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HM COURTS & TRIBUNALS SERVICE

MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

**LANDLORD AND TENANT ACT 1985
SECTION 27A (AND 19)**

**APPLICATION FOR THE DETERMINATION OF LIABILITY TO PAY
AND REASONABLENESS OF SERVICE CHARGES**

Applicant	Friel Investment Company Limited
Respondents	Dr R Ravikumar & Mrs V Ravikumar
Property	15 The Crossings, Uttoxeter Road, Stone ST15 8EQ
Date of application	26 April 2012
Members of the Committee	V Ward BSc Hons FRICS P Hawksworth
Date of Hearing	10 October 2012
Date of determination	05 DEC 2012

Application

- 1 On 26 April 2012, the Applicant, Friel Investment Company Limited, applied to the Leasehold Valuation Tribunal ("the Tribunal") for a determination under Section 27A (and 19) of the Landlord and Tenant Act 1985 ("the Act") for liability to pay and for reasonableness of a service charge levied in the years 2009, 2010 and 2011 in respect of 15 The Crossings, Uttoxeter Road, Stone ST15 8EQ ("the Property").

- 2 This matter had been transferred to the Leasehold Valuation Tribunal by Crewe County Court on the instructions of District Judge Pates – Case Number 1ZA01134. The action in the County Court was brought by The Applicant against the Respondents in respect of unpaid service charges. The Order transferring the matter is dated 4 November 2011.
- 3 By Directions issued by procedural chairman on 28 June 2012, the Tribunal directed that the application be dealt with on the basis of an oral hearing, as had been requested. Written representations were received from both parties and these were copied to either side.

Background

- 4 The Respondents are the lessees of the property and hold the residue of a 125 year term from 1 January 2006 granted by a Lease (“the Lease”) dated 16 November 2007 made between Friel Homes Limited as lessor and Dr Rathinam Ravikumar & Mrs Vijaya Ravikumar as lessees. The initial rent under the Lease is £125 per annum.
- 5 The Applicant is the freeholder of the property having acquired the interest in November 2008. The development is managed on the Applicants behalf by Messrs C P Bigwood.
- 6 The Application Form states that the Applicant seeks determination by the Tribunal for the liability to pay and reasonableness of specific service charge amounts as follows:
 - a. For the period of 1 July 2009 – 31 December 2009 - Service Charge of £21.61
 - b. For the period of 1 July 2010 – 31 December 2010 - Service Charge of £206.64
 - c. For the period of 10 February 2011 – the balance charge in the sum of £101.31
- 7 In their Statement of Case, the Respondents provided a copy of the “Reservation Agreement” completed by the Sales Agent when they agreed to purchase the property dated 21 May 2007 which indicated that the service charge was £581.12 per annum. The Respondents contended that, in effect the Applicants were limited to recovery, as a service charge, a figure based on the amount stated in the Reservation Agreement. The Respondents did not challenge any particular item or items within the Service Charge.

Inspection

- 8 On 10 October 2012 the Tribunal inspected the development known as The Crossings. The Applicant was represented at the Inspection and the subsequent Hearing by Robert Williams (“Mr Williams”), Barrister of Corner Stone Chambers and Ms Dianne van Aperen (“Ms van Aperen”), Senior Property Manager and Miss Beverley Wootton (“Miss Wootton”), Finance Manager, both of C P Bigwood, Managing Agents of the site.

The Crossings comprises of a development of twenty one properties of varied types including traditional housing albeit that these do not form part of this Decision.

The subject property comprises of a first floor flat which unfortunately the Tribunal was unable to inspect internally.

The Law

9 The Act provides:

Section 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 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 of subsequent charges or otherwise.

10 **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 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.

(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 as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

11 Section 20B Limitation of service charges: time limits on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

The Hearing

12 A Hearing was held at the offices of The Tribunal Service, Bennett House, Stoke on Trent on 10 October 2012. Present at the Hearing were the aforementioned parties on behalf of the Applicant and also Dr Ravikumar, the Respondent, on his own behalf and also that of Mrs Ravikumar.

