



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

Case Reference : **CHI/43UF/LSC/2022/0012**

Property : **16 Home Farm Close, Tadworth
Surrey, KT20 5PQ**

Applicant : **Nicholas James Parker**

Respondent : **The Home Farm Management
Company Limited**

Representative : **HES Estate Management Limited**

Type of Application : **Section 27A**

Tribunal Members : **Judge D Dovar**

Date of Decision : **6th December 2022**

DECISION

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1. This an application for the determination of the payability of service charges for the years ending 2019 to 2021. In particular in respect of:
 - a. For each of the years, the costs of insurance is challenged on the basis that the Respondent is not entitled to insure;
 - b. Professional legal fees of £3,073 in the year end 2019;
 - c. Reserves, referred to as 'future works' in the sum of £34.65 for the years ending 2020 and 2021;
 - d. Whether the sum of £61.24 is payable for the year end 2020;
 - e. A budgeted amount for legal assistance; and
 - f. Whether the certification requirements have been met.
2. There are other aspects of the application which are outside the jurisdiction of the Tribunal, being allegations that the Respondent has failed to provide documents, including details of the block insurance policy and queries as to why there was a delay in the provision of the service charge demand for the year end 2019 and where the reserves were held. The Tribunal's jurisdiction in this matter is confined to matters under s.27A of the 1985 Act, which relate to the payability of service charges. None of these issues fall within that remit.
3. Directions were given on 20th April 2022, following a telephone case management hearing, in which the Tribunal informed the parties that it intended to deal with this matter without a hearing under rule 31 of the

Tribunal Procedure Rules 2013; neither party has objected to that and this determination has been made on that basis.

4. I have been provided with a 534 page bundle which contains the application, the Tribunal's directions, the parties' Statements of Case, various documents in support and a witness statement by the Applicant and one on behalf of the Respondent from Mr Harvey of HES Estate Management Limited. Since June 2018, HES Estate Management Limited has been instructed as managing agents for the Estate.
5. The subject property ('the Property') is a maisonette on the upper floor in a purpose- built block of two maisonettes on an estate ('the Estate') comprising 56 such maisonettes. The Applicant had been a director of the Respondent's Management Company in 2017 and 2018; it seems that since his removal as a director, relations have turned sour.
6. The Applicant is the owner of a long lease of the Property dated 16th April 1982 for a term of 999 years ('the Lease'). That is a tripartite lease, with the Management Company covenanting to carry out various maintenance and repairing matters on the Estate. The Lease also provides for the Applicant to pay 1/56th of the total costs incurred by the Respondent Management Company in fulfilling its obligations.

Insurance

7. The Applicant challenges the recovery of insurance premium through the service charge on the basis that the Lease provides for him to insure and

does not make any provision for recovery of the costs of the Respondent for insuring.

8. The Respondent accepts that the Lease provides for the Applicant/Lessees to insure their own demise. The provisions in that regard are unusual, but relatively clear. Firstly, there is no obligation on the Respondent to insure. The only obligation arises within the Applicant's covenants at clause 7 (B) in the following terms:

“(v) (a) Forthwith to insure and thereafter to keep insured the property against loss or damage by fire and aircraft and such other risks as the Lessor shall from time to time specify in writing

(b) The insurance shall be effected through such agency as the Management Company shall first approve in writing and shall be in the joint names of the Lessor and the Lessee; ...

(d) Each and every premium in respect of the insurance shall be paid by the Lessee immediately it becomes due. If it is not paid as it becomes due the Lessor may pay it and recover the amount paid from the Lessee by action or otherwise as if it were part of the rent”

9. Secondly, and unsurprisingly, given there is no obligation on the Respondent to insure, the cost of insurance does not fall within the service charge provisions.
10. The Respondent complains that this places a number of obstacles in the way of placing insurance and as a result a considerable amount of

administration is required and difficulties faced, with cost implications. As a result of this the Respondent has placed insurance through a block policy for the Estate; an approach that the Respondent says has the support of 54 out of the 56 leaseholders.

