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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**69 Granary Court, Haslers Lane, Great Dunmow, Essex CM6 1BW**
Applicants	:	**Michael Reeve and Teresa Reeve**
Respondent	:	**G & O Estates**
Case number	:	**CAM/22UQ/LAC/2009/0008**
Date of Application	:	**3rd November 2009**
Type of Application	:	**To determine an administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act")**
The Tribunal	:	**D.T. Robertson (Lawyer/Chairman) F.W. James FRICS D.W. Cox JP**
Date of the Hearing	:	**26th January 2010**
Venue for the Hearing	:	**The County Hotel Chelmsford, Rainsford Road, Chelmsford, Essex CM1 2PZ**
Appearances	:	**None. This is a case dealt with as a paper determination without an oral hearing.**

D E C I S I O N

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1. There is no liability on the Applicants to pay the Respondent an administration charge for the Lessors consent and the covenant as prescribed in Clause 3(13)(b) of the Lease.

2. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 preventing the Landlord from recovering costs incurred in connection with these proceedings in the event that the Lease permits such recovery.

REASONS

The Background of the Case

1. The Applicants apply to the Tribunal for a determination of a liability to pay and the reasonableness of a variable administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

2. The Application is the outcome of a letter of the 21st May 2009 from Urbanpoint Management Limited as managing agents for the Respondent to the Applicants. It suggests that the Property has been sub-let and if so requires that the tenancy is forthwith terminated or a retrospective application for landlords approval is made for which a fee of £500.00 plus VAT is demanded.

3. The Tribunal made directions on the 26th November 2009. The Respondent failed to provide a statement of reply to the application within the specified period. Its managing agents apologised and did later provide relevant information.

4. The application makes reference to a similar case relating to a block of flats at East Bergholt, Colchester, Essex. The Tribunal in directions requested further details but none have been provided by the Applicants.

5. The application makes a request for an order under Section 20C of the Landlord and Tenant Act 1985 to prevent the landlord from recovering costs incurred in connection with these proceedings as part of service charges in the future.

6. The Tribunal also noted that there are 8 other applications in the same development as this property which are awaiting the outcome of this case before they are processed further if necessary by the Tribunal Office.

The Law Applicable to this Case

7. Part I of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 deals with the reasonableness of administration charges. There does not appear to be any dispute between the parties that the charge in question is an "administration charge" as defined in paragraph 1 of Schedule 11.

8. The main paragraph for the Tribunal to consider initially is Clause 5(1). An application may be made to a Leasehold Valuation Tribunal for a determination whether an administrative charge is payable. If so the Tribunal then need to consider Clause 2 that provides that a variable administration

charge is payable only to the extent that the amount of the charge is reasonable.

9. It is therefore a matter of construction of the Lease to determine firstly whether a variable administration charge is payable and if so the reasonable sum that is to be paid.

The Lease

10. The Property is subject to a Lease dated the 23rd December 1987 between Furlong Brothers (Construction) Limited of the one part and David Kenneth Parsley of the other part. It is for a term of 125 years from the 25th day of December 1986 and the ground rent is initially £50.00 per annum.

11. The clauses of the Lease referred to in the application are 3(13) and 3(14).

12. 3(13) reads as follows:-

3(13) (a) not to assign underlet or part with the possession of part only of the Demised Premises (b) Not without the Lessors consent which shall not be unreasonably withheld to underlet (as distinct from assign) the Demised Premises for a term exceeding three months and to procure that such under-lessee shall on or before the underletting covenant direct with the Lessor to comply with the covenants on the part of the Lessee and conditions contained in this Lease.

13. 3(14) reads as follows:-

3(14) within one calendar month after any transfer or charge of this Lease and also every underlease of the Demised Premises for a term exceeding three months and also every Probate, Letters of Administration, Order of Court or other instrument effecting or evidencing a devolution of title to produce to the Lessor for purpose of registration particulars of the instrument in question and to pay the Lessor a fee of £10.00 (Ten Pounds) plus Value Added Tax in respect of each registration.

14. A lease of this nature would normally include a covenant by the lessee to pay to the lessor the costs and expenses (including professional fees) which the lessor incurs in dealing with any application by the lessee for consent or approval whether it is given or not. The Tribunal must consider if there is any provision in the lease which would have this effect.

Application by the Respondent that the Tribunal has no jurisdiction

15. The Respondent argues that if there is a subletting you must first consider if it is within the scope of the covenants in the Lease or outside that scope. If it is outside that scope then the Tribunal has no jurisdiction. The Respondent then progresses its argument by saying that if the underletting is within the scope of the covenants there should be a valid application for

approval as a prerequisite before the Tribunal can determine whether an administration charge is payable.

16. In this respect the Respondent highlights the case of 2 Juniper Court Case No. CAM/30UE/LAC/2009/0004 which the Tribunal has considered very carefully.

17. That case has very different facts. The issue in the other case was not whether the administration charge is payable but what would be a reasonable sum. In that case it appears that the tenant was trying to avoid the question of whether any underletting existed. In this case the tenant admits that there has been an underletting and on the balance of probabilities it is an assured shorthold tenancy of six months or more and therefore comes within the scope of the covenant in Clause 3(13) of the Lease.

18. The Tribunal also notes that directions were not dealt with on time and this issue of jurisdiction was raised at a comparatively late stage.

19. The Tribunal decides that it is not bound by the previous case of 2 Juniper Court which was considered on different facts and it considers that it does have jurisdiction to deal with this case. An application for consent should not be a prerequisite for the Tribunal deciding if an administration charge is payable.

Evidence and Conclusion

20. The Applicants put forward a straightforward case that they have taken legal advice and have been told that there is no provision in the Lease which makes the administration charge payable. There are a large number of written representations concerning what charge is reasonable and in relation to other issues. The Respondent does not deal with this initial fundamental point as to whether the administration charge is payable.

21. The Tribunal considered the Lease looking for a covenant that the lessee will pay the lessors costs and expenses in dealing with an application under Clause 3(13).

22. They first looked at Clause 3(11) which deals with various costs, charges and expenses with regard to specified notices but does not cover an application under Clause 3(13).

23. The Tribunal also considered Clause 4 of the Lease and although this refers to administration issues and managing agent charges it is in the context of service charges only and does not relate to an administration charge under Clause 3(13) of the Lease. The Tribunal did not think any implied covenant is appropriate.

24. The Tribunal must therefore come to the conclusion that under the provisions of Clause 5(1) of Schedule 11 of the Act there is no administration charge payable under the construction and interpretation of the Lease. The

representations as to whether the charge is reasonable do not have to be considered in this case.

25. The Tribunal wishes to highlight the distinction between Clause 3(13) and 3(14) of the Lease. Clause 3(13) relates to an application for consent to underlet and if granted a direct covenant by the under-tenant whereas Clause 3(14) relates to subsequent registration of the underlease. The Applicants complain that reference to a licence to underlet was not referred to until late on in the case. Clause 3(13) makes it clear that the underlessee shall on or before the underletting covenant direct with the lessor. This could be a separate deed of covenant but the document that would be most commonly used for this purpose is a licence to underlet as suggested by the Respondent.

26. The Tribunal then considered the application under Section 20(C) of the Landlord and Tenant Act 1985. This is not a service charge case therefore the issue is whether it is just and equitable to make the order sought whether or not the Lease might permit recovery. Bearing in mind the outcome of the case and the conduct of the parties the Tribunal decided that an order should be made as requested.

Duncan Robertson

D. T. ROBERTSON (Chair)
1st February 2010