



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

Case Reference : **MAN/00FF/LSC/2022/0014**

Property : **101 and 405 Westgate Apartments,
Leeman Road, York**

Applicant : **MICHAEL DAVID SINCLAIR**

Respondent : **WESTGATE (YORK) LIMITED**

**Type of
Application** : **Section 27A Landlord and Tenant Act 1985:
determination of reasonableness of service
charges
Section 20C, Landlord and Tenant Act 1985
Schedule 11, paragraph 5A, Commonhold and
Leasehold Reform Act 2002.**

Tribunal : **A M Davies, LLB
J Jacobs, MRICS**

Date of Order : **26 June 2024**

ORDER

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DECISION

1. The service charge for each of the years ended 24 December 2019 to 24 December 2023 is payable as demanded by the Respondent.
2. In the event that either party intends to apply for or in respect of costs, an application (with costs schedule where appropriate) shall be served on the other party and filed in these proceedings no later than 21 days after receipt of this order. The other party may serve and file a response no later than 14 days after receipt of such costs application. Any costs decision will be made by the Tribunal on consideration of representations filed and served in accordance with this order, without a hearing.

REASONS

BACKGROUND

1. The Applicant bought the leasehold of Apartment 405 at Westgate Apartments, Leeman Road, York ("the Property") on 20 February 2018. From the grant of the lease in 2002 until 6 April 2021 he was also a joint leaseholder of 101 Westgate Apartments. The immediate reversioner is the Respondent, a private company limited by guarantee with no share capital, whose purpose is to manage the Property. The Property was built around 2002 and contains 114 apartments and a car park. At all relevant times the Property was managed for the Respondent by J H Watson Property Management Limited ("Watson").

THE APPLICATION

2. The Applicant lodged this application on 7 October 2022 (updated on 12 January 2023) seeking a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of accountancy costs and company secretarial costs included in the service charge account for the years ending 24 December 2018, 2019, 2020, 2021 2022 (actual) and 24 December 2023 (anticipated).
3. The Applicant also made applications (1) under section 20C of the Act seeking an order that the Respondent should not add its costs of this application to his future service charges, and (2) under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order that his liability, if any, to pay administration charges in respect of litigation costs be reduced or extinguished.

THE LAW

4. Section 18 (1) of the Act defines a service charge as “*an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.....
(3) For this purpose –
(a) “costs” includes overheads.....”
5. Section 19 of the Act limits service charges as follows:
“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.
(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”
6. Under section 27A (1) of the Act, the Tribunal may, on application, determine whether a service charge is payable, and, if it is, (among other things) the amount which is payable. A “service charge” levied in any year is a single demand comprising the various actual or anticipated costs of management in that year. The terms of the lease authorising the levy of a service charge must be complied with.
7. Since the annual service charge is a demand for a single amount, it follows that a determination having been made on an application by a leaseholder as to the reasonableness and payability of a service charge, a further application in respect of costs included in the same service charge may not subsequently be made by the same leaseholder.
8. Section 20C of the Act enables a leaseholder to apply for an order that the landlord’s costs of tribunal proceedings may not be added to the service charge account of any leaseholder named in the application.
9. Where the lease permits, a landlord’s litigation costs may be claimed from a leaseholder as an administration charge. At paragraph 5A, Schedule 11 of

the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) the Tribunal may, on application by the leaseholder, reduce or remove his liability to pay such a charge.

THE LEASES

10. The Applicant’s leases of Apartments 101 and 405 provide, insofar as relevant to this application, as follows. During the period of his ownership of each apartment, the Applicant is to contribute 1% (in respect of Apartment 405) and 0.96% (in respect of Apartment 101) of all the Respondent’s costs incurred in providing or procuring, among other items listed as Services in Schedule 4 of the lease, the keeping of books of account and records in respect of the management and maintenance of the Property together with the preparation and auditing of those accounts and the preparation and service of all notices and statements in respect of the Services (paragraph 5.6), and employing “*the Surveyor and any other....professional or adviser employed or retained in connection with the Services or anything arising in relation to them*” (paragraph 5.7).
11. Paragraph 4.5 of Schedule 4 to the lease provides that “*the inclusion of a service in paragraph 5 of this Schedule does not impose any obligation on the Landlord to provide it.*”
12. The Land Registry’s office copy indicates that the Applicant’s lease of Apartment 101 was varied on 22 November 2018. The Tribunal was not advised that the variation had any bearing on the issues before it.

