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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/42UH/LSC/2016/0023**
Property	:	**Flat 6 The Homestead, South Green, Southwold, Suffolk IP18 6EX**
Applicant	:	**The Homestead (Southwold) Management Co. Ltd.**
Respondent	:	**Margaret J. Garton**
Date of application	:	**16th March 2016**
Type of Application	:	**To determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair) David Brown FRICS**

DECISION

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1. Of the service charges claimed from the Respondent of £2,431.08 for the period 20th April to 31st December 2015, the determination of this Tribunal is that all of that was payable at the time of the demand less any costs incurred by the Applicant in filing its company accounts and return at Companies House.

2. If the demand for service charges was not accompanied by a summary of the rights and obligations of tenants pursuant to section 21B of the **Landlord and Tenant Act 1985** ("the 1985 Act"), then nothing is payable until such a summary is served.

3. No order as to costs save that the Tribunal makes an order pursuant to section 20C of the 1985 Act preventing the Applicant from claiming any amount for representation within these proceedings as part of any future service charge.

Reasons

Introduction

4. The property is on the top floor of a 3 storey building including 4 flats and 3 maisonettes formerly owned by the brewery company called Adnams & Co. Ltd. In 1961, that company granted the long lease of the property. The Respondent acquired her interest in 1996. The lease anticipated that the freehold title would be transferred to a lessee owned company for £1 but this did not happen. The freehold was acquired by the Applicant in 2013.

5. The Tribunal made a directions order on the 21st March 2016 timetabling the case to a determination. As the argument seemed to be based only on contractual matters the Tribunal said that it would be content for the case to be determined on the basis of the papers and written representations. The appropriate notice was given with a clear proviso that if a party wanted an oral hearing then one would be arranged. For the same reason, the Tribunal indicated that it would not need to inspect the property but would consider any request for an inspection. No application has been made for either an inspection or an oral hearing.

6. The directions order stated that a single bundle of documents had to be filed. It is sad to note that the relationship between the parties appears to have broken down to such an extent that each side has filed a substantial bundle. This has necessitated the Tribunal members having to read 2 bundles which contain many of the same or similar documents. As a simple example, the copy of the application form in the Applicant's bundle does not contain the account attached to the Tribunal's copy of the application which is a statement of service charges claimed from the Respondent only and appears to have been prepared by the managing agent. This is in the Respondent's version of the bundle. It illustrates how careful the Tribunal has had to be.

7. The point should be made that large sections of the documents consist of explanations for what has happened and the reasons which, by and large, are irrelevant to the simple issues raised by the Applicant. For this reason, the Tribunal will not be recounting all the various ancillary points raised. However, both parties can be rest assured that the Tribunal has spent a great deal of time reading everything that has been submitted.

8. The application asks the Tribunal to determine the payability of service charges for 2016. However, the statement of service charges attached related to 2015. The issues upon which the Applicant requires a determination can be summarised as:-

    a. Can the landlord just make a demand for payment at any time and expect payment within 21 days and
    b. Can the landlord recover accountant's fees as part of the service charges?

9. Paragraph 14 of the Respondent's statement of case refers to the Applicant's statement of case and then contains the rather enigmatic statement "*attached to the Statement of Case was a one page document to the Service Charge for 2015 (not 2016).....it is anticipated (save for Issue Two below) that the Account will be susceptible to agreement*". The Issue Two referred to is a denial that the Applicant can recover its 'statutory costs' which are defined as

being the cost of filing its accounts and annual return.

The Lease

10. This dispute relates to the contractual relationship between the parties. The lease is the contract and both parties are bound by it unless it is varied either by specific and clear agreement or by this Tribunal. To suggest that *estoppel* is relevant is misconceived particularly when the category of *estoppel* referred to is not defined. As has been said any agreement to change the terms of a sealed document such as a lease, needs to be clear and unequivocal.

11. The lease is dated 16th May 1961 and is for a term expiring on the 31st December 2959 with a ground rent of £25 per annum payable on the 1st January each year without any indication whether it is in advance or in arrears. The tenant agrees to pay 17.14% of the service charges incurred.

12. Of relevance to the service charge demands, the lessee covenants in clause 2 to observe obligations set out in the Sixth Schedule clause 19 of the Sixth Schedule says:

> *"The Tenant shall within twenty-one days after the service by the Landlord on the Tenant of a notice in writing stating the proportionate amount due from the Tenant to the Landlord pursuant to Clause 18 of this Schedule for the accounting period to which the notice relates pay to the Landlords or be entitled to receive from the Landlords the balance by which the said proportionate amount respectively exceeds or falls short of the rent paid by the Tenant to the Landlords pursuant to clause 1 of this Schedule"*

13. Clause 18 of that Schedule simply says that the tenant shall indemnify the landlord *"from and against 17.14 per centum of all costs charges and expenses* ***incurred*** *by the Landlords"* (emphasis added) in maintaining the structure etc. of the building. In other words, the costs etc. have to have been incurred before they are payable by the tenants.

