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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KF/LSC/2012/0040

Property	:	**Flat 3 Ingledene Court, Horace Road, Southend-on-Sea, Essex SS1 2DN**
Applicant	:	**George SHEPHERD and Frank DUFFY**
Respondents	:	**(1) Maria Lauretta (2) Morgelay Ltd.**
Date of transfer from Southend County Court	:	**23rd March 2012**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair) Gerard F Smith MRICS FAAV Jane Clark**
Date and venue of hearing	:	**17th May 2012, The Crowstone Room, The Westcliff Hotel, Westcliff Parade, Westcliff-on-Sea, Essex SS0 7QW**

DECISION

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1. The Tribunal finds that in respect of the amount claimed by the Applicants from the Defendant Maria Lauretta (sued as Marie Lauretta) in the Southend County Court under case no. 1SS00270, nothing is payable because Maria Lauretta is not a party to the lease under which terms the claim is made.

2. The Tribunal further finds that in respect of the amount claimed by the Applicants from the Morgelay Ltd. (erroneous described as Mongelay Ltd. in such court proceedings), nothing is currently payable because (a) the terms of the lease concerning certification of service charges have not been complied with and (b) no proper service charge demand complying with Section 21B of the **Landlord and Tenant Act 1985** ("the 1985 Act") and Section 47 of the **Landlord & Tenant Act 1987** ("the 1987 Act") has been served.

3. This matter is now transferred back to the Southend County Court to enable the counterclaim to be considered and for either party to apply for any further order dealing with any matter not covered by this decision including enforcement, if

appropriate.

Reasons

Introduction

4. On 16th May 2011 the Applicants, issued proceedings in the Southend County Court against Ms. Lauretta claiming £1,293.33 from her "*...for non payment of a £20 monthly maintenance charge since March 07 which equates to £740 and the non payment of the annual buildings insurance since November 2006 which comes to £553.33 which totals £1,293.33*" in respect of the property, plus the court fee.

5. On the 16th June 2011, Ms. Lauretta filed a defence and counterclaim. The defence said that she had been wrongly named as defendant because she was not the lessee of the property. It further stated that as the certification process in the lease had not been complied with and no proper demands had been served for service charges, then nothing was payable anyway. The counterclaim is for damages for harassment, alarm, distress etc. and alleges that the proceedings are an abuse of process.

6. By Order of District Judge Dudley at the Southend County Court dated 13th March 2012, the company Mongelay Ltd. (whose name, as stated above, is misspelt) was made a second defendant, the claim was referred to this Tribunal for determination and the counterclaim was stayed.

7. The Tribunal issued a directions order requiring the Applicants to file copies of all service charge demands showing the total amount claimed in the proceedings. No such demands have been filed. All that has been filed is a copy of some sort of ledger showing what appear to be items of expenditure and a copy of what would appear to be a building society book showing receipts of many payments of £20 between September 2011 and April 2012 and a total saved of £2,609.11 as at April 2012.

8. From the statements of case and the additional statements filed, it seems that before Morgelay Ltd. purchased the leasehold interest in the property on the 6th February 2006, the owners of the 4 flats in this development had a very informal arrangement whereby each of the lessees would pay a sum of money into a building society account and any money which needed to be spent on service charges, to include insurance premiums, was authorised to be paid out of that building society account by 2 signatories.

9. It also appears that either Morgelay Ltd. or Ms. Lauretta have some interest in the freehold title but the precise details of the freehold owner are not clear from the papers.

10. After Morgelay became involved, it seems that Ms. Lauretta, the owner and sole director of Morgelay Ltd. attended a meeting of owners on 20th September 2006. A 'minute' of such meeting appears in the papers and shows that such meeting appears to have been amicable. It seems that Ms. Lauretta agreed to pay £120 towards service charges.

11. Subsequently, the relationship between Ms. Lauretta on the one hand and the

Applicants on the other hand clearly deteriorated. They are now at such a low ebb that despite the parties being ordered to file a single paginated bundle to assist the Tribunal, they have failed to do so and the Tribunal and its staff have had considerable difficulty in trying to sort out the papers for the hearing. Such papers are full of allegations and counter allegations about abusive conversations, a visit by the Applicants to Ms. Lauretta's home etc. which are of no real relevance to the Tribunal's deliberations.

The Inspection

12. The members of the Tribunal inspected the property in the presence of Mr. Duffy and Ms. Lauretta. The building was a late Victorian/early Edwardian substantial semi-detached house with what looks like an extension at the rear. This may have been built as part of the original house but if it was an extension, it was built soon after the house. It is of solid brick construction under a slate roof and was originally 106 York Road. It has been converted into 4 flats at some stage and the leases suggest that the postal address then became Horace Road for the simple and obvious reason that the entrance doors are in Horace Road rather than York Road.