13 The Tribunal initially asked the Applicant to confirm the amounts for which determination is sought. These are as follows:

- a. For the period of 1 July 2009 – 31 December 2009 - Service Charge of £21.61
- b. For the period of 1 July 2010 – 31 December 2010 - Service Charge of £206.64
- c. For the period of 10 February 2011 – the balance charge in the sum of £101.31

14 On behalf of the Applicant, Mr Williams stated that in his opinion the matter revolved around several key issues. Firstly, does the amount quoted on the

Reservation Agreement restrict the Applicant from charging any service charges other than this specific amount?

15 Secondly, Mr Williams considered the Tribunal must determine whether or not the Applicant is entitled to demand the balancing charges and also whether or not they were demanded in time.

16 Continuing, Mr Williams said that balancing charges for the service charge in years 2008 and 2009 were demanded too late under the terms of the Lease and accordingly these amounts were credited, however balancing charges for 2010 were issued correctly.

Commenting on the Respondents' statement, Mr Williams said he took objection to the Respondents' comment within his submission to the effect that "we request the Tribunal to set the correct level of service charge". Mr Williams stated that it is not the Tribunal's role to audit service charges and further he made the point that the Respondents had not specifically commented on any element of the service charge. In his opinion the Tribunal's role is to consider whether service charge is reasonable.

17 Mr Williams then called Miss Wootton to give evidence. Miss Wootton is a Finance Manager for C P Bigwood and deals with credit control matters regarding their development schemes and liaises with solicitors over court procedures where parties do not pay the charges. She confirmed that the Respondents purchased the property in November 2007 and the Reservation Agreement was completed by the sales office handling the disposals for the developer. When asked by the Tribunal as to why the service charge on the Reservation Agreement in the sum of £581.12 appeared very low, she said that the initial charge could have been set approximately two years before the properties were actually sold and it was an estimation in which there was no allowance for repairs. She indicated that the charge in future years was arrived at by considering the costs incurred in earlier years and then making allowances for necessary works. She also stated that they had not received objections from any other leaseholder.

18 Dr Ravikumar questioning Miss Wootton asked why the service charge had risen so much, Miss Wootton, with contributions from Ms van Aperen, reiterated the point in connection with allowing for repairs as the development aged, hence higher incidences of repair costs and the provision of a reserve fund raised the service charges. Dr Ravikumar did not accept this explanation and still considered that the rise in service charge from the original proposed charge was very high particularly when C P Bigwood were in theory experienced Property Managers.

19 Mr Williams then summed up on behalf of the Applicant. He said that the only issue for the Tribunal was whether the service charge was reasonable and considered that the amount in the reservation agreement was irrelevant. Continuing he said that the initial service charge was set from plans and further that the charge set in 2007 would obviously rise as time passes and certainly by the years in question. No specific points or queries in respect of the service charge have been raised by the

Respondents. Mr Williams said that to the best of his knowledge, the Respondents were represented when they acquired the property which the Tribunal confirmed with the Respondents. Mr Williams then confirmed the Lease terms under which the service charge is due and said that Dr Ravikumar had misinterpreted the Lease in as much as the account for the balancing charge must be served within two months of the year end, not twenty one days which was in fact the period within which the Lessee had to pay the same.

20 Dr Ravikumar referred the Tribunal to his Defence Statement and Counterclaim and to his Statement of Case entitled "Statement of Both Mr and Mrs Ravikumar at page 138 of the Trial bundle. Essentially, the Respondents' case can be summarised thus:

(a) They question the fact that legal fees have been incurred in such a substantial amount when nothing is owed, they contend, and the proceedings emanate from the small claims court;

(b) They question the reasonability of the service charge figures claimed saying:

"..... the property was sold with a written agreement (as per the enclosed reservation form) that the service charge per annum would be £581.12. While we understand that this is a variable amount, we do not believe it is proper to charge nearly double that amount in subsequent years"

In essence they rely on the figure contained in the Reservation Agreement (or Reservation Form) as setting the level of the Service Charge saying in their joint statement. Thus, it is the Respondent's contention that the Reservation Agreement is of binding effect in forming a basis on which the Service Charge is to be arrived at for subsequent years.

