FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CH1/29UE/LSC/2020/0033 and Ch1/29UE/LSC/2020/0034
Property	**:**	Chalets 67, 68, and 123, Kingsdown Park Holiday Village, Kingsdown, near Deal, Kent CT14 8EU
Applicants	**:**	Stephen Wornell and Glynis Deirdre Wornell (chalets 67 and 68) and Shirley Marie Mans (chalet 123)
Respondent	**:**	Shearbarn Holiday Park Limited.
Type of Application	**:**	Section 27a of the Landlord and Tenant Act 1985
Tribunal Members	**:**	Judge S Lal
Date and venue of Hearing	**:**	30th October 2020, Judge's home
Date of Decision	**:**	30th October 2020

DECISION

Application

1. This is an application by the leaseholders of chalets 67,68 and 123 at the Kingsdown Park Holiday Village ("the Property") for a determination as to whether the service charges under certain invoices issued by the Respondent are payable by the leaseholders in question.

2. The leaseholders of chalets 67 and 68 are Mr and Mrs Wornell (herein referred to as the "First Applicants") and the leaseholder of chalet 123 is Ms Mans (herein referred to as the "Second Applicant") Details of the service charges in question are set out below:

   Issue B – LP/50/2017 invoices for £35,519.50 – relevant to the First Applicants and the Second Applicant.

   Retained Land Invoices for £8,191.50 – relevant to the First Applicants only.

3. The Applicants have also made a Section 20C Landlord and Tenant Act 1985 application asking the Tribunal to make an order that costs incurred by the Respondent in connection with these proceedings are not to be included in the service charge expenditure payable by the Applicants.

4. The application is to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.

5. Each chalet comprises an "A" framed Scandinavian style timber built semi-detached holiday home with a 47 week period for occupancy from 7th February to 2nd January the following year. There are 149 lessees on the holiday park contributing an equal share to the annual management fee made up of management expenses, a 15% management charge and VAT (the "service charge").

6. The First and Second Applicants and Respondent have submitted paperwork in respect of the application.

7. The Applicants have reached agreement with the Respondent on some points in their original application but some issues remain outstanding.

8. The first issue which the Applicants would like the Tribunal to address is whether the 2018 legal and professional fees invoices are recoverable under the lease .

9. The amount in question is £35,519.50 and relates to an application made by the First Applicants under section 84(1) of the Law of Property Act 1925 to discharge a covenant that restricted the occupancy of their chalets to 37 weeks. This action was joined by 106 leaseholders and 12 interested parties. It was initially understood by the First Applicants that they would be liable to pay the costs of the other parties if ordered to do so by the Upper Tribunal. The Respondent incurred £35,519.50 legal fees but agreed before the hearing date to a deed of variation extending the occupancy time of chalets to 47 weeks with an increase in rent of £315.

10. The First Applicants claim that the Respondent agreed at this point not to obtain an order for its costs. The First Applicants say that if they had been aware that the Respondent intended to charge them costs, they would have continued the case to hearing. The First Applicants also contend that the legal costs were unreasonably incurred by the Respondent as the 47 week occupancy period which was eventually agreed by the parties is essentially the deal offered by the First Applicants in 2017.

11. The Second Applicant also claims that she should not be liable for any of the legal costs referred to in paragraph 5 above. The reasons she gives for this are that in April 2019, the Respondent came to an agreement with the First Applicants about the occupancy period and signed a draft order. In this draft order, there was a statement confirming "There is no order as to costs". Moreover, the Second Respondent claims that the Upper Tribunal issued a Consent Order under cover of a letter dated 8th October 2019 confirming withdrawal of LP/50/2017 and stating that "There be no order as to costs between the applicants and the first objector". The applicants are the First Applicants and the first objector is the Respondent.

12. The Second Applicant claims that the Respondent does not have the right to recover the costs from all leaseholders in the 2018 Management Fee having agreed not to recover any costs from the First Applicants.

13. The Respondent claims that the legal costs referred to in paragraph 5 are recoverable under the lease as a Management Expense. The Respondent accepts that the order from the Tribunal referred to in paragraph 6 above states that there should be "no order as to costs". The Respondent has supplied detailed submissions which cover the history of the matter and various legal doctrine.

