FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UH/LSC/2018/0054**
Property	**:**	**Flat 8, Coniston Court, 388-389 Marine Road East, Morecambe, LA4 5AL**
Applicant	**:**	**Fraser Estates Ltd.**
Representative		**Laker Legal Solicitors**
Respondent	**:**	**Coniston Court (Morecambe) Management Co. Ltd.**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A and s20C**
Tribunal Member	**:**	**Judge P Forster** **Mr I James MRICS**

DECISION

Decision

1. The applicant is not liable to pay the respondent any of the service charges claimed for the years 2014/15 to 2019/20 because the accounts on which the demands are based have not been certified in accordance with the terms of the lease.

2. The Tribunal did not determine the application made by the Applicant under s.20C of the 2002 Act because the Respondent agreed that the Applicant would not be charged for the costs incurred in relation to the proceedings.

Introduction

3. This an application under s.27A of the Landlord and Tenant Act 1985 ("the Act") to determine whether a service charge is payable, and the reasonableness of the charges that have been made for the years 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 and 2019/20.

4. There is also an application under s.20C of the Act for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings 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 .

5. The applicant, Fraser Estates Ltd., is the leasehold owner of Flat 8, Coniston Court, 388-389 Marine Road East, Morecambe, LA4 5AL ("the property"). It holds the property under a 999 year lease commencing on 1 January 1973.

6. The respondent, Coniston Court (Morecambe) Management Co. Ltd. holds the freehold of the property and is entitled to receive the contributions and payments reserved by the lease towards the costs of maintaining, repairing, decorating and renewing the property. The members of the respondent company are the leaseholders of the respective flats each holding one share.

7. Coniston Court consists of two large terraced houses that were converted into 14 self-contained flats in about 1973. 7 of the flats are owner occupied and 7 are sub-let to tenants.

8. The Tribunal issued directions on 14 January 2019 that required the respondent to send the applicant copies of all relevant service charge accounts and budgets for the years in dispute, together with all relevant notices and demands for payment. The respondent was also required to send the applicant a statement showing the total service charges it believes to be payable by the

applicant for the relevant years, explaining by reference to the lease the basis on which those charges have been applied, calculated and apportioned. Within 21 days of receipt of that financial information the applicant was required to send to the respondent a statement of case setting out the grounds for the application, identifying the charges which are in dispute. That was to be done by means of a schedule or spreadsheet showing the disputed item, the reasons why it is disputed, the amount, if any which the applicant is willing to pay and providing a space for the respondent to comment on each item.

9. There was only partial compliance with directions. After an inspection of the property on 30 May 2019 and a hearing at Lancaster Magistrates Court the application was adjourned and the time for complying with the directions issued on 14 January 2019 was extended.
10. The hearing was resumed on 26 November 2019. The applicant was represented by Mr Ogden of Laker Legal Services, solicitors. The respondent was represented by Mr Richard P Taylor of Richard P Taylor, chartered surveyors.

The applicant's case

11. The applicant contends that:

    (i) costs included in the service charge demands are not reasonable and that no information has been provided as to how the expenditure in relation to those charges has been calculated,

    (ii) the applicant has not been provided with evidence as to any of the expenses listed in the seventh schedule to the lease and how the applicant's contribution to the same has been calculated,

    (iii) the service charge statements provided do not comply with the requirements under the Administration Charges (Summary of Rights and Obligations) (England) 2007,

    (iv) the applicant contends that it has not been consulted about works to the building which are qualifying works in accordance with s. 20 to 20ZA of the Landlord and Tenant Act 1985,

    (v) the respondent has invoiced the applicant for a contribution to the cost of rendering works to the exterior of the building which is said to have cost £16,000 in the period 2016 and £15,000 in the period 2017. The applicant has not witnessed any works being carried out on the property that would reflect the cost of such service charges and that the costs of the works are

excessive. The applicant has obtained a quotation of its own for the rendering works believes that the fair cost would have been no more than £7,000,

(vi) the respondent further seeks to recover costs other than the service charges which amount to £892. The applicant has been given no indication as to what these charges are for and no consultation was offered by the respondent.