(c) They question the accounting arrangements between themselves and the Applicant maintaining that in fact, they do not owe anything by way of charges

(d) They contend that, contrary to the comments of the Applicant, they are not the only tenants in the development who are unhappy about the reasonability of the service charge. They have spoken to other tenants who have expressed similar concerns.

Determination

21 Having considered the provisions of the Lease, the Tribunal notes that the obligation for the tenant to pay a service charge is set out within several provisions of the Lease. Clause 2 of the Second Schedule contains an obligation "to pay the shares set out in Column 2 of the Fifth Schedule of (a) the expenses incurred by the Lessor in performing its obligation set out in Column 1 of Part 1 of the Fifth Schedule and (b) the discretionary expenses and other matters set out in Column 1 of Part 2 of the Fifth Schedule". The Sixth Schedule of the Lease deals with the method of accounting of the service charge and Clause 4 indicates that the Lessor shall within two months of the end of the accounting year provide a Notice in writing stating the

total amount of the Lessor's expenses for the preceding accounting year, including reserves certified in accordance with the terms of the lease and the Lessee's contribution. The method of payment of the service charge is set out in clause 3 of the same Schedule and specifically sub clause (d) states that within 21 days after being served by the Lessor with a Notice in writing stating the Lessee's final contribution for the year (certified in accordance with the Sixth Schedule), the Lessee must pay to the Lessor the amount by which the certified contribution exceeds the payment made on account.

22 Upon the Tribunal's inspection of the development it was found that the communal areas were generally kept reasonable with no apparent issues.

23 One of the crucial questions to be decided when considering the service charge position in this case, is the effect of the Reservation Agreement or Reservation Form. Did that Agreement comprise a representation that induced the Respondents to enter into the lease or agreement for lease? Does it have binding effect, so as to now limit the service charge that can be now claimed? Does it cause issues of proprietary estoppel to arise which prevent the Applicants from claiming more than the service charge figure set out in the Reservation Agreement or are considerations as the reasonability or otherwise of a particular Service Charge, required to start from the figure set out in the Reservation Agreement as opposed to the provisions of the Lease, that is to say, does the former override or influence the construction of the latter? This Tribunal considers that it would be dangerous for it to determine questions such as those set out above. These are properly matters for a county court to determine with its greater power to compel production of documents and witnesses and the like. Accordingly we remit back to the County Court for determination, the effect of the Reservation Agreement – is it of binding effect – when determining the reasonability of the Service Charge - does one start with the figure set out in the Reservation Agreement?

24 The Tribunal can determine what a reasonable service charge figure for this particular development would be and whether or not a Service Charge was and is payable under the terms of the lease.

25 The Service Charge certificates provided by the Applicant indicated the costs were as follows (year end 31 December):

2009	£931.13
2010	£1,096.29
2011	£1,038.96

26 The Respondents did not have a complaint about a specific aspect of the service charge but rather made general comments that the service charge was too high. In the absence of any direct evidence the Tribunal cannot find that any particular aspect of the service was sub-standard and in the absence of any direct evidence either provided by the Respondents or noted at the inspection consider that the charges are reasonable.

Summary of Decision

- 27 The matter concerning the amount of service charge stated on the Reservation Agreement and whether this binds the Applicant to a service charge at the level stated, £581.12, is remitted back to the County Court.
- 28 The Tribunal finds that a service charge figure for each of years indicated in 25 above would be reasonable depending on the County Court determination of the issue of the Reservation Agreement.
- 29 The Tribunal further finds that amounts demanded are due under the terms of the lease with the exception of balancing charges for the years 2008 and 2009 which were not demanded in time.
- 30 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal you must apply, in writing, to this Tribunal for permission to appeal within twenty one days of the date of issue of this decision which is given below stating the grounds upon which you intend to rely on in the appeal.


V WARD BSc Hons FRICS

DATE 05 DEC 2012