as Respondents, leaving only the nine Respondents mentioned above. After the CMH this application proceeded against those nine Respondents except that in respect of seventh, eighth and ninth Respondents identified above it proceeded only in respect of the estimated costs of the 2014/15 service charge year (the costs of the 2013/14 service charge year no longer being in issue as against those three Respondents .
9. None of the Original Respondents attended the CMH except for Mr Anyasi of 7 Bedford Court who, it was agreed between the parties, should be removed as a Respondent.
10. Directions were issued by the tribunal on 19 November 2015 (the Directions") which provided for the application to be determined without a hearing, on the papers unless either party requested a hearing in which case it would be determined at a hearing. No party has requested a hearing and the application has therefore been determined on the papers.
11. The tribunal's directions required the Applicant's representative to serve a copy of its directions on the Respondents and on an Interested Party, Mrs M F Davis of Woburn and Bedford Residents Association ("WBCRA"). It also required the Applicant to send to the Respondents by 30 November 2015 all relevant service charge accounts and estimates for the years in dispute together all demands for payment and details of any payments made.
12. The Directions required the remaining Respondents, either individually or together, by 18 December 2015, to send the landlord a completed schedule in the form attached to the Directions setting out which items of costs were in dispute, the reasons why the amounts were disputed and the amount, if any, that they would be willing to pay for each disputed item. They were also directed to supply the Applicant, by that date, any alternative quotations or documents on which they wished to rely and a statement of case setting out their reasons for the challenge to the service charges.
13. On 11 January 2016 Arko Property Management ("Arko") notified the tribunal it had not received any correspondence from any of the lessees in response to the Directions. Following receipt of that letter the tribunal wrote to the Chairman of WBCRA on 15 January 2016 asking for an explanation as to why the Directions had not been complied with, what remedial action they proposed to take and why the tribunal should not bar them from taking any further part in these proceedings. Also on 15 January 2016 the tribunal wrote to Arko asking it to serve a

letter, in the same format as the tribunal's letter to the Chairman of WBCRA, on all the remaining Respondents.

14. Arko notified the Tribunal in a letter dated 19 January 2016 that it had sent the required letter to the remaining nine Respondents.
15. Arko subsequently sent emails to the tribunal on 26 and 27 January 2016 confirming that it had not received a statement of case or any correspondence from any of the remaining respondents in relation to this case.
16. On 28 January 2016, in response to a letter from the tribunal sent by email on the same date, Arko informed the tribunal that on 30 November 2015 it had sent to the Respondents and the Interested Party, by first class post, a copy of the Directions, copies of service charge accounts for the years in dispute and all related demands and details of payments made.
17. The Applicant's position is that as none of the remaining Respondents have complied with the Directions and as it has not received a statement of case or schedule of disputed charges from any of them it is not in a position to identify and respond to any challenge to the service charge costs identified in this application.

The tribunal's decision and reasons

18. The Applicant has assured this tribunal that it complied with the requirement in the Directions: to (a) provide a copy of those Directions to all remaining Respondents; and (b) provide them with copies of the relevant service charge accounts and other documents it was directed to provide by 30 November 2015.
19. Arko has also confirmed that no representations have been received by any of the remaining Respondents. Nor has the tribunal received any representations from any of the remaining Respondents except for an email received on 22 January 2016 from somebody called Dan (possibly from Mr Lombardo) acknowledging receipt of a letter dated 15 January 2016 but which did not identify any challenge to the costs sought.
20. Given the assurances from the Applicant and the complete absence of any challenge being raised by the Remaining Respondents the tribunal is of the view that it has no option but to determine that the costs sought are payable.
21. We have considered the 2013/14 service charge accounts and the 2014/15 budget and none

22. premium and the Premium Credit Charge are payable by the Respondent and that these costs have been reasonably incurred.
23. The tribunal has not received any communications from the Respondent and does not know why the sum demanded by the Applicant on 27 October 2014 has not been paid. He has not complied with the tribunal's directions to respond to the Application and has not provided any alternative insurance quotes. He has not sought to argue that the costs in issue have been unreasonably incurred or that they are unreasonable in amount.
24. The provisions of the lease referred to above impose a clear obligation on the Applicant to insure the Flat and for the Respondent to contribute towards that cost in a 50% share. The tribunal notes that the obligation on the Applicant is to insure the Flat and not the Building. However, the tribunal considers that this clause should be interpreted to include insuring the Building itself as it is unlikely that it would be possible to insure the Flat without also insuring the Building (given that the Flat comprises part of the Building). If that is incorrect, the tribunal is of the view that in seeking to insure the Flat it was a reasonable response for the Landlord to seek to insure the whole Building and then apportion the costs equally between the two flats comprising the Building.
25. In the absence of any evidence from the Respondent to the contrary the tribunal concludes that the sum demanded from him in respect of the insurance premium is payable by him and that the cost has been reasonably incurred.
26. In its Statement of Case the Applicant refers to the decisions in *Forcelux v Sweetman* [2001] 2 EGLR 173; *Berrycroft Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [1997] 1 EGLR] 47; and *Avon Estates (London) Limited v Sinclair Gardens Investments (Kensington) Ltd*.
27. The tribunal agrees with the Applicant's submission that those authorities support its' contentions that whilst the costs of services provided by a landlord must be reasonable the fact that they could have been obtained at a lesser cost does not necessarily mean that the actual cost is unreasonable and, further, that a landlord is not under an obligation to find and accept the cheapest possible premium. However, these issues do not fall to be determined in this Application as they are not issues raised by the Respondent.
28. As for the Premium Credit charge the Applicant has not explained why the taking out of this facility is necessary as opposed to the premium being paid in one payment. However, the tribunal notes the assertion in its Statement of Case that the Respondent has a history of non-payment of sums due under his lease resulting in five County court judgments

against him. If that is correct then it may explain why a credit facility is needed. In the absence of any specific challenge from the Respondent the tribunal determines that the sum of £20.63 is payable by him in respect of the Premium Credit charge and that the costs have been reasonably incurred. This is on the basis that the charge is a cost associated with securing insurance for the Building and therefore recoverable from the Applicant under clause 5.2.

Name: Amran Vance

Date: 3 February 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.