



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

Case Reference : **MAN/OODA/LSC/2019/0062**
First Tier Tribunal

Property : **3007 Bridgewater Place, Water Lane,
Leeds, West Yorkshire, LS11 5QD**

Applicant : **Bridgewater Manco Limited**
Representative : **J B Leitch, Solicitors**

Respondent : **Mr. Anthony Palmer**

Type of Application : **Landlord and Tenant Act 1985 - s27A
Commonhold and Leasehold Reform Act 2002
- Sch 11 para 5**

Tribunal Members : **Mr John Murray LLB
Ms. Aisling Ramshaw**

Date of Decision : **17 December 2019**

Date of Determination : **17 February 2020**

REASONS FOR DECISION

INTRODUCTION

1. The Applicant issued proceedings in the County Court in Liverpool on the 26 June 2019 under claim number F30LV392 for a declaration pursuant to s81 of the Housing Act 1996 that service charges and administration charges are due and payable.
2. The Applicant further sought a declaration pursuant to s168 of the Commonhold and Leasehold Reform Act 2002 that the Defendant had breached the terms of the lease, and a money judgement and/or damages in respect of unpaid service charges, ground rent and administration charges in addition to statutory interest or such other interest as the Court deemed fit, and costs.
3. On the 9 July 2019 the claim was transferred to the County Court at Leeds by Order of Deputy District Judge Causton. At the direction of District Judge Goldberg sitting on the 11 July 2019 the claim was referred to the Tribunal to determine whether the service charges and administration charges were payable and/or reasonable. In addition the District Judge has allocated the remaining aspects of the claim as particularised in the original claim form for determination by a Tribunal Judge (sitting as a Judge of the County Court).
4. Directions were made by a Procedural Judge on 15 August 2019 for the exchange of statements and relevant documents including a school or spreadsheet setting out the disputed items. The Respondent was directed to state whether he was seeking an order under s20C Landlord and Tenant Act 1985 and an order under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.

THE INSPECTION

5. A Tribunal was appointed and an inspection of the Property took place on the morning of 17 December 2019 at 10am.
6. The Applicant was represented at the inspection by Mr Tolson of Counsel and Mr Mearns of Liv, managing agents to the Applicant. The Respondent attended the inspection in person.
7. The Tribunal were shown around the apartment which is a one bedroomed apartment on the 30th floor of the Bridgewater Place building in the centre of Leeds. Bridgewater Place is a mixed use development incorporating commercial and residential premises, with substantial office accommodation on lower floors.

8. The Property, Apartment 3007 was in very good condition save for water marks and damage to window soffits at the top of the floor to ceiling windows in the living area, and some tracking to the ceiling, where water had penetrated. The carpets were very badly water stained. The window which had been defective in the lounge had recently been repaired and was operating.

THE LEASE

9. The Property is held by the Respondent pursuant to an Underlease made between KWLinfoot@Bridgewater Place Limited, Bridgewater Place Residential Management Company Limited and Victoria Corlette Bannister dated 9 January 2009 for a term of 250 years less 3 days from 25th January 2007 at an initial rent of £260 per annum [Bundle p35]. The Respondent was registered on 13 May 2013 as the leasehold proprietor of the Property.
10. The Premises are described in Schedule 5 of the lease as 30 floor premises in the Building known as 3007 Bridgewater Place, and being the non load bearing furnishings or coverings to the main ceilings, floors and walls of the Premises, any main columns in the Premises, but not any other part of those main ceilings, floors, walls or columns; any windows, doors and window and door frames within the Premises but excluding any external windows, window frames and patio doors; any raised floors and suspended ceilings inside the Premises; all Pipes inside and exclusively serving the Premises; all additions and improvements, all other structures and appurtenances at any time on or enjoyed with the Premises insofar as they do not form part of the Common Parts
11. At Clause 3 of the Lease, the Respondent covenanted to pay ground rent and service charges to the Applicant. At 3.1 the Respondent covenanted to pay a provisional sum in respect of the Tenant's Proportion for each Account Year as determined by the Landlord ... by equal payments in advance on the Service Charge Dates, with provision for balancing amounts in following Account Years.
12. At Clause 4.2 the Landlord covenanted to keep the Common Parts adequately repaired and decorated.
13. The Service Charge is dealt with in Schedule 4 to the lease, the services being listed in parts B, C, D and E. The Expenditure is defined as all cost, expense and outgoings whatsoever incurred by the Landlord in providing or procuring the provision of all of any of the Services in respect of the Common Parts, the Building, or the Estate (as appropriate).

