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

Case Reference : **MAN/30UF/LSC/2013/0096**

Property : **11, Bishops Gate, Lytham St Annes, FY8 4FR
("the Property")**

Applicant : **Cypress Point Management Company
Limited ("the Applicant")**

Represented by : **Homestead Consultancy Services
Limited**

Respondent : **Mrs Claire Howarth ("the Respondent")**

Type of Application : **Section 27A (and 19) of the Landlord and
Tenant Act 1985 ("the Application")**

Tribunal Members : **Mr. P. W. J. Millward LLB
Mr J Rostron MRICS**

Date of Decision : **11th October 2013**

DECISION

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The Application

1. By the Application the Applicant seeks to recover unpaid service charges from the Respondent relating to the Property. An Order for Directions ("the Directions") was made by a Member of the Tribunal on 30 July 2013 and thereafter sent to the parties.
2. Pursuant to the Directions the Applicant provided a Statement of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the Act), as to the payability of the service charge in respect of the Property. The Respondent did not provide a Statement of Case.
3. The Application relates to demands for service charges in respect of the two years commencing 1 July 2011 and 2012 and ending on 30 June 2012 and 2013 respectively. The total service charge stated by the Applicant to be outstanding as at 19 August 2013 is in the sum of £899.70, comprising service charges outstanding as at 1 May 2011 in the sum of £30.60, service charge for 2011/12 in the sum of £321.00, service charge for 2012/13 in the sum of £327.00 and administration fees totalling £221.10.

The Leases

4. The Respondent is the lessee of the Property under a lease made 31 August 2001 between Cypress Point Developments Limited (1) the Respondent (2) and the Applicant (3) for a term of 999 years from the 1 January 1998 ("the Property Lease").
5. Under a Lease ("the Management Lease") made 10 May 1999 between the said Cypress Point Development Company Limited (1) and the Applicant (2) management of the property comprised therein ("the Development" which for the avoidance of doubt includes the landscaped parts of the whole development but excludes the Property and all other houses and flats in the same development) is to be undertaken by the Applicant.
6. By clause 2 of the Property Lease the Respondent covenant to contribute and pay 1/431 share of the "Landscaping Charge and those services if complying with (the Respondent's) covenants contained in the Management Lease" and "the Maintenance Payment". The said clause also provides that "if due to re-planning of the layout of the Development it should at any time become necessary or equitable to do so the share of cost appropriate to (the Property) shall be recalculated on an equitable basis to be notified to (the Respondent) and the new cost shall be substituted for the 1/431 share". Due to more properties being built than had originally been planned the Property is now charges 1/576 part of the total cost.

7. "The Service Charge" comprises the Landscaping Charge and the Maintenance Payment.
8. The Memorandum and Articles of Association of the Applicant contain clauses authorising the Applicant to raise and maintain a reserve fund and states that the shareholders will contribute to that fund and also to effect insurance in relation to the Development.

The Law

9.1 Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:

9.1.1 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.

9.1.2 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.

9.1.3 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.

9.1.4 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.

9.1.5 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.

9.2.1 Paragraph 1(1)(d) of Schedule 11 of the Commonhold and Leasehold Reform Act (2002) (the 2002 Act) provides that “administration charge” means an amount payable by the tenant of a dwelling as part of or in addition to the rent which is payable in connection with a breach (or alleged breach) of a covenant or condition in the lease.

9.2.2 Paragraph 1(3) of Schedule 11 of the 2002 Act provides that a “variable administration charge” means an administration charge which is neither specified in the lease nor calculated in accordance with a formula specified in the lease.

9.2.3 Paragraph 5 of Schedule 11 of the 2002 Act provides that an application may be made to a Leasehold Valuation Tribunal for determination whether an administration charge is payable, and if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable.

The Inspection

10. The Leasehold Valuation Tribunal (the Tribunal) inspect the Property externally and the common areas of the Development in which the Property is situated on the 11 October 2013 in the presence of the Applicant’s representatives Mr Bentham and Miss Owen. The Respondent also met the Tribunal at the Property but did not accompany the Tribunal during its inspection.

11. The Property is a house situated in a large modern development of houses. There are extensive landscaped areas, a Japanese garden and a wooded area all of which are maintained well by the Applicant. The Applicant also insures sculptures which are of value and are situated in the landscaped areas.