THE HEARING

13. Initial directions were given on 28 March 2022 and following case management conferences further directions were issued on 24 August 2022 and 6 November 2023. Subsequently it was agreed that an inspection of the Property would not assist the Tribunal. The matter was listed to be heard in Harrogate Justice Centre. The Applicant represented himself, and the Respondent was represented by Ms Zanelli of Property Management Legal Services.
14. Ms Zanelli drew the Tribunal’s attention to three jurisdiction issues raised in the Respondent’s Statement of Case. The first concerned the dates between which the Applicant had been liable to pay the service charge, and this issue had been resolved between the parties prior to the hearing. The second concerned an application in relation to the service charges payable for Apartment 101 in the years ending 24 December 2016, 2017 and 2018 which was brought by the Applicant and heard before Judge Martin Simpson in the First-tier Tribunal on 11 August 2018. The tribunal had then found that the Applicant had been overcharged on his service charge

account in each of the three years. Since the Applicant's service charge for the year ending 24 December 2018 has already been adjudicated upon, this Tribunal has no jurisdiction to re-open the service charge account for that year. Therefore the years with which the present hearing was concerned were the years ending 24 December 2019, 2020, 2021, 2022 and 2023.

15. The third point on jurisdiction related to the Applicant having included in his application objections to the Respondent's accounting procedures; in particular the processes by which the Property's reserve fund is managed. In his decision dated 11 August 2018 Judge Martin Simpson at paragraphs 14 – 16 clearly set out the limited extent of the tribunal's jurisdiction on an application under section 27A of the Act. Despite this, the Applicant produced lengthy arguments and a considerable volume of documentation relating to management of the reserve fund and was insistent upon developing his argument at the hearing. This he was permitted to do, and the Respondent helpfully supplied Watson's Property Accounts Manager Mr Ralph to answer questions and provide further explanations. Nevertheless, this issue is outside the jurisdiction of the Tribunal and does not form any part of the Tribunal's determination. Moreover, it is apparent that despite the Applicant's concerns there is no evidence that excessive amounts have been collected in respect of provisions.

DISPUTED COSTS

16. The Applicant claimed that the service charge accounts prepared by JWP Creers LLP do not conform to the terms of the lease, that the audit report contains untrue statements and "an unsafe opinion not based on fact", and overall took the view that the accounts are of poor quality and "incompetent". He did not supply any alternative costs figure for the accountancy work but told the Tribunal that no fee should be permitted under this head.
17. The accountancy, audit and payroll costs paid by the Respondent in the years in question ranged from £1711 in 2019 to £2407 in 2022, with an estimate of £2000 for 2023, the Applicant's share of these being one percent.
18. In 2022 the Applicant submitted his objections to the service charge accounts to JWP Creers LLP's governing body ICAEW by way of a formal complaint. After investigation, ICAEW formed the view that no disciplinary action was called for. Their report to JWP Creers LLP dated 17 June 2022 states "*.....the Committee foundthat the audit report complied with the.....guidance for such reports.....The Committee found prima facie evidence that the service charge accounts were, in all material respects, prepared in accordance with the accounting policies set out in the accounts....It further found that the alleged errors in the notes to the*

accounts would not, in themselves, be serious enough to render JWP Creers LLP potentially liable for disciplinary action.” The Applicant disagreed with this conclusion but, other than his own opinion, produced no expert or other evidence as to the alleged failures of the accounts. His main objection was that the annual accounts did not include sufficiently detailed information. However the Tribunal were shown his correspondence with Watsons which provided full explanations regarding the accounts and answered all his questions to the Applicant’s satisfaction. The Applicant objected to this on the basis that none of the other leaseholders had unrequested access to the same detailed explanations. He described JWP Creer’s work as “useless accounting and audit” and referred to a number of minor errors, none of which affect the substance of the account. He told the Tribunal “a catalogue of errors implies that something deeper is wrong.” He was concerned that the RICS Code of Practice had not been followed, and believed that the accounts disclosed breaches of section 19(2) of the Act.

19. The Tribunal does not accept that the Applicant’s suspicions are justified. The annual service charge accounts comply with the terms of the lease and the Act. To the extent that the RICS Code of Practice has not been followed, the Tribunal notes that the Code is advisory only. The accounts are reasonably informative, provide a true and fair view of the financial transactions, and are not in any way unusual. More detailed explanations, when requested, were readily supplied by the Respondent. The accountancy fees included in the service charge for each year in question are within normal parameters and reasonable, and the level of service is also reasonable.
20. In 2022 the Respondent outsourced its company secretarial responsibilities. The cost in the year ended 24 December 2022 was £762, with an estimate of £819 for 2023. The Applicant objected to these costs on the ground that there had been a failure of the Company Secretary’s duty to record and authenticate minutes, to record authority for obtaining legal representation, and to update Companies House records. No evidence was supplied in support of these alleged failures. The Applicant also claimed that leaseholders’ tenants were entitled to become members of the Respondent and objected to the fact that they had not been invited to do so.
21. The Applicant acknowledged that the Company Secretary had provided services to the Respondent, but was unable to say what the correct fee for those services should be. In response Ms Zanelli listed the tasks undertaken by the Company Secretary to ensure “basic compliance”, for which a reasonable fee was charged.

22. The Tribunal finds that the outsourced company secretarial work has been undertaken appropriately and that the Respondent has agreed a reasonable fee for it.

LITIGATION COSTS

23. The Tribunal chose not to consider the Applicant's costs applications at the hearing, but instead gives directions which will take effect in the event that either party should decide to pursue (Applicant) or make (Respondent) any costs application.