FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/18UE/LIS/2020/0007
Property	:	5 Parliament Court, Ilfracombe, Devon EX34 9EL
Applicant	:	Taplow Investments Limited
Representative	:	Mr C. Baker, director
Respondent	:	Mrs Dawn Yeo
Representative	:	Dr G. Pearson
Type of Application	:	Determination off liability to pay and reasonableness of service charges
Tribunal Member(s)	:	Judge D. R. Whitney Mr N. Robinson FRICS Mr P. Gammon MBE
Date of hearing	:	3rd June 2020
Date of decision	:	10th June 2020

DETERMINATION

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Background

1. The Applicant is the freeholder of Parliament Court, Ilfracombe ("the Building"). The Respondent is the owner of the leasehold interest in Flat 5 Parliament Court, Ilfracombe ("the Property"). The Building has 12 flats over three floors. The Applicant acquired the freehold and the then vacant ground floor flats in about October 2018 from North Devon Homes. The 4 vacant ground floor flats required refurbishment.

2. The Applicant issued proceedings in the County Court seeking to recover monies due and owing by way of ground rent, service charges, administrations charges, interest and costs. The Respondent defended such proceedings. By way of Order of District Judge Griffiths in the County court at Barnstaple Claim Number 093MC522 the claim was transferred to the First Tier Tribunal (Property Chamber) for it to determine matters within its jurisdiction and for the Judge alone to determine any remaining issues not within the jurisdiction of the tribunal.

3. The tribunal issued directions for the determination on 15th April 2020. Such directions included the provision of an electronic bundle and for the matter to be dealt with by remote video hearing. The hearing took place in this way due to the current Covid 19 pandemic.

4. The parties complied with the directions and a bundle was supplied. References in [] are to pages within that bundle.

The Law

5. The relevant law was contained with sections 19 and 27A of the Landlord and Tenant Act 1985.

Hearing

6. The hearing took place by video. The Applicant was represented by its director Mr Baker. Mrs Yeo was represented by her son, Dr Pearson.

7. The below represents a summary of the submissions and evidence provided by the parties.

8. Dr Pearson experienced throughout the hearing some difficulties with his video connection. He did try to participate without his video on and explained to the tribunal that he had experienced difficulties with other video meetings using his network connection at his place of work. If Dr Pearson's connection failed the tribunal would halt until he was able to re-join. The tribunal was satisfied Dr Pearson was able to engage fully with the hearing.

9. Mr Baker opened his case. He acknowledged that the demands claimed under the County Court claim had not had attached to them Summaries of Rights and Obligations as required under section 153 of the Commonhold and Leasehold Reform Act 2002. This was a point which the Respondent had raised in her defence. Mr Baker indicated fresh demands had recently been issued attaching the summaries. Copies of these fresh demands were not within the bundle.

10. Mr Baker suggests that section 20 consultation was not required for the works undertaken. He suggested each of the works were undertaken one after the other as separate tasks and that as a result the threshold for consultation was not exceeded. In any event given the Applicant company is responsible for one third of the costs it was in his interest to keep the costs to a minimum. He suggested the works being undertaken included:

    - Main sewage repairs;
    - Renewal of pipework;
    - Pressure washing balconies;
    - Pointing south facing walls;
    - Removal of redundant wiring;
    - Resealing grills;
    - Lintel and joist repairs;
    - Emergency flash banding;
    - Gutter and downpipe renewal;
    - Scaffolding etc;

11. Mr Baker stated he wrote to Mrs Yeo giving her notice that he intended to undertake such works. Whilst he is not a builder himself he oversaw and specified the works himself as he has a long experience of building and property maintenance. He felt comfortable within this skill set.

12. Mr Baker relied upon the spreadsheets he had produced one showing expenditure on the block [7E] and [8E] showing the expenditure on the Applicants four retained flats. At [13F] was the summary of what had been spent.

13. Mr Baker explained that he had ascertained that a quarterly in advance charge of £225 was a reasonable sum to request. He accepted this was as he put it a guesstimate based on the costs he estimated on the basis the works would be carried out over the next three years and would cost about £30,000. Mr Baker stated that when his company purchased the Building he was aware works were required and was keen to begin as soon as possible. He accepted in making such arrangements he had not referred to the lease. He prepared a note of works required which he sent to the leaseholders [9E]. He believed the Building suffered lack of maintenance for a long period of time and in Mr Baker's opinion given the Buildings location on the seafront high costs were likely to be incurred.

