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

Case Reference : **CHI/43UE/LIS/2013/0080**

Property : **2 Archway Mews, Dorking, Surrey
RH4 1BX**

Applicant : **Archway Mews Residents
Association Limited**

Representative : **Mr Roger Stones, director of the
Residents Association Limited**

Respondent : **Mr Robin Gould**

Representative :

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges for 2010,
2011, 2012 and 2013.**

Tribunal Members : **Judge Tildesley OBE
Mr D Lintott FRICS
Ms J Morris**

**Date and venue of
Hearing** : **7 November 2013 at Mercure
Burford Bridge Hotel, Dorking,
Surrey RH5 6BX**

Date of Decision : **18 November 2013**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Respondent was bound by the terms of the lease dated 18 November 1983 for a term of 99 years from 24 June 1983, and made between J Stephen Obank limited of the one part and Peter Martin Thursby of the other part (hereinafter referred to as the lease).
- (2) The Tribunal finds that the Applicant was the lessor under the terms of lease, having acquired the freehold of the property from Fairwater Properties on 28 June 1990.
- (3) The Tribunal determines that under the terms of the lease the Respondent was required to contribute and pay the due proportion of costs reasonably incurred by the Applicant in discharge of its responsibilities under the lease.
- (4) The Tribunal determines that the service charges for the years 2010, 2011, 2012 and 2013 were reasonably incurred and payable by the Respondent.
- (5) The Respondent was liable to pay the requisite proportion of the service charges in the respective sums of £364 (2010), £484.92 (2011), £484.92 (2012), and £530 (2013).
- (6) The Tribunal determines that the Respondent shall pay the Applicant £ 315 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years, 2010 to 2013 inclusive.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr R Stones, director, at the hearing and the Respondent appeared in person. Mr Alan Chandler, another director of the Applicant accompanied Mr Stones at the hearing.

4. Immediately prior to the hearing the Tribunal inspected the property in the presence of the parties.
5. On 23 October 2013 the Respondent requested an adjournment of the hearing on the ground that his counsel, Mr Knight, was not available. Judge Tildesley OBE refused the application because he considered that the Respondent had sufficient time to instruct another counsel. At the inception of the hearing on the 7 November 2013 the Tribunal enquired of the Respondent whether he wished to renew his application for an adjournment. The Respondent indicated that he did not.
6. On 11 November 2013 the Respondent submitted further written representations about the lease terms which he said he had overlooked in his final statement at the hearing. The Tribunal took the view that the Respondent had been given more than sufficient time to prepare for the hearing, and that the additional information did not advance his case. The Tribunal, therefore, declined to admit the further representations.

The background

7. Archway Mews was a housing development created between 1983 and 1985. The development comprised a Victorian property originally identified as 16 or 16A Church Street Dorking. This property on its eastern aspect had been converted into two flats. Flat 1 was at the first floor accessed by its own entrance at the ground level whilst Flat 2 was at the ground floor and leased to the Respondent. The adjoining western aspect of the Victorian property comprised a semi-detached property referred to as the Coach House. The Victorian property had a garden at the front and rear of the property. To the north of the Victorian property was a development of two blocks of ten modern terraced houses constructed in the 1990's.
8. Vehicular access to Archway Mews was gained through Chapel Court which led to a communal car parking area on the west side of the development. At its northern border there was a culvert through which a stream passed. A public pathway delineated the eastern side of the development.
9. Mr Stephen Obank operating under the trading names of J Stephen Obank Limited and Fairwater Properties Limited was responsible for the development of the site for Archway Mews which commenced with the conversion of the Victorian property.
10. The freehold title to Archway Mews was originally held in the name of J Stephen Obank Limited. On 28 June 1990 the freehold title was transferred to Archway Mews Residents Association Limited and registered under title number SY535994, which made reference to the

lease for Flat 2 (title number SY552160) in the schedule of notices of leases.

