

8919

MAN/00BM/LSC/2012/0143

MAN/00BM/LSC/2012/0144

**HM COURTS AND TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985 SECTION 27A(1)**

**Property:** Apartments 5 & 6, The Residences, Scholes Lane, Prestwich, Manchester M25 0NT

**Applicant:** Apartment 5 – Mr & Mrs Messing  
Apartment 6 – Mr & Mrs Silver

**Respondents:** The Residences Prestwich (Management) Ltd  
The Residences (Ivy Homes) Limited

**The Tribunal:** Chairman: Mrs N Ali  
Valuer Member: Mr J Faulkner FRICS  
Lay Member: Miss C Roberts

**Date of Inspection and Hearing:** 24<sup>th</sup> April 2013

**Date of Determination:** 24<sup>th</sup> April 2013

**Present at the Inspection** For the Applicant:- Mr & Mrs Messing, Mr & Mrs Silver and Ms Ackerley (Counsel)  
For the Respondent:- Mr J Kamali

**Present at the Hearing** For the Applicant:- Ms Ackerley (Counsel) representing Mr & Mrs Messing and Mr & Mrs Silver and Ms Burns (Accountant)  
For the Respondent:- Mr J Kamali

**Order:**

**The service charges in respect of:-**

**Apartment 5 for the years 25th October 2010 to 31st December 2010, 1st January 2011 to 31st December 2011, and 1st January 2012 to 31st December 2012**

**And**

**Apartment 6 for the years 11th July 2011 to 31st December 2011, and 1st January 2012 to 31st December 2012**

PIP8

**Is not payable by the Applicants until the Respondent serves on the Applicants the duly audited and certified Management Accounts relating to the requisite service charge years and the Service Charges are to be demanded in the prescribed form with summary of the rights and obligations of tenants of dwellings in relation to service charges attached.**

**There is no order as to costs.**

### **Application and Background**

- 1 The Development known as The Residences comprise 5 Blocks. The apartments which are the subject of this application are situated within a grade 2 listed building formerly known as Prestwich Town Hall. This building has been converted to house 5 apartments over 4 floors. The annex building adjacent to this is a similar conversion comprising 4 apartments. Block 3 is a purpose built set of 9 apartments and Blocks 4 & 5 consist of 10 new build townhouses with adjacent garages.
- 2 The Applicants are the long leaseholders of 2 apartments within the Town Hall block. The remaining 3 apartments are owned by the Respondent.
- 3 The Respondent is the landlord and the management company responsible for the provision of services to this block only. The development and remaining blocks are managed by The Guthrie Partnership. Management of the blocks transfers from the Landlord to the Management company when the Landlord has sold more than 51% of the leasehold interests in each block.
- 4 The Applicants made an application to the Leasehold Valuation Tribunal on the 7th and 18th October 2012 for a determination of liability to pay and the reasonableness of the service charges for the years 2010, 2011 and 2012 as applicable

### **The Lease**

5. This application was in relation to 2 apartments. Copies of both leases relating to each apartment were available to the Tribunal. The terms of the leases were identical.
6. The lease for apartment 5 and parking space 5 was made between The Residences (Ivy Homes) Limited of the first part, The Residences Prestwich (Management) Limited of the second part Zvi Ram Messing and Hilary Estelle Messing of the third part. It was dated 26th October 2010 and grants the term of 999 years from 1<sup>st</sup> January 2003 at a premium and an initial rent of £175.00 per year payable in two instalments
7. The lease for apartment 6 and parking space 6 was made between The Residences (Ivy Homes) Limited of the first part, The Residences Prestwich (Management) Limited of the second part and Hynda Silver of the third part. It was dated 11th July 2011 and grants the term of 999 years from 1st January 2003 at a premium and an initial rent of £300.00 per year payable in two instalments.
- 8 The Lease defines the Service Charge Year as 1 January to 31 December. The Applicants seeks a determination for the outstanding service charges for the year 2010, 2011 and 2012 as applicable
- 9 As is common with many leases of residential apartments, the provisions relating to the service charge are contained in:-

- Table of Particulars: Service Charge; defines the sum payable as Proportion A: 20% of the Block Service Charge and Proportion B as 3.87% Estate Service Charge
  - Definitions and Interpretation: Block Charge means the proportion of the Block Service Charge being 20%  
Block Service Charge states that it is the aggregate of the costs fees and expenses and outgoings properly incurred relating to the services referred to in Part 2 of the second schedule.  
Estate Service charge is stated as being 3.87%
  - Second Schedule Part 1 defines the Service Charge and how all costs and expenses are identified
  - Second Schedule Part 2 sets out all the items which comprise the Block Service
  - Second Schedule Part 3 sets out all the items which comprise the Estate Service
10. Within the definitions and Interpretation of the lease for apartment 6, Proportion A was stated in words to be 'twenty two point two three percent' but in figures to be '20%'.

