FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	CHI/29UN/LSC/2020/0037
Property	:	Flats 5, 20 and 24, 71-79 Eaton Road, Margate, Kent CT9 1XB
Applicants	:	(1) Brin and Anne-Marie Hughes (Flat 5) (2) CKM Property Services Ltd (Flat 20) (3) Matharu Properties Ltd (Flat 24)
Representative	:	In person
Respondent	:	71-79 Eaton Road Ltd (landlord)
Representative	:	Bamptons Management
Type of Application	:	Liability to pay service charges: s.27A Landlord and Tenant Act 1985
Tribunal Member	:	Judge M Loveday
Date and venue of hearing	:	Determination on the papers without a hearing
Date of Decision	:	2 November 2020

DETERMINATION

Introduction

1. This is an application under s.27A Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges under leases of flats at 71-79 Eaton Road, Margate, Kent CT9 1XB. The Application is dated 28 May 2020. The Applicants are the lessees of 5, 20 and 24 and the Respondent is the landlord. On 21 October 2019, a previous tribunal decided liability to pay interim service charges for the 2019 service charge year (CHI/29UN/LSC/2019/0048). This is the application to determine the 2019 balancing service charge liability now that that year is complete.

2. Directions were given on 4 June 2020 that the application was to be determined on the papers without a hearing under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Written submissions have been received from the parties as follows:
   (a) The application. Attached to this were position statements prepared by Mr Brin Hughes (Flat 5) and Mr Jaskirat Singh Matharu, who is a director of the Second and Third Applicants (Flats 20 and 24).
   (b) A statement by the Respondent dated 19 June 2020.
   (c) A joint Statement of Case from the Applicants dated 28 July 2020.

3. Save where otherwise indicated, the Tribunal adopts the definitions of "service charge" and "relevant costs" in ss.18(1) and (2) LTA 1985.

The premises

4. The Tribunal did not carry out an inspection. However, from the papers it is clear they comprise a modern block of 24 purpose-built flats with a flat roof.

The Lease

5. The bundle provided to the Tribunal does not include a copy of any of the leases. However, the Applicants' Statement of Case refers to the previous tribunal's summary of the relevant service charge provisions of a lease of Flat 10 dated 19 January 2007. This was said to be typical of the Applicants' leases ("the Lease"). The obligations were:

(a) By clause 1, the Tenant must pay by way of further rent such sums of service charge as are payable in accordance with the provisions of the Fourth Schedule.

(b) By clause 1, the Tenant must further pay by way of insurance rent sums equal to a one-twenty fourth part of the premiums from time to time expended by the Landlord in effecting insurance.

(c) Sch.4 para 1(ii) states that "Service charge" means a "one-twenty fourth part of the expenditure on services for the Estate".

(d) Sch.4 para 1(iii) defines the "'Interim service charge instalment' as "a payment on account of … TWO HUNDRED POUNDS per half year or of one-half of the service charge shown on the service charge statement last served on the Tenant whichever is the greater".

(e) Para 1(iv) of Sch.4 to the Lease provides that "'Service charge statement' means an itemised statement of:

(a) the expenditure on service for the year … ending on the day of the amount of the service charge due in respect thereof (any apportionment necessary at the beginning or end of the term hereby granted shall be made on the assumption that expenditure on services is incurred at a constant daily rate) and

(b) Sums to be credited against that service charge being the interim service charge instalments paid by the Tenant for that year or period and any service charge excess from the previous year or period accompanied by a certificate that in the opinion of the accountant preparing it the statement is a fair summary of the expenditure on services set out in a way which shows how it is or will be reflected in the service charge and is sufficiently supported by accounts receipts and other documents that have been produced to him".

(f) Sch.4 para 4 provides that "[b]y equal half-yearly instalments in advance on the first day of January and the first day of July in each year of the Term (the first such payment to be made on the date hereof being a proportionate sum) the Tenant shall pay to the Landlord an interim service charge instalment which may if the Landlord so stipulates be applied for the purpose of creating a reserve fund to meet anticipated future expenditure on services for the Estate".

