



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

Case Reference:	CHI/29UK/LIS/2016/0003
Premises:	6 Ide Hill Hall, Philippines Shaw, Ide Hill, Kent, TN14 6EY
Applicant:	Dr Michael David Lloyd
Respondent:	Ide Hill Park Management Company
Type of Application:	Liability to pay service charges
Tribunal Members:	Judge S Lal, Mr B Simms FRICS, Ms Liane Farrier
Date and venue of Hearing:	28 th July 2016, Sevenoaks Magistrates Court
Date of Decision:	4 th August 2016

DECISION

Nature of the Matter before the Tribunal

1. This is an application brought by Dr Lloyd. The matter was subject to Directions issued by the Tribunal dated 1st February 2016 and 10th March 2016 which dismissed an application to strike out and set out those matters over which it was said the Tribunal has jurisdiction, namely:

2012/12 Interest Charge of £64.00 pounds

2013/14 Repayment of surplus service charges for private gardens

2014/15 Whether the lease requires accounts certified by an independent qualified accountant.

2. The Tribunal was supplied with a Bundle prepared by the Applicant running to some 299 pages (the "Bundle"). Furthermore, the Tribunal was supplied with the Decision of a previous Tribunal from 2012 between the same parties.

The Inspection

3. The Tribunal inspected the subject premises on the morning of the hearing. Ide Hill Hall is a Regency country house having cement rendered elevations under part pitched and part flat roofs converted into seven apartments. Adjoining is the Stable Block also converted into seven dwellings.
4. Philippines Shaw is a gated estate comprising several detached houses (not part of this application) and the Hall and Stable Block set in landscaped Gardens.

The Hearing

5. The matter was heard at the Sevenoaks Magistrates Court & Tribunal Centre on 29th July 2016. The Applicant appeared representing himself. He was accompanied by his wife. The Respondent was represented by Mr John Rowland (one of the Directors of the Hall), Ms Sue Beacher (one of the Directors of the Stables) and Ms Andrea Barden (another Director of the Hall)
6. The Tribunal was pleased to note that Directions had been complied and the Tribunal had before it a Bundle. The Tribunal need not repeat at length the statements of case but summarised below are the respective submissions which the parties amplified in oral submission.
7. The Tribunal notes that Dr Lloyd brings the Application and therefore the burden of proving his case rests throughout upon him to the civil standard of a balance of probabilities.

The Case for the Applicant

8. The Tribunal was supplied with the original Application form as well as a detailed statement of case and accompanying Schedule set out at pages 1-13 of the Bundle. This was a document that was at times difficult to understand as it raised a number of collateral issues over which the Tribunal has no jurisdiction such as aspects of the relationships between the various parties and aspects of Dr Lloyds rights generally. However, in respect of what the Tribunal does have jurisdiction to determine the Applicant submitted the following. His starting position concerns his rights as a leaseholder to have accounts, that are in his opinion, adequate and that have been certified by a proper independent qualified accountant. He sets out the historical background to the case and highlights the 2012 claim in respect of the lift.
9. He points out that a new managing agent was appointed in 2013/14. In July 2013 Stables leaseholders needed eight thousand pounds for external

re-decoration but because the Applicant claimed that the management company was technically insolvent a “cash call” was made. There then followed a discussion at page 3 as to what the Applicant perceived was the non-supply of accounts for 2014/15 and how these were to an extent resolved and that in February /March 2014 a Section 20 procedure was carried out to approve re-decoration of the Hall exterior.

10. In May 2014 it was agreed with a contractor for this work at a cost of £60,000 plus a contingency fee of £10,000.
11. The Applicant then alleged that by this time no accounts had been produced, no budget for 2014/15 had been agreed and no service charges had been raised for the April- June quarter while significant payments had been made. By mid June no accounts had been issued and that the accountant Ms Wallis was only using Mr Rowland as her point of contact. Dr Lloyd alleges that when the other directors complained a draft followed by some adjusted draft accounts were issued and according to Dr Lloyd this showed unusual accounting treatment backdating planned work to secure the Lighting Protection System on the roof of the Hall. Dr Lloyd alleges that he was not aware that the work was going ahead immediately and it highlighted a section 20 violation. He goes on to say that despite his objections a majority of the leaseholders agreed to carry out the work.
12. He alleges that although Ms Wallis supplied additional information in July he identified significant mistakes and omissions. This led to what Dr Lloyd alleges was a private meeting with him and four of the Hall Directors where he was urged to resign. He maintains that he has the support of the Stables Directors throughout.
13. In any event he met with Miss Wallis in July 2014 and although not entirely happy he raised no more questions and in fact submitted his resignation on 30th July 2014. Dr Lloyd alleges that a few days later he did in fact identify a number of accounting errors.
14. In respect of that which is in dispute he makes the following points.

Interest Charges

15. Dr Lloyd alleges that he has been erroneously charged interest in respect of £63,93. This appears to have been the subject of a County Court claim for negligence and Dr Lloyd suggests that proceedings are still ongoing against the management company.

Lightning Protection System

16. In respect of the Lightning Protection System (LPS) the criticism is that work to attach cables to the roof was carried out followed by repairs to the roof and then a subsequent reattachment to the roof. The allegation is that the final cost shows backdated costs of £ 3200 and in any event in 2015 the LPS failed its annual inspection.

