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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/21UD/LSC/2014/0073**
Property	:	**Allegria Court, Quarry Hill, St. Leonards, East Sussex, TN38 0HQ**
Applicant	:	**Allegria Court Management Co. Ltd** **Mr. De Bonis (Flat 8)** **Ms. N. Jackson (Flat 1)** **Mr. F. Rayner (Flat 2)** **Ms. M. Denny (Flat 6)**
Representative	:	**Mrs. F. Hatch as Director of the First named Applicant assisted by her husband Mr. S. Hatch**
Respondent	:	**Mr. C. Green (Flat 4)** **Ms. H. Norman (Flat 5)**
Type of Application	:	**Section 27A the Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge D. R. Whitney** **Mr. R. Wilkey FRICS**
Date and venue of Hearing	:	**17th February 2015** **Bexhill Town Hall**
Date of Decision	:	**17th March 2015**

DECISION

BACKGROUND

1. Application was made by the First named Applicant to determine various matters relating to the payment of service charges including a claim against a third named Respondent, Mr. Derwent George (Flat 7) dated 12th August 2014.

2. The First Applicant is the owner of the freehold of a property known as Allegria Court, Quarry Hill, St Leonards ("the Property"). The Respondents are owners of leasehold interests in the Property and each of the two named Respondents to this application are shareholders in the First named Applicant.

3. An oral pre trial review was held on 29th September 2014 and directions were given. These included joining the other Applicants all of whom were leaseholders in the Property and shareholders in the First Applicant.

4. Subsequently the claim against Mr Derwent George was withdrawn. The parties substantially have complied with the Directions made and the issues to be determined are the reasonableness and payability of service charges claimed by the First Applicant for the years 2012, 2013 and 2014.

THE LAW

5. The relevant section for this application are sections 19 and 27A of the Landlord and Tenant Act 1987 which are annexed hereto marked A.

INSPECTION

6. On the morning of the hearing the tribunal inspected the Property.

7. It was a substantial manor house on the hill overlooking the seafront at St Leonards. The tribunal was told it was the home of a renowned architect James Burton. It was believed to be about 100 years old and at some point had been converted into flats.

8. The Property was accessed via a driveway off Quarry Hill. To the front and side of the building was a gravelled car parking area. The main part of the house was arranged around a small court yard with a building to the one side. It was a substantial building which at a maximum height was some three stories and contained the tribunal was told some 9 flats. The tribunal only inspected the building externally save for walking through the communal hallway in the main part of the house.

9. The rear of the building, overlooking the seafront had some scaffolding erected in respect of chimney stack which had been removed. The parties

pointed out various areas where works had been undertaken or were required. Whilst it was clear some works had been undertaken from an external view it was apparent that major works would be needed imminently to the Property.

HEARING

10. Ms Hatch had highlighted that she had previously sat as a Magistrate at Brighton Magistrates Court and believed that Mr Wilkey may have done so also. Mr Wilkey agreed this was the case but that he had never sat with Mrs Hatch to the best of his knowledge. The parties were all asked if anyone wished to make any submissions on this point and no party did. The tribunal was satisfied that there was no conflict in Mr Wilkey being a member of the tribunal in this case.

11. The tribunal reminded the parties as to its jurisdiction under the law as set out in paragraph 5 above. In particular it was explained to the respondents that the tribunal had no jurisdiction to determine any matters relating to any question of loans made by them to the First Applicant company. Further the tribunal had no jurisdiction to determine what payments if any the Second Respondent, Ms Norman, may be entitled from the First Applicant as remuneration for any work she undertook for it.

12. Finally the tribunal reminded all parties with regards to any issues resulting from the removal of the chimney and any claims any party had against the other resulting from the same again given this did not relate to the service charges in question this was not a matter for the tribunal to determine.

13. The parties were all reminded that they must take their own independent legal advice and it was not for the tribunal to advise them.

14. The Respondents agreed that they were not looking to challenge the reasonableness or payability of the amounts claimed for insuring the Property in each of the years in question.

