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

Case Reference : **LON/00BG/LSC/2013/0327**

Property : **22 Iron Works, 58 Dace Road,
London E3 2NX (“the property”)**

Applicants : **Ms Michelle Gabriel**

Respondent : **Miltenglade Limited**

Representative : **Stevensons Solicitors**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr S Mason BSc FRICS FCI Arb**

**Date and venue of
hearing** : **7 August 2013 10 Alfred Place,
London WC1E 7LR**

Date of Decision :

DECISION

Decisions of the Tribunal

- (1) The Tribunal determine that the Service charge contributions for insurance contributions for the years -: (a) 2008/09 in the sum of £268.21, (b) for 2009/10 in the sum of £290.35) (c) 2010/11 in the sum of £276.63 (d) 2011/12 in the sum of £235.26(e) and for 2012/13 in the sum of £266.39 are reasonable and payable.
- (2) The Tribunal determine in respect of the balancing charge payable for the service charges for 2011/12 that the sum of x claimed is
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether future service charges are reasonable and payable for the periods set out above.
2. The Applicant issued two Applications both dated 7 May 2013. One application ("the first application") was in respect of the service charges payable as a contribution to the cost of insurance, for the periods set out above. The other application ("the second application") was in respect of the balancing charges demanded for 2011/12 and two sums claimed in respect of administration charges £47.40 (13.12.2012) and £55.80 (11.01.2013)
3. Directions were given by the Tribunal on 6 June 2013.

The matter in issue

4. An oral pre-trial review was held by the Tribunal on 6 June 2013, which was attended by the Respondent's representative. The Applicant did not appear and was not represented.
5. The Tribunal noted that a number of matters were identified as being in issue (i)the reasonableness and payability of service charges for the periods 2008/09 to 2012/13 (ii) whether the landlord was entitled to recover insurance premiums for the years in question (iii) whether the insurance arrangements amount to a qualifying long term agreement which required the landlord to consult, in accordance with section 20 of the Landlord and Tenant Act 1985 and the consultation Regulations 2003 (iv)whether the requirement to serve the demands with a Service Charges (Summary of Rights and Obligations) (England) Regulations 2007("Summary of Rights and Obligations") had been complied with (v) whether the landlord was entitled to recover a balancing charge in

respect of the year 2011/12 (vi) whether section 20B limited the leaseholders liability to pay service charges for the period in (v) above. (vi) the cost of the hearing and application fee, and whether an order ought to be made in accordance with section 20C of the Landlord and Tenant Act 1985.

6. At the pre-trial review, it was also noted that the matter was capable of being allocated to the paper track (which meant that the matter could be disposed of without a hearing) at the request of the Applicant.
7. The Respondent did not object to the matter being considered on the basis of documentary evidence alone.
8. The relevant legal provisions are set out in the Appendix to this decision.

The background

9. The premise which is the subject of this application is a two bedroom flat situated in a purpose built block accommodating 79 flats.
10. The Applicant holds a long lease of the ground floor flat, pursuant to the assignment of the lease of premises on 8 December 2008. The lease required the landlord to provide services and the Respondent, as leaseholder, to contribute towards the cost of the service, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Paper Determination

11. At the hearing the Tribunal were provided with an applicant's bundle and a separate respondent's bundle.
12. The Applicant in her bundle set out that she had purchased the premises on 8 December 2008 from London Green and that at the time of her purchase there was no outstanding charge for building insurance, and that this was confirmed in writing by her solicitor.
13. A year later, on paying the insurance for 2009/10, the Applicant was informed that the previous year's charges were still outstanding. The Applicant stated that she received written confirmation from Simarc that it was incorrect that charges were outstanding. (Simarc were the landlord's agents). However this was not conceded by the Landlord, who in written submission on their behalf did not accept that payment had been made.
14. The Applicant also asserted that she had not received a demand, which accorded with the legislation (that is that complied with the provision of a *Summary of Rights and Obligations*). As this dispute was over three years old, The Applicant also contended that even if a demand was made

now that complied with the legislation, it would be caught by section 20B (see below) of the Landlord and Tenant Act 1985.