(g) Sch.4 para 7 provides that every service charge statement shall be conclusive as to the information shown thereon.

(h) By clause 4(2) the Landlord undertakes to perform the covenants in Sch.6.

(i) By Sch.6 para 1, the relevant costs include sums expended by the Landlord in repairing the Estate.

(j) Sch.6 contains a list of other obligations on the part of the Landlord to provide various services.

6. It is evident the apportionments for each flat are the same, namely 1/24th.

Service charge accounting

7. As mentioned above, the previous proceedings dealt solely with the interim service charges for 2019. The previous tribunal determined that the Respondent[1] was limited to recovering £200pa in interim charges under the first limb of Sch.4 para 1(iii) to the Lease. Nevertheless, the Respondent relied on a budget issued to lessees on 13 March 2019 which set out the relevant costs it anticipated incurring during the 2019 service charge year.

8. On expiry of the 2019 service charge year, the managing agents arranged for the preparation of accounts for that year and a statement under para 1(iv) of Sch.4 to the Lease. The bundles in the present matter include a set of service charge accounts for the premises apparently sent to the leaseholders on 21 February 2020. The income and expenditure account shows total expenses of £77,689 for the service charge year ending 31 December 2019. The Applicants produce demands for payment dated 9 March 2020 which include £2,837.04 for "Balancing charge for y/e 31/12/19". After accounting for the two interim service charge payments of £200 found payable by the previous tribunal, this corresponds to 1/24th of the total expenses of £77,689 shown in the 2019 service charge accounts. In June 2020, it seems the Respondent found minor errors in the service charge accounting. These were purportedly corrected by further service charge demands issued on 15 June 2020, although the Re-

[1] i.e. the Respondent in these proceedings. The landlord was in fact the applicant in the previous matter.

spondent continued to demand payment of balancing charges of £2,837.04 for the 2019 service charge year.

9. The application challenges several heads of relevant costs, although the joint Statement of Case dated 28 July 2020 refines these challenges to six items. The Applicants do not suggest the relevant costs incurred by the Respondent are outside the terms of the Lease. The principal issue is whether the costs were reasonably incurred by the Respondent and/or whether the services or works comprising the charges were of a reasonable standard under s.1(1) LTA 1985. In addition, there is an issue about certification and various applications for costs orders.

Building Insurance

10. The income and expenditure account suggests relevant costs of £3,035 were incurred on building insurance in the 2019 service charge year.

11. In essence, the Applicants say it is unclear what the payment of £3,035 was for and "why further insurance was required". They point to the fact that the 2019 budget included a provision for £3,200 for building insurance. They also point to the fact that the premium (for the insured period 1 December 2018-30 November 2019) was shown in the policy schedule as £3,012.18. There was also a premium of £2,255 apparently incurred in November 2019.

12. The Respondent refers to a schedule of pre-payments and accruals to explain the figure shown in the accounts. The schedule of pre-payments is said to show the difference between the premiums shown on the policy schedule and the relevant costs shown in the accounts. The schedule shows prepayments of £2,847 brought forward and £3,420 accruals brought forward from the 2018 service charge year for insurance, premiums of £622.30 and £5,559.51 paid during the 2019 service charge year, and a prepayment of £2,573.42 carried forward into the 2020 service charge year. The balance is £3,035.39 which corresponds with the £3,305 shown for Building Insurance in the income and expenditure account. It also produces receipts from Alan Boswell Insurance dated 5 November 2018 for insurance premiums of £3,012.18 payable from 1

December 2018 and another from Bridge Insurance Brokers dated 28 November 2019 for £2,255.68.

13. The Tribunal accepts the explanation given by the Respondent. The accounting exercise is intended to reflect the fact that the insurance policy period does not cover the same period as the service charge year. If the annual insurance premiums were paid in December 2018 and November 2019 in advance of the relevant service charge years, and the insurance year does not correspond with the service charge year, the accountant will ordinarily apportion the premiums paid and the liabilities to pay on an accruals basis. This is a perfectly standard method of accounting for service charges.