11. In a letter dated 27 July 1990 to the Respondent Mr Stephen Obank confirmed that the freehold title had been transferred to Archway Mews Resident Association.
12. The Respondent held leasehold title absolute in Flat 2 under title number SY552160. The terms of which were governed by a lease dated 18 November 1983 for a term of 99 years from 24 June 1983, and made between J Stephen Obank limited of the one part and Peter Martin Thursby of the other part. The lease required the lessor to provide services and the lessee to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

13. The principal dispute concerned the Respondent's assertion that he was not bound by the terms of the lease and, therefore, had no obligation to contribute towards the costs incurred by the Applicant in respect of the services provided. The Respondent also contended that the Applicant's costs were exorbitant

Reasons

14. The Tribunal considers the Respondent's principal argument that he was not bound by the lease had no legal foundation and made no sense when viewed against the evidence. The Respondent put forward separate justifications for his argument. The first was that he had discharged the mortgage on his leasehold interest in the property, and that as a result he now held the freehold title. The second was that the leases for the Archway Mews estate properties were just instruments of registration with the Land Registry Office, and did not affect his ownership of the property asset. Finally the Respondent contended that as a shareholder of the Applicant, he had an equal share in the freehold, and as such was the landlord for his flat.
15. The Tribunal makes the following findings of fact:
 1. The property was subject to the terms of the lease dated 18 November 1983 for a term of 99 years from 24 June 1983, and made between J Stephen Obank limited of the one part and Peter Martin Thursby of the other part.
 2. The lease was registered at HM Land Registry under title number SY552160, with the Respondent as the proprietor with title absolute in the leasehold interest.

3. On 18 June 1990 the freehold of the property was registered in the name of the Applicant under title number SY535994. The title noted the details of the Respondent's lease in the *Schedule of notices of leases*.
4. On 21 December 1990 the Respondent purchased the property subject to the lease. Prior to the purchase, Mr Obank advised the Respondent that the freehold in the property had been transferred to the Applicant on 27 July 1990.
5. The Applicant was a company limited by shares. Under its Memorandum of Association dated 10 October 1983 membership of the company was restricted to the subscribers and lessees of the flats comprised in the Archway Mews Estate. There were currently 13 shareholders of the company, all of whom were lessees including the Applicant.
16. The Tribunal finds on the above facts that the Applicant and the Respondent were the lessor and lessee respectively under the lease dated 18 November 1983.
17. Under clause 2(a) of the lease the lessee (the Respondent) was obliged to pay the due proportion of the sums expended by the lessor (the Applicant) for keeping the building insured against fire, public liability and other such risks. Further clause 2(f)(i) required the lessee (the Respondent) to contribute and pay the due proportion of the costs and expenses of the lessor's service obligations including the reasonable charges of any managing agent.
18. The Tribunal, therefore, decides that the Respondent was bound by the terms of the lease and liable to pay a contribution towards the Applicant's costs for insuring the building and for carrying out its service obligations.
19. The Respondent's assertions about being the freeholder and or not being bound by the terms of the lease had no evidential or legal basis. Mr Obank advised the Respondent before he purchased the flat that the freehold of it was owned by the Applicant.
20. The Respondent's arguments were in effect a repeat of the arguments he made to a previous Tribunal on 22 October 2009 (CHI/43UE)/LIS/2009/0070) which resoundingly found against him.
21. At paragraph 26 the Tribunal said

"The Tribunal had little difficulty in concluding on this evidence the Applicant was the owner of the freehold reversion on the Respondent's lease, or in other words that the Applicant was the Respondent's landlord".

22. On the effect of the Respondent's shareholder status on the ownership of the freehold, the Tribunal said

"The Tribunal rejected the Respondent's submission that as he was a shareholder in the Applicant company he was a part-owner of the freehold. It seemed to the Tribunal that the Respondent had overlooked the fact that as a limited company the Applicant is a legal person which is able to own property in its own right. Whilst as a general rule it is likely that the shareholders in a limited company own the company itself, the shareholders do not own the assets of the company either individually or collectively".