15. The Tribunal noted that the effect of not serving the Summary of Rights and Obligations was set out in Section 21B (3) of the Landlord and Tenant Act 1985 which states:-: ***(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.***
16. The Applicant also asserted that the interest charge of £51.16 was not reasonable or payable.
17. In reply the Respondent set out that the insurance for this period was payable on 12 November 2008-11 November 2009. This was approximately one month before the Applicant became the leaseholder of the premises.
18. The Respondent in their written reply stated that the demand had been served on London Green, who were at the relevant time, the leaseholder. The Respondent asserted that they had been unaware of the change of leaseholder; in their defence they state:-: *"...It would appear that either London Green Developments Limited failed to disclose this to the applicant or the applicant's solicitor failed in their due diligence to give notice of assignment of the lease to the Respondents..."*
19. The managing agents were not aware of the change of leaseholder, and as a result sent further letters to London Green Development chasing up insurance on 6 March 2009, and on 10 March 2010.
20. The Respondent also stated in paragraph 13 of their statement of case that -: *"The Applicant states that leasehold property management confirmed receipt of the insurance payment. The Respondent strongly denies this and the Applicant has failed to provide any evidence to support her claim..."*
21. In so far as the Applicant raised issues concerning whether the insurance premium payable was a qualifying long term agreement this is dealt with below.

The Decision of the Tribunal on the insurance premium payable for 2008/09

22. The Tribunal were provided with a copy of the demand for payment. The Tribunal noted that this sum was marked "not paid" on the applicant's statement of case (noting that no payment had been made in respect of this sum).
23. Having looked at the demand, the Tribunal noted that the landlord had not complied with the requirement to provide a *Summary of Rights*

and Obligations as required by Section 21(B) of the Landlord and Tenant Act 1985 either to London Green, the applicant's predecessor in title, or to the Applicant herself.

24. By virtue of Section 21B (3) the Applicant was entitled to withhold payment until such time as the Respondent's had complied with the requirements. As the Respondent did not comply within 18 months of the expenditure being incurred, the Tribunal determine that sum claimed for insurance for the period 2008/2009 is not payable

The Insurance premium for 2009-2010, 2010/11 and 2011/12

25. In her statement of case the Applicant raises two issues, the first that in her view the insurance premium is payable under a qualifying long term agreement, and secondly, that the landlord failed to consult under section 20 of the Landlord and Tenant Act 1985, and the Service Charges (Consultation Etc) (England) Regulations 2003. If the Applicant was correct in her assertion the sum due should be limited to £100.00.
26. The Applicant basis her claim of the fact that the insurance premium in her submission exceeds a 12 months period.
27. In her written summary the Applicant also states that the landlord has not complied with the Requirements in respect of *the Summary of Rights and Obligations* referred to above.
28. The same issues are raised in respect of the insurance premium for 2010/11 and 2011/12 (the insurance premium exceeded 12 months)
29. The Respondent in their reply, rely on two insurance premiums one AXA Insurance ran from 12 November 2008 to 11 November 2009 and the other 18 November 2009 to 17 November 2010. Neither policy on the face of it exceeds a year.
30. In answer to the submissions raised in relation to the failure to serve a Summary of Rights and Obligations, the Tribunal note that this allegation was not denied for either of the periods in issue. The Respondent states in paragraph 18 of their statement of case that the Applicant's right is merely to withhold payment until such time as the summary is served -: "... *The Applicant has clearly forfeited her right to withhold payment by making payment. In addition there is no provision for the payment to be refunded when paid...*"

The Decision of the Tribunal on the insurance premiums payable for 2009/10, 2010/11 and 2011/12