14. There is no substantive objection to the relevant costs on the grounds the insurance premiums were not reasonably incurred or that the insurance services were not of a satisfactory standard. The Applicants are therefore liable to pay service charges reflecting £3,035 relevant costs of insurance in the 2019 service charge year.

Repairs and Maintenance

15. The income and expenditure account suggests relevant costs of £12,299 were incurred on Repairs and Maintenance in the 2019 service charge year.

16. The Applicants refer to the 2019 budget which gave an estimate of £3,000 for repairs and maintenance in 2019, but the outturn obviously exceeded this many times over. The original application asked, "what precisely was all this was spent on?". The Respondent then produced numerous receipts for individual items of work. The substance of the renewed objection is set out in the Applicants' Statement of Case:
    (a) £2,640 paid to Steve Prescott (t/a SJP Scaffolding) on various occasions in 2019. It is suggested it was unnecessary to erect and strike scaffolding on 3 occasions over a 20-day period in late 2019.
    (b) The various receipts amount to £13,688.68 not £12,299, and these figures cannot be reconciled with the schedule of pre-payments and accruals.

These specific points were raised at a late stage, and the Respondent has not been given an opportunity to respond to them. However, the tribunal has sufficient evidence to dispose of the complaints made and it would not be proportionate to delay matters to invite further representations on the point.

17. As far as the scaffolding is concerned, the receipts referred to above are as follows:
    (a) 28 June 2019 (£720) "to supply and erect scaffolding to top floor balcony for repairs as requested" on 1 July 2019. The unit price was £600.
    (b) 30 October 2019 (£900) "to supply and erect scaffolding to roof level as requested" on 30 October 2019. The unit price was £750.
    (c) 15 November 2019 (£1,020) "to supply and erect scaffolding to rear elevation for roof repairs" on 15 November 2019. The unit price was £850.
    (d) 19 November 2019 (£720) "to supply and erect scaffolding to front downpipe for repairs as requested" on 19 November 2019. The unit price was £600.

    Of these, the Applicants have no issue with the first. The third and fourth plainly relate to different elevations of the building, so there can be no question about whether it was reasonable to strike scaffolding between the two jobs. The only question therefore is whether it was reasonable for the Respondent to incur a further cost of £1,740 in November, having already erected scaffolding in late October. On this, the Applicants themselves suggest the Respondent has told them the new scaffolding was for "urgent roof repairs". Be that as it may, the essential problem here is that there is no evidence at all that erecting scaffold for a longer period over a wider area of the premises would have been cheaper than erecting it in three stages, as and when works were required. The Applicants have simply not supported their argument with even the most basic evidence that the Respondent has acted unreasonably in its approach to the scaffolding costs.

18. As far as the arithmetic is concerned, the Respondent again relies on the schedule of prepayments and accruals to support its figures for repairs and maintenance in 2019. But even if the Applicants are right, their figures for repairs and maintenance in 2019 would be *higher* those shown in the income

and expenditure account. The tribunal is satisfied the Applicants are liable to pay service charges in the 2019 service charge year which reflect relevant costs of £12,299 for repairs and maintenance.

Management Fees

19. The income and expenditure account suggests relevant costs of £8,432 were incurred on management fees in the 2019 service charge year.

20. In the statement of case, the Applicants point out that the budget for the 2019 Management Fees was £7,632. The Applicants question the "extra" amount, presumably the difference of £800 between the two figures. They also explain that previous managing agents Haus Block Management were replaced by the agents Bamptons and the Applicants question why anything at all was incurred for the relevant costs of the previous agents in the 2019 accounting year.

