

3105

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT  
ACT 1985**

---

**Reference:** LON/00AG/LIS/2006/0122

**Address of Property:** Mayfair Mews, 77 Regents Park Road, NW1 8UY

**Applicants:** Ms H Brown, represented by Mr. D. Brown

Mr. and Mrs. T. Weidner, represented by Mr. J. Goodwin  
Mr. I Rennie (in attendance )

**Respondents:** Mr and Mrs T Jones  
Mr. M. Ferguson (witness)

**Members of the Tribunal:**  
Mrs C A Lewis FCI Arb  
Mr Holdsworth Msc FRICS  
Mr E Goss

**Date of the Tribunal's Decision:** 15<sup>th</sup> MARCH 2007

MAYFAIR MEWS, 77 REGENTS PARK ROAD, LONDON, NW1 8UY

**PRELIMINARY**

1. This was an application under Section 27A of the Landlord and Tenant Act 1985( the Act") by the lessees, Ms H Brown (Flat 2) and Mr and Mrs T Weidner (Mews Cottage).
2. An oral Pre-Trial Review had been held on 25 October 2006 when the Applicants had been represented by Mr D Brown (father) and Mr J Goodwin, represented Mr and Mrs Weidner, the Respondent lessors, Mr and Mrs P Jones had also been present.
3. The Applicants hold their properties under the terms of similar leases, and a copy of the lease for Flat 2 was on the Tribunal's file.

**The Law**

4. Section 27A of the Landlord and Tenant Act 1985, as amended by the Commonhold and Leasehold Reform Act 2002 says :-

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-

- (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 by which it is payable, and
- (e) the manner in which it is payable.

Subsection (1) applies whether or not any payment has been made.

**THE ISSUES**

5. These were:-
  - (a) Whether the Applicants are liable for the total sum of £89,543.75 for labour in respect of major works or the lesser amount of £71,635.00.
  - (b) The supervisory fee paid to Mr Jones of £17,097 in respect of the contract for major works.
  - (c) The fee for administration of the contract paid to Mrs Jones of 15% of the contract disbursements (£31,814.22).

- (d) Whether the consultation process prescribed by Section 20 of the Landlord and Tenant Act 1988, had been properly complied with.

### **INSPECTION**

6. The property was inspected by the Tribunal on the morning of the 29 January 2007 in the presence of all the parties, together with their advisers.
7. It is an end terrace four-storey brick built property, built-in the 1870s and comprises three flats, a mews cottage and a lock-up florist shop at ground floor level. An internal and external inspection was made, and the Tribunal found the property to be in good condition.

### **THE HEARING**

8. The hearing took place on the 8 January 2007 and continued on the 29 January 2007 following the Tribunals inspection of the premises on that day.
9. At the hearing, Ms P Blank, lessee of the shop premises, was not present and had not confirmed in writing that she wished to be an Applicant to the proceedings.

### **The Applicants' Case**

10. Mr Brown submitted that the issues were –
- (i) the reasonableness of the bonus/incentive payments claimed
  - (ii) the appropriateness of the payments made to Mrs Jones for Contract Administration, and Mr Jones as Contract Manager
  - (iii) Compliance with Section 20 Notice legislation.
11. He said that the Landlords operated a bonus scheme for the labour force without consulting or discussing the matter with the tenants and Mrs Jones had claimed to have paid over £17,908.75 in this respect. He understood that the workmen had been paid £120 per day this figure was at odds with the £150 per day in the labour cost sheets.
12. Mrs Jones had produced some signed receipts in respect of the extra payments, but these were not in an approved format, and in the opinion of the Tribunal failed to satisfy good practice procedures. The majority of the payments were made from the Landlords personal bank account.
13. Mrs Jones' appointment as Contract Administrator had been made by the Respondents themselves. Mr Brown said he had queried her competence on a number of occasions. He also criticised Mr Jones' appointment as Contract Administrator. Neither appointment allowed for any involvement of the tenants.
14. He criticised the time taken to complete the project, and suggested work had not been carried out in the most cost effective manner. It was his opinion that

this had contributed to the increase in costs from the original estimate of £51,000 to a current estimate of £220,000.

