

11658



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

Case reference : **LON/00AU/LAC/2016/0009**

Property : **Five flats at 104 Tollington Way, N7
6RY**

Applicant : **Haiyue Yu (Flat 4) lead Applicant
Gulner Aktruan (Flat 3)
Lucy O'Dwyer (Flat 5)
Donna Somaes (Flat 2)
Isobel Spencer (Flat 1)**

Representative : **Mr Haiyue Yu**

Respondents : **Eagerstates Limited
Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Mrs S O'Sullivan
Mr S Mason BSc FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **23 May 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal allows the Eagerstates' costs of £60 for 2014 and £65 for 2015 in full.
- (2) It makes no order under Rule 13.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of service charges for the service charge years 2014 and 2015.
2. The application is dated 2 March 2016 and the applicants are members of a Right to Manage Company which has been set up to manage the building known as 104 Tollington Way, London N7 6RY. Assethold Limited holds the freehold interest in the building and employs Eagerstates Limited (Eagerstates") to collect the ground rent each year from the Applicants. As the RTM Company manages the building the freeholder's only involvement in the building is the collection of ground rent.
3. The sums in issue are as follows which have been demanded from each leaseholder by way of service charges from each leaseholder;

2014: £60

2015: £65
4. Directions were made dated 31 March 2016 which provided for the steps to be taken by the parties in preparation for the hearing. These also provided that the matter be considered by way of a paper determination unless an oral hearing was requested. As no hearing was requested the application was considered on the papers on 23 May 2016.
5. The relevant legal provisions are set out in the Appendix to this decision.

Application for a postponement/variation of directions

6. By an email dated 18 May 2016 the lead Applicant requested an extension of time in which to serve bundles. The reasons given for the request were that they had not "*managed to gather all the necessary paperwork as several of the leaseholders do not live at the property so it has taken more time than envisaged gathering the documents. In*

addition one of the leaseholders has been on holiday which has further delayed the process". By an email dated 18 May 2016 Eagerstates wrote to give a response to the application. They pointed out that the lead Applicant is a lawyer and would know the consequences of failing to comply with directions; the request for an extension was made very late in the day and only after the Respondent had pointed out the non compliance; the Applicants have made the case and have nothing to gather as the case was included in the application; they have been in possession of the Respondent's case since 22 April 2016 and have had ample time and that the directions deadline was missed out of pure negligence.

7. Pursuant to rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having regard to the overriding objective contained in rule 3, we refuse the application for each of the following reasons:
 - (i) The directions in this matter were made on 31 March 2016 and the applicants have been aware of the deadlines since that date and have had ample time to prepare;
 - (ii) The request has been made only shortly before the matter was listed to be determined;
 - (iii) Eagerstates objects to a postponement;
 - (iv) A tribunal has been booked to consider this case and a postponement at this late stage would result in an unjustifiable waste of the tribunal's limited resources that deprives others of their proper entitlement.
8. The Respondent, Eagerstates, had made an application for a dismissal of the application. The tribunal did not consider it reasonable to dismiss the application on the basis that the Applicants had failed to serve bundles and given it was noted that the Applicants had made a full application attaching evidence relied upon which had in fact stood as their statement of case. It therefore went on to consider the application on the basis of the documents filed.

The application

9. The property which is the subject of this application is a Georgian Terraced house converted into five flats.
10. The Applicants allege that (a) the sums claimed are excessive; (b) that the Respondents are essentially the same entity and that the arrangement of these companies as freeholder and agent is simply a device to demand service charge where otherwise they would not be due.

11. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
12. The Applicants say that the charges of £60 and £65 for 2015 and 2015 respectively are not reasonable given that the Applicants all pay ground rent by a single bank transfer annually after receiving an invoice sent by the Respondent. It is their case that the fee is not reasonable for the work involved in sending out one invoice and receiving one bank payment.
13. The Applicants also say that Eagerstates and the landlord are companies that have the same shareholders, directors and registered office. It is said that this demonstrates that the landlord is not a bona fide client and that this structure is a ruse to exact the charges. It is said that this arrangement is a sham and reliance is placed on the decision in *Skilleter v Charles* [1992] 24 H.L.R 421 supported by a decision of the tribunal dated 21 October 2013 reference LON/OOAX/LRM/2013/0018.
14. Copies of the invoices in issue were provided.
15. Eagerstates set out their response in a statement of case attached to a letter dated 20 April 2016.
16. It is pointed out that the Applicants do not appear to contest the validity and entitlement of the charge but rather its reasonableness. In any event the Respondent sets out the provision relied upon in clause 6 of the Sixth Schedule of the lease.
17. As far as the Applicants' argument as to the payment by a single bank transfer is concerned the Respondent says that the method of payment is varied and the leaseholders are able to pay in various methods. It is also said that there are serious consequences if the notice required under section 166 of the Commonhold and Leasehold Reform Act 2002 is not in the correct format. It is said to be vital to ensure the notice is properly served and is not unreasonable for a freeholder to employ a professional managing agent to deal with these notices and collection of the ground rent to ensure that it can recover the ground rent. The work carried out is listed which includes checking the lease, issuing the notice, dealing with queries, monitoring bank details to recognise payment, recording payment and/or monitoring for non payment, accounting to the freeholder and maintaining records/an office. In addition disbursements such as postage, bank charges and computer maintenance are incurred.

18. The total time estimated to be served on each notice is between 30 and 60 minutes, the hourly charge for a senior person is £120 plus vat and £65 for a general worker in the office.
19. It is also pointed out that the freeholder is able to charge a fee of 15% plus vat if there were no managing agent and the cost of a professional is higher.
20. As for the allegation that the managing agent is a sham the Respondent likewise relies on *Skilleter* and in particular the comment that “No doubt the professional agent may be a company in which the Lessor is interested”. The Respondent likewise relies on a decision of the tribunal where it was found that the fees were payable reference *ON/OOAY/LCP/2013/0010*.
21. It is further said that Eagerstates are a bona fide management company which manages properties for other freeholders. A copy of the management contract is relied upon.

The tribunal’s decision

22. The tribunal allows the costs in issue in full as reasonable.

Reasons for the tribunal’s decision

23. As far as the ownership of Eagerstates is concerned the landlord is entitled to set up a management company and it will be treated as a separate company unless the arrangement is a “complete sham”. The tribunal has been provided with a copy of the management agreement between Assethold Ltd and Eagerstates and the services provided include “*sending out ground rent demands*” and “*processing payments*”.
24. There is no evidence before the tribunal that the arrangement is a complete sham in this case.
25. The tribunal decision relied upon by the Applicants was concerned with managing agents claimed under section 88(4) rather than in relation with a lease provision as in this case. There is clear provision in the lease for the recovery in principle of the costs in question.
26. Eagerstates set out in full the work undertaken in relation to the notices and a breakdown of the costs involved. The tribunal had no alternative evidence from the Applicants to suggest these were unreasonable. In the absence of such evidence it therefore allows the costs in full.

Application under Rule 13

27. Eagerstates applied for an order under Rule 13 in respect of their costs on the basis of the Applicants' failure to comply with directions and serve the bundles.

28. The tribunal declined to make any such order.

29. The tribunal's power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which states that;

"The Tribunal may make an order in respect of costs only-

(b) If a person has acted unreasonably in bringing, defending or conducting proceedings in-

(I) a residential property case ..."

30. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person's conduct of the proceedings is unreasonable rather than his behaviour generally. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.

31. Having considered the facts of this case overall we do not consider that it is appropriate that an order is made under Rule 13 in respect of some of the Respondents' costs. The Applicants set out their case in full in the application. They have failed to serve bundles in accordance with the tribunal's directions. However given the detail provided in the application the tribunal has been able to make a decision, the only additional costs incurred by the Respondents would be limited to providing a response to the application for an extension of time to file bundles. In the circumstances we do not consider an award of costs to be appropriate.

Name: S O'Sullivan

Date: 23 May 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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 would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be 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 to have agreed or admitted any matter by reason only of having made any payment.