

5392

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 95 Elderberry Gardens Witham Essex
Applicant(s) : Mr. D. Hill
Respondent(s) : Gloucester Place (Witham) Management
Company Limited
Case number : CAM/22UC/LSC/2010/0070
Date of Application : 25 June 2010
Date of Hearing : 6 October 2010
Type of Application : Determination of liability to pay
administration charges
Tribunal Members : M. Graham Wilson, Roland Thomas MRICS
Mrs. Jane Clark JP

DECISION

Application

- (1) This was an application by Mr. Hill, the tenant of a long Lease, under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the liability to pay, and the reasonableness of, a variable administration charge: in this case, a £20 "late payment fee" levied by the Respondent Management Company. As will be clear from what follows, the late payment fee was a fee charged by the Management Company for its own work.
- (2) The Lease was a Lease for 999 years, from 1 January 1980.

Hearing

- (3) At the Hearing, the Applicant represented himself. The Respondent was represented by its Finance Director, Mrs. J.P. Coutts-Goss.
- (4) The Applicant had prepared a bundle of documents, as directed. It ran to about 100 pages. It is not necessary to refer to its contents in detail.

- (5) The Tribunal began by identifying 3 questions:
- (i) did the Lease contain the right for the Management Company to charge a late payment fee and to charge it to an individual? If so
 - (ii) was it reasonable? If so
 - (iii) was it properly demanded?

If the answer to any of these questions was in the negative, the Applicant would succeed in demonstrating the fee could not be recovered (or, at least in the case of the third question, not recovered without further steps being taken).

Both Applicant and Respondent agreed that these were indeed the questions posed by the application.

- (5) The Tribunal began by asking the parties to focus on Part II of the Fifth Schedule of the Lease – sub-titled "Expenditure to be recovered by Means of the "Maintenance Charge" – and paragraph 1 of that Schedule which stated:

The sums spent by the Management Company in and incidental to the observance and performance of the covenants on the part of the Management Company contained in the Fifth Schedule and Part I of this Schedule.

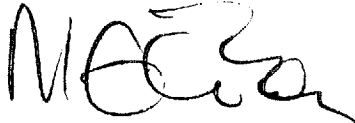
- (6) The Tribunal suggested that the words "incidental to" may be wide enough to encompass late payment fees. While the Applicant did not disagree with that, he argued that such fees were neither "Expenditure" nor "sums spent". A fee was imposed by the Management Company "internally" and did not reflect, for example, charges incurred by some kind of debt collection agency. Nothing in the Lease, the Applicant submitted, entitled the recovery of such a fee from an individual.
- (7) The Respondent suggested that the late payment fee was "Expenditure" which it was fair for the Company to impose.

Decision

- (8) The Tribunal decided that under this Lease it was not legitimate for the Management Company to levy late payment fees for its own work. It was, as the Applicant had submitted, neither "Expenditure" nor a "sum spent". It was thus unnecessary to deal with the remaining questions. Even if the answer to that question had been otherwise, it was also the case that the Lease did not provide for the recovery of such a fee from an individual.
- (9) It was not part of the Tribunal's function to proffer advice either to the Management Company or to the Tenant. However, the Tribunal

observed that it appeared either a lease variation or the employment of an outside agency only would allow the recovery of such a fee (and only a lease variation would allow for its recovery from an individual).

- (10) Mrs. Coutts-Goss correctly observed that some charges were imposed on individuals – typically where the Management Company incurred costs in authorising lease assignments. No doubt tenants were willing to pay such costs to procure the consent of the Management Company to an assignment. The question of whether this Lease permitted the imposition of such charges was not one which was appropriate for the Tribunal to attempt to answer.



M. GRAHAM WILSON
Chairman

Dated:  October 2010