



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

- Case Reference** : CHI/21UC/LSC/2020/0004
- Property** : Broad Oaks, 32 Silverdale Road,
Eastbourne, East Sussex BN20 7EU
- Applicant** : Peter Amies & Susan Amies (Flat 2)
Freda Goodey (Flat 3)
Bridgewater Equity Release Limited (Flat
4)
Ian Sands (Flat 7)
Gloria Green (Flat 8)
Anthony Steininger (Flat 9)
Douglas Tompkins & Shirley Tompkins
(Flat 10)
- Representative** : Ian Sands
- Respondent** : Broad Oaks Residents Limited
- Representative** : Rradar Limited
- Type of Application** : Determination of service charge
- Tribunal Member(s)** : Judge D. R. Whitney
- Date of Determination** : 8th July 2020
Issued 20th August 2020

DETERMINATION

Background

1. The Applicants are all leaseholders of flats in the Property. The Property consists of 11 purpose-built flats. The Respondent is the freeholder and we are told a company in which all the leaseholders are members.
2. The Applicants collectively seek a determination of their liability to pay service charges for the period 2014 to 2019 inclusive. They also seek an order pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Applicants case is that the demands issued for this period are invalid in that they do not comply with the terms of the lease in respect of certification.
3. Directions were issued on 11th February 2020 and subsequently a telephone case management hearing was held on 27th March 2020. At that telephone hearing Mr Peter Amies represented the Respondent as a director. Ms. S Jennion of Flat 5 was at that stage listed as an Applicant.
4. Subsequently it appears that solicitors have been appointed by the Respondent under a policy of insurance. Ms Jennion withdrew her application. She is a director of the Respondent and has signed the necessary statements of truth on behalf of the Respondent.
5. At the telephone CMH it was confirmed that the only issue to be determined was the validity of the demands. There was no challenge as to the reasonableness or otherwise of the sums claimed over that period.
6. It was agreed that the matter may be dealt with on paper given the limited nature of the issues to be determined. The solicitors for the Respondent have supplied an electronic bundle and references in [] are to pages within that bundle.

Determination

7. The tribunal thanks the parties for their submissions. It has read all and the whole of the bundle which runs to some 432 pages containing the relevant submissions, copies of accounts, minutes of company meetings and demands.
8. A point was raised that the statement of truth signed by Ms Jennion referred to her signing as the Applicant. This was an obvious

typographical error and the tribunal accepts she signed the document as a director of the Respondent company.

9. The issue for determination is a narrow one. Put simply it is whether or not the Respondent has certified matters in accordance with the lease.
10. The tribunal has been supplied with a specimen lease [13-32]. This lease is for Flat 7 and is dated 31st January 1990 and made between Poststyle Limited and Enid Gladys Cheshire. It appears to be common ground that the form of lease is the same for each flat. The relevant clause is Clause 7 [25 and 26] and in particular Clause 7(2) and 7(3) which state:

“7(2) The total amount of the expenses and outgoings incurred by the Lessor and the amount assessed by the managing agents as a reasonable provision for future expenditure in accordance with sub-clause (a) hereof shall be ascertained and certified by a certificate (hereafter called “the Certificate”) signed by the Lessor or its accountants or managing agents (at the discretion of the Lessor) acting as experts and not arbitrators and shall be so certified as soon after the 29th day of September in each year as may be practicable the first certificate to be for the year ending 29th September 1991

(3) The Certificate shall contain a fair summary of the expenses and outgoings incurred by the Lessor during the period to which it relates and the amount assessed as a reasonable provision for future expenditure in accordance with sub-clauses (a) and (b) hereof together with a fair summary of the relevant details and figures forming the basis of the management charge and the Certificate or a copy thereof shall be evidence for the purpose hereof of the matters which it purports to certify”

11. The Application form [1-12] stood as the Applicants statement of case. The issue for determination and the Applicants case identified that they denied that the Certificate as required under clause 7 had been provided.
12. At pages [33-42] the Respondent filed their statement of case.
13. In essence it is suggested that the service charge accounts did include what amounts to a certificate to satisfy the requirements of clause 7. Further it is suggested that all such accounts were discussed at annual general meetings of the Respondent and approved at the same. Finally it is suggested on behalf of the Respondent given no complaint has been made until recently that the leaseholders had waived any right to challenge the service charges.