(vii) no internal decoration or ground maintenance has been carried out at the property or the building in which it is situated during the periods in contention.

The respondent's case

12. The respondent submits that:

(i) the service charges were calculated based on the budget figures which were circulated to all leaseholders prior to AGMs. The applicant chose not to attend any of the meetings over the periods in question,

(ii) evidence to support the expenses claimed has been provided with the respondent's submission,

(iii) The service charge demands were accompanied by a statutory notice as required,

(iv) there was full consultation with all leaseholders who attended the AGM and the Extraordinary General Meeting, and this constitutes full consultation. The applicant chose not to attend the meetings,

(v) invoices for the external rendering have been provided with the submission. The applicant has inspected the premises and is aware that the rendering has been done to the exterior of the building. Competitive quotes for the rendering were obtained. Anybody who would have charged £7,000 to render the building would not have done a worthwhile job. The decision to instruct Coastal Building Services was agreed by the leaseholders who attended the AGM,

(vi) the claim for £892 was for works undertaken by the management company to stop water ingress from flat 8 into the flat below. The management company had to take action because the applicant did not respond to requests to attend and have the works done,

(vii) no internal decoration has been carried out and ground maintenance is de minimis done on an ad hoc basis when requested by residents.

The Law

13. S.18 of the Act defines "service charges" and "relevant costs":

(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.

14. S.19 of the 1985 Act deals with limitation of service charges:

(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 provision 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.

15. S.27A of the 1985 Act deals with the liability to pay service charges:

(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.

S.18 of the Act defines "service charges" and "relevant costs":

(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.

Decision

16. The lease contains a covenant by the leasee and their successors in title (the applicant) forthwith on demand to pay in common with the owners of other flats in the building a due proportion of the costs, expenses, outgoings and other matters as set out in the seventh schedule. That schedule contains covenants by the lessee to contribute a 1/26th share to the following:

    (i) The expenses of maintaining, repairing, decorating and renewing the reserved property all additions thereto and ensuring the same,

    (ii) The cost of keeping the halls passageways landings staircases and open areas of the Court clean condition

    (iii) The cost of decorating the exterior of the buildings erected on the Court.

    (iv) The cost of insurance against third-party risks in respect of the Court if such insurance shall in fact be taken out by the lessor.

    (v) An additional charge not exceeding £10 per centum shall be added to costs expenses outgoings and matters referred to in the preceding paragraphs of this schedule (the seventh schedule) for administration expenses and when any maintenance cleansing repairs redecorations renewals are carried out by the lessor it shall be entitled to charge as the expenses of cost thereof it's normal and reasonable charges including profit in respect of such work.

17. By a deed of variation dated 19 July 1994 the contribution portion was varied to 1/14th.

18. It was not in dispute that the applicant is liable to the respondent to pay a service charge as provided by the lease.

19. The amount charged in respect of each of the relevant years is:

2014/15	£601.50
2015/16	£936.00
2016/17	£1,200
2017/18	£1,200
2018/19	£1,200
2019/20	£1,200

20. The information provided by the respondent to support the service charge claims was partially incomplete. Although a claim was made for 2014/15 the service charge demand was not provided, and it was uncertain how much was claimed. It was submitted at the hearing by Mr Taylor that the amount was £601.50. He deduced that sum from figures produced by the previous agent who managed the property. Mr Taylor's company took over responsibility for the property on 11 March 2014. It follows that the service charge demand would have been prepared by Mr Taylor, but it was not provided to us.

21. Mr Taylor's evidence was that the service charges were calculated based on the budget figures circulated to all the leaseholders at the AGMs. Copies of that information was provided to the tribunal. The items for which a charge has been made can be identified in documents headed "financial report". For example, in respect of the year to 31 March 2016 the relevant costs are: insurance; accountants; electricity; management fees; bank charges; cleaning; window cleaning; grounds maintenance; fire alarms/emergency lighting repairs; general repairs and sundry expenses. This is the information which the applicant claims was not provided when the service charge demands were made. Now that information is available, the respondent takes issue, in particular, with the management fees. We note that one of the items is for grounds maintenance which the respondent concedes was de minimis. All the figures have apparently been estimated on the basis the previous year's expenditure.

