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**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : **Apartment 25, 5 Back Colquitt Street,  
Manolis Yard, Liverpool, L1 4NL**

**Applicant** : **Dr S Ashraf**

**Respondent** : **Manolis Yard Residents Property  
Management Limited**

**Case number** : **MAN/00BY/LSC/2012/0155**

**Date of Application** : **8 November 2012**

**Type of Application** : **Application for a determination of  
liability to pay and reasonableness  
of service charges**

**The Tribunal** : **P J Mulvenna LLB DMA (chairman)  
I James, Dip Surv, MRICS**

**Date of decision** : **27 February 2013**

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**ORDER**

- 1. That the service charges demanded by the Respondent in respect of the Property for the year ended 31 December 2007 be reduced (a) by £1,000 in respect of an excess on an insurance claim; and (b) from £18,660 to £11,196 in respect of the cost charged for a full-time on-site manager.**
- 2. That the service charges demanded by the Respondent in respect of the Property for the year ended 31 December 2008 be reduced (a) from £12,436 to £7,447 in respect of the cost charged for a full-time on-site manager; and (b) by £112 paid to Klassic Builders in respect of a door at Apartment 14, and by £85 paid to D & A Properties in respect of a leak at 20A Manolis Yard.**
- 3. That the service charges demanded by the Respondent in respect of the Property for the year ended 31 December 2009 be reduced £20,551 to £12,330 in respect of the cost charged for a full-time on-site manager.**

4. That the service charges demanded by the Respondent in respect of the Property for the year ended 31 December 2010 be reduced £20,211 to £12,126 in respect of the cost charged for a full-time on-site manager.
  5. That the Respondent reimburse the Applicant with the application fee of £350.00 and the hearing fee of £150.00.
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## **INTRODUCTION**

1. By an application dated 8 November 2012, Dr S Ashraf ('the Applicant') applied for the determination of the reasonableness and recoverability of the service charges sought to be recovered by Manolis Yard Residents Property Management Limited ('the Respondent') for the years 2007 to 2010 in respect of Apartment 25, 5 Back Colquitt Street, Manolis Yard, Liverpool, L1 4NL ('the Property')
2. The Applicant is the lessee of the Property under a lease dated 29 August 2002 and made between (1) Iliad Morrison Limited (2) the Respondent and (3) Paul Pavlou and Mark Ian Minards by which the Applicant, as successor to the original lessees, was granted a lease of the Property for a term of 150 years from 13 June 2002 ('the Lease').
3. The Respondent has engaged Andrew Louis Property Management as managing agent.

## **THE PROPERTY**

4. The Property is a two bedroom, self-contained apartment on the sixth floor of a nine-storey, purpose built development ('the Development') comprising 60 self-contained residential units and two commercial units. There is a designated car parking space in a basement car park. The residential element of the Development has a common entrance area, with secure access, which includes a lift and stairs to the accommodation on the upper floors and to the basement car park. The Development has reasonable access to Liverpool city centre.

## **THE INSPECTION**

5. The Tribunal inspected the Property and the common parts of the Development externally and internally, on the morning of 27 February 2013. Neither the Applicant nor the Respondent was present or represented at the inspection. The Tribunal was admitted to the Property by a colleague of the Applicant who declined to give his name. The Tribunal found the Property and the Development to be maintained to a reasonable standard.

## **DIRECTIONS**

6. Directions were issued by L Bennett, sitting as a procedural chairman, on 14 December 2012. The Directions have been complied with by both parties.
7. The substantive hearing of the application was held on 27 February 2013 at the Appeals Tribunal building, 36 Dale Street, Liverpool. At the substantive hearing, neither the Applicant nor the Respondent was present or represented.
8. The Tribunal draws no adverse inference in relation to the substantive issues under consideration from the failure of the parties to attend the inspection or the hearing, but observes that they have both lost an opportunity to address at first hand, by way of oral evidence and submissions, the matters in issue before the Tribunal.

## **THE STATUTORY PROVISIONS**

9. The following provisions in The Landlord and Tenant Act 1985, as amended, are material to this case:

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' include 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 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.

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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

## **THE LEASE**

10. The Tribunal has read and interpreted the Lease as a whole but in reaching its conclusions and findings has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties but which were relied on or referred to in the parties' written evidence and submissions or were specifically taken into consideration by the Tribunal in determining the issues before them:

8.1 Clause 1 contains definitions, including:

'The Maintenance Expenses' – the monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the term in carrying out the obligations specified in the Sixth Schedule.

'The Lessee's Proportion' – the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule.