The Submissions of the Parties

12. The Applicant’s statement includes (inter alia) the following:-

- 12.1 Homestead Consultancy Services Limited (“Homestead”) was appointed as managing agents by the Applicant in 2003 and at all material times since that appointment has undertaken repairs, maintenance and insurance on behalf of the Applicant

- 12.2 full details of the relevant clauses in the Lease
- 12.3 full details of the services carried out
- 12.4 full details of the management charges
- 12.5 copies of the Memorandum and Articles of Association of the Applicant, with a specific reference to clauses 3.1.1 of the Memorandum (which empowers the company to manage the Development), 3.1.6 (which allows the company to make a reserve fund) and 3.1.5 which authorises the company to insure the Development against such risks as may be considered necessary

13. The Respondent did not file a statement.

The Hearing

- 14. The hearing took place at Blackpool Magistrates Court on 11 October 2013.
- 15. Both parties attended the hearing. The Applicant was represented by Mr D Bentham. The Respondent appeared in person.
- 16. The Applicant's evidence was provided by Mr Bentham. It may be summarised as follows:-
 - 16.1 The Applicant confirmed the evidence contained in its statement was correct.
 - 16.2 There are two particular points in relation to the application. These are relating to late payment and administration charges. The Applicant has decided to apply these charges and would be pleased to receive the Tribunal's determination as to whether they are allowed under the terms of the Property Lease as this would be helpful to the Applicant in the future.
 - 16.3 The Applicant submitted that although there is no mention of a reserve fund in the Property Lease, the Applicant is able to raise funds to create a reserve under the powers set out in the Memorandum of the company, which also states that the shareholders shall contribute to the reserve fund. All owners of property on the Development, including the Respondent, are shareholders.
 - 16.4 The budget for 2013/4 is underpinned by a 5 year plan. This plan includes re-tarmac paving, painting railings and repairing a pumping station on the landscaped area which is already under way. The pumps are authorised and are required in the event of heavy rains. The Applicant has already spent £50,000 on pump repairs/replacement.
 - 16.5 The budget is prepared on an annual basis and is first agreed by the company directors before being presented to the company's AGM. As stated the shareholders are the owners of the properties on the Development. Usually about 40 owners out of over 500 attend.
 - 16.6 The monies referred to in the various demands produced to the Tribunal are still outstanding.

17. The Respondent's evidence was as follows:-

- 17.1 The Respondent admitted that the service charges were outstanding.
- 17.2 She had bought the house in 2001 and had had money problems since then. Previously her mortgage company had paid outstanding charges and added the sums paid to her mortgage account. She is now in a better financial state and wants to discharge the arrears, but will require time to pay (at which point Mr Bentham confirmed that the Applicant would agree to a payment plan, provided that the arrears were paid in 6/8 months)
- 17.3 The Respondent then said that she would be able to afford £100 per month, which offer the Tribunal put to Mr Bentham. He said that although this would mean to arrears and current year's service charge would not be paid off until about 12 months had passed, it could be agreed.

The Tribunal's Determination

18. The Tribunal considered very carefully the written submissions of the Applicant, and the evidence given at the hearing.

19. The issues to be determined by the Tribunal are:-

- 19.1. is the demand for the service charge valid and if so
- 19.2. to what extent is the demand reasonable and if so
- 19.3. to what extent (if any) the Respondent should pay towards the same

20. The Tribunal first determined that the demands served upon the Respondent were valid.

21. The 1985 Act under which the Application is made does not deal with late payment and administration charges. However the Tribunal had received a request from the Applicant to determine whether or not these charges were payable. The Tribunal determined that the Property Lease gave the Applicant no authority to levy late payment or administration charges and that any such charges added to the service charge account would be disallowed under the provisions of the 2002 Act. As the Tribunal had received no information as to whether or not the sum of £30.60 outstanding as at 1 May 2011 was in relation to administration charges, late payment charges or service charge, it also determined to disallow that sum.

22. In relation to the reserve fund the Tribunal determined that the Memorandum of Association of the Applicant authorised the Applicant to raise funds for a reserve fund even though there is no mention of a reserve fund in the Property Lease or in the Management Lease.

23. Accordingly the monies due from the Respondent in respect of service charges are as follows:-

Service charge for 2011/12	£321.00
Service charge for 2012/13	<u>£327.00</u>
Total	<u>£648.00</u>

24. The Respondent will pay to the Applicant the sum of £100 per calendar month commencing on the 11th November 2013, until such time as her service charge account (for the avoidance of doubt including the service charge to be paid for the year commencing 1 July 2013 which was not part of the application, and future years' service charges) is clear.

25. Liberty to apply.