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

BETWEEN—

ST ANDREWS MEDICAL CENTRE

-and-

NHS PROPERTY SERVICES LTD

PARTICULARS OF CLAIM

PARTIES

1. The Claimant is a partnership in the business of operating a General Practitioner doctors’ surgery and has occupied property known as St Andrews Medical Centre, 30 Russell Street, Eccles, Salford, Manchester, Lancashire M30 0NU (‘the Premises) since 1995. The Claimant’s interest in the Premises is registered under Land Registry title number GM958770.

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 20 May 2013 under Land Registry title number GM605636.
5. The most recent written tenancy governing the terms of the Claimant’s occupation was dated 10 March 2004 (‘the Lease’) for a term of 15 years from 10 March 2004. The Claimant has held over since expiry as a periodic tenant on the same terms (save as to period).

6. The Lease defines ‘Common Parts’ in the recitals thereto as follows:

   means the areas and amenities made available from time to time by the Landlord for use in common by the tenants and occupiers of the Building and all persons expressly or by implication authorised by them including the pedestrian ways, forecourts, car parks, loading bays, service roads, landscaped areas, entrance halls, landings, staircases, passages and areas designated for the keeping and collecting of refuse, but not limited to them

7. The Lease defines ‘Rent’ in the recitals thereto as follows:

   EIGHTY THREE THOUSAND POUNDS (£83,000) per annum subject to review in accordance with Schedule 3

8. The Lease provides:

   Clause 3 – Demise and Rents
   
   In consideration of the rents hereinafter reserved the Landlord DEMISES to the Tenant ALL THOSE the Premises together with the rights set out in the first Schedule but EXCEPTING AND RESERVING to the Landlord the rights and matters set out in the second Schedule TO HOLD until the Tenant for the Contractual Demise but determinable as hereinafter provided SUBJECT to all matters whatsoever affecting the Landlord’s title to the Premises (if any) YIELDING AND PAYING therefor [sic] in each case by way of rent:

   3.1 ... the Rent by equal quarterly payments in advance on the usual quarter days in every year without deduction or set off and

   3.2 a fair proportion (to be determined by the Landlord’s surveyor acting reasonably) of the cost and expense of maintaining and as necessary repairing
and rebuilding redecorating and renewing cleaning the Common Parts ('the Service Charge')

3.3 Interest on any unpaid rent or other monies due under the terms and provisions of this Lease (whether formally demanded or not) from the due date until the date of actual payment both before and after any judgement [sic] at the Interest Rate.

Clause 4 – Tenant’s Covenants

The Tenant covenants with the Landlord as follows:

4.1 Rent Outgoings and Value Added Tax

4.1.1 To pay the reserved rents as provided without deduction or set off whatsoever

4.1.2 The Service Charge

4.1.3 To pay and discharge or in the absence of direct assessment to pay to the Landlord on demand a due proportion (determined by the Landlord at its discretion) of all rates taxes charges duties assessments outgoings and impositions whatsoever now or at any time during the Term charged rated and assessed or imposed on or in respect of the Premises or on the owner or occupier in respect thereof and to pay for all the services utilities or amenities used by or available to the Premises (including all standing charges) and to indemnify the Landlord against any breach of the foregoing

4.1.4 All payments under this Lease are expressed exclusive of VAT and the Tenant shall pay on demand such VAT as shall be chargeable in respect of the value of any supply made by the Landlord to the tenant under this Lease and indemnify the Landlord from and against all claims and demands in respect thereof and where the Tenant has agreed to reimburse the Landlord in respect of any payment made by the Landlord
the Tenant shall also reimburse any VAT paid by the landlord on such payment

SERVICE CHARGE DEMANDS

9. The Defendant has demanded the Claimant pay the following sums:
   a. by a charging schedule for 2015 – 2016 dated 24 March 2016:
      i. Service Charge: £26,319.39
      ii. Facilities Management: £69,520.58
   a. by a charging schedule for 2016 – 2017 dated 3 May 2016:
      i. Service Charge: £60,498.32
   b. by a charging schedule for 2017 – 2018 dated 13 September 2017:
      i. Facilities Management: £29,250.71
      ii. Service Charge: £56,227.24

10. The Defendant has sought to charge the Claimant the increased sums as set out in paragraph 9 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 2016/2017 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.”

13. The charging schedule for 2016 – 2017 states as follows on page 4:

Rent: This financial year sees a move to market-based charging, in line with Government initiatives to improve property utilisation and value for money. The market rent model offers benefits for our customers and the NHS, including greater transparency on property costs. As a result, some occupiers may see higher rental charges, however others may reduce. The Department of Health as agreed that any such increases in 2016/17 will be mitigated by funding adjustments from NHS England. Where NHS Property Services holds a property by way of a lease, a management charge of 5% of the rent will be made in order to reflect our additional costs and responsibilities.

Facilities Management: The amount charges for FM services will be the all-inclusive cost of delivering services to each customer.

Service Charges: A service charge arises in multi-occupied sites or buildings and is each occupier’s share or the costs incurred by the landlord in maintaining the common parts of the building and providing services that benefit all occupiers. The service charge includes core landlord services such as cleaning, heating, lighting, security and waste management, plus building maintenance and repairs. Our service charge also includes rates, utilities and insurance, apportioned without profit according to the net internal area held by each occupier. A management fee of 10% of the service charge reflects our costs in arranging and managing services provided except for business rates, utilities and the Superior Landlord’s service charge, for which the management fee is charged at 5%.

14. The charging schedule for 2017 – 2018 states:
“The costs outlined in your Annual Charging Schedule are forecasts for the year ahead. At the end of the year, we re-calculate your costs again based on the actual amount of facilities or services you have used and settle the difference with you.”

BREACH

15. 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 only:
   a. “a fair proportion of the costs and expenses of maintaining and as necessary repairing rebuilding redecorating and renewing cleansing the Common Parts”;
   and
   b. “…to pay for all services utilities or amenities used by or available to the Premises…”

16. The charges, said to be due pursuant to the Consolidated Charging Policy and as set out in the charging schedule for 2016 - 2017, take no account of the express terms of the Lease and the charges levied do not represent costs and expenses incurred but instead impose arbitrary charges in an apparent effort to recoup the Defendant’s overall yearly expenditure.

17. The Consolidated Charging Policy 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

18. Under sufferance, the Claimant paid £29,634.48 p.a. in 2015/16 and 2016/17 and £34,800 p.a. in 2017/18; this has increased to £60,000 p.a. from February 2018.
AND the Claimant seeks declarations that:

1. The terms of the Lease 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 Lease 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 Lease by the provisions of the Defendant’s Consolidated Charging Policy 2016/17 or 2017/18;
4. The terms of the Lease 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 Lease.

JOHN DE WAAL QC
KATRINA MATHER

Statement of Truth

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

Full name

Signed

Position or office held  Partner

Dated this 1 day of 2020