14. At 3.1 of Schedule 4 the Tenant covenants to pay a provisional sum in respect of the Tenant's Proportion for each Account Year to be determined by the Landlord, or in the case of dispute, the Surveyor by equal payments in advance on the Service Charge Dates, the first payment, being a proportionate sum in respect of the period from the date of this Lease to the Service Charge Date immediately after the date of this Lease, to be paid on the execution of this Lease.
15. At 3.2 of Schedule 4, when the Tenant's Proportion for each Account Year is finally fixed:
 - (a) if it exceeds the provisional sum paid by the Tenant the excess shall be paid to the Landlord on demand;
 - (b) if it is less than the provisional sum paid by the Tenant the overpayment shall be credited to any sinking fund or allowed against the provisional sum payable by the Tenant for the following Account Year (at the option of the Landlord).
16. At 4.4 of Schedule 4, if the Tenant disputes any demand made by the Landlord for payment of monies under this Schedule, whether or not the dispute is to be referred to the Surveyor, it shall, even though there is a dispute, pay the monies demanded to the Landlord in accordance with this Schedule and on the final resolution of the dispute (whether by the Surveyor or otherwise) the Landlord shall repay to the Tenant any excess which is found to have been paid.
17. Part B of Schedule 4 deals with Building Costs, Part C with Estate Costs, Part D with Car Parking Costs, and Part E with General Costs including insurance and other such outgoings.
18. Building Costs include obligations to inspect, repair, maintain renew reinstate redecorate various aspects of the Common Parts
19. The Building is defined in the lease as the Building on the Estate comprising inter alia the Apartments and the Car Park known as Bridgewater Place including any future extensions, alterations or additions to it and excluding any future reduction of it.
20. The Common Parts are defined in the lease as all parts of the Building and of the Estate which at any time during the Term do not form part of the Premises or the Car Park or any Apartments or other premises in the Building let or intended to be let to any other tenant of the Landlord including without limitation:
 - i. the roof, foundations, main ceilings main floors and floor slabs, main walls, structural steelwork, structural and main columns, beams and joists and all other external and structural parts of the Building including all windows and doors and windows and door frames in external elevations of the Building.

- ii. all internal walls, whether load bearing or not inside the Common Parts or separating the Common Parts from the Premises or any other Apartments or Premises in the Building let or intended to be let to any other tenant of the Landlord and all windows and doors and window and door frames in those walls.
 - iii. all entranceways, hallways, balconies, terraces, passageways, staircases, lifts, toilets, kitchens, refuse areas, roads and footpaths and all parking, service, access and landscaped areas, all boundary structures and all Pipes other than those demised to the Tenant or demised or intended to be demised to any other tenant in the Building.
 - iv. any central heating, air handling or air conditioning system radiators, boilers, ducts, pumps, water tanks, coolers, controls, and other equipment (including all associated pipes) which serve the Building as a whole or any parts of it communally.
 - v. any video, monitoring, security, control, access, fire detection, fire prevention or sprinkler system and any other electrical or other system of any type (including all associated Pipes) which serve the Estate as a whole or any parts of it communally.
21. The Estate is defined in the lease as the Landlords' Bridgewater Place development comprised in the Headlease but including any future extensions, alterations or additions to it and excluding any future reduction of it. The Headlease [Bundle p239,242] defines the headlease as excluding particular parts, specifically the roof and the airspace, all doors and windows in the external envelope.

THE LEGISLATION

22. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

- (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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Common hold and Leasehold Reform Act 2002 Schedule 11 paragraph 5:

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.

THE HEARING

- 23. The Applicant was represented at the Hearing by Mr Tolson of Counsel. The Respondent appeared in person.
- 24. At the outset of the hearing, the Respondent confirmed that he did not object to the service charges, he simply wanted to offset the cost he had been put to as a result of the leak which had existed for several years. He confirmed that he had received the demands for payments and summaries of rights and obligations accompanying the former. The Applicant had filed the Statements of Account and Demands and Summaries of Rights and Obligations [Bundle p84]
- 25. The issue for the Tribunal and the County Court therefore was whether the Respondent could make a counterclaim/set off against the Applicant, and issues arising from that determination accordingly.