8.2 The Second Schedule describes the extent of the property which is within the Respondent's maintenance responsibilities.

8.3 The Sixth Schedule contains a detailed specification of the Management Company's maintenance obligations.

8.4 The Seventh Schedule sets out detailed provisions for the calculation, apportionment, demand and payment of service charges.

8.5 The Eighth Schedule sets out the Lessee's covenants.

## **THE EVIDENCE AND THE TRIBUNAL'S CONCLUSIONS WITH REASONS**

11. The Tribunal has considered the issues on the whole of the written evidence and submissions now before them, have had regard to their own inspection and, applying their own expertise and experience, have reached the following conclusions on the issues before them.

12. Some of the responses made by Andrew Louis on behalf of the Respondent are reasonable and have not been challenged by the Applicant. There are elements of the service charges which require credits, but these have been addressed by the Respondent and Andrew Louis without any influence from the Applicant's application. These aspects are accepted by the Tribunal as reasonable and recoverable as part of the service charge. They are noted by reference to this paragraph in the Tribunal's detailed consideration of the issues in paragraph 14 below.
13. In respect of some issues, the Applicant has produced no evidence to suggest that the service charges are unreasonable. In particular, no evidence has been produced of comparable service charges for comparable works and services at comparable properties which would suggest that the service charges are inherently unreasonable. The Respondent has raised no sustainable issues as to value for money in relation to any of the individual costs recharged. The Tribunal is aware from their own experience and knowledge that those service charges are not substantially different from those of other, similar developments in the immediate area or in the wider area of the Residential Property Tribunal's Northern Region. These aspects are accepted by the Tribunal as reasonable and recoverable as part of the service charge. They are noted by reference to this paragraph in the Tribunal's detailed consideration of the issues in paragraph 14 below.
14. The Applicant's particular challenges to the service charges were posed in his application as set out below, answered by Andrew Louis on behalf of the Respondent, and determined by the Tribunal as indicated:

(i) In the year ended 31 December 2007 -

- Insurance premium is £10,136.77, but sum charged is £11,136.77, why has an additional £1,000 been charged?

Andrew Louis has indicated that the additional £1,000 represented a £1,000 excess on a claim.

The Applicant has challenged the Respondent's response on the basis that the claim was under Andrew Louis's professional indemnity policy with Royal & Sun Alliance rather than the Property insurance with Norwich Union. There is unchallenged documentary evidence to that effect. The Tribunal considers that the claim should have been made under the Property insurance as it related to occupier's liability. The insurance documentation before the Tribunal does not contain reference to an excess for occupier's liability claims, although it does note excess provisions for other claims. It is unreasonable to include

the excess in the service charge: if the claim was properly made under Andrew Louis's professional indemnity insurance, it is not expenditure which can properly be recovered from the lessees. If the claim should have been made under the Property insurance, there is no excess provision. The service charge is to be reduced accordingly.

- Andrew Louis Management Fee per the agreed budget is £7,382, actual amount charged was £9,414 resulting in an overcharge of management fees of £2,032.

Andrew Louis has indicated that the difference represents VAT.

The Applicant has not challenged the response which is accepted by the Tribunal. The charge is reasonable and recoverable as a service charge.

- Andrew Louis Administration costs – include £1,000 late billing fees. The managing agent Andrew Louis are paid to administer such matters, why should I pay such costs, there is ample time to file accounts. It was agreed that £2,000 worth of late filing penalties were to be paid back in 2010 this has yet to be done.

Andrew Louis has indicated that it was agreed that these charges should be reimbursed to the Respondent and that appropriate credits were made on 17 December 2012.

The Applicant has not challenged the response which is accepted by the Tribunal. The Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

- Andrew Louis have made an error and a duplicate charge in sundry expenses for caretaker's uniform £217.

Andrew Louis accepts the position and will arrange rectification.

The Applicant has not challenged the response which is accepted by the Tribunal. The Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

- Andrew Louis are recharging costs of a building manager, given we are paying for a full time on site manager what should the level of management fee be?

Andrew Louis has referred to the differences in the respective roles and has submitted that the management fee is reasonable.