14. Of relevance to the question of accountants' fees, clause16 of the same Schedule starts off by referring to regulations but it then goes on to say:

> *"Any costs charges or expenses incurred by the Landlords in.....providing services.....shall be deemed to have been properly incurred by the Landlords in pursuance of its obligations under the Seventh Schedule hereto notwithstanding the absence of any specific covenants by the Landlords to incur the same and the Tenant shall keep the Landlords indemnified from and against his due proportion thereof under Clause 18 of this Schedule accordingly".*

The Law

15. Section 27A of the **Landlord and Tenant Act 1985** ("1985 Act") says that an application can be made to this Tribunal for a determination as to whether a service charge is payable. No such application can be made if a service

charge has been 'agreed or admitted by the tenant'. There are similar provisions relating to administration charges as defined by paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002**.

Conclusions

16. The answer to these problems lies in the need for the Tribunal to consider how the contractual position should be interpreted. The lease is not a model of clarity but, in this Tribunal's view, it contains sufficient to enable conclusions to be drawn about the issues raised.

17. The Respondent, in her statement of case says that the figures in the Applicant's statement of case i.e. £2,431.08 for the period up to 31st December 2015 are 'susceptible to agreement' less the Applicant's costs of filing its accounts and annual return. Indeed a payment has been made of £2,073.83 which is said to be 'without prejudice' whatever that may mean for a payment of money. Presumably this was intended to mean that it was a payment under protest.

18. In the document referred to, there is no indication of the amount of any cost claimed to cover the Applicant filing its accounts and annual return. The only conclusion the Tribunal can draw is that the amount of £2,431.08 less such costs is agreed as the service charge for the period up to 31st December 2015.

19. Thus, there are 3 issues i.e. the way service charges are demanded, the accountants' costs of preparing the accounts and he Applicants costs of filing its accounts and annual return.

20. On the **first of those issues**, the Tribunal looks to the Sixth Schedule which makes it clear that the service charge accounting period is linked inextricably to the rent payment. In other words, the ordinary meaning of the words used leads the Tribunal to conclude that after the 1st January in each year, the landlord should prepare a written service charge demand for the year up to 31st December in the previous year and which shall be payable within 21 days. It shall take the rent into account by, in reality, deducting it from the service charges due. This is reinforced by paragraph 7 of the Seventh Schedule which states that the landlord must keep an account 'for each calendar year'.

21. There is clearly no provision in the lease for payments on account of service charges. This may not please the Applicant but it knew that when it bought the leases. The fact that it has no money is not relevant in law. The covenant by the landlord to keep the building in repair is not dependent on the tenants paying for such repairs in advance or at the moment costs have been incurred.

22. On the **second issue**, clause16 of the Sixth Schedule clearly provides that expenses such as an accountants' fee for the preparation of service charge accounts could be collected if they are reasonable. Having said that, the service charge statements seen by the Tribunal would indicate that they have not been prepared by accountants and it may be that the disbursement of £378 in favour of Place Campbell Accountants is for dealing with the matters complained of by the Respondent. If so, they are not payable.

23. On the **third issue**, the costs and expenses of the internal management of a limited company are not service charges. It is a service to the landlord and not to the tenants. Such costs are not recoverable as part of the service charges. It should be remembered that company accounts are not service charge accounts. The reasonable cost of preparing service charge accounts would be recoverable.

The Future

24. There is discussion in the papers that some of the tenants in this building having signed documents of variation to rectify the service charge regime. Copies are in the Applicant's bundle. The Applicant could also apply to this Tribunal to vary a lease if it does not provide adequately for the collection of service charges.

25. A variation by consensus would be better and cheaper for all sides. The variations seen by the Tribunal are not, with respect to the Applicant, adequate or sensible. There should be proper deeds of variation which would be registered at the Land Registry so that the present tenants and any buyer of a flat would be bound by the provisions.

26. Modern leases acknowledge that a ground rent provides no profit for a landlord. There needs to be a service charge regime which allows a landlord to maintain the property properly without going into debt to do it. This should include a clear regime for payments on account and for a reserve fund to be set up. The accounting period should be set out and provision for proper demands and reconciliation soon after the end of the service charge year.

Costs

27. The Respondent seeks an order preventing the Applicant from claiming their costs of representation as part of a future service charge. The Tribunal must determine whether it would be just and equitable for the landlord not to be able to recover the costs of representation. In view of the determination made in this case it is deemed just and equitable for such an order to be made as requested.

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Bruce Edgington
Regional Judge
16th May 2016

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.