SUBMISSIONS

CASE FOR THE APPLICANT

- 26. The Applicant had filed a witness statement dated 13 June 2019 by Katy Devine, a solicitor in the employ of the Applicant's solicitors JB Leitch Limited [Bundle p6] with the County Court Claim form, in support of the Applicant's claim for the following:-
- 27. A declaration pursuant to s81 Housing Act 1996 that service charges totaling £2583.60 are due and payable by the Respondent to the Applicant.
- 28. A declaration pursuant to s168 of the Commonhold and Leasehold Reform Act 2002 that ground rent in the sum of £260 is due and payable to the Applicant by the Respondent.
- 29. That by reason of the Respondent's failure to pay the above sums, the Respondent had breached the terms of the Lease.

30. A money judgement and/or damages in respect of unpaid ground rent and service charges.
31. Ms. Devine confirmed that the Applicant is the registered Head Leasehold Proprietor of a residential development known as and situated at Apartments 1 - 201 Bridgewater Place, Water Lane Leeds LS11 5QT, having been registered as the Head Leaseholder on 9 July 2007. Liv Group were appointed agent to demand and receive service charge and ground rent in accordance with the lease.
32. The Applicant filed a statement by Gavin Mearns, Regional Manager of Liv Group Limited dated 2 September 2019 [Bundle p127]. He stated that the water ingress that was the major concern of the Respondent was caused by a leak in the roof of the building, the responsibility for the repair of which was with the Freeholder of the building.
33. The Applicant filed a supplemental statement by Mr. Mearns, dated 8 October 2019, [Bundle p216] pointing out that the Respondent had not complied with paragraphs 4 to 7 of the directions, and had failed to file a schedule or spreadsheet confirming items in dispute.
34. Mr. Mearns confirmed that he was employed by the Applicant to collect charges on their behalf and carry out maintenance functions under the Lease. He produced a workflow explaining the ownership of the development, exhibited as GM2 to his statement.
35. He confirmed that the Freehold is owned by CPPI Bridgewater Place Limited Partnership; a headlease was in place between the Freeholder and KWLinfoot@Bridgewater place Limited, an under -lease between MP Reversions No 105 Ltd, and KWLinfoot@Bridgewater Place Limited, and a sub under lease between the latter and the Respondent. JLL were the managing agent employed by the Freeholder. He stated that the Applicant was not therefore responsible for the repair of the part of the building that the Respondent was concerned about, and had withheld his money over, and that this had been pointed out to the Respondent by emails Mr. Mearns had sent to him dated 7 August 2018 and exhibited to the Respondent's evidence marked 36 and 37.
36. Mr Tolson pointed out that there was no challenge to the service charges themselves there was no reason for the Tribunal to interfere with the amounts.
37. He submitted that the Tribunal could not deal with a Counterclaim in any event, as the counterclaim did not arise from any contested facts, no formal counterclaim had been issued, no fee had been paid, and consequently the Tribunal had no jurisdiction in accordance with the decisions in *Lewis v Ward Hadaway* [2015] EWHC 3503 (Ch) and *Lifestyle Equities C. v sportdirect.com Retail Ltd* [2016] EWHC 2092 (Ch).

38. If he was wrong on this point, then he submitted that the Counterclaim could not validly be brought against the Applicant as they were not responsible for the repair of the roof. He accepted that there was no dispute that the leak existed, or that it had taken several years to address; but the roof was not in the ownership of the Applicant, and they would have been trespassing to carry out works. He pointed to documents in the bundle, emails between the Respondent and Mr. Mearns, and an email from JLL agents for the Landlord confirming that they were responsible for carrying out the repair. Mr. Mearns gave evidence that the repair had been completed on the 12th December 2019. Mr Tolson said that any claim by the Respondent should be directed at the Freeholder.
39. In relation to the Common Parts in the sub underlease referring to the roof being included, Mr Tolson submitted that the reference was an error of drafting and the Tribunal was invited to make such a finding when interpreting the lease.
40. Mr Tolson confirmed that the Applicant sought interest at section 4 of his Skeleton argument, as a contractual right. He conceded that the Tribunal should award interest at the contractual rate instead of the County Court rate of 8%. He had set out calculations of interest on the contractual basis at the daily rate.
41. On the 20 January 2016 Mr. Mearns had emailed the Respondent to advise that the exterior of the building was managed by JLL who had instructed contractors, and at that stage the works were due to commence to the cladding in March 2016. This was confirmation that it was the Freeholder who was responsible for the roof and the windows.
42. Mr. Mearns confirmed that delays had been due to the need to carry out complex repairs to commercial parts, external wind reduction works and other “base build” issues that were being pursued against the original contractors Bovis. He stated that there had been quite a few properties with water ingress; there had been maintenance issues, problems with window gaskets, or more serious breaking of frames, but the freeholder had undertaken to resolve there. There had been delays with obtaining information, but he stated that his instructing ManCo director had been very involved, pushing for updates every 7 - 14 days. He said that they had sent strongly worded emails to the freeholder because they owned the lion’s share of properties.
43. Mr Tolson addressed the tribunal on the statement of costs filed by the Applicant for contractual costs. He confirmed that proceedings had been taken in the County Court as a condition precedent to service of s146 notice which would consequently enable the Applicant to pursue contractual costs whereas a small claims action would not permit a s168 declaration. The Applicant sought costs on a full indemnity basis, and any doubts should be resolved in favour of applicant not respondent.

