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

Case Reference : LON/00BE/LSC/2016/0064

Property : 64 Whitworth House, Falmouth Road, London, SE1 6RN

Applicant : London Borough of Southwark

Representative : Mr Ahmed

Respondent : Ms Adeyinka Omalade Oyenuga

Representative : Mr Rigg, Legal Adviser from the Citizens Advice Bureau

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

Tribunal Members : Judge I Mohabir
Mr I Thompson BSc FRICS

Date and venue of Hearing : 27 June 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 16 August 2016

DECISION

Introduction

1. The Respondent is the long leaseholder of the premises known as 64 Whitworth House, Falmouth Road, London, SE1 6RN (“the property”) pursuant to a lease granted to her by the Applicant dated 20 December 2004 for a term of 125 years from that date (“the lease”).
2. The Applicant commenced proceedings in the County Court to recover service charge arrears from the Respondent for the years ended 20 December 2013 and 2014. The sums respectively claimed are £4,815.95, being the quarterly payment to 1 April 2014 for the estimated cost of major works in the sum of £8714.07, which are challenged by the Respondent, and annual service charges of £70.06, which are agreed by the Respondent. The Applicant also claims contractual interest (as an administration charge) in the sum of £386.34, which is not expressly challenged by the Respondent. As will be seen below, the Respondent’s liability to pay this turns on whether her primary case succeeds or fails.
3. The Defence filed by the Respondent in the County Court effectively contended that the estimated cost of the major works were unreasonable. Eventually, the case was transferred to the Tribunal for a determination to be made on this point. However, at the Directions hearing held by the Tribunal, the Respondent also contended that the costs of the major works were not contractually recoverable under the terms of her lease.
4. The Tribunal’s determination is made under section 27A of the Landlord and Tenant Act 1985 (as amended) below.

Relevant Lease Terms

5. The relevant lease terms can be summarised as follows.
6. By clause 2(3)(a) of the lease, the Respondent covenanted to pay the service charges set out in the Third Schedule at the times and in the manner set out therein.

7. Paragraph 2(1) of the Third Schedule requires the Applicant to produce an estimate before the commencement of each service charge year of the amount payable by Respondent and to notify her of this. Each service charge year commences on 1 April and ends on 31 March in the following year.
8. By paragraph 2(2)(a) of the Third Schedule, the Respondent covenanted to pay the estimated service charges in four equal instalments on the usual quarter days commencing on 1 April of each year.

Decision

9. The hearing in this matter took place on 27 June 2016. The Applicant was represented by Mr Ahmed, a legal representative. The Respondent was represented by Mr Rigg, a legal adviser from the Citizens Advice Bureau.
10. Mr Rigg, helpfully, confirmed that the Respondent was not longer challenging the reasonableness of the estimated cost of the major works. He said that the Respondent's case was simply that the estimated costs of the major works are not contractually recoverable under the terms of the lease.
11. Mr Rigg submitted that paragraph 2(1) of the Third Schedule of the lease requires that Applicant to notify the Respondent of the estimated cost of service charges before the commencement of each relevant year. The Respondent's liability to pay the estimated cost of the major works arose in the 2012/13 service charge year. Therefore, the Applicant was obliged to send the service charge estimate to the Respondent on or before 1 April 2012. However, in breach of paragraph 2(1) of the Third Schedule, this was not done until 12 February 2013.
12. Mr Rigg argued that the intention behind paragraph 2(1) of the Third Schedule was to give the tenant advance warning of future service charge contributions. By sending the service charge estimate to the Respondent

on 12 February 2013, the Applicant allowed her effectively a month to meet that liability.

13. Mr Rigg relied on the authority of *London Borough of Southwark v Woelke* [2013] UKUT, which concerned the same contractual provisions, as is the case here, for the proposition that the Applicant could not waive the obligation imposed by paragraph 2(1) of the Third Schedule. Therefore, he submitted that the estimated cost of the major works claimed by the Applicant is not contractually recoverable.
14. The Tribunal did not accept the submissions made by Mr Rigg on behalf of the Respondent for the following reasons.
15. It was common ground that in July 2013 the Respondent accepted an interest free payment option offered by the Applicant to pay the service charge contribution for the estimated cost of the major works. In so doing, the Appellant had “*agreed to waive strict compliance with the Third Schedule, so far as it related to the cost of the major works*”¹. In other words it was now not open to the Respondent to take any point against the Applicant in relation to its strict non-compliance with paragraph 2(1) of the Third Schedule of the lease.
16. In addition, as was conceded by Mr Rigg, paragraph 2(1) of the Third Schedule did not make time of the essence in relation to service of the service charge estimate. Consequently, if the Applicant failed to provide the service charge estimate after the relevant year to which it relates had commenced, it was not prevented from doing so at a later date. The Respondent’s contractual liability came into effect once the service charge estimate was served by the Applicant, albeit late².
17. Accordingly, the Tribunal concluded that the Respondent was contractually liable to pay the service charge contribution claimed by the

¹ see paragraph 62 of *Woelke*.

² see paragraph 44 and 46 of *Woelke*.

Applicant in respect of the estimated cost of the major works for the year 2012/13.

Costs

18. The only cost sought by the Applicant from the Respondent is the hearing fee of £190 it has paid to the Tribunal. Given that the Applicant has succeeded in the application, the Tribunal concluded that costs should “follow the event”. Therefore, pursuant to Regulation 9 below, the Tribunal orders that Respondent to pay the sum of £190 to the Applicant within 28 days of service of this decision on her.

19. This case is now remitted back to the County Court to decided any remaining issues stayed in those proceedings.

Judge I Mohabir
16 August 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (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.

Section 19

- (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 provisions 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (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 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 a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).