IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

BETWEEN—

ST KEVERNE HEALTH CENTRE

- and -

NHS PROPERTY SERVICES LTD

PARTICULARS OF CLAIM

PARTIES

1. The Claimant is a partnership in the business of a General Practitioner doctors’ surgery and has occupied property known as Polventon Parc, St Keverne, Helston, Cornwall TR12 6PB (‘the Premises’) since around 1978.

2. The Defendant company was incorporated on 20 December 2011 pursuant to the enactment of the Health and Social Care Act 2012 (‘the Act’). The Defendant is wholly owned by the Secretary of State for Health and Social Care and carries out the premises functions that were formerly undertaken by Primary Care Trusts (‘PCTs’).

3. On 1 April 2013 the interest in 3,600 properties was transferred to the Defendant from 151 PCTs and ten strategic health authorities. These properties were primarily community healthcare facilities such as GP surgeries.

4. The Defendant is the registered freehold owner of the Premises having been registered as such on 21 May 2013 under Land Registry title number CL272317.

TERMS OF OCCUPATION

5. The Claimant occupies the Premises under an unwritten periodic tenancy and the Defendant is the Claimant’s landlord.
6. There being no written tenancy, the terms of the Claimant’s occupation are implied from the parties’ conduct in demanding and paying rent and service charges as set out at paragraph 7 below,

7. Since the Claimant took up occupation it has paid an all-inclusive rent. The rent is currently of £6,742.18 per quarter.

8. The Claimant has not paid a specific service charge in respect of its occupation. There is no obligation on the Claimant to pay any service charge nor any other payment beyond the inclusive charge and no such term may be implied.

SERVICE CHARGE DEMANDS

9. The Defendant has demanded the Claimant pay the following sums in addition to rent:
   a. 2016 – 2017:
      i. Facilities Management: £39,442.48
      ii. Service Charge: £11,492.01
   b. 2017 – 2018:
      i. Facilities Management: £22,118.80
      ii. Service Charge: £22,714.20
   c. 2018 – 2019:
      i. Facilities Management: £18,047.33
      ii. Service Charge: £17,569.97

10. The Defendant has sought to charge the Claimant these sums pursuant to its ‘Consolidated Charging Policy’ (‘the Policy’) which states its purpose to be:

    "...to drive more efficient use of space across the Government Estate, all public sector organisations are required to ensure that they charge their occupiers (or, if occupiers themselves, recognise) rent and service charges which better reflect the true market based cost of real estate to which the public sector is committed."
11. Paragraph 7 of the Policy states:

"... A separate management charge is also payable for occupations in NHSPS leasehold buildings reflecting the work done by NHSPS and is set at 5% of the rent payable by the occupier, the notional funding for which is included within Clinical Commissioning Groups ('CCG') baselines."

12. In correspondence dated 27th September 2018 the Defendant’s solicitors Bevan Brittan LLP have asserted, wrongly, that:

"...the policy documents, i.e. the charging policies of 2016/ and 2017/18 ... provide terms incorporated into the relevant contracts where there is no express lease or where the express lease does not deal with service charges”.

BREACH

13. The demands for payment of service charges as set out at paragraph 9 are in breach of the terms of the Claimant’s occupation of the Premises which require the Claimant to pay the inclusive charge only.

14. The Consolidated Charging Policy takes no account of the terms upon which the Claimant occupies the Premises and purports to vary the same by the retrospective implication of a term that has not been agreed. There is no basis for such variation in the implied terms of the tenancy or in law.

PAYMENT

15. Under sufferance, the Claimant has paid the following sums to the Defendant towards the charges set out in paragraph 9 above:

a. 2017 – 2018:
   i. Facilities Management: £20,240.76
   ii. Service Charge: £15,084.48

b. 2018 – 2019:
i. Facilities Management: £9,023.66
ii. Service Charge: £8,784.84

AND the Claimant seeks declarations that:

1. The terms of the tenancy do not include the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
2. There is no implied term of the tenancy that the Claimant should pay charges in accordance with the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
3. There is no agreement between the Claimant and Defendant to vary the terms of the tenancy by the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
4. The terms of the tenancy have not been varied by the provision of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18; and
5. The provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18 are not incorporated into the tenancy.

JOHN DE WAAL QC
KATRINA MATHER

Dated this 21st day of December 2019

I believe that the facts stated in this Particulars of Claim are true

Full name          SUZANNE AMHERST

Signed              [Signature]

Position or office held  GP, Partner

[Signature]          27/12/19