21. The Respondent states that "the managing agent for the Property from 1 February 2019 to date is Bamptons". It again refers to the schedule of prepayments and accruals to explain the Management Fees shown in the accounts. The schedule shows £779.83 accruals brought forward from the 2018 service charge year for management, fees of £1,573.42 paid to Haus Block Management and £7,632 paid to Bamptons in the 2019 service charge year. It produces four receipts for quarterly payments to Sustainable Property Management Ltd t/a Bamptons" dated 21 February, 10 May, 10 July and 30 October 2019, each in the sum of £1,908 (total = £7,632), the first of which is described as covering the period February-April 2019.

22. The tribunal again accepts the explanation given by the Respondent. The evidence given (supported by the invoices) suggests Bamfords only replaced Haus Block Management in February 2019. Although no receipts are provided for payments to Haus Block Management, some costs would have been incurred, accounting for the figure of £1,573.42 shown in the schedule. There is also the point about accruals, again shown in the schedule. The tribunal there-

fore accepts management costs of £8,432 were incurred in the 2019 service charge year.

23. The fact the costs of management in 2019 may have exceeded the budgeted figures does not in itself meet the test in s.19(1)(a) or (b) LTA 1985. The Applicants do not advance any positive case as to why the relevant costs are not reasonably incurred or as to why the management services were not of a reasonable standard. It follows the Applicants are liable to pay service charges in the 2019 service charge year which reflect relevant costs of £8,432 for management fees.

s.20 fees

24. The income and expenditure account suggests relevant costs of £4,410 were incurred on "s.20 fees" during the 2019 service charge year.

25. The Respondent produces three receipts for payments to Bamptons relating to s.20 consultation. These were:
    (a) An invoice dated 25 March 2019 for "Section 20 notices for major works" (£1,440).
    (b) An invoice dated 15 April 2019 for "Section 20 notices for lift works" (£1,440).
    (c) An invoice dated 1 December 2019 for "Section 20 notices For roof works" (£1,440).

    The schedule shows a further payment to Haus Block Management, although there is also an accrual of £300 from the 2018 service charge year.

26. The Applicants raise the question as to why "such a substantial fee is charged for merely sending out an email to each leaseholder" and question why Haus was paid anything at all.

27. As with the above points, the tribunal accepts the explanation about how the costs were arrived at. Although there is additional work undertaken by Haus in 2019 before it handed over management to Bamptons, this is a fairly small element of the costs (amounting to £90).

28. The substance of the objection is that the work undertaken for s.20 consultation was minimal and the fees were excessive. In assessing whether this is the case, the tribunal has relatively limited evidence. It is clear from the invoices that the Respondent consulted upon three separate sets of works during the 2019 service charge year, namely "major works", roof works and lift works. Of these, the bundle only includes a statement of estimates dated 18 July 2019 which apparently relates to the major works. The five contractors' estimates ranged from £111,168 and £203,374 including VAT. The statement of estimates refers back to a notice of intention dated 28 March 2019, although no copy of that notice is in the papers.

29. It is clear from the statement of estimates in the bundle that Bamptons must have undertaken a substantial amount of work preparing the notice. This was not a minor works contract and there were five contractors. Not only did the agent need to get the notice into the correct form required by statute, but it had to ensure the correct figures were taken from the tender documents and particularised, it had to consider the treatment of the single contractor nominated by the by lessees, consider how to deal with that contractor in the statement of estimates, it had to establish the final cost of works from each of the six contractors who submitted estimates (and particularise them), consider time limits, consider the appropriate method of service, collate up to date addresses for 24 lessees and arrange service. Moreover, the agents had to be satisfied about various other matters in Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2013, such as how they dealt with representations from the lessees. The work did not simply involve sending out 24 emails in standard form, and no doubt similar considerations applied to the other s.20 work included in the 2019 relevant costs. The fees charged by the agents are therefore not obviously excessive. Furthermore, there is no evidence from the Applicants that the fees charged were more than would be charged by other agents for comparable blocks of flats.

30. In short, the challenge is rejected. The Applicants are liable to pay service charges in the 2019 service charge year which reflect relevant costs of £4,410 for s.20 fees.