13. There is evidently a basement area which does not apparently form part of any leasehold title but can be accessed by Ms. Lauretta. The Tribunal did not see this. The exterior is in need of attention. The wooden surfaces need maintenance and decoration and the roof has had a large number of repairs. It looks as if it needs fairly urgent replacement. Most of the 'garden' areas are laid to car parks or paths.

14. The property is in a central position in Southend town centre within easy walking distance of the shopping centre and a London commuter station.

The Lease

15. The Tribunal was shown a copy of the original lease. It is dated 8th September 1988 and is for a term of 99 years from the 24th June 1988 with an increasing ground rent.

16. There are the usual covenants on the part of the landlord to maintain the structure of the property and to insure it. Under clause 3(4) and the 4th Schedule the lessee has to pay a quarter of costs incurred as a service charge. There is clearly an error in the lease because the service charge regime does not allow the landlord to recover the cost of the insurance premium. It only allows recovery of the expense of obligations under clause 4(1)(b) to (f) which includes everything except insurance. The obligation to insure is under 4(1)(a).

17. The Respondents have not taken this point. As has been said, it is clearly an error and if the matter were referred to this Tribunal under Part IV of the 1987 Act, a variation to the leases would clearly be appropriate. In the meantime, it is suggested that the parties recognise the reality of the situation, i.e. the error, and allow any insurance premium to be reimbursed to the landlord.

18. Of relevance to the issues in this case, the service charge provisions require, under paragraph 6 in the 4th Schedule that before a charge is payable there must be a summary of total expenditure certified by a qualified accountant.

The Law

19. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

20. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

21. Section 21B of the 1985 Act says that any demand for service charges must be accompanied by a statement of the rights and obligations of a lessee. If it is not, then such charge is not payable.

22. Section 47 of the 1987 Act says that the landlord's name and address must be in any demand for payment of service charges. If it is not, then, once again, such charge is not payable.

23. The Upper Tribunal is taking a firm approach to cases where technical breaches of the terms of a lease have occurred, even when the landlord is a company owned by the lessees as in the case of **Akorita v Marina Heights (St. Leonard) Ltd** [2011] UKUT 255 (LC). In that case, a lease which required service charges to be certified by a surveyor was held to be unenforceable where the lessee owned company, as freeholder, had had such service charges certified by an accountant instead.

The Hearing

24. The hearing was attended by Ms. Lauretta, Mr. Duffy, Mr. Shepherd and the other lease owner, Jane Hutton who had provided a statement for the Tribunal in the papers. From the outset, it was clear that the relationship between Ms. Lauretta on the one hand and Mr. Duffy, Mr. Shepherd and Ms. Hutton on the other hand was fractious and possibly irretrievable. Whilst Mr. Shepherd, in particular, said on a number of occasions that he wanted a good working relationship with Ms. Lauretta, he continued to mention what he perceived as her wrong behavior. She was equally clear that her mistrust of her co-owners was absolute.

25. The Tribunal was told that the freehold title to the building is held by Mr. Duffy, Mr. Shepherd and Morgelay Ltd., presumably as tenants in common in equal shares.

26. It seems clear from the papers that the basement has been the source of some tension in the past. Amongst the documents provided by the Respondent was a letter from her solicitor recording that the vendor of the property to Morgelay Ltd. had said that the basement was included in the leasehold title and confirming that in November 2005, when it was realised that this was not the case, the then freehold owners refused to vary the lease to incorporate the basement. Despite this, the purchase still went ahead in February 2006.

27. It is suggested that the only access to the basement is through Flat 3. If that is the case, it does seem rather odd that it could not have just been included in the leasehold title of Flat 3. The Applicants will no doubt consider that this is giving Morgelay Ltd. something for nothing. However, if they think about it, they will realise that this does make some sense from their point of view. At the moment, there is a basement with access only from Flat 3 which the freeholders are supposed to maintain i.e. all three freeholders. In giving Morgelay some space which is presumably only good for storage, albeit with the propensity to flood, the Applicants will have this responsibility taken away from them.

28. Since the Respondent's purchase, the basement did become flooded and the Respondents arranged and paid for this to be dealt with, albeit some of it was reimbursed by the buildings insurers. As this is part of the freehold title, Ms. Lauretta considers that Mr. Duffy and Mr. Shepherd should pay their share of this and this would certainly have some logic to it. All 3 freeholders, including the Applicants, should have taken actual and financial responsibility for sorting this out.

