



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

**Case Reference** : **MAN/00BU/LSC/2016/0020**

**Property** : **5, Bowden Court, 14, Montague Road,  
Manchester M16 6QT**

**Applicant** : **John Frazer**

**Respondent** : **Contour Property Services Limited**  
**Represented by** : **Lachlan Mclean, Solicitor**

**Type of Application** : **Landlord and Tenant Act 1985, Section 27A  
payability of service charges**

**Tribunal Members** : **Mr J R Rimmer**  
**Mr M Bennett**

**Date of Decision** : **8<sup>th</sup> November 2016**

**Decision**

## Decision

**The service charges specified in the lease are Payable annually in advance in accordance with the terms of the lease.**

### **Application and background**

- 1 The Applicant is the leasehold owner of the flat at 5, Bowden Court, 14, Montague Road, Manchester. The Respondent is the management company established to service the development under the provisions of the long leases for this and other flats in the development. A copy of the lease for Flat 5 has been provided to the Tribunal.
- 2 By common consent the service charges under the lease have been collected monthly over the year to which they have related. This might at this stage be termed neutrally as an “arrangement” entered into between the leaseholders and the original landlords at the time of the construction of the building and has been adhered to by Respondent since it acquired the management responsibilities under the lease.
- 3 For reasons set out later the Respondent seeks to establish that the service charges are recoverable annually in advance in accordance with the terms of the lease and that they are not bound to collect them on a monthly basis as has been the case until now.
- 4 It is the Applicant’s contention that the lease is not clear as to the entitlement to collect the charges annually, but, if it is, the lease has been superceded by an agreement entered into by the parties at the time of the negotiations for the original sale of flats by the developer.
- 5 The Tribunal has had the benefit of extensive submissions provided by both the Applicant and the Respondent and comprehensive bundles of documents prepared for the hearing. All these were considered by the Tribunal during the course of its deliberations.

### **The lease**

- 6 The lease contains provisions relating to the service charges at several points within it. It is not necessary to consider them all as the single issue between the parties is the manner and period over which those charges are collected.
- 7 Part 1 of Schedule 6 to the lease provides that  
“ The Management Company shall as soon as practicable after the 1<sup>st</sup> day of January in each year prepare estimates of the sums to be spent by it on the matters specified in part II of this schedule (“Estimated Management

Costs”) for such year in respect of (the services) And shall forthwith thereafter notify the Buyer of such Estimated Management Costs. The buyer shall within 14 calendar days of receipt of demand therefor pay the Maintenance Charge to the Management Company (or to the Company if the Company is carrying out the obligations of the management Company under the provisions of paragraph 3(a) of the Fourth Schedule.”

- 8 Thereafter “The management Company shall in respect of each calendar year keep accounts of the sums spent by it on the matters specified... (Actual management Costs) ...and shall as soon as reasonably practicable after the end of each calendar year notify the buyer of the Actual Management Costs incurred during such year and the amount of the Estimated management Costs for the current year notified to the buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account any excess or deficiency in the Actual management Costs incurred in the preceding year”

### **The Law**

- 9 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:
- (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
- 10 Further section 27A Landlord and Tenant Act 1985 provides:
- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

## **The evidence and submissions**

- 11 The initial application made by Mr Frazer is admirably short in its contention that there was an agreement entered into at the time of his original purchase that service charges would be collected monthly, this had continued ever since and hardship would be caused by changing to an annual payment in advance. Subsequent correspondence was provided from other leaseholders confirming an understanding as to such an agreement.
- 12 On behalf of the Respondent Mr McLean assisted by witness statements from two members of staff of the Management Company sought to justify both the reason for the change (the end to any cross-subsidy from the group of which the management company was a part to provide "up-front" cash flow for costs being incurred prior to monthly payments by leaseholders) and the legal entitlement to change according to the terms of the lease.
- 13 A number of legal authorities were provided, (they are set out at some length both in the written submissions of Mr McLean and additionally, with Mr Frazer's consent, at the hearing), to support the principle that the content and meaning of a deed cannot be altered by subsequent oral negotiations.
- 14 Mr Mclean was reluctant to accept that there was sufficient evidence of any agreement with the original developer to allow monthly payments to be made, or, alternatively, if there was such an agreement then what its precise terms and effect were.
- 15 He was adamant that the lease provided for annual payments in advance, 14 days after the estimate of costs was provided to the leaseholder(s) and all the terms of the lease referred to the assessment and payment of the service charge on an annual basis.
- 16 Mr Frazer disagreed. His view is that a clear agreement was entered into with the developer, the frequent references in the lease to yearly costs were simply references in accounting terms as to the period over which they were assessed and even Part 1 of Schedule 6 to the lease was not as clear about annual payments as Mr McLean suggested.
- 17 The Tribunal entered into lengthy consideration with both parties as to whether the discussions with the developer, if accepted as having taken place, in relation to monthly payments, were prior to the execution of the lease rather after and after. If so were they to be regarded as contractual terms, representations (innocent or otherwise) or "mere puffs" during negotiations.

18 The Respondent indicated that its intention was to establish its entitlement to annual payments in advance without necessarily moving immediately to that position: having regard to leaseholders circumstances, some shorter periods for instalments would be appropriate. The parties had discussed this but were some way apart in their views and the matter had therefore proceeded to the hearing.

### **The Determination**

19 The Tribunal reached a number of conclusions during its deliberations upon the matters raised:

- It is entirely satisfied, from the information provided by the Applicant, supported by the letters from other leaseholders and evidenced by the conduct of all parties since the granting of the leases that an agreement had been entered into for service charges to be collected on a monthly basis. The precise nature of the agreement may now be difficult to establish.
- This had been negotiated with the contractor (Wimpey's) prior to the execution of the leases for the original purchasers.
- As such, the Tribunal was not here considering an attempt to effect an oral variation at any point after the execution of the lease. Those legal authorities proposed by the Respondent upon that point were of no assistance.
- The Tribunal is satisfied that representations had been made to the leaseholders prior to executing their leases and those leases subsequently failed to reflect the position that the parties understood to apply to the collection of the service charges.
- The written terms of the lease prevail over any such oral representations until such time as any remedy is sought in relation to them, which is beyond the jurisdiction of this Tribunal in relation to this application. Alternatively, if the payment provisions were intended, as contractual terms, to supplant, or expand, the terms of the lease those written terms prevail.
- The Tribunal is satisfied that the obligation in Part 1 of Schedule 6 to the lease is quite clear in that payment should be made in full 14 days after the estimate of annual service charge costs is delivered to the leaseholder.
- If the Respondent now seeks to rely upon that provision it is not within the power of the Applicant or the Tribunal to oblige the Respondent to maintain the existing arrangement for the future.

20 The Tribunal is conscious that the reason for the Respondent's actions (already noted above) is the removal of any cash flow subsidy in respect of costs incurred before monthly payments would be received. There will now be, if the Respondent relies fully upon its entitlement, a consequential front loading in its favour from payment of the service charge before costs are incurred over the year and it is hoped that this can be mitigated in favour of leaseholders so far as possible.