



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

Case Reference : **LON/OOAG/LSC/2020/0176**

Property : **22B Camden High Street, London
NW10JH**
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Applicant : **Mr Rene Wilson**

Representative : **In Person**

Respondents : **Independent Developments Limited**

Representative : **Tom Dewey of Pelham Associates**

Type of Application : **Reasonableness and payability of
service charge.**

Tribunal Members : **Jim Shepherd
Sue Coughlin MCIEH**
:

Date of Decision : **November 2020**

DECISION

No sums are due. The management fee is not reasonable. The Applicant shall have his application fees reimbursed and there shall be an order made pursuant to s.20C of the Landlord and Tenant Act 1985.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was A:BTMM COURT. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

The case

1. In this application the Applicant, Rene Wilson seeks a determination as to the reasonableness and payability of service charges of £200 which are due in the current financial year. The sum of £200 relates to a management fee sought by Pelham Associates purportedly on behalf of the Respondents.
2. The Applicant alleges variously: that the management fee should be a Qualifying Long Term Agreement (QLTA) pursuant to s 20(4) of the Landlord and Tenant Act 1985 and the Respondents have not carried out the relevant consultation; that the management fee is incongruous because it has never been charged before and there is no explanation as to how the sum of £200 is arrived at.

The premises

3. The premises consist of a mixed use residential and commercial property with two leasehold flats on the upper floors and a dental surgery on the ground floor. The Applicant occupies Flat B. He has owned the lease since 2012.

4. The Respondents are represented by Pelham Associates the managing agents. As a preliminary issue the Applicant questioned whether the Respondents, Independent Developments Ltd were still in existence and pointed to evidence he had obtained from the internet which suggested the company had been dissolved. Mr Dewey maintained that the company was still in existence and are based in the Seychelles following a re-registering exercise. No definitive evidence was provided that the company was still active and the re-registering appeared to post - date the company's dissolution. Perhaps of more concern was the fact that Pelham Associates had embarked on charging a management fee without apparently consulting with the Respondents.

The hearing

5. The hearing of the application was assisted by the bundle prepared carefully by the Applicant without any legal assistance.

6. The Applicant highlighted the fact that there had been no management fee charged since the leasehold inception 33 years previously. The fee had appeared for the first time in the current year's estimated budget and he questioned the timing and validity of the charge because the parties had been involved in previous cases in which the Applicant had challenged other charges. There is in existence a Property Management Agreement (PMA) dated 2014 between Pelham Associates and the Respondent. He submitted that this agreement was a QLTA because it had no end date save that it could be terminated by either party by giving three months written notice (Page 31 cover page). He also argued that no explanation had been given for how

the management fee had been arrived at despite the Tribunal ordering the Respondents to provide this information in the Directions.

7. Mr Dewey said that the management fee had been introduced in an effort to upgrade the management of the premises. It was common ground that the lease allowed the collection of a management fee. He said that the PMA was set up in 2014 primarily to deal with the commercial unit – the Dentist. The residential elements had been sold on long leases and therefore the PMA was not relevant to them. He refused to provide details of the fees paid to Pelham Associates under the PMA as he considered that this was commercially sensitive information. He was able to shed no clear light on how the figure of £200 was arrived at although he said that he considered that £200 per dwelling was a reasonable sum for administering the Lessor’s responsibilities under the lease. He said that Pelham Associates had not consulted the Respondents about the management fee. He said they were attempting to agree the fee with the leaseholders first. He could not address the question of whether the PMA was a QLTA.

Decision

8. The Tribunal was concerned about several matters in this case:
 - a) Was the PMA of any relevance?
 - b) Have the Respondents been involved in the decision to charge a management fee?
 - c) Is the management fee a QLTA?

- d) How is the figure of £200 arrived at?
9. Despite his best efforts Mr Dewey was unable to answer any of these questions properly.
 10. His position in relation to the PMA was confused. He relied on it to confirm his role as managing agent yet he said it was not directly relevant to the leasehold flats. The Tribunal considers that the PMA was distinct and dealt solely with the commercial premises. It was impossible to apply the PMA to the charges being made to the Applicant.
 11. On Mr Dewey's own admission the Respondents had not been consulted on the decision to charge a management fee. This decision had been made by Pelham Associates of their own volition. This is surprising in light of the fact that no management fee had been charged before. There is no evidence that the Respondents agree with the decision to charge the fee
 12. Although the PMA itself may not be directly relevant the management fee could be a QLTA. It is an agreement entered into on behalf of the landlord (although the landlord is not aware of it) there is no apparent term and therefore it could be for more than 12 months. Accordingly, a consultation exercise should probably have been carried out before the management fee was charged.
 13. The Tribunal remain in the dark as to how the figure of £200 was arrived at for the management fee particularly in the absence of any details of the fees collected from the commercial premises.

Summary

14. The Tribunal does not consider that the £ 200 charge for the management fee is reasonable for the reasons already given. It is undoubtedly true that a

management fee could be charged as there is provision under the lease however the current charge cannot be justified.

15. In light of our decision and the history of the case the Tribunal allows the Applicant's application for reimbursement of his application fee and the Tribunal makes an order under s.20C Landlord and Tenant Act 1985 preventing the Respondents from recovering costs of these proceedings from the Applicant in his service charge.

Judge Shepherd

November 2020

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).