14. Mr Baker stated that in fact despite requesting the quarterly payments in fact he had always spent more than was recovered. He stated that he was not a lawyer and believed the lease was convoluted but believed all costs spent on the Building were recoverable. His view was that the two surveys which had been undertaken [11E-38E] were clear as to the problems but did not provide solutions.

15. Mr Baker explained a breakdown of the expenditure had been provided [12F] under cover of letter dated 13th February 2020 [1D]. Mr Baker acknowledged he had no invoices within the bundle for the works undertaken and that this may be an oversight. The invoices are all at his offices in Maidenhead.

16. Mr Baker was of the view that he explained what works were being undertaken and any reasonable person would be satisfied that the charges were reasonable. Mr Baker instructed a self-employed builder and his son whom he had used with success on other projects. They would generally work on the Property, including the Applicants retained flats 3 days a week. Their invoices would separate out work undertaken on the retained flats and the Building. The builder charges £150 per day and his assistant £120 per day which he believed represented good value. Essentially the builder has a list of jobs that need doing and does each one in turn.

17. Mr Baker explained that the Company would purchase the materials and the builder had access to its trade accounts with suppliers. The Company had negotiated with various suppliers from whom it believed it received good service and prices.

18. Mr Baker explained whilst certain of the documents referred to "sinking fund" he suggested this was just an accounting phrase. In fact the accounts were never in credit but always in deficit and funded by the Company. The plan is that by the end of the three year cycle the account will balance up.

19. Mr Baker did not believe he had ever been asked for invoices from Mrs Yeo. He stated that upon purchase he wrote explaining what he intended to do [53E and 54E]. He had supplied in February 2020 what he believed were service charge accounts. He stated he believed all charges are reasonable and properly apportioned.

20. Mr Baker referred to the assignment of the service charge debts [8-11B]. He confirmed the signed version was with his solicitors Ashfords. He referred to [14F] which set out the amount assigned in respect of the Respondents flat which totalled £806.03.

21. Mr Baker explained that North Devon Homes ("NDH") billed in arrears. As a result at the date of transfer there were certain costs which NDH had not billed. Mr Baker believed it was better for his company to bill this amount shown at [13F] and invoice [2F]. At [4F]

was an invoice dated 1st October 2018 looking to recover "Arrears to date as assigned by North Devon Homes to Taplow Investments Ltd".

22. Mr Baker contended his invoices were also the ground rent demands. Mr Baker upon questioning accepted this may not be a correct way to demand ground rent but it was an honourable way.

23. At this point of the hearing Dr Pearson interjected that he had an interview and would need to leave at 12.15. He explained he had an interview for a senior medical academic post and had been alerted to the same on Monday and had been unable to reschedule the same. His mother could not take part as she suffers from social anxiety. He believed the interview would take most of the afternoon. He requested an adjournment.

24. The tribunal took a short adjournment at 11.23am to consider with the hearing resuming at 11.31am.

25. The tribunal declined to adjourn the hearing. The tribunal determined this was in the interests of justice given no application had been made until during the course of the proceedings notwithstanding at the opening of the hearing both parties had been asked if there were any matters they wished to raise. The tribunal noted Dr Pearson had supplied already to the tribunal detailed legal submissions as to his mother's case. The tribunal provided that Dr Pearson would now be given an opportunity to present his mothers case before he had to leave and both parties would, time allowing, be afforded an opportunity to ask any questions they wished of the other.

26. The tribunal confirmed that it had read Dr Pearson's submissions within the bundle and would take account of the same.

27. Dr Pearson stated that in his opinion all had been handled poorly and the approach was amateur. His view was that a section 20 consultation should have been undertaken.

28. Dr Pearson explained his mother had owned the flat since early 2000's. He assists his mother with the management. They also own the freehold of a block of flats within the town which they manage and so understand what is required.

29. In his opinion the works being undertaken were a planned set of works. He suggests that they are not all separate small jobs. In respect of the document [45E] which Mr Baker had referred to as explaining what works he wished to undertake this was not a consultation.

30. Dr Pearson referred to various letters in which his mother had requested copies of invoices and details of the charges but these had not been supplied despite a statutory responsibility to supply the same. He and his mother had not reported this to the relevant authorities as he did not think it would assist.

31. In respect of maintenance he believed charges of £20,000 in any one year were exorbitant.

32. Turning to the administration costs levied of £1000 he believed these were excessive given the invoices did not meet the requirements of the law.