Tribunal fees

31. The income and expenditure account suggests relevant costs of £3,400 were incurred on tribunal fees during the 2019 service charge year.

32. The Applicants' Statement of Case does not suggest these relevant costs are not recoverable under the terms of the Lease. Instead, the Applicants contend that they represent some 22 hours' work carried out by Bamptons in connection with the previous tribunal application mentioned above. This (it is said) appears an excessive fee "for sending an e-mail to each leaseholder"

33. The Respondent corrects the figures given by the Applicants, which were taken from draft accounts inadvertently served during the course of proceedings. It contends the tribunal fees of £3,400 were entirely incurred during the 2019 service charge year , and that they related to the Bamptons' fees of dealing with the previous tribunal application mentioned above. This is (the Respondent says) recoverable under para 12 of Sch.6 to the Lease. The Respondent produced invoices from Bamptons dated 19 July 2019 for "further Work with regard to the First-tier Tribunal" (£900) and 24 April 2019 for "Applications and subsequent work with regard to the First-tier Tribunal" (£2,400).

34. The tribunal has reminded itself of the decision in the previous matter dated 21 October 2019. In that application, the Respondent had to draft the application, issue and serve it on some 24 lessees and consider and answer representations made by two lessees. There were directions, and no doubt consideration given to the decision once it was given. An issue fee and a hearing fee had to be paid. If (as is suggested by the Applicants) the agents charged for 22 hours work, it was not an obviously excessive amount of time for a case of this kind. Neither is it suggested the agents charged an excessive hourly rate for their work. There is simply no evidence to suggest the costs were not reasonably incurred or that the services were not of reasonable standard under s.19(1)(a) and (b) LTA 1985.

35. This challenge is also therefore rejected. The Applicants are liable to pay service charges in the 2019 service charge year which reflect relevant costs of £3,400 for tribunal costs.

Professional Fees

36. The income and expenditure account suggests relevant costs of £6,155 were incurred on professional fees during the 2019 service charge year. In the original application, the Applicant merely sought further details of the professional fees. The Respondent has provided evidence (including fee notes) from the surveyors Price Lilford. The Applicants' joint statement of case does not refer to these costs, and it therefore appears the objection to professional fees has now been withdrawn.

Major Works

37. The income and expenditure account suggests relevant costs of £31,464 were incurred on major works during the 2019 service charge year. The Applicants sought details of these costs during the course of proceedings and were provided with copies of receipts for the costs.

38. The income and expenditure account suggests relevant costs of £31,464 were incurred on major works during the 2019 service charge year. The Respondent provided details and it appears the entire cost is an accrual carried forward to the 2020 service charge year. These costs apparently form part of the major works scheduled for the 2020 service charge year. Although the Applicants are unhappy about the alleged "confusion" which "led to significant misunderstandings", they raise no substantive objection to the £31,464 relevant cost of major works incurred in 2019 service charge year.

Certification

39. In the original application and Statement of Case, the Applicants argued the landlord had never provided a certificate in accordance with para 1(iv) of Sch.4 to the Lease. Although the Applicants did not spell it out, the argument proceeds on the basis that a certificate is a condition precedent to liability to pay the service charge – or at least that certification is part of the contractual

route the Respondent must travel before recovering any balancing service charge.

40. The Respondent's Statement of Case does not engage with the question about whether a certificate is required before there is any liability pay a balancing service charge. But it relies on the certificate in the final version of the 2019 accounts. This is in the following form:

> ***Accountant's report***
> *(Pursuant to section 21(6) Landlord and Tenant Act 1985)*
> *We have prepared the above accounts from the books and records maintained by the managing agents during the year.*
> *In our opinion the above summary showing total expenditure during the period of £77,689 represents, on an accrual basis, a fair statement of the total service charge and assets and reserves for the year ended 31st December 2019, complying with subsection (5) and is sufficiently supported by accounts, receipts and other documents which have been provided to us.*
> *MMP Ltd*
> *Chartered Certified Accountants*
> *64 High Street*
> *Broadstairs*
> *Kent CT10 1 JT.*