15. It was agreed by the parties and the tribunal the issues for determination were the method adopted in each year for calculating the service charge proportions and also the one off payment levied by the First Respondents agent dated 20th May 2013.
16. Ms Denny had indicated that she could not remain for the whole of the hearing. She had made a statement which was included in the bundle. No other party wished to question her upon her statement and the tribunal accepted the same.

17. Mrs Hatch explained that prior to the First Applicant acquiring the freehold it was believed that the service charge proportions had been calculated having regard to the rateable values of the flats when the leases had been originally granted in or about 1982. A copy of the relevant lease clause being (xix) of the Sixth Schedule is attached marked B. This refers to the proportion being

calculated by reference to "gross value". The clause provides that "the decision of the agent to the Lessor shall be final and binding on all parties". She relied upon an "Explanatory Time Line" included in the bundle at Section A. However after the enfranchisement of the block by the First Applicant the then directors (being the Respondents) changed the methodology and calculated the service charge based on floor areas.

18. In July 2012 the then board of the First Applicant reverted to the previous methodology and percentages which had been used prior to the enfranchisement. The Respondents objected to this change.

19. It was agreed the relevant section of the lease is The Sixth Schedule (xix) and a copy is annexed hereto marked B. This clause refers to the service charge percentages being based upon the gross value of the flats compared to that of the Property as a whole.

20. Mrs Hatch suggested that the flats had been bought and sold on the basis that the percentages charged to each flat would be as per those prior to enfranchisement and the First Applicant therefore had decided to revert to those percentages as being a fairer method of calculation. Mrs Hatch referred to G6 Appendix C of the bundle which was a spreadsheet setting out the percentages. Mrs Hatch she had no evidence of the rateable values within the bundle but believed that this method had not been controversial in the past and was a reasonable methodology of calculation of the charges.

21. In her submission this created certainty so that there was not any re-valuation or re-appraisal every few years and that certain of the leaseholders had been unhappy as to the calculation of floor areas and whether this had been accurately undertaken.

22. The relevant invoices for the two Respondents relating to the one off charge were to be found at D5 and D15 of the bundle.

23. There was discussion as to what the one off payment was for and whether this was to pay previous managing agents who were replaced in or about June 2012 or some form of interim charge. The tribunal was directed to D23 which appeared to be a document created by the new managing agent and was titled "Budget March 2013 to February 2014". This referred to a sum of £3671.22 being required to clear the outstanding debt and when the percentages were applied to this this matched the amounts claimed from the two Respondents as a one off payment.

24. Mrs Hatch explained the company was in a very difficult position as it appeared there was some conflict with the previous agents and monies were required. Mrs Hatch referred the tribunal to The Seventh Schedule and particularly clause 4 (iii) as allowing an interim charge.

25. The other Applicants supported the First Applicant in its submissions to the tribunal.

26. The Respondents stated that they took advice after the enfranchisement and determined that a square footage method was more appropriate as in they did not believe rateable values existed. Copies of some of the advice was within the bundle. The Respondents were concerned as to the methodology used and whether it was appropriate as it may not encourage people to maintain their flats.

27. Ms Norman explained she had offered to pay but had not tendered any money and now did not have the money to pay. She accepted the transition between agents had been difficult but it was not clear what she was being asked to pay as to the one off amounts. She had surmised that it may have been due to certain works to another leaseholders flat but it was clear now having had the evidence that this was not the case. She was still however unclear as to what the charge was for.

28. Mr Green endorsed and supported the submissions of Ms Norman.

29. In reply Mrs Hatch accepted that the service charge clause did cause problems but felt capital values may be affected by the particular outlook of a flat. She accepted perhaps some of the documentation relating to the service charges could have been clearer. She stated that the Respondents were both shareholders in the company and therefore obtained documents as to its running and stated the company would prefer them to be involved as directors.