29. The Tribunal chair explained to Mr. Duffy and Mr. Shepherd about the provisions of the 1985 and the 1987 Act and therefore indicated to them that the decision of the Tribunal on payability would have to be in favour of Ms. Lauretta. They did not seek to argue against this. They simply tried to re-assure the Tribunal that they had acted reasonably at all times. The Tribunal attempted to impress on them that this was irrelevant to the issues in the case. They had not sent any service charge demands at all, let alone any complying with the legislation.

30. Eventually, with all 3 members of the Tribunal attempting to provide some calming influence on the parties with advice about what could be done, the hearing had to be terminated as it was clear that the parties could not resolve their dispute about who had been 'fair' and who had been 'reasonable'.

Conclusions

31. The first matter to deal with is the payability of service charges by Ms. Lauretta. It is clear that she has no personal liability under the terms of the lease. None of the service charges claimed from her are payable in any event.

32. The next matter is the liability of Morgelay Ltd. As it was accepted that no service charge demands had been sent to Morgelay Ltd., let alone any which comply with the statutory requirements of any service charge demand, it is clear that nothing is payable.

33. In so far as it is relevant, the Tribunal cannot come to a view about the reasonableness of the service charges as insufficient detail has been provided.

34. The counterclaim is a matter for the court. However, from the correspondence seen by the Tribunal, it seems clear that there has been vitriol passing both ways. An award of damages is likely to make a bad situation even worse.

The Future

35. The reason for the present situation is not at all clear. There was obviously some difficulty between the parties over the basement, but their first planned

meeting on 20th September 2006 appears to have gone well and the Applicants benefitted from Ms. Lauretta's experience in that the minute of the meeting thanks her for drawing the low insurance valuation to everyone's attention. The valuation produced an increase in insurance value.

36. Thereafter, things went downhill and the Tribunal is still none the wiser about why. One of Ms. Lauretta's complaints at the hearing was that she had become 'sidelined' in the decision making process, was excluded from management meetings and, to corroborate this, she pointed to the fact that there were no minutes of meetings subsequent to the one in 2006.

37. It is not easy to obtain the services of a reputable managing agent for a property with only 4 flats and really one should not be necessary when 3 of the 4 long leaseholders are also the freehold owners. If everyone agrees with each other, it is obviously cheaper for people to self manage and reduce the formalities to a minimum. There is also a practical advantage when one of the freehold and leasehold owners lives 'on site' and can keep a constant eye on what is happening. A managing agent, however conscientious would not be able to do this.

38. In this case, such a position does not appear to be possible and this is inevitably going to cost everyone more money. In case there is a glimmer of hope, the Tribunal suggests the following:-

- Both sides issue simultaneous formal written apologies to each other about the tendentious and abusive comments they have made about each other – whoever started things off. If this is complied with in full, the counterclaim for damages should be withdrawn.
- A set of proper management accounts is prepared by an independent accountant showing the reserve existing when Morgelay Ltd. purchased its interest in the building and details of the income and outgoings since. These should include a reconciliation as to the amount currently held in the building society account seen by the Tribunal.
- There then be a formal minuted meeting between the parties when possibly Ms. Lauretta could bring someone with her for support and each side agrees in advance that the past differences between them will not be raked over. This meeting could discuss (a) the future of the basement and why it should not be just included within the demise of Flat 3 (b) what should have been paid by Morgelay Ltd. if the lease had been complied with and the necessary statutory notices had been issued (c) there should be a properly agreed programme for future work, the creation of a reserve etc. and (d) an agreement as to who should approve any future payments on the service charge account with possibly 1 signature for payments up to £100 and the approval of all 3 freeholders for anything over that amount – at least for the time being.
- There should be an agreement to have regular minuted meetings.

39. If Ms. Lauretta, on behalf of Morgelay Ltd. then agrees to pay all that is said to be owed and proceed without any further formality, then so much the better.

40. If not, or if the parties refuse to co-operate with each other, then the parties will have to find a reputable managing agent to manage the property and a chartered accountant to provide proper management accounts and then the annual certificates set out in the lease.

41. As a final comment, and using the Tribunal's many combined years of experience, whilst Ms. Lauretta will undoubtedly feel outnumbered and threatened by the good relationship between Mr. Duffy, Mr. Shepherd and Ms. Hutton, she will understand that buying a property for letting out is a commercial matter and it is in everyone's interests that costs are minimised. She must also appreciate that when she criticises management policies honed over years, she is likely to be viewed with hostility. Equally, Mr. Duffy, Mr. Shepherd and Ms. Hutton must appreciate that someone coming into their 'cosy' arrangement will undoubtedly feel threatened and positive efforts have to be made to build bridges.

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Bruce Edgington
Chair
21st May 2012