



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

**Case Reference** : **MAN/00CG/LSC/2018/0029**

**Property** : **31 Park Grange Mount, Sheffield S2 3SP**

**Applicant** : **Gleeson Developments (North East) Ltd**  
**Representative** : **Mainstay Residential Ltd**

**Respondents** : **N’Goran Jules Diango**  
**Henri Keli**

**Representative** : **N/A**

**Type of Application** : **Commonhold and Leasehold Reform Act  
2002 – Sch 11 para 5**

**Tribunal Members** : **I D Jefferson TD BA BSc FRICS**  
**I R Harris MBE BSc FRICS**

**Date of Determination** : **12 April 2019**

**Date of Decision** : **18 April 2019**

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**DECISION**

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## DECISION

- 1 Administration costs totalling £803.50 following failure by the Respondents to pay the service charge due for the two service charge years 1 January 2016 to 31 December 2017 are payable.

## INTRODUCTION

- 2 This Application was in respect of both whether or not service charges were payable for the service charge years 2016 and 2017 which has been dealt with in a previous Decision issued in January 2019, in which the Tribunal found that those charges were not in dispute by the Respondents and were payable.

The second part to the Application relates to the matter of administration costs incurred by the Applicants in trying to recover the service charge arrears.

- 3 The Parties to these proceedings are respectively Freeholder or Landlord and Leaseholder or Tenant of the property, which is understood to be a semi-detached house on an estate totalling 125 units both houses and flats.
- 4 Directions were issued by the Tribunal on 16 October 2018 after the Parties had been notified that the matter was listed for a Case Management Hearing to take place in Manchester on 8 October 2018. This had to be abandoned as neither Party attended. It is regrettable that neither Party did so as the CMC would have been a good opportunity for this Tribunal to understand the issues and to require the Parties to provide the necessary documentation to make a decision on all matters.
- 5 Neither Party requested a Hearing and the Tribunal met on 8 January 2019 to deliberate, without inspection. The Parties both provided Statements of Case which have been considered by the Tribunal. It would have greatly assisted the Tribunal had the Parties numbered their bundles.  
A Decision in respect of the service charges alone was issued in January 2019, together with further Directions in respect of the administration costs element. Those further Directions were as follows.
- 6 The Tribunal find that there is insufficient documentation in the Statements of Case received to make an informed determination in respect of the administration costs element. This can be resolved by the parties producing further and specific information as follows.
- 7 The Tribunal considers it appropriate for the matter of the administration costs to be determined on papers to be provided without holding a Hearing. However, if either Party would wish to attend a Hearing, and upon payment of the appropriate fee, then a Hearing can be arranged subject to notification and payment within 28 days of the date of these Directions.

## THE RESPONDENT

- 8 Within 21 days (beginning with the date of these Directions) the Respondent must send to the Applicants, together with three further copies to the Tribunal simultaneously, the following.
- A copy of the document notifying the Landlord or their Agent of the change in address from France to their new address
  - Mr Diango states that Mr Keli is no longer involved. The Lease makes specific provision for changes of ownership to be notified for example Schedule 4 Paragraph 8 Notices of Devolution, and elsewhere. Respondent to provide documentary evidence of any such change, or indeed any other document to formally confirm the status of Mr Keli.
  - An up to-date copy of the Land Registry Leasehold Title of the property.

## THE APPLICANT

- 9 Within 7 days (beginning with the date with which the Respondents further Statement of Case is received) the Applicants must send the Respondent a short supplementary statement of reply to the Respondents Statement of Case. Three additional copies must be sent to the Tribunal at the same time.
- 10 The Applicants may include a copy of any relevant document they may wish to rely upon, for example any document received from the Tenant notifying them of the change of address within the period 1 January 2016 to 31 December 2017.
- 11 Both Parties submitted further representations, and neither Party requested a Hearing. The Tribunal reconvened on 10 April 2019 to determine the balance of the Application in respect of the administration costs namely whether or not they were chargeable under the Lease, reasonable in amount, and payable.

## THE LEASE

- 12 A copy of the Lease dated 3 November 2005 between the original Parties was before the Tribunal. The Tribunal do not intend to detail the relevant provisions here. The Tribunal determine that the Lease does contain relevant powers for the Applicant to recover relevant administration costs, in particular Schedule 8.
- 13 In addition the Tribunal were provided with a copy of the Land Registry Leasehold Title document SYK514104 edition dated November 2007 which records the proprietors at that date as N’Goran Jules Diango and Henri Keli of Flat 3 Hill Top Court 345 Grange Road Norwood London SE19 3BX.

## **THE LAW**

### **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 (of 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.

#### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

#### **Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination –
  - (a) in a particular manner, or
  - (b) on particular evidence,
 of any question which may be the subject matter of an application under sub-paragraph (1).

## **REPRESENTATIONS**

- 14 The Applicants case is that the Respondents failed to pay the service charges properly due and requested in respect of 2 service charge years and as a direct result of non-payment of those charges the Claimant incurred costs under the Act and requests payment of those reasonable administration charges.

Those charges vary over time but in the Applicants Statement of Case a vague reference at paragraph 18 refers to costs of £1,000 + VAT. In the County Court claim form dated 9 November 2017 a total sum of £1,225.22 is shown. However this includes various service charge arrears. Elsewhere a total sum of £825.38 is claimed. Stripping out any service charge arrears, and 2 other disallowable small amounts produces an adjusted administration cost total of £803.50.