41. On the legal point, the tribunal assumes (without finding) that a certificate is a condition precedent to liability. But it is satisfied that in any event the certificate provided complies with the requirements of para 1(iv) of Sch.4 to the Lease:
    (a) It is provided by "an accountant".
    (b) The statement gives the "opinion of the accountant preparing it" in relation to a "statement".
    (c) The accountant's report refers to the "statement" as the "the above summary". The "above summary" appears to be a reference to a summary of relevant costs in accordance with LTA 1985 21(1). The obvious candidate for such a summary in the accounts is the "Expenditure" element of the 2019 Income and Expenditure Account, which appears immediately above the accountant's statement. This lists relevant costs one might expect to appear in a s.21(1) summary. Although the accountant does not use the same terminology as the Lease, the account-

ant is therefore referring to "a summary of the expenditure on services", which means the requirement of para 1(iv) of Sch.4.

(d) The accountant states expressly that the list of relevant costs "… is a fair statement of the total service charge …". Although this might appear slightly at odds with the provisions of the Lease which state that the accountant must certify that the list of costs is "a fair summary of the expenditure on services", the tribunal considers the statement does meet the requirements of para 1(iv) of Sch.4. This is because "expenditure on services" can only mean a list of relevant costs, such as the 2019 list mentioned in the accountant's report.

(e) The listed 2019 relevant costs are self-evidently "set out in a way which shows how [they are] reflected in the service charge".

(f) The accountant states expressly that the 2019 list of relevant costs "is sufficiently supported by accounts, receipts and other documents" provided to him.

Although the accountants' report does not use the word "certify", it therefore meets all the requirements of para 1(iv) of Sch.4 to the Lease.

42. Tech 03/11 Accounting for Service Charges in Residential Leases states at para 28 that:

> *"2.8 The service charge statement should include any certificates, statements and signatures by or on behalf of the accountant, landlord or agent that are required by the lease. In some cases, the lease may also require a separate certificate or signed declaration as to the amount payable by individual lessees.* ***Care should be taken to ensure that any certificate or statement follows the exact terminology used in the lease…****"*

It is far from clear why the accountant did not use the exact terminology used in para 1(iv) of Sch.4. But for the reasons given above, the tribunal finds the certificate meets the requirements of the Lease.

Service charges - conclusions

43. None of the other relevant costs is challenged. As a result of the above, the tribunal finds the Applicants are liable to pay service charges in the 2019 service charge year which reflect the full amount of relevant costs shown in the income and expenditure account, namely £77,689.08.

44. Applying the apportionment of 1/24th, the tribunal determines the Applicants are each liable to pay service charges of £3,237.04 for the 2019 service charge year. This is subject to the deductions to be made under para 1(iv) of Sch.4 to the Lease. The tribunal does not have all this information available, and cannot therefore determine a figure for the service charges payable by the Applicants to the Respondent. But the above determination ought to enable the parties to calculate this figure without further recourse to the courts or the tribunal.

Costs limitation

45. The Applicants apply for a determination under s.20C LTA 1985 that the relevant costs of the Respondent in connection with the application to the tribunal should not be taken into account in any service charge payable by the Applicants. The Applicants argue the Respondent has been inflammatory and uncooperative, and that it failed to provide proper detail of the relevant costs. They also refer to unspecified failings by the former agent in relation to management of the block. The Respondent denies it has acted improperly and points to the suggestion it attempted to meet a s.22 request for detailed accounts and invoices during the Covid-19 lockdown.

46. Suffice it to say the Respondent has succeeded entirely in resisting the application. It is also hard to see how it could have acted unreasonably in incurring costs to meet an application which would have had the effect of extinguishing the Applicants' liability to pay. The disclosure in these proceedings is not markedly different to that in many other cases before the tribunal, where the onus is on the lessees first to identify areas of challenge - before the landlord provides receipts etc. in response. The tribunal declines to make a s.20C order.