The Tribunal inspected the Property on 27 February 2013 and there was no evidence of the presence of a full-time on-site manager. There was no accommodation for a manager, not even by way of a reception desk, and no indication as to how contact might be made. In the Tribunal's experience, the presence of any full-time member of staff in residential accommodation is clearly evidenced and easily identified. The absence of such evidence leads to a conclusion that there is no full-time on-site manager. Moreover, the description of duties given by Andrew Louis, dealing with day to day issues and cleaning, does not suggest a management role. There is no evidence that the post-holder has authority to commit the Respondent or Andrew Louis to unscheduled expenditure. In any event, even if there were such authority, it would, in the Tribunal's view, be a duplication of the management responsibilities exercised by Andrew Louis. The Tribunal recognizes that there is some value to be attached to dealing with day to day issues and cleaning but observes that, given the limited extent of the communal areas and facilities, they would not be unduly onerous. The Tribunal is aware from its own experience and knowledge that service charges for such provision in other, similar developments in the immediate area and in the wider area of the Residential Property Tribunal's Northern Region, are of a more modest order. The Tribunal would reduce the cost charged for the full-time on-site manager by 40% for each of the years in question, that is, in 2007 from £18,660 to £11,196; in 2008 from £12,436 to £7,447; in 2009 from £20,551 to £12,330; and in 2010 from £20,211 to £12,126.

- Should the same accountant be preparing accounts for the management company and the management agent, surely this is a conflict of interest which has only just been brought to my attention. The Lease stipulates in part 5 of the Seventh Schedule that the accountant's annual certificate be prepared as soon as practicable after the year end. Clearly this has not happened. I am still waiting for the 2010 and 2011 year end certificates.

Andrew Louis has submitted that there is no conflict of interest and maintained that all information has been provided to the Applicant.

The Tribunal is not aware of the requirements of the relevant professional body in relation to the identification of conflicts of interest. In any event, there is no evidence that the alleged conflict of interest has had any direct impact on the reasonableness and recoverability of the service charges and the Tribunal does not, therefore, have jurisdiction to determine the issue.

- The Residents Company has engaged Andrew Louis Property Management as an officer of the company and managing agent to ensure such matters are dealt with. Failure to do so should be reflected in a much lower management fee being charged to lessees.

Andrew Louis has not responded to this issue.

The Tribunal finds the management fees to be reasonable and recoverable as a service charge for the reasons set out in paragraph 13 above. There is no evidence that the alleged management failures have resulted in loss or additional expenditure for the Applicant.

(ii) In the year ended 31 December 2008 -

- Andrew Louis Management Fee per the agreed budget is £7,382, actual amount charged was £8,674 resulting in an overcharge of management fees of £1,292.

Andrew Louis has indicated that the difference represents VAT.

The Applicant has not challenged the response which is accepted by the Tribunal. The charge is reasonable and recoverable as a service charge.

- Sundry expenses include £1,440 of Andrew Louis legal charges which will have been recovered directly from the respective lessees, so I do not understand why they have been charged again to all lessees within the service charge certificate.

Andrew Louis has indicated that legal charges are initially charged to the service charge account but subsequently credited if and when they are recovered from the appropriate lessee.

The Tribunal observes that the charges in issue are chargeable by the Respondent under paragraph 19 of the Sixth Schedule to the Lease and payable by the Applicant under paragraph 1 of part 1 of the Eighth Schedule to the Lease. The Tribunal finds these costs to be reasonable and recoverable as a service charge for the reasons set out in paragraph 13 above. The intention to credit on recovery should be followed and transparently included in the accounting procedures.

- Maintenance internal has increased substantially from the previous year please provide a full breakdown of the £2,368 together with supporting invoices. Andrew Louis have recently confirmed that



personal expenditure not related to service charge has been billed to the management company incorrectly in the sum of £199.

Andrew Louis has provided a full breakdown and has indicated that the disputed £199 was an erroneous charge which has been credited to the Respondent. The Tribunal has determined that no further action is required in respect of this particular issue.

However, the Applicant has identified from the breakdown provided, two accounts which he specifically challenges: one from Klassic Builders for £112 in respect of a door at Apartment 14, the other from D & A Properties for £85 in respect of a leak at 20A Manolis Yard. Having regard to the definition of the Maintained Property in the Second Schedule to the Lease and to the Lessee's covenants in the Eighth Schedule to the Lease, particularly at paragraph 4 which is a repairing provision in respect of the Demised Premises, the Tribunal has determined that this expenditure should be borne by the relevant lessee and not recovered by way of a service charge. The service charge is to be reduced accordingly.

- Andrew Louis Company Secretary fee of £810 is very excessive.

Andrew Louis has indicated that the agreed fee for the company secretary is £630 plus VAT, to which has been added £70 for sundry charges, such as annual return fees.

The Tribunal finds these costs to be reasonable and recoverable as a service charge for the reasons set out in paragraph 13 above.

(iii) In the year ended 31 December 2009 -

- Andrew Louis Management Fee per the agreed budget was £7, 382, actual amount charged was £8, 490 resulting in an overcharge of management fees of £1, 130.