DETERMINATION

30. At the end of the hearing the tribunal reminded the parties that whatever it determined all the parties to this application would need to work together for the benefit of the Property as a whole. Without there being some consensus they would never move forward and inevitably they would find themselves involved in further litigation possibly involving this tribunal. The parties were urged to try and communicate to resolve their difficulties.

31. As to the first issue relating to the method of calculation the tribunal reminds itself that it must look to the lease. Whilst the form of lease may be said from a modern stand point to be less than ideal it has not been varied. The tribunal determines that the First Applicant is entitled to revert to the previous percentages determined when the leasehold structure was first established.

32. In reaching this determination it does not seek to criticise the earlier method used after the enfranchisement. However it is satisfied having regard to the terms of the lease that the First Applicant as freeholder was entitled under the lease to revert to this earlier model.

33. The lease refers to "gross value" with no explanation as to the methodology being adopted. This tribunal is satisfied that a calculation by reference to rateable values or similar would comply with the clause relating to calculation of the service charge proportions. Certainly it seems that this methodology had been adopted without challenge for many years prior to the enfranchisement. The First Applicants agent has accepted this as a method. The tribunal accepts it is not the only method but is satisfied that this is a fair and reasonable method in accordance with the lease terms and which has been determined by the First Applicant's agent. This tribunal also reminds itself that in such circumstances we should be reluctant to overturn such decisions unless it is manifestly unfair or unreasonable.

34. The tribunal finds that for each of the years in question the methodology applied for calculating the service charges as set out in the First Applicants application being for years 2012 to 2014 was reasonable and is payable by the two Respondents subject to our below determination in respect of the "one off" charge made in 2013.

35. The tribunal was not satisfied that the Respondents are liable to pay the "one off" charge levied by way of invoices dated 20th May 2013. No evidence was adduced as to what this was for whether by way of witness statements form the agent or invoices supporting the same. None of the Applicants were able to give any wholly convincing evidence as to what it was for.

36. Whilst the tribunal has no doubt, at what plainly was a difficult time for the First Applicant following the change of managing agent, that funds were required it is for them to demonstrate what these funds were used for. It may well be that they were some form of interim payment but this is unclear. Further the tribunal was not satisfied that under the lease such a payment could be levied at this time. The lease sets out the accounting periods and how and when charges can be levied and for what period none of which corresponded with the periods referred to in the evidence before this tribunal.

37. The tribunal reminds the parties that the lease is the document which must be adhered to in determining how and when monies can be demanded.

38. This determination gave the tribunal little satisfaction given it was plain that this is relatively small block looking to manage its affairs. What was plain is that as ever communication between the parties is key.

Judge D. R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX A

Sections 27A, 19 and 20 of the Landlord and Tenant Act 1985

Section 27A Liability to pay service charges: jurisdiction

(1)An application may be made to a leasehold valuation 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 a leasehold valuation 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.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination— .

(a)in a particular manner, or .

(b)on particular evidence, .

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

19 Limitation of service charges: reasonableness. .

(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 provision 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.

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

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(a)complied with in relation to the works or agreement, or

(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

ANNEX B

(xviii) (a) THE Lessee shall not assign underlet or charge or part with the possession of part only of the demised premises

(b) THE Lessee shall within 21 days of the date of every assignment underlease grant of probate or administration assent transfer mortgage charge or discharge order of Court or other event or document relating to the term give notice thereof in writing to the Lessor and in the case of a document send a certified copy thereof to the Lessor's Solicitors for the time being with a registration fee of five pounds

(xix) THE Lessee shall keep the Lessor indemnified from and against due proportionate part of all costs charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule hereto such proportionate part to be calculated on the basis of the relation that the gross value of the demised premises bears to the aggregate gross value of the property and in case of dispute the decision of the agent to the Lessor shall be final and binding on all parties

(xx) THE Lessee shall on the execution hereof and thereafter on the first day of every year during the continuance of this demise pay to the Lessor on account of the Lessee's obligations under the last preceding clause an advance amounting to:

(a) for the period ending on the

(b) for each subsequent year on the first day of January in such year