- 15 The Respondents claim that they notified the Applicants or their Agents of a change of address which the Respondents failed to act upon. Thus service charge demands were not received and it is this failure by the Applicants that renders the payment of any consequent administration costs unreasonable.

- 16 The Respondents also put forward that the Applicants had been informed that Mr Henri Keli was no longer involved with the property and any communication forwarded to him in respect of payments was irrelevant.

### **THE TRIBUNAL'S DECISION AS TO ADMINISTRATION COSTS**

- 17 In brief the Applicants case is that they served Service Charge demands on an address which was the last known current address for the Tenant.
- 18 In or around the second half of 2017 the Applicants were made aware of a different address and the demand dated 15 December 2017 was served on the Respondents at Flat 9 Hill Top Court 345 Grange Road London SE19 3BX.
- 19 The Respondents failed to pay those service charges and accordingly the Applicants instructed Agents to take action to recover both the outstanding monies, and administration costs [adjusted] in the order of £406.00, debt recovery costs in the order of £317.50, and professional court fee of £80.00.
- 20 The Respondents claim that they did notify the Landlords, or their Agents, of a change of address which the Applicants failed to act upon. As the Respondents were unaware of the service charge demands any consequent administration charges are therefore not applicable.
- 21 The Tribunal, by way of further Directions, invited the Respondents to produce a copy of the communication to the Applicants or their Agents setting out a change of address at the relevant time. In addition, although something of a side issue, the Tribunal also sought confirmation of the identity of the legal leasehold owners of the subject property.
- 22 Dealing with the second issue first the Tribunal were provided with a copy of the Land Registry Leasehold Office Copy Entry Title SYK514104 in respect of 31 Park Grange Mount, Sheffield by the Respondents. This Title was registered on 29 November 2007 in the joint names of both Respondents. The address noted on that Title for the Respondents is Flat 3 Hill Top Court 345 Grange Road Norwood London SE19 3BX (Flat 3).
- 23 In or around 2013 the Applicants were corresponding with the Respondents to an address in France namely 17 Rue Des Alpes 28500 Vernouillet France (France).
- 24 On 2 July 2014 by way of a telephone enquiry from Mr Diango concerning the payability of service charges a written reply was sent by solicitors for the Applicants (SLC) dated 31 October 2014 addressed to both Respondents at Flat 3. The Applicant assumes that this address was taken from the Land Registry Title document, although they state it is possible that it was given by Mr Diango although they consider that unlikely.

- 25 The Applicants state that the usual mode of communication was by email and therefore any correspondence address was not obvious.
- 26 The Respondents statement received by the Tribunal 6 March 2019 includes a statement:  
Flat No.[3] is wrong, but all correspondences [sic] were made via my email at the time.
- 27 The Respondents only change of address document that they produce is an email which is simply an acknowledgement to Maybank Collections (who were a collection agency acting for the Applicants in respect of service charge arrears) in reply to an email from Maybank replying with a copy statement, copy complaint procedure, and request for the Respondents correspondence address.
- 28 By way of email reply sent 3 July 2017 Mr Diango stated:  
Further to our telephone conversation, please find enclosed my corresponding address Flat 9 Hill Top Court, 345 Grange Road, London SE19 3BX Email: herve.diango@\*\*\*\*\*  
N.B. Mr Keli does not act on this account anymore, please forward any correspondence to me at email and address given above.
- 29 In summary the Land Registry Title document records the owners as both Respondents at Flat 3. Ownership is in joint names, and subsequent to further Directions requesting an up to-date leasehold OCE, the address is unchanged.
- 30 The only evidence put forward, following further Directions, by the Respondents setting out a change of correspondence address was given by way of reply dated 3 July 2017 to Maybank Collections who were acting for the Applicants in trying to recover arrears of service charge.
- 31 It is still not entirely clear to the Tribunal whether the Respondents reside jointly at Flat 3 as per the Land Registry Title, or Flat 9 as per Mr Diango's email of 3 July 2017, or separately at differing addresses.
- 32 There is no evidence that the Respondents relied upon postal correspondence, who themselves confirm that everything was copied to at least one of them by email.
- 33 There is no evidence from the Respondents that they gave notice directly to the freeholder, or the managing agent, or the solicitors of a change of correspondence address, simply to Maybank Collections only.
- 34 There is no evidence that the Respondent gave notice to Maybank Collections prior to 3 July 2017, and then only after a correspondence address was requested by Maybank Collections. The Respondents did not request that the change of address be forwarded to the freeholder, or the managing agent.

- 35 There is no legal confirmation that Mr Keli no longer has any legal interest in the subject property. The Tribunal have received no submissions from Mr Keli. Nor would it appear that the legal owners address or details lodged with the Land Registry have been updated.
- 36 Having due regard to all of the evidence and statements of case submitted by the Parties the Tribunal determine that the Respondents have failed to evidence that: Mr Keli no longer has a legal interest in the property; that the Respondents adequately notified the freeholder or the managing agents of any change of correspondence address; that the Respondents notified Maybank Collections of any change of correspondence address prior to 3 July 2017.
- 37 The Respondents seem to take a casual attitude to notifying change of address to the Applicants and were content to rely on email correspondence. The motive in respect of lack of clarity over any change of correspondence address is not known but the Tribunal determine that the failure to make any changes clear to the freeholder or their managing agent is entirely the fault of the Respondents and as a result administration charges totalling £803.50 were reasonably incurred and are payable by the Respondents.

**ID Jefferson**  
**Tribunal Judge**  
**12 April 2019**