Andrew Louis has indicated that the difference represents VAT.

The Applicant has not challenged the response which is accepted by the Tribunal. The charge is reasonable and recoverable as a service charge.

- Andrew Louis Admin costs of £1,230 seem excessive what does this comprise of?

Andrew Louis has indicated that this has subsequently been reviewed and appropriate credits made as agreed with the Respondent. A sum

of £1,000 in respect of the repayment of a cash injection by Andrew Louis has been maintained under this head of charge.

Andrew Louis accepts the position and will arrange rectification.

The Applicant has not challenged the response which is accepted by the Tribunal. The Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

- Andrew Louis have made an error and a duplicate charge in sundry expenses for caretaker's uniform £217.

Andrew Louis accepts the position and will arrange rectification.

The Applicant has not challenged the response which is accepted by the Tribunal. The Tribunal finds these costs, as amended by the Respondent to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

- Electricity £28, 609, this includes approximately £25, 910 worth of costs which relate to the period to March 2008 and prior. It has been confirmed by Andrew Louis that this large liability was due to a member of Andrew Louis staff not processing electricity invoices as they were received. Due to serious accounting and management errors the statutory accounts for 2009 have had to be re-stated.

Andrew Louis has accepted responsibility for the problem and has reduced the management charge by £2, 122 for the year in question by way of compensation. Andrew Louis has agreed a payment plan with Scottish Power to minimise the impact.

The Tribunal observes that there is no evidence that the Applicant has suffered loss or increased costs because of the Respondent's error. In these circumstances, the Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

(iv) In the year ended 31 December 2010 -

- Andrew Louis Admin costs of £1,956 seem excessive what does this comprise of?

Andrew Louis has indicated that this has subsequently been reviewed and appropriate credits made as agreed with the Respondent.

The Applicant has not challenged the response which is accepted by the Tribunal. The Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

- Lift maintenance costs for the year 2010 amounts to £13,011, this huge charge as confirmed by Andrew Louis was due invoices not being processed at the time. £6, 008 relates to expenditure incurred up to 2009 and it is unfair to levy such costs going back 18 months against me. Given we are being charged huge accountancy and management fees to administer and manage such matters it is unacceptable such a liability be charged against lessees now.

Andrew Louis has provided details of the maintenance costs and of the need for the expenditure incurred.

The Tribunal observes that there is no evidence that the Applicant has suffered loss or increased costs because of the Respondent's error. In these circumstances, the Tribunal finds these costs, as amended by the Respondent, to be reasonable and recoverable as a service charge for the reasons set out in paragraph 12 above.

15. A recurring theme in the Applicant's claim is allegations of failure by Andrew Louis to provide a satisfactory management service. There are allegations of failing to provide accounts in a timely and proper manner, of failing to pay accounts, of duplication in charges and of general mismanagement. Andrew Louis has acknowledged many of the failings and, in the case of the electricity charges, has made a compensatory payment to the Respondent. The Applicant has claimed that a reduction in fees is merited to reflect the unsatisfactory performance. The Tribunal has considered the claim but has decided against it because there is no evidence that the Applicant has suffered any loss or increased expenditure as a result of any failures. Moreover, Andrew Louis has made appropriate compensatory payments and credits to the Respondent which will ultimately benefit all the lessees, including the Applicant
16. The Tribunal is conscious, however, that if failings continue on the same scale, it has the potential to cause further disharmony between individual lessees and the Respondent and/or Andrew Louis. It would profit the Respondent and Andrew Louis to revisit their relationship and procedures to ensure that the lessees are provided with clear, transparent and accurate information to enable them to establish with ease and confidence that they are being asked to pay service charges which have been properly calculated and apportioned in respect of works and services competently provided in accordance with the provisions of the Lease.

## **COSTS**

17. The Tribunal has considered the questions of costs and reimbursement of fees.

18. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

'(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'

19. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

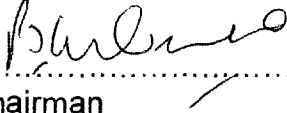
20. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

'(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).'

21. The Tribunal has reviewed all the evidence in this case and, as the Applicant has been successful in significant areas of his claim, has determined that it would be fair and reasonable for the fees incurred by the Applicant (£350 application fee and £150 hearing fee) to be reimbursed by the Respondent.
22. The Applicant included in his application a request for an order to be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondent has acted unreasonably in any respect and has decided that it would not be reasonable or proportionate to make an order.

Signed..........

P J Mulvenna, Chairman

27 February 2013