23. This Tribunal adopts the previous Tribunal's reasoning on why the Respondent's shareholding in the Applicant did not alter his status of owning a leasehold interest in the property.
24. Thus this is the second time that the Tribunal has ruled against the Respondent in respect of his argument that he is not under an obligation to pay service charges to the Applicant. The Tribunal is also aware that the Respondent was unsuccessful on the same issue before the County Court. The plain fact is that the Respondent purchased a leasehold interest in the property after the Applicant acquired the freehold. The Respondent knew at the time of purchase that the Applicant was his landlord and entitled under the terms of the lease to recover service charges from him. The Respondent's position as a leaseholder owing obligations to the Applicant has not changed since he bought the property. The discharge of his mortgage on the property or Mr Obank's original intentions for the development has had no effect on the Respondent's status as a leaseholder.
25. At the end of the hearing the Respondent queried whether the Tribunal had the power to enforce its order. The Tribunal pointed out that it had jurisdiction to determine whether he was liable to pay the service charge but the authority to enforce the Tribunal's order rested with the County Court.
26. The Tribunal is concerned that the Respondent's continuing refusal to recognise his obligations as a leaseholder may lead to a situation where the Applicant has no choice but to apply to the County Court for the forfeiture of his lease, which if successful would result in the Respondent losing his property. Given those circumstances, the Respondent may wish to give careful consideration of what he should do in relation to the payment of the outstanding service charges.
27. On the question of the actual charges for services, the Tribunal notes that the recurring expenditure items of the disputed service charges were for buildings insurance, accountancy fees, management fees and

general maintenance. The Tribunal is satisfied that these expenditure items were authorised under the terms of the lease.

28. The Respondent argued that the Applicant's expenditure, in particular the management fees, was exorbitant but he adduced no evidence to substantiate his allegation.
29. The Tribunal having examined the service charge accounts decided that the overall annual charge was modest for the size and age of the development.
30. The lease did not specify the precise proportion of the service charges payable by the Respondent. The Applicant decided to split the service charge equally between the lessees of the development, which in the Tribunal's view, is a reasonable interpretation of the lease provisions requiring the Respondent to pay a due proportion of the charges.
31. The Applicant pointed out that in 2011 it had gone out to tender on management fees with the result that new managing agents, Whyte & Son, were appointed. The annual fee of Whyte & Son was less than that paid to the previous agents and representative of the size of fees charged by other managing agents in Dorking. The Tribunal accepts the Applicant's evidence on the management fees which was sufficient in the absence of evidence to the contrary to establish the reasonableness of these charges.
32. The Tribunal also examined the amounts charged by the Applicant for the other individual expenditure items and concluded that there was nothing striking or unusual about the amounts charged. The Tribunal is, therefore, satisfied that these charges were reasonably incurred and payable by the Respondent.

Decision

33. Having regard to its reasons the Tribunal decides the following:
 1. The Respondent was bound by the terms of the lease dated 18 November 1983 for a term of 99 years from 24 June 1983, and made between J Stephen Obank limited of the one part and Peter Martin Thursby of the other part.
 2. The Applicant was the lessor under the terms of lease, having acquired the freehold of the property from Fairwater Properties on 28 June 1990.

3. Under the terms of the lease the Respondent was required to contribute and pay the due proportion of costs reasonably incurred by the Applicant in discharge of its responsibilities under the lease.
 4. The service charges for the years 2010, 2011, 2012 and 2013 were reasonably incurred and payable by the Respondent.
 5. The Respondent was liable to pay the requisite proportion of the service charges in the respective sums of £364 (2010), £484.92 (2011), £484.92 (2012), and £530 (2013).
29. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the hearing¹. The Tribunal is satisfied for the reasons given above that the Respondent's objection to the Application was unmeritorious and without substance. The Tribunal, therefore, orders the Respondent to refund the fees of £315 paid by the Applicant within 28 days of the date of this decision.

Judge Tildesley OBE

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.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.