11. None of the points raised by the Respondent provide a legal basis for recovering insurance costs under the service charge. The Lease is clear in that it places the obligation in that regard on the individual leaseholders. Whilst that is an unusual and surprising provision, and no doubt most if not all of the difficulties set out by the Respondent are correct, I am unable to find that they are able to recover the cost of insuring. It may be a matter that they wish to consider remedying under Part IV of the Landlord and Tenant Act 1987; but they have not done so despite such an application being canvassed in correspondence between the parties. Accordingly, the insurance costs for each year are disallowed; being:

- a. For the year end 2019, the cost shown in the service charge accounts was £9,454;
- b. For the year end 2020, the cost shown in the service charge accounts was £13,591;
- c. For the calendar year end 2021, £250.43 has been demanded from the Applicant as the yearly charge for the Insurance Premium in the application for payment dated 13th January 2021. In the accompanying letter from HES, it is said that the total premium is £14,023.88.

Professional and Legal Fees

12. The service charge accounts for the year end 2019 show that £3,073 was incurred under this heading. The Respondent has clarified that the sum in question, £3,073, comprises: £2,880 for work undertaken by Cait Taylor; £180 for company secretarial services and £13 for a Companies House Confirmation Statement fee.
13. The Respondent relies on clause 4(A) of the lease which permits the recovery of costs relating to *'the management and administration of the Management Company'*.
14. There is an invoice from HES Estate Management which refers to *'Work carried out on behalf of Home Farm Close by Cait Taylor for HES Estate Management falling outside the normal management services.'* The £2,880 is said to be for 16 hours of time by Cait Taylor in dealing with the Applicant's queries and liaising with the Respondent's directors. Ms Taylor is a non-practising solicitor engaged by HES.
15. I have been provided with HES Management Agreement with the Respondent. The services to be provided for the annual management fee of £5,600 include *'Providing guidance to the Client on relevant legislative and regulatory issues and general interpretation of leases as required.'* The agreement also sets out a fee for matters not included in the standard service. For a partner of the firm (or any other Chartered Surveyor employed by the firm) it is £150 plus VAT per hour.

16. There is extensive correspondence in the bundle provided to me between Cait Taylor and the Applicant on the issue of insurance and other service charge items and on his hand over of company documents when he ceased to be a director. This latter topic does appear to fall within the provisions of the lease for the management and administration of the Management Company, in that it is concerned with the Applicant's exit as a director and difficulties that surrounded that. Further that does seem to be work that would fall outside of the type of work which would be included in the annual fee. However, some of the other issues relate to the management of the Property and therefore would fall outside of clause 4 (A). Indeed, they would also appear to form part of what the management fee should have included. Therefore, taking a broad assessment from the correspondence of the time taken, I allow the sum of £500 plus VAT for Ms Taylor's correspondence and time spent on the Management Company.
17. Therefore, for the year end 2019, the sum of £793 is payable for this cost item.

Legal Assistance - £2,000 (2020)

18. For the year end 2020, £4,000 was budgeted for legal assistance 'Insurance clause in Lease' and a similar provision was made in the 2021 budget. However, the service charge accounts show that no sum was actually expended on this item in 2020.

£34.65 Future Works

19. The applications for payment dated 23rd March 2020 and 2nd July 2020 provide for a half yearly service charge of £270.31 and in addition to that a further 'Future Works/Reserves' half yearly demand for £34.65. The applications for payment dated 13th January 2021 and 22nd June 2021 provide for £26.79 for the half yearly Future Works/Reserves sum.
20. The Respondent has clarified that this is a budgeted sum, incorporating the following amounts: £280 for an insurance valuation fee, £100 for Fire, Health and Safety Risk Assessment, paving repairs (£3,675 in 2019, £500 in 2020) and a £3,000 contribution to reserves. The Respondent accepts that save for the contribution to the reserves the other items should have been included in the annual expenditure. As a cost for estimated annual expenditure, those sums appear reasonable. I assume that the sum for paving repairs was based on an estimate of costs for that particular year.
21. The budget for the year end 24th December 2021, shows that for the year end 2020 £5,000 was budgeted for reserve/contingency and £3,000 for 2021. There was no sum budgeted for reserves in the 2022 accounts.
22. The sums demanded for reserves are transferred into the Maintenance Fund which stands at £54,000. That does not appear out of line with a sensible reserve for the Estate. Therefore, the sums demanded on reserve for the years in question are reasonable and payable.

