2884

In the Leasehold Valuation Tribunal

Ref : LON/00AG/LIS/2006/0023

Property	Flat 3, 31 Fortess Road, London NW5 1AD
Applicant	Pledream Properties Limited (Landlord)
Represented by	Dr Elaine Graham- Leigh of Sable Estates Limited, Managing Agents.
Respondent	Dr E P Hill (Leaseholder)

Tribunal
Ms E Samupfonda LLB (Hons)
Mr L Jacobs FRICS
Mrs S Baum JP

Introduction

1. By an order dated 27th February 2006 made in the Central London County Court, the following question was transferred to the tribunal:

   How much if any of the claimant's claim for £651.58 in respect of service charges for the year ended 31/03/05 is due from the defendant having regard in particular to {the} defendant's contention that the work was carried out in an inadequate manner and that the specifications for the works was varied without notice or consultation with the defendant.

2. An oral pre trial review was held on 10 April 2006. Dr Hill attended and Dr Elaine Graham Leigh of Sable Estates Limited, managing agents represented the Applicant. Directions for a hearing were made including an inspection.

3. The Tribunal inspected the premises before the hearing. 31 Fortess Road is a mid terrace property, converted into 3 self contained flats comprising basement plus 3 storeys, situated on a busy main road c 1900. Flat 3 is a maisonette on second and attic floors. The Tribunal examined the parapet wall concealing the roof terrace to the front of the Respondent's flat and the sash windows.

4. Dr E. Graham Leigh represented the Applicant. Mrs Rosemary Silver, FRICS, surveyor for Peter Scott & Associates, Applicant's contractors and Mr R M Jenkins, its managing director, accompanied her. Dr Hill attended in person.

5. At the heart of the matter is the work carried out to the parapet wall, the painting of the windows and the management fee. The following sums are said to be due and payable; £136.64 as contribution to the works carried out by Peggram Contracts Limited, £257.96 for the supervision work carried out by

Mrs Silver on behalf of Peter Scott Associates and £264.37 in respect of the annual management fee.

6. **The Parapet Wall**

In essence, on 19th August 2002, the Applicant served a notice under section 20 of the Act in respect of works to the interior and exterior of the premises. Attached therein was a specification of works. 4.6 to 4.7 detailed the proposed works to the parapet wall comprising the fitting of lead flashings. Mrs Silver explained that the original specification had been drawn up following a ground inspection only. Once the scaffolding was erected she closely examined the wall. She then formed the view that that projecting concrete coping stones laid on a damp proof course was more appropriate against driving wind and rain than a lead capping. Accordingly she instructed this approach to be adopted.

7. Dr Graham-Leigh conceded that the alterations were carried out without further consultation with the Respondent. She said that the wall did not form part of the demised premises and therefore the Applicant did not need the Respondent's permission to carry out any works to it. She relied on clauses 1(b) (i) (iii) and 5 (1) of the lease. She confirmed that there had been a late tender submitted by M & J Painting (later trading as Peggram Contracts Ltd) in the sum of £10,250 and that the contract was awarded to Peggram Contracts even though they had not been named in the section 20 notice. Her view was that this would prejudice the Respondents as the quote was lower than that which the Applicant had originally consulted upon and accepted from J & N Contractors. Furthermore, the effect of the variation was to reduce the original costs by £305. She added that the Respondent was notified of the Applicant's intention to engage M & J Painting by a letter dated 16th April 2003. That letter also invited the Respondent to make known any observations or objections. The work commenced in September 2003 and was completed by November 2003.

8. Dr Hill explained that he did not wish to contribute to the cost of the copping stones as they were placed on the parapet without his knowledge and consent. He contended that the effect of this approach significantly reduced his amenity and diminished the value of his leasehold interest. The original proposed use of lead would not have increased the height and width of the wall.

9. **The Windows**

Both parties gave detailed evidence of the painting of the windows and the surrounding circumstances. The parties were diametrically opposed on this issue. From our inspection it was clear that the lower sash window on the second floor on the right hand side of the front elevation could not be opened. What remained unclear was whether or not the Respondent failed to cooperate with the request to leave his windows open to allow for painting and the contractors had painted them in shut position or whether they were left open by the Respondent, painted and then shut prematurely before the paint had dried. It was clear from the correspondence that the contractor had tried to ease and adjust the window to no avail.

10. In response to questions from the Tribunal, Dr Graham Leigh acknowledged that according to clause 1 (a) of the lease, the window frames were demised to the flat. She maintained that the Applicant was under a general duty to maintain the building as set out by clause 5 (1). Dr Hill added that the Applicant has always assumed the responsibility for maintaining the windows and had done so for the last 21 years.