14. The Respondent argues that it is not estopped from recovering the legal costs through the service charges. The Respondent cites the law on the doctrine of promissory estoppel and claims that the Applicants argument fails because there was no express representation that the Respondent would not seek to recover the legal expenses through the service charge. The Respondent claims that the agreement that "there be no order as to costs" was an agreement between the First Applicants and the Respondent and did not relate to the contractual recovery of service charges under the lease. Furthermore, the Respondent claims that the Upper Tribunal was not exercising its jurisdiction under section 20 of the Landlord and Tenant Act 1985 to preclude recovery of legal costs under the lease.

15. The Respondent contends that the legal costs are recoverable under the lease as solicitors' costs are specifically referred to in paragraph 6 , Part III, Fourth Schedule to the lease and without prejudice to the generality of "all other expenditure". In addition ,the Respondent contends that the expenditure was incurred "in or about the maintenance and proper convenient management and running of the Estate".

16. The application to the Upper Tribunal by the First Applicants is, the Respondent argues, a matter which impinges on the management of the Estate. The Respondent contends that as the Upper Tribunal proceedings were not enforcement proceedings, the Respondent can recover legal costs in other proceedings pursuant to paragraph 6 referred to above. The Respondent also points out that in the Upper Tribunal case, the First Applicants did not apply for or obtain a section 20c order.

17. The Respondent also argues that it had not acted unreasonably in incurring the costs as the First Applicants did not initially act for all leaseholders and the change in occupancy period was more complicated than presented by the Applicants. Only later did the number of leaseholders who wanted an extended occupancy period increase. The Respondent claims that the settlement was not on the same terms as the First Applicants original offer and that the Respondent acted reasonably in incurring the legal fees.

18. The First Applicants would also like the Tribunal to consider the retained land invoices for £8,191.50. The First Applicants contend that these amounts are not recoverable by the Respondent as a valid notice has not been served. They rely upon their interpretation of the lease as they see it. The Respondent points out that there is no obligation under the lease to serve notice on the lessees in respect of expenses incurred in relation to the Retained Land.

The Decision

19. The Tribunal has reviewed the documentation provided together with the statements from each of the Applicants and the Respondent. The Tribunal has also considered the terms of the leases and the obligations of the parties thereunder together with the statutory provisions that are relevant to this issue.

20. In relation to the first issue as to whether the First and Second Applicants are liable under the leases to pay their share of the legal costs associated with LP/50/2017 , it is the Tribunal's view that although the Respondent would be entitled to reimbursement for its legal costs in objecting to the application to discharge the holiday period restriction in the leases, this entitlement to reimbursement was lost as soon as the Respondent made the decision to withdraw its objection on 25th April 2019. The Respondent made essentially a commercial agreement with the Applicants to extend the holiday period to 47 days in return for an increased ground rent and the draft order specifically stated that there was "no order as to costs".

21. The Tribunal is satisfied that the position on costs was reinforced by the Upper Tribunal consent order of 19th August 2019 specifically stating that there was "no order as to costs". The Tribunal does not accept that having openly accepted the position on costs, the Respondent can revert to the leaseholders in order to recoup the costs of the legal fees both in law and as a matter of procedural fairness. It has no doubt that "no order as to costs" can only mean what it says. The Tribunal therefore finds in favour of the First and Second Applicants in relation to this issue.

22. In respect of the second issue, however the Tribunal agrees with the Respondent's reading of paragraph 6 of Pt III of the Fourth Schedule to the lease that the requirement is to serve notice on the Management Company under the provisions of the Management Agreement and not on the lessees. This is a fairly straightforward matter of construction. The Tribunal agrees that the purpose of the provision is that management expenses in relation to the Retained Lands would not be a management expense until a notice was served on the management company requiring them to assume the management of the Retained Lands.

23. The reason being that this was a tripartite lease: Tractbrook Ltd were the management company (Recital 3(a)(1)(p)) with responsibility for management. The Management Agreement was, as defined in Recital3(a)(1)(o),the agreement between the landlord and the management company relating to the management of the Holiday Site and other parts of the Estate and included any similar agreements. Since the First Applicants have not given any other reason why these Retained Land costs should not be payable, the Tribunal is unable to find that they would succeed in their submission which is limited to this one narrow issue of construction.

24. The Tribunal makes a further section 20C order prohibiting the Respondent from seeking any costs of this application through the service charge. Such an outcome reflects the Tribunal's decision in respect of the major area of dispute before it which revolved around the recoverability of past legal costs.

25. 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. 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.

26. 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.

27. 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.

Judge S. Lal .....

Date.....