47. The Applicants have applied for an order limiting the amount of the Respondent's litigation costs that are recoverable as administration charges under 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002. The Respondent argues the application is premature, since no administration charges have

been demanded to cover its litigation costs. But in Avon Ground Rents v Child at para 53, it was made clear the para 5A power enables the tribunal to make an order in relation to charges which "are to be imposed". The tribunal therefore has power to make an order if it considers it is just and equitable to do so.

48. However, for the same reasons given in para 46 above, it is not just and equitable to make any order under para 5A of Sch.11.

Rule 13(1)(b) costs

49. Under Rule 13(1)(b) of the Tribunal Procedure Rules, the tribunal may make an order in respect of costs "if a person has acted unreasonably in bringing, defending or conducting proceedings". In Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 0290 (LC) at para 28, the Upper Tribunal suggested three convenient stages for the award of costs under Rule 13(1)(b):
    (a) Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.
    (b) Stage 2: Whether, the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness and effect of the unreasonable conduct: see para 42.
    (c) Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct: see para 42.

50. The Respondent seeks a Rule 13 order for £218.75 + VAT. This represents the wasted costs of employing the agent to apply to substitute the name of the Respondent. It is said the Respondent acquired the freehold from one of its directors in November 2019- January 2020 and the February 2020 ground rent demands included s.48 notices with the name of the new landlord. The Applicants nevertheless issued against the wrong landlord. When they were invited to substitute the name of the landlord in May 2020, they did not agree. There was also an argument about s.5 rights of first refusal and some fairly tetchy

correspondence. The Respondent had to apply to the tribunal to amend the name of the Respondent, incurring costs in doing so.

51. The tribunal has considered the correspondence on this issue and the February 2020 ground rent/service charge demands did indeed include s.47/48 notices of the name of the correct landlord. But the writing was obscure, and the issue was (perhaps surprisingly) not flagged up in the covering letters from the agents which went with the service charge demands dated 21 February and 3 March 2020. On 20 May, Mr Anderson (the former landlord) emailed the Applicants suggesting the application should be withdrawn. Later that day, he changed tack, inviting the Applicants to apply to amend. And on 27 May 2020, the agents eventually applied to substitute the correct party.

52. Several points emerge from the above:
    (a) As far as the tribunal is aware, the Applicants have acted in person throughout. In the light of the nature of the s.47/48 notices, and the covering letters, it is perhaps not surprising that a lay person would have failed to appreciate there had been a change of landlord. There is a reasonable explanation for the conduct complained of.
    (b) It was at all times open to Mr Anderson or the Respondent to correct things by making an application to the tribunal to substitute parties under Rule 10. Such an application would not have required the consent of the Applicants – or any correspondence.
    (c) The sequence of events shows the request was for the Applicants to make the Rule 10 application and the Respondent's application was made only a week after the request was refused.
    (d) Insofar as the Applicants can be said to have been unreasonable in not agreeing to the amendment, the behaviour was inconsequential and had no real effect. It was always open to the Respondent to apply directly to the tribunal to substitute parties during routine correspondence with the tribunal.
    (e) In all this, it is hard to see why the Respondent should have incurred any substantial additional costs at all. Indeed, there do not appear to be any receipts from the agents to support the costs claimed.

In all the circumstances, the tribunal declines to make a Rule 13(1) costs order.

Conclusions

53. The Applicants are each liable to contribute a 1/24th share of the relevant costs of the Respondent's relevant costs of £77,689 incurred during the service charge year ending 31 December 2019.

54. No costs orders are made under:
    (a) s.20C LTA 1985
    (b) Para 5A of Sch.11 to the Commonhold and Leasehold Reform Act 2002.
    (c) Rule 13(1)(b) of the Tribunal Procedure Rules.

Judge Mark Loveday
2 November 2020

Appeals

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.