THE RESPONDENT

44. In his defence to the County Court action, the Respondent produced a defence and a witness statement. The Respondent produced the same witness statement in the Tribunal proceedings dated 1 September 2019 [Bundle p141] He stated that there was substantial damage to the Property as a result of water ingress, which had existed since he purchased the Property. Paintwork, woodwork, curtains and decor was damaged, and insect infested. He was told by the Agent that the Management Company were responsible for repairing and making good the damage. He described talking to a number of individuals from Eddisons, and then Liv, managing agents for the Management Company.
45. He described receiving a lot of promises that the work would be carried out, but no action over many years. His flat was being damaged and he has to isolate electricity for safety owing to water ingress. He also stated that a window could not be opened, which resulted in the glass fronted flat overheating. He also raised concerns that there were no fire alarms on the top floor. Eventually he told the agency managers that he would carry out work himself to repair cosmetic aspects of the Property. He emailed the various agency managers with a start date and advised that unless heard from the contrary he would assume that they would agree. He arranged for cosmetic work to be carried out and sent an invoice for £2040 to “everyone concerned”.
46. He said he could not purchase insurance as the Property was not watertight. He stated that Paul Curson (of JLL) and Kevin Wilson (of LIV) were in agreement to offset the money he had paid for renovation. However he was told that they had both left the company when he spoke to Awais Ahmed on 14th April 2019. The Respondent was told that the matter was in the hands of their solicitors, and the next he knew the court proceedings had been issued. He sought to offset the monies paid out in repairs and to claim for the consequential damages and costs, as the water problem was still ongoing
47. The Respondent confirmed that he had taken legal advice, and had had extensive meetings over the years with JLL. He said that Eddisons had told him that they would fix the leak before he purchased. He said that Kevin at Liv had agreed to offset his expenses, but this was not put in writing.
48. In support of his claim, he produced an invoice dated 11.8.2018 for £1700 plus VAT, total £2040 repairs to window soffits, stain blocking and repainting from Harrison Property Solutions Limited. He said he had lost rents at £20,000 per annum for two and a half years, but he accepted he was not pursuing this through the Tribunal.
49. The Respondent asked for common sense to prevail. He has been passed from pillar to post, and it's not fair, and he has asked at different times to be able to pay the difference. He said he had offered to pay the whole amount less the disputed sum, but had been unable to do so as Mr. Ahmed at LIV said he would not be able to do this.

THE DETERMINATION

DETERMINATION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

50. The Respondent did not challenge the service charges sought, and consequently the Tribunal determines that Service Charges and Administration Charges of £2583.60 are payable by the Respondent to the Applicant.
51. The Tribunal determines that the Respondent is not able to counterclaim or set off any sums in respect of the leaks to the apartment. The Tribunal determines that whilst the lease is badly drafted, and ambiguous, it cannot have been the intention of the original parties to put the roof into the common parts. It is specifically retained in the Headlease, which is referred to in the sub underlease, and at all times JLL on behalf of the Freeholder took responsibility for the roof and window and have now in fact repaired it. The Tribunal has every sympathy for the Respondent who has clearly struggled to get a solution to his problem over many years, but any claim that he has in relation to his losses must be made to the entity responsible for the nuisance he has suffered.

Costs

52. The Applicant asked the Tribunal to make an order for costs against the Respondent and filed a schedule of costs. The Tribunal finds the costs of the correspondence, Counsel, and the issue fee reasonable, but some of the time spent on documents excessive. Consequently the overall sum is reduce to the sum of £4316.80.

Tribunal Judge

John Murray

17 February 2020

APPENDIX 1 – RIGHTS OF APPEAL

Appealing against the tribunal's decisions

- (1) A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- (2) The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties, unless the Tribunal has extended that period, in which case it must arrive by the extension date.
- (3) If the application is not made within the time limit, such application must include a request for an extension of time and the reason for not complying with the 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.
- (4) The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.