### **The Applicants Case**

11. The Applicants did not dispute either that the Lease reserved a service charge or that there was an amount payable.
12. The Applicants disputed the amount that was charged for the years in question as the quality of service provided was questionable; The Respondent had failed to produce evidence of expenditure to justify charges and certified accounts had not been provided
13. The Applicants stated that despite numerous requests for clarification as to how the Service Charges were calculated, this was not forthcoming and the Service Charges were inappropriately apportioned such that costs pertaining to the 3 unsold apartments were being apportioned to the two apartments.

### **The Respondents Case**

14. The Respondent stated that it is permitted to charge based on the estimated service expenditure as stated within the Lease and the subsequent administration charges. The Respondent confirmed that the Applicants had made some partial payments of the Service Charge but has refused to make payment of the outstanding amount in full and within time.
15. The Respondent had provided access to the Applicants to all invoices and bank statements requested and these were checked by the Applicants accountant. The Respondent has provided in the bundle of documents submitted to the Tribunal invoices and receipts upon which the Service Charge for the years in question were calculated.
16. The Respondent stated that the management company (The Residences Prestwich Management Ltd) had initially managed the whole of the development but in September 2010 the residents of Blocks 2, 3 4 & 5 (when all the properties within these blocks had been sold) withdrew from this wishing to take responsibility themselves and this is now managed by The Gutherie Partnership on their behalf and Estate Charges invoiced to Ivy Homes for the Applicants apartments.

## Inspection

17. On the morning of 24th April 2013 the Tribunal inspected the whole Development; The Development comprises 18 apartments and 10 houses. The Appeal Properties were part of a four storey conversion of a grade II listed building within the Development. Parking is provided together with landscaped gardens which are well maintained. The Development is served by an Estate roadway and is accessed via electronic gating system. The whole development is enclosed by high brick walls.
18. Externally the block was of stone construction, with gutters and downpipes in need of repainting. There was a large front door which led into the block.
19. The common parts comprise a main entrance hall leading to the inner hall which contain original features and is well maintained. Apartment 6 is located on the ground floor whilst apartment 5 is located within the basement accessed via a lift leading directly into the apartment and also by a set of stairs.
20. Apartment 7 is also located on the ground floor, whilst apartments 8 and 9 are duplexes and located on the first and second floors. These apartments have not as yet been sold and remain in the ownership of the Landlord.
21. Apartment 5 has its own security key to the lift as it opens directly into the lobby of the apartment. The lift was not functioning and apartment 5 is accessed by the stairs. The apartment accesses the communal gardens via French doors but has an enclosed patio area which is maintained by the Applicant.
22. The meter room is housed opposite the apartment and has gas, electric and water meters for the apartments in this block and the adjacent block. The applicant confirmed that there were no issues regarding this.
23. Apartment 6 has an external door from the inner hall leading into the apartment. The communal gardens are accessed through the French doors via a small patio area which is maintained by the applicants. Some paint had chipped from the window frames and the stone sills had minor cracks.

## The Law

24. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

- (1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –
  - (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose-
  - (a) "costs" includes overheads, and

- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

25. Section 19 provides that

- (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:and the amount payable shall be limited accordingly.

26. Section 20B provides that

- (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 the 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

27 Section 20C provides that

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [residential property tribunal] or leasehold valuation tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

28 Section 21 provides that

- (1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred –
  - (a) If the relevant accounts are made up for periods of 12 months, in the last such period ending no later than the date of the request...

29 Section 21 A provides that

- (1) A tenant may withhold payment of a service charge if—
  - (a) the landlord has not provided him with information or a report—
    - (i) at the time at which, or .
    - (ii) (as the case may be) by the time by which,he is required to provide it by virtue of section 21, or
  - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform

exactly or substantially with the requirements prescribed by regulations under that section....

- (3) An amount may not be withheld under this section—
  - (a) in a case within paragraph (a) of subsection (1), after the [information or report concerned has been provided] to the tenant by the landlord, or .
  - (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided

30 Section 27A provides that

- (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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which -
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment

31. Section 42(1) Landlord and Tenant Act 1987 provides:-

Service charge contributions to be held in trust.

- (1) This section applies where the tenants of two or more dwellings may be required under the terms of their leases to contribute to the same costs by the payment of service charges....

32. Commonhold and Leasehold Reform Act 2002 –

Section 153 Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges..
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations. .
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. .

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

33 Commonhold and Leasehold Reform Act 2002 –

Schedule 12 paragraph 10(2)(b)

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where...

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

**The Tribunal's Further Directions**

34. The Tribunal issued further directions on the 11th February 2013 in order to obtain further documentary evidence to supplement information already provided

**The Tribunal's Conclusions and Reasons.**

35 The Applicants were represented by Counsel (Ms Ackerley) instructed by J B Leitch Solicitors LLP

36 The Respondent was self-representing.

37 Pursuant to the Tribunal directions the Applicants submitted their statement of case with supporting documents (D1) on 4th March 2013. The Respondent submitted his statement of case with supporting documents (D2) on 23rd March 2013

38. On 5th April 2013 The Applicants solicitors made an application to submit further evidence. Copies of this were served on the Respondent and in triplicate to the Tribunal.