Reconciliation

23. At the end of his application, the Applicant complains that there has been a failure to comply with clause 4 of the lease which provides for the Respondent in '*estimating the share to be levied for the following year*' to adjust the sums demanded to '*take into account any surplus or deficiency which has arisen due to the previous estimates being more or less than actual expenditure incurred.*' As a result, he says that he is paying more each year than he needed.
24. In response the Respondent acknowledges that the '*reserves held are probably in excess of what is reasonably required to meet the management company's short and medium- term needs.*' As a result, they have said they will review this for the 2023 service charge in order to keep reserves at a justifiable level.
25. Although this does not directly address the point made by the Applicant, I take it from this that no reconciliation has actually been undertaken and when demands have been made for on account payments, no adjustment has been made by reference to any surplus, nor has any subsequent credit been applied to his account. This is supported by the service charge accounts which show that certainly for the years ending 2019 and 2020, the surplus was carried into the 'Retained Reserves', which was a distinct fund from the 'Maintenance Fund' which held £54,000. The Retained Reserves appear to be any surplus sum that is held over in order to meet any deficit in future years. It is also supported by the fact that the demands and statements of account I have been provided with do not have any indication of any reconciliation being made.

26. In administering the service charge in that way, the Respondent has failed to comply with the reconciliation provisions contained in the Lease. This also means that in order to make any adjustment to the sums payable by the Applicant as a result of this determination, it is necessary to determine in relation to each year in question how much credit should have been given to the Applicant.
27. For the year ending 2019, the service charge accounts record a deficit of £9,290 which was salvaged by a surplus held from the previous year of £12,814. However, in light of my determination below in respect of insurance and professional fees, there was in fact a surplus. The £9,290 deficit is turned into a surplus by the insurance of £9,561 which was not payable and the £2,280 which were not payable for professional and legal fees. Therefore, in fact there was as surplus of £2,551. It follows that there should be a credit to Applicant for the on- account demand for the year end 2020 of £45.55 (i.e. £2,551/56).
28. For the year ending 2020, the accounts show a surplus of £12,713, which was carried into the Retained Reserves (which is distinct from the sums held in a Maintenance Fund). It should not have been, it should have been credited to the leaseholders in accordance with clause 4. Further, by reason of this determination, a further sum should be credited to this year's account, being the insurance of £13,591. The total surplus was therefore £26,304.
29. The result is that an adjustment needed to be made to the demands made for the budget for 2021 to take that surplus into account; i.e. a

credit to the Applicant of £469.71 (£26,304 / 56). The challenge to the legal assistance fee is dealt with in this manner, in that given it was not a cost actually incurred it will form part of the surplus to be credited.

30. I have not been provided with the accounts for the year end 2021, and do not know whether they have been drawn up. However, in light of the determination above, the cost of insurance should not be added to those accounts and any surplus should be credited to the Applicant.

£61.24 Outstanding

31. The Applicant queries what this sum represents.
32. This is said to be the balance outstanding from the Applicant. Indeed, in the application for payment dated 2nd July 2020, the demand notes a balance brought forward of £366.20 and then a payment received of only £304.96, leaving a balance outstanding of £61.24.
33. Given that this figure is a product of the Applicant's service charge account and that various adjustments have been made above in accordance with my determination on various cost items and the failure to reconcile, the demand for £61.24 is no longer relevant.

Section 20C, Paragraph 5A

34. The Respondent has not stated whether or not it intends to recover the cost of this application from the Applicant and/or through the service charge. Given that the Applicant has been successful on a number of his challenges, I will make an order under both s.20C and paragraph 5A precluding the Respondent from recovering the costs of these

proceedings through either the service charge or by way of administration charge from the Applicant.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.