33. For electrical costs he believed these were too high as he believed there was only one light bulb.

34. Dr Pearson conceded the cost of insurance was reasonable if properly demanded.

35. Dr Pearson accepted his mother should pay 1/12th of the costs incurred on the Building.

36. Dr Pearson contended that under clause 4(ii) of the lease [6C] his mother was not liable for structural defects that the freeholder became aware of during the period 1992 to 2002. He contended that the original landlord knew or ought to have known about the issues Mr Baker was now attending to under the major works. Whilst he had not seen his mother's conveyancing file in his opinion the surveys relied upon [11-38E] clearly identify structural defects which he suggests the then freeholder should have been aware of by 2002.

37. In respect of the assignment he says that there must be a clear pathway and notice of assignment for the debt to pass. He suggests that the documentation provided was inadequate.

38. Dr Pearson was not satisfied that there was any clause under the lease allowing recovery of legal fees. Further the invoice did not seem to cover work undertaken just on his mother's flat.

39. In his submission no valid demands had been issued and none of the sums claimed were payable. He did not believe that the Applicant could retrospectively bill matters for NDH.

40. Both parties were afforded an opportunity to ask the other any questions. Both asked questions but the exchange did not elicit any relevant material save for evidencing the animosity between the parties.

41. At 12.10 the tribunal adjourned for lunch until 12.45. The tribunal made clear to Dr Pearson if his interview finished earlier than he expected he was free to return to the hearing.

42. The tribunal resumed at 12.47. Mr Baker only attended.

43. Mr Baker confirmed he had no copies of any demands issued by NDH or supporting documents. He had simply a list of the arrears as supplied to his conveyancing solicitor.

44. He confirmed he was not sure when the works which had been claimed by NDH had been undertaken. It may have been in 2010. He said it is clear works have been undertaken and the leaseholders should pay towards the same. He had no reason to doubt the veracity of the information provided by NDH.

45. Turning to notice of the assignment Mr Baker referred to letter dated 1st October 2018 to the Respondent [53E] which referred to debts owed to NDH being transferred to the Applicant. Further the invoices referred to the assignment [4F].

46. In respect of the legal fees which had been claimed as an administration fee a copy of the invoice from Ashfords solicitors was in the bundle [16F]. This had been invoiced to the Respondent [6F]. Mr Baker confirmed advice had been taken in respect of flats 5 & 6. The covering letter from the solicitors confirmed the invoice covered advice obtained on both flats [15F] although the typed invoice only referred to flat 6. He believed the handwritten annotations referring to flat 5 had been made by his bookkeeper. He did not have any breakdown of the costs but just divided the sum between the two flats.

47. Mr Baker said he was not sure where in the lease it allowed him to recover such costs but he believed NDH had charged administration fees and they would not have done so if they could not recover the same.

48. As for the administration fees he had spoken to various management companies and believed the sums charged were very low. He believes the costs were reasonable given he has to employ bookkeepers and the like. Mr Baker did refer to clauses 4(b) and (c) (ii) of the lease [6C] as allowing recovery of such costs.

49. In respect of the electrics Mr Bailey stated there was more than one light. There are significant electrics to provide lighting to balconies, bin stores and a communal aerial. Mr Baker stated there is a meter in the common area stairwell which is read and the bills are charged to the service charge account.

50. In respect of the application for an order under section 20C requested by Dr Pearson Mr Baker stated he would not be looking to charge anything to the service charge, not least as he paid 4 proportions of the charge himself for his flats.

51. Mr Baker explained that the other leaseholders were aware and supportive of his actions. He simply wants to regularise the running of the Building.

52. At 13.24 Dr Pearson rejoined the hearing.

53. Mr Baker accepted that a summary of rights and obligations should be attached and this had not been. He was satisfied there was requirement for a consultation pursuant to section 20. He denied ever having been asked to see invoices. He accepted he was not infallible but believed throughout he had acted in good faith. He believed the works undertaken provided an excellent outcome for all and the re-sale value of the flats had been lifted.

54. Dr Pearson in closing stated that he did not believe proper bills had been issued. Further he believed there had been no proper assignment of the NDH debt. In his submission nothing was due and payable.

55. At this point the tribunal hearing ended. The tribunal deliberated and later in the afternoon resumed and the Judge explained the tribunal's decision and that reason would follow. The Judge then sitting as a County Court Judge alone made orders in respect of all outstanding matters. Mr Baker attended this part of the hearing but Dr Pearson was unavailable to attend.