39. At the hearing the Tribunal accepted the further evidence submitted by the Applicants.

40. The parties agreed that under the terms of the lease service charge was payable. The parties also agreed that the apportionment of the Block Service Charge was 20% for apartment 6 as is for apartment 5.

41. The parties agreed that the Estate Service Charge apportionment was 3.87% per apartment and that this is managed by the Guthrie Partnership. The Applicants stated that since October 2012 they had been making a payment of £85 per month directly to the Guthrie Partnership. The Respondent stated that from September 2010 until December 2012 he received invoices from the Guthrie Partnership for the Estate Service Charges which although demanded from the Applicants had not been paid and

so had been paid by the Respondent. The Respondent confirmed that all invoices were available and the Applicants and their accountant had seen these (D2 p4 and p10-30).

42. The Applicants disputed the annual expenditure of the Proposed Management Charges which comprise the Block Service Charge which had been provided to them:-

<b>ITEM</b>	<b>Applicants</b>	<b>Respondent</b>
Window Cleaning	Window cleaning was not currently being carried out. It had been carried out initially but no longer.	This had now been cancelled as there were no funds to pay the cleaning company. (D2 –p 34 Bespoke Cleaning). Cleaning ceased about 6 months ago.
Cleaning of Common Areas	Common areas were being inadequately cleaned (main entrance hall and inner hall) that as a result they now employed their own cleaner to maintain the common parts.	Happy for the Applicants to manage this aspect and no charges were incurred since then (D2- p39)  Cleanliness issue due to owners of apartment 6; they were living in apartment 7 whilst their apartment was being completed and dust & building materials were being transferred across the common parts when they were monitoring the building works
Building Insurance	Concerned that the building was inadequately insured	Confirmed that the building was adequately insured. Copy of current and previous year's schedule of Insurance provided
Electricity	Queried actual cost of expenditure of electricity within common parts as shared meter with adjacent block.  Change own light bulbs	There is an electric heater servicing the common parts; there is lots of lighting. This is an underestimate. Electricity bill not received since the Gutherie Partnership took over. Stopped changing light bulbs when the tenants refused to pay the service charges
Lift	Inoperable and shut down – health and safety issues.	Insurance with Lucas Fettes to cover Otis Servicing. Otis has lift maintenance contract and the lift is being serviced at 6 monthly intervals. Invoices from Fettes and Otis provided
Accountant Fee	No certified management accounts provided	Certified accounts for The Residencies Prestwich (Management) Limited produced by the Gutherie Partnership for the Estate Management and for remainder of the block service charges for Block 2/3/4/5. Can't provide 2 set of accounts for one company. No money in account to pay for fees to produce certified accounts



Telephone	Telephone line to lift and security disconnected	Lines still active and paid to date. Lines in the name of Respondent as residential line charges are cheaper (D2 -p31)
Management	Disputed	The Applicants accountant reviewed and this was reduced and invoices reissued (D2 -p47).  The applicant's accountant provided with copies of the proposed management charges and in-house income and expenditure (including breakdown)
Sinking Fund	Disputed – considered not necessary	No payment received; necessary as Grade II listed building

43. The Tribunal has taken into account all that it has heard from the parties and read the extensive documentation supplied to it
44. The Tribunal concluded that the amount payable by the Respondents for the provisions of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
45. Having decided this, the Tribunal had to apply a three stage test to the application under section 27A:-
- 46.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
- 46.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the 1985 Act?
- 46.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended?
47. The Lease permits the Respondent to recover service charges in the stated proportion applicable per property
48. The Tribunal decided that that expenditure had been incurred on services and from the inspection it was of the opinion that the services were of a reasonable standard. From the oral and written evidence, that some of services were withdrawn on a temporary basis due to lack of receipt of payment of services charges by the Applicants,
49. The Tribunal took into account that the Respondent allowed the Applicants' accountant access to all receipts invoices and accounts in relation to the Block Service Charges, the service charge budget and accounting spreadsheets. The Respondent conceded that the summary of the rights and obligations of tenants of dwellings in relation to service charges were not attached to the service charge invoices.
50. The Respondent confirmed that monies are all paid into a client bank account and that no cash payments are made. Bank statements are available for inspection. This was not disputed by the Applicants.

51. The Tribunal determined that the invoices and the proposed management charges submitted to the Applicants and annexed are deemed adequate written notice under the Landlord and Tenant Act 1985 section 20B (2)
52. The Tribunal determined that the Respondent produce and serve on the Applicants Management Accounts duly certified with an accountants certificate, a written statement of account for each accounting period and service charge invoice in the prescribed form. The demands for service to be correctly served. The service charges are then due and payable
- 53 The Tribunal then considered the Applicants' application for the costs of £500 pursuant to paragraph 10(2)(b) of Schedule 12 of Commonhold and Leasehold Reform Act 2002. It was decided that the Applicants by withholding payment of part or all of the service charges were instrumental in the reduction of services being provided to the block. The Respondent did not want to make an application for costs. No Cost Orders are to be made in this instance.

NASRIN ALI  
Chairman  
11 June 2013