Garden Apportionments

17. In respect of garden area apportionments Dr Lloyd claims that Ms Wallis continued to set the service charges on a previous flawed basis for 2014/15 and 2015/16 but these have now been corrected but that the figures presented in the accounts are unnecessarily obscure and need a good deal of understanding of the accounts and that in his view the service charges for the private gardens are still set too high.

Independent Qualified Accountant

18. In respect of write offs, Dr Lloyd alleges that small mistakes make the accounts confusing, make it impossible to reconcile them and discredit the integrity of the accounts. In respect of the 2014-15 accounts there seems to be a criticism of the work of Ms Wallis.

The Case for the Respondent

19. This is contained in the written submission of 31st March 2016 and in summary it says the following. In respect of interest charges the Respondent states that this was properly demanded and that he was correctly charged interest on an amount that DR Lloyd had withheld.
20. In respect of the LPS the Respondent states that Dr Lloyd agreed to this emergency work and they refer to his email dated 16th July 2014. They raise the issue that had the works not been carried out then the insurance to the building would have been invalid. Mr Rowland submitted that the LPS contactors came back after the roofing work was done and reinstalled the LPS at no extra cost.
21. In respect of the private garden issues they state that Dr Lloyd already knows he will receive the surplus he is due.
22. In respect of the independent accountant, Mr Rowland submitted that the lease does not require an independent accountant and in any event Mrs Wallis is an independent accountant regulated by the FCA.

The Decision of the Tribunal

23. The question then arises, what exactly appears to be in dispute and more importantly what does the Tribunal have jurisdiction to determine? From the Schedule supplied it appears that the items in dispute are excess interest charges of £64; in respect of the LPS limitation of his cost to £ 250; the right to be involved in the preparation of accounts linked to the notion of an independent accountant. The Tribunal notes the various sets of Directions issued by the Tribunal and will confine itself to that which it has jurisdiction to determine which is set out in paragraph 1 above. The Tribunal determined the matters in the following way.
24. In respect of the requirement of an independent accountant, the Tribunal was satisfied that the lease could not be clearer in that at the Second Schedule Part 1, it is stated that the *“the statement will be certified by a qualified accountant as being in his opinion a fair summary....”*.
25. This provision refers to a qualified accountant only. The Tribunal is satisfied that Ms Wallis is so qualified and is a member of a regulated body and the lease has no requirements that the accounts be certified by an independent accountant. For the avoidance of doubt the Tribunal is satisfied that Ms Wallis is an independent accountant in any event in that she has her own business and is independently regulated. She is not a member of the Respondent company nor is she a leaseholder. The Tribunal is satisfied that the argument advanced by Dr Lloyd is one without merit upon a proper construction of the lease.
26. In respect of the garden apportionments issue the Tribunal notes the Respondent’s submission dated 31st March 2016, that notwithstanding the error in using an earlier method of calculation, the Respondent accepts that a refund of £174 is due back to Dr Lloyd. In the circumstances the Tribunal need not make any determination on the issue as it has effectively been reduced to a “non-issue” There is nothing in dispute. The Tribunal was informed that the lawn area may have to be recalculated for the future as Dr Lloyd had increased his square footage of lawn but this was not material to the refund or any matter before the Tribunal.
27. In respect of the LPS the Tribunal noted that Dr Lloyd conceded at the hearing that this was now really an argument over section 20 consultation. However, the Tribunal noted the email at page 55 of the Bundle from Dr Lloyd dated 16th July 2014 where he states that *“we have agreement.....to waive the need for section 20 Consultation.....please proceed with the full work asap and try to keep the cost within this limit.”*
28. The Tribunal accepts that the work was necessary as all parties agreed the existing LPS was not fit for purpose and that failure to do the work so in a timely manner would have implications for the insurance arrangements of the Hall let alone the safety of the residents and the structure of the building. The Tribunal has seen nothing to contradict Mr Rowland’s observation that the LPS installers did not make any additional charge for relaying the cables after the roofing work was completed.

29. The Tribunal is satisfied that a building of this size and location needed an LPS system and it would have been a dereliction of duty to have waited until after roof repairs had been completed. The Tribunal is satisfied that Dr Lloyd waived his right to the Section 20 Consultation procedure and that he cannot now raise it.
30. Lastly in respect of the £64 interest charges the Tribunal notes the discussion at the hearing as to how the interest was calculated. The lease refers to the "Interest Rate" at 7.22. This is defined in the definition section of the lease as being 4% above the base rate of the Royal Bank of Scotland plc from time to time or 10% whichever is the greater. The Tribunal does not find in favour of Dr Lloyd because in the Tribunal's assessment the lease could not be clearer in that Section 7.22 determines that if payment is not made then the lessee has to pay interest, at the stated rate. Dr Lloyd accepted that he had withheld the payment because he did not feel that he ought to pay the service charge demand. This is a different issue. However, the Tribunal is satisfied that the interest was lawfully demanded and that Dr Lloyd had an obligation to pay it under the terms of his lease. There was no disagreement as to the amount of any interest levied.
31. For the Reasons above the Tribunal dismisses the above application in its entirety, many of the points raised by Dr Lloyd being of limited or no merit for the reasons set out above.
32. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it as not just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicant has not succeeded in respect of his submissions.

APPEALS

33. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
34. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
35. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S.Lal.....