Determination

56. The tribunal thanks both parties for their submissions. The tribunal acknowledges and readily accepts that Mr Baker was acting in good faith throughout his ownership and was attempting to return the Building to good order.

57. The tribunal limits its determination to matters relevant to the tribunal and within its jurisdiction. By way of example reference was made as to requests for provision of invoices. Whilst we accept these may go to credibility and the like it is not a matter strictly within the tribunal's jurisdiction.

58. The first question is does the lease allow the Applicant to recover interim payments? We are satisfied that clause 4(c)(ii) [6C] does so allow. The lease requires the Respondent to pay on demand "a reasonable part of the costs incurred or to be incurred…". In this tribunals determination such wording allows the Applicant to recover costs for repairs in its contemplation although some form of explanation by way of budget or estimate is required.

59. Any such demand must however comply with the statutory obligations including the obligation to have attached the relevant summary of rights and obligations dependant upon whether an administration charge or service charge. Mr Baker conceded the original demands which are the subject to this application, and which are all found in section F of the bundle, did not. As a result none of the monies claimed are payable by Mrs Yeo.

60. Whilst we find above that none of the charges levied are due and payable currently it may be useful for us to comment on the make up of the charges to assist the parties.

61. This tribunal was not satisfied that the works undertaken were not major works. Whilst it was clear Mr Baker planned for them to be undertaken over a period of time, three years, they were planned as one ongoing scheme of works. In this tribunals determination this means that such works were major works. We note Mr Baker's spreadsheet of costs [12F] shows about £17,000 was spent between October 2018 and January 2019. In light of the absence of a consultation the amount which can be recovered by the Applicant is capped at £250 per leaseholder.

62. Mr Baker by his own admission has not consulted. It is open to the Applicant to make an application to this tribunal for dispensation from consultation. The Applicant should take its own advice on making such application but if to be made such application should be made promptly.

63. Turning to the sums claimed as being due to NDH we are satisfied that the debt was assigned to the Applicant. The Applicant produced a deed of assignment and various supporting emails. On balance we accept upon completion of the purchase the completed documents would have been supplied to the Applicants solicitor. Further we are satisfied that notice of assignment was given. Mr Baker plainly referred to the assignment in his letter to Mrs Yeo of 1st October 2018 and each of the relevant invoices referred to the assignment.

64. However we are not satisfied that the sum of £806.03 is due and payable. No demands have been produced or supporting invoices. The Respondent plainly challenged her liability to pay all such sums and the Applicant was on notice of such challenge. No real explanation was given as to why an explanation was not received. Without copies of the demands and a proper breakdown the tribunal determines that the Applicant has not proved on a balance of probabilities that the sums claimed are due and reasonable.

65. Turning to the balancing payment of £266.23 we are not satisfied that the Applicant could demand the same. The sum assigned was said at [12B] to be £806.03. Further sums were not assigned under the documentation provided by the Applicant and the Applicant has no right to recover the same.

66. As an aside we note the sums claimed also include ground rents over which this tribunal has no jurisdiction. Mr Baker did however concede that he had not issued any ground rent demands which complied with Section 166 of the Commonhold and Leasehold Reform Act 2002.

67. Turning to the actual sums claimed by the Applicant, save for the costs of major works, we were satisfied with the explanation given for each and find that they are reasonable. The Applicant gave cogent reasons for each and in this tribunal's judgment the same are reasonable

including the management fee which amounts to less than £100 per annum per unit.

68. There is the question of the legal fee claimed. No valid demand has been issued for the same. We are not satisfied that the lease allows recovery of such cost. We certainly do not accept the clauses relied upon by Mr Baker would allow recovery. Even if we are wrong on that point we would not have allowed recovery of this sum. The invoice supplied only refers to work being undertaken to Flat 6. No further explanation as to what work was undertaken or the costs of the same were provided.

69. Dr Pearson sought an order pursuant to Section 20C of the Landlord and Tenant Act 1985. Whilst Mr Baker indicated he would not seek to recover any costs given the determination we believe it is appropriate to make an Order pursuant to section 20C preventing recovery of any of the costs of the application from Mrs Yeo as a service charge expense.

70. In conclusion the tribunal determines that none of the service charge or administration costs claimed by the Applicant from the Respondent under claim number 093NC522 are due. It may be that the Applicant can issue fresh demands if these comply with the lease terms and the statutory requirements, but the Applicant must take their own advice. The tribunal would urge the parties to work together for their mutual benefit. As stated above it was plain the Applicant has the very best of intentions for returning the Building to good order.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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

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