22. Our starting point is the service charge demands that were served on the applicant. These invoices simply state the period for which the charges are made and provides a figure. We do not have the invoice for 2014/15. The invoice for 2015/16 is dated 1 April 2015 and is £936. All subsequent invoices are for £1,200. No further information is provided with the demands to substantiate the sums claimed.

23. The applicant's first objection is that the invoices are invalid and of no effect because they do not comply with the requirements of the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007. The applicant's case was that it could not be certain that the prescribed information was provided with the invoices. The applicant assumes that the information was not provided. The respondent produced copies of the relevant information that was attached to each invoice. We accepted the respondent's evidence and therefore find that it did comply with the 2007 Regulations.

24. The respondent conceded that it had not complied with the relevant provision in the lease, namely clause 4 (viii), that "*the account taken in pursuance of the last preceding sub-clause shall be prepared and audited by a competent chartered accountant who shall certify the total amount of the set costs charges and expenses (including the audit the said account) for the period to which the account relates and proportionate amount you from the lessee to the lessor pursuant to sub-clause (xiv) of clause 3 hereof*". We find that failure is fatal to the service charge claims. The respondent has failed to comply with the terms of the lease. By failing to have the accounts audited and certified by a chartered accountant it is not possible to rely on the figures put forward to support the claims. The respondent's answer to this is that the accounts were provided to and accepted by the leaseholders at the AGMs. That is not sufficient because it does not follow the provisions of the lease and the information provided has not been certified and therefore cannot be relied on. Not all the leaseholders attended the meetings, certainly the applicant did not do so, and cannot legitimately be criticized or penalized for not being present.

25. Before the respondent is able to recover any relevant expenditure, it must comply with the terms of the lease to certify the accounts on which the claims are made.

Conclusion

26. The service charge claims are fatally flawed by the respondent's failure to comply the terms of the lease. Therefore, we must allow the application and find that the applicant is not liable to pay the respondent any of the service charges made for the years 2014/15 to 2019/20.

27. We make the following observations to assist the parties because our decision may well not be the end of matters. The respondent may wish to obtain certified accountants and make new claims.

28. The lease governs the relationship between the lessor and the lessee and only charges made in compliance the terms can be recovered. The lease prescribes the proportion of the charges that are payable by the applicant. The proportion is 1/14th of the costs. We heard evidence that 3 of the 14 flats are charged less than 1/14th because they do not have access to rear the property. The respondent has made up the resulting shortfall by increasing the amount that the other 11 leaseholders are asked to pay. That may be a practical solution, but it is not within provisions lease.

29. There are other issues which remain outstanding between the parties and will need to be resolved. We do not make any decision in respect of these issues. It is apparent that the applicant does not accept the amount claimed for management fees. The relevant provision in the lease is paragraph 3 of the 7th schedule which appears to limit the amount that can be recovered to 10% of the cost of the expenses detailed in paragraph 1. Further, the respondent appears to claim a contribution from leaseholders to a reserve fund to meet future expenditure. That is prudent and to the benefit of the leaseholders, but such a contribution may only be claimed if there is provision for it in the lease. The work undertaken to render the building appears to be subject to the consultation provisions in s.20 of the Act. Failure to comply will limit the amount that can be recovered from each leaseholder. It is open to the respondent to apply for dispensation allowing it to recover the actual amount incurred from the leaseholders, but evidence must be provided to show what was actually done and to explain the failure to comply with the statutory requirements. If the standard of the work carried out is to be challenged by the applicant, then evidence will be required to substantiate any such allegations.

Costs

30. During the course of the inspection the Respondent's representative, Mr Taylor, stated that the Applicant would not be asked to pay any of the costs incurred in relation to the proceedings. On that basis, the Tribunal did not have to determine the application made under s.20C of the 2002 Act.

Dated 5 December 2019

Judge P Forster