11. The Management Fee

The Management Fee in question was for the year ending 31 March 2005. Dr Graham-Leigh explained that the sum of £264.37 is the annual fee chargeable to each flat for carrying out general management duties including procuring building insurance, responding to queries and organising necessary repairs.. Dr Hill stated that he considered this fee to be unreasonable because the managing agents failed to answer letters, presented financial statements that are not clear and failed to engage in dialogue with him over the copping stones.

12 **The Law**

Sections 18-30 of the Landlord and Tenant Act 1985 regulate the recovery of service charges from tenants. A service charge is defined by section 18 as "an amount payable by the tenant of a dwelling as part of or in addition to the rent (a) which is payable, directly or indirectly for services, maintenance, improvements, or insurance or the landlord's costs of management" Section 19 provides that relevant costs are to be taken into account in determining the amount of a service charge payable for a period but only to the extent that they have been reasonably incurred, and where the costs are incurred on the provision of services or carrying out of works, only if the services and/or works are of a reasonable standard. The landlord is required by section 20 to undertaken a consultation procedure with tenants prior to carrying out "qualifying works" defined as "works on a building or any other premises" the cost of which is above the prescribed amount. If the landlord fails to comply with the consultation procedures, any costs incurred by the landlord in excess of the prescribed a mount cannot be recovered through the service charge unless the consultation requirements have been complied with. Section 155 Commonhold and Leasehold Reform Act 2002 has replaced the provisions relating to the determination of reasonableness with new provisions with effect from 30 September 2003. The new provisions apply to qualifying works begun after 31st October 2003. Therefore in determining this application we have had regard to the pre 2002 requirements.

13 **The Lease**

Clause 1(a) defines the building and 1(b) defines the flat, the demise of which includes "the internal plastered coverings and plasterwork of the external walls bounding the flat and the doors, door frames and window frames fitted in such walls and the glass fitted in such window frames" By clause 5 (1), the lessor covenants to "maintain repair amend cleanse repaint and redecorate renew and

otherwise keep in good and tenantable condition (a) the structure of the building.....but excluding nevertheless therefrom (ii) the windows and other glass and the doors of and in the flat" By clause 3D the lessee covenants to "repair amend renew uphold support maintain paint grain varnish paper whitewash cleanse clean polish and renovate the whole of the flat and the windows and doors thereof..." The parapet wall forms part of the common parts as defined by clause 1 (b) (ii). Schedule 11 provides for the charging of management fees.

14 **Decision**

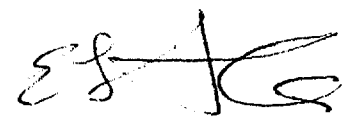
In determining the application, we had regard to the totality of the evidence submitted, the relevant law and the terms of the lease.

We find that the costs incurred with respect to the parapet wall have been reasonably incurred and are payable. The purpose of section 20 is to ensure that tenants are put on notice of proposed expenditure and are given the opportunity to make observations and comment on the nature of the proposed work, its cost and choice of contractor. We find that there was no flagrant breach of the consultation requirements in this case as the tenants were notified of and invited to comment on the new contractor and the cost. Furthermore there were sound reasons provided by Mrs Silver for the alterations. The variation of the specification from lead flashing to copping stones did not result in additional costs to the Respondent. From our inspection the increase in height amounted to 45mm and we do not accept that this had an adverse impact on either the Respondent's amenity or the value of his leasehold interest.

We determine that the supervision fee of £257.96 including VAT paid to Peter Scotts Associates and £136.64 paid to Peggrem are reasonable and therefore payable. There was no challenge from the Respondent as to the provision of the supervision service by Mrs Silver.

We find that the costs associated with the painting of the windows are not recoverable through the service charge. In so finding, we have had regard to the parties' obligations under the lease and we are bound to give effect to those terms. We note that it has been common practice over the years for the Applicant to undertake the responsibility for maintaining the window frames. The parties may chose to continue with this practice by mutual consent and agree payments outside the service charge provisions.

We find that the management fee of £264.37 is unreasonable in the light of the level of service provided as described to us. As the building has recently undergone a major works programme, it is unlikely that the managing agents would have been required to provide the same level of service as in years when major works are being planned or executed. Using our knowledge and experience, we determine that the sum of £150 including VAT is reasonable and payable by way of management fee for the year ending 31st March 2005.

Chairman **Evis Samupfonda** 

Dated **10th July 2006**