14. The Respondent referred the tribunal to two cases: Central v. Wright & Fuller Ltd [2003] B.L.R. 412 and Token Construction v. Charlton Estates (1973) BPR 48.
15. Mr Sands on behalf of the Applicants filed a reply [395-399]. In summary he continued to dispute that a certificate had been provided. He did not accept that matters relating to the conduct of the companies affairs at AGM's were relevant or that a waiver had taken place simply because there had been no challenge.
16. Mr Sands referred the tribunal to two cases in support of his submissions. He explained he had been directed to these by the Leasehold Advisory Service: Bahmbhani v. Willow Court (LRX/22/2007) and Akorita v. Marina Heights (St Leonards) Ltd [2011] UKUT 255 LC. Copies of these judgements were supplied by Mr Sands.
17. At pages [43-65] were copies of the accounts for the relevant years save for the year 2014/2015 which do not seem to have been found. Each set of service charge accounts have an accountant's report provided by Price & Company Chartered Accountants. This is a factual report in accordance with the Technical Release 03/11 produced by ICAEW. Each also contain a statement similar to that in the accounts for the year ending 28th September 2018 [59] which states:

“The financial statements were approved by the Board of Broad Oak Residents Limited on 1st April 2019 and signed on its behalf by: P E Chapman Director”
18. This statement bears the signature of P E Chapman. The accounts are typical service charge accounts showing details of the income, expenditure (with a breakdown into various heads) and the reserve funds held. The accounts are typically 4 pages and a cover sheet.
19. The tribunal has considered carefully the cases to which it was referred. The two cases relied upon by the Respondent relate to construction contracts and certificates required under the same. The two cases relied upon by the Applicant relate to the certification of service charges under residential leases and in this tribunal's determination were more relevant to the issues to be determined. In reaching our determination we have had regard to all four of the cases to which we were referred.
20. Firstly we are satisfied that the way the company conducts its affairs including what is or is not approved at an AGM is not determinative of whether or not it has complied with the lease terms. It is clear from the AGM minutes included within the bundle that the accounts were considered by the shareholders at

such meetings. People attending those meetings and voting on matters do so as shareholders of that company.

21. At no point has it been suggested that leaseholders were not aware of what was included with the accounts, amounts spent or the like. The point being taken is that the Company, acting by its managing agents, has failed to follow the provisions of the lease. Irrespective of the membership of the Company the Applicants contend, and this tribunal agrees, the Respondent is required to comply with the terms of the leases. It is a fundamental requirement of a leasehold estate that the Landlord and the Tenant comply with their respective obligations under the leasehold contract.
22. Further looking at the authorities to which we have been referred and generally we are not satisfied it can be said that leaseholders have waived a right to challenge the accounts. Mr Sands explains in his response how he became aware of the issue. It is for the Respondent to have complied with the lease terms and to be able to demonstrate they have done so. If they have not then a leaseholder is entitled to challenge their liability to pay notwithstanding payments have been made.
23. This leaves the tribunal to determine whether or not a certificate has been issued which satisfies the lease terms. The Respondent contends the form of words referred to in paragraph 16 above and the accounts satisfy this requirement.
24. Mr Sands appears to contend, amongst other points, that the certificate should state it is such and be on one sheet of paper and the interim expenditure should be included within a certificate.
25. This tribunal agrees with the Respondent that the critical issue is the form and not the substance.
26. There is no strict requirement for the certificate to state categorically it is such in this tribunals judgement. We have weighed up the issues carefully. On balance and taking the wording of clause 7 as a whole and in particular 7(2) we are satisfied that the wording included within the accounts for each of the years produced amounts to a Certificate in accordance with the lease.
27. We so conclude having considered that the form of words is personally signed by a director and as such we are satisfied this amounts to a certificate by the Lessor. Considering the form of words we are satisfied the intention is that what we may refer to as service charge accounts are certified. The requirement under the lease is for the expenditure and outgoings to be certified. This tribunal finds that the reference in clause 7(3) to “reasonable provision for future expenditure” is reference to what are called reserves within the accounts. The service charge accounts contain all such information. We do not accept that all such information

must be contained on one sheet, the totality of the document must be considered. This tribunal is satisfied that by referring to board approval the Respondent is satisfied that such accounts properly reflect the service charges. In this tribunal's determination the intention of the draftsmen has been met.

28. Whilst we note the accounts for the year ending September 2015 have not been produced it appears to be accepted by the Applicants that they would have adopted a common form. We find that on a balance of probabilities it is clear the accounts would have followed a similar form to the accounts produced and so would have been certified.
29. Given our determination above the Applicants challenge fails.
30. The Applicants have sought orders pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The directions provide that any representations should be included within the statements of case.
31. In this case the application has been unsuccessful. In saying that we make no criticism of the application itself. The question of certification was a legitimate matter to be considered by this tribunal. Making orders under section 20C and Paragraph 5A are always at the discretion of the tribunal. In this instance taking account of all matters, including the fact the Respondent is a company in which each and every leaseholder is a shareholder we exercise our discretion and decline to make any 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