31. The Tribunal having looked at the schedules of insurance noted that the cover was for a period not exceeding 12 month accordingly, The Tribunal does not accept that the period exceeded the 12 months period which would rendered the agreement subject to a qualifying long term agreement. Although having inspected the demand and schedule, the Tribunal could see that these documents might be misleading as one of the schedules had an earlier due date than the actual period of cover.
32. Accordingly the insurance is not covered by the qualifying long term agreement provisions.
33. In respect of the failure to serve the *Summary of Rights and Obligations* the Tribunal agrees that the Respondent's assertions in respect of the law concerning the service of the notice is correct; that is, that by paying the sums demanded, the Applicant had forfeited her right to assert that the payments were not due.
34. The Tribunal noted that the Respondent disputes the Tribunal jurisdiction on this matter. However it is within the discretion of the Tribunal, given that the wording of Schedule 11 of The Commonhold and Leasehold Reform Act 2002 is identical to Section 27A of The Landlord and Tenant Act 1985, for the Tribunal to form a view as to whether the remaining issues can be dealt with by this Tribunal, or whether they should be the subject of a further Tribunal application. The Tribunal consider that the small amount of interest means that it would be disproportionate for this matter to be considered separately.
35. The Tribunal noted that interest was demanded on the sums due, however the Tribunal noted that if the sum was not payable, until such time as the Respondent served the *Summary of Rights and Obligations*, the sum cannot be said to be properly demanded, until such time as the sum is demanded in according with the legislation (and payment is not made in accordance with the lawfully demand) Accordingly the Respondent is not entitled as of right to interest.

The balancing charges for 01/01/2011 to 24/3/2012

36. In her statement of case, the Applicant stated that:- "*... the Service charge accounts were published on 25/10/12 more than 6 months after the end of the period. A balancing charge of £384.06 representing an over spend of 17% on the budgeted amount...This was more than eighteen months after the start of the accounting period and no section 20B Notice has been issued within the eighteen months advising the leaseholders of the excess.*"
37. The Applicant asked the Tribunal for a determination in respect of the same.

38. The Respondent's refute this, they say simply that the Applicant has paid sums in advance and that the charges are not due until such sums have been exhausted. They rely upon the cases of *Gilje -v- Chalgrove Securities Limited [2002] 1 EGLR 41* and *Holdings and Management (Solitaire) Ltd -v- Sherwin [2010] UKUT* in support of this proposition.
39. They state that the sums paid on account were not exhausted until 25 April 2011, and that as such the period runs from this date until 25 October 2012. The Respondent state that none of the relevant invoices is over 18 months old and so it is not caught by Section 20B of the Landlord and Tenant Act 1985. The Respondent also relied upon the fact that the Landlord invited the Applicant to inspect the invoices, and that inspection of the invoices would have confirmed their assertions.

The Tribunal's decision

40. The Tribunal having considered the oral and written submissions relied upon by the parties have determined that the balancing charge is reasonable and payable, The Reason that the Tribunal have reached this decision is that on the evidence before it, The Tribunal have not been referred to any invoices demanded as part of the balancing charge which is more than eighteen months old. The Tribunal cannot assume that merely because the sum claimed for the balancing is claimed sometime after the end of the accounting period that this includes invoices which are more than 18 months old, the Applicant has the burden of proving this assertion.
41. The Tribunal note that the Applicant has not discharged this burden and that the Tribunal have not found this on a balance of probabilities.

Application under s.20C and refund of fees

42. The Tribunal noted that the Applicant in bringing this case made assertions about the Insurance premiums, concerning their payability. Although the Tribunal have found that the sums were not caught by section 20 as long term agreements, the Tribunal noted that the Respondent were not asserting that they had complied with the requirements to serve the Summary of Rights and Obligations as required.
43. Given this The Tribunal find that at the time of making this application, the Applicant had a legitimate concern about whether the sums claimed were due., given this it cannot be said, as asserted by the Respondent

that -: “ the Applicant’s application is wholly without merit and is unreasonable .”

44. The Tribunal determine that in all the circumstances it is reasonable to make an order under Section 20C of The Landlord and Tenant Act 1985.
45. The Tribunal however determines that the Tribunal and hearing fee are payable by the Applicant. The Tribunal note that the interest due on the sums demanded in respect of the non-compliant demands should be re-credited to the Applicant’s account within 28 days of the date of this determination.

Name: Ms M W Daley

Date: 29.08.2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.