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

Case reference : **LON/00AW/LSC/2014/0572**

Property : **Flat 5 & 19, 52 Pont Street,
London SW1X 0AE**

Applicant : **Consolidated Land (Financing)
Limited
Jardine & Company S.A. Ltd.**

Representative : **Land Capital Partners Ltd.**

Respondent : **52-58 Point Street RTM Company
Ltd.**

Representative : **Stitt & Co. Solicitors**

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

Tribunal Judge : **F. Dickie**

Date of decision : **30 January 2015**

DECISION

Decisions of the tribunal

- (1) The balancing charge for the year ending 2011 in the sum of £961.87 is not payable as a service charge by virtue of Section 20B of the Landlord and Tenant Act 1985 (“the Act”).
- (2) An order is made under section 20C of the Act so that none of the landlord’s costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Respondent shall pay the Applicants £125 within 28 days of this decision in respect of the reimbursement of the tribunal fees paid by the Applicants.

The background

1. The properties which are the subject of this application are two one bedroom flats within a building understood to be a four storey red brick period building comprising 26 flats in total. The freeholder is the Wellcome Trust and the Respondent is the Right to Manage company which assumed the right to manage on or about 17 April 2010. It was unnecessary for the tribunal to carry out an inspection.
2. The Applicants each hold a long lease of one of the subject properties which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are not reproduced as they are not relevant to the issue in this application.

The issue, decision and reasons

3. The Applicants seek a determination pursuant to s.27A of the Act as to whether the balancing charge of £961.87 per flat is payable by them as a service charge in respect of the service charge year ending 24 March 2011.
4. The relevant issue for determination is whether the balancing charge for the service charge year in dispute is irrecoverable by virtue of s.20B of the Act.
5. Section 20B(1) provides:

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.”

6. I have considered written submissions from both parties before reaching my conclusions.
7. In the present case, certified accounts for the year in dispute were served on the Applicants by email on 31 January 2013. A subsequent service charge demand dated 11 February 2013 requested payment of £1495.69 for each property for a “Balancing Charge to March 2013”. It is acknowledged by the Respondent that this demand was for the sum of the balancing charges for the years ending 24 March 2011 and 24 March 2012, being £961.87 and £533.82 respectively.
8. It is the Respondent’s position that the balancing charge is due for the year ending 2011 as there has been compliance with Section 20B(2) of the Act, which provides:

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.

9. The Respondent explains the delay in preparation of the annual accounts was due to difficulties in obtaining accounting information from the freeholder’s managing agent. However, the Respondent relies on an email dated 15 May 2012 sent to the Applicants’ managing agent attaching a draft certificate of service charge expenditure which recorded expenditure incurred. The Respondent submits that this set out that the Respondent would be claiming these in the service charge, and amounted to notice that the relevant costs had been incurred and would be included in the service charge demand in due course.
10. The email in question reads as follows:

“Dear Hannah

Thank you for your comments but admit disappointment that the we are to expect only £1.000 per flat.

I do understand the directors would like to see accounts of the RTM company. We are getting there. We have now accepted the RTM Company started 17 April 2010. We still are waiting for the closing statement from Cluttons/Knight Frank before we can incorporate this information to produce full accounts. They had collected for the Quarter to June and paid the April Caretaker wages that is all I know at present.

The draft certificate I am attaching includes income for the 3 quarters to March 11 and expenditure May 10 to March 11. It highlights a shortfall of around £22,000 if we adjust for collection of Q1. This, under collection year to March 2012 and lessee arrears (Flats 5 and 19 not being the only ones) gives us the dire cash position we are facing. One of the 4 directors is urging us to refer to solicitors.

Thank you again for getting back to us and hope to hear that you will be able to arrange full payment based on the drat certificate.”[sic]

11. The question for me to determine is whether the tenant was notified in writing that the relevant 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. I conclude that the email of 15 May 2012 does not constitute such notice for the following reasons.
12. The draft certificate attached lists a number of items of expenditure, some of which match those in the annual accounts, but some of which are either greater than or lower than those figures. In the case of water hygiene, buildings insurance, health and safety and “insurance claim” items, this variance amounted to overstated figures in the draft certificate which were more than double those in the accounts, and they were not therefore a reliable statement of expenditure.
13. In any event, the draft certificate does not amount to notice that these costs had been incurred. It is a draft document, expressly prepared on the basis of incomplete information, and indeed proven in a number of respects to be inaccurate as to the expenditure stated. It was apparently furnished as a result of the directors’ wish to see annual accounts, not in order to comply with the requirements of s.20B of the Act. It expresses merely a hope that payment will be arranged based on the draft certificate, and there is no notice that the tenant would subsequently be required to contribute to these costs as a service charge. I cannot infer from it compliance with the requirements of s.20B(2) as the Respondent’s solicitor invites me to do.
14. Since no demand for the balancing charge was served on the Applicants within 18 months of the relevant costs having been expended, which cannot have been later than 24 March 2011, and since there has been no compliance with s.20B(2), I find that the balancing charge is not payable as a service charge by the Applicants by virtue of s.20B(1).

Application under s.20C and refund of fees

15. Taking into account the determination above, I order the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
16. The Applicants made an application for an order under s.20C of the Act that all or any of the costs incurred, or to be incurred, by the landlord in

connection with proceedings before the tribunal 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. I may make such an order as I consider just and equitable in the circumstances.

17. Taking into account the evidence and the Applicants' success in this application, I do consider that it is just and equitable to make the order under s.20C sought.

Name: F. Dickie

Date: 30 January 2015