15. Mr Brown acknowledged that two Section 20 Notices had been issued in 2001 and 2003, but said that additional work which had been carried out was outside the items listed in the two Notices. He contended that a further Section 20 Notice should have been issued, which would have included all supplementary work including roof replacement.
16. Mr Brown requested the following :
  - (a) The lower sum for labour at £71,635 should be allowed: and that
  - (b) The sums of £31,814.22 for administration, and £17,097 for supervision should be disallowed as service charges.

### **The Respondents' Case**

17. The Respondents submitted that the method of payment to the workforce was irrelevant, and argued that it was an effective and efficient way of remunerating casual labour. Bonus payments equated to 11.5% of the overall figure, not 20% as claimed by the Applicants. They considered that a clear audit trail had been provided regarding payments to the workmen. Payments had been made from the Respondents' bank accounts of necessity because of non-payment of the service charge by the Applicants and the lessee of the ground floor shop.
18. The Respondents stated that the Administration charge of 15% had been in place since 2000; during which time it had not been challenged by the Applicants. They considered that the amount charged was appropriate and fell within the terms of the lease. They described the extent of the Administration service provided.
19. So far as the Supervision was concerned they provided details of tasks undertaken and said that in their opinion the £30 per hour charged was well below industry standard for the service provided.
20. They had issued two Section 20 Notices, and a further Notice was unnecessary as all the works, including the new roof, were part and parcel of the same evolving scheme. They emphasised that the decision to employ casual labour on the scheme was not premeditated, but was a pragmatic response to ensure costs were maintained as low as possible for the benefit of all.
21. The Tribunal were told that the original contractor, Underpin and Makegood had been reluctant to take on the whole project as it emerged and Underpin and Makegood had been appointed in September 2003. For a number of reasons it had not proved possible to make steady progress, principally because the Applicants had been unwilling to pay the service charges.

22. The Respondents stressed to the Tribunal that the property had increased in value as a result of the work and that the work had been done to a good standard. All the parties had benefited.
23. They said that Mr Brown had used some of the casual labourers, employed on the main scheme on personal work at his daughter's flat (No 2). Mrs Jones had endeavoured to keep everyone informed on the progress of the work through regular memoranda which included details of costs. In spite of the information supplied by Mrs Jones, no approach had been made by the tenants to halt or modify the ongoing work. It was only sometime after, in late 2006, when the work was nearly complete that any queries had arisen. The Respondents themselves had stated that they had suffered hardship.

### **THE TRIBUNAL'S DECISION**

24. The two Section 20 Notices served under the Landlord and Tenant Act 1985 are dated 17 March 2002 and 15 July 2003, and Notices given before 31 October 2003 fall within the Act. The Act was amended by subsequent legislation.
25. The Tribunal have considered the scope and nature of the work carried out beyond that advised in the Notices served in 2002 and 2003, which included among other things, repair to the roof. Although it may have been preferable to issue another Section 20 Notice relating to the further work, the Tribunal consider that the work involved is a reasonable continuation of the original scheme. For example, the original scope of works provided for repair of the roof but upon investigation it was evident that more comprehensive work beyond repair was required to this structure.
26. Evidence provided to the Tribunal justified the removal of the existing roof structure to allow comprehensive repair. This necessitated the exposure of the roof and whole building to the elements, and speedy conclusion of these works was essential to avoid consequential damage to the building and adjacent buildings. A long period of exposure of the roof could also have posed a health and safety risk. It was for these reasons that the Contract Manager felt it necessary to proceed without further consultation with the lessees. The Tribunal was persuaded that further statutory consultation would have resulted in delay to the works programme and this was inappropriate under the particular circumstances.
27. The Tribunal considered that the Administration and Supervision service provided by the Respondents fell below a reasonable professional standard for this size of works project. They particularly noted the lack of a contract between the parties, inadequate consultations regarding the Respondents' appointments, and no explanation of services provided. The Respondents' use of their private bank account was in breach of the RICS guidelines and no competitive tendering processes were available for examination by the Applicants. The Tribunal also noted the inadequacy of documentation and receipts that departed from normal contract administration from best practice.

and procedures. These shortcomings may have contributed to a significant increase in cost which is currently estimated by the Tribunal at three and a half times the original estimate. Even by the conclusion of the hearing the final cost was not available. It was noted that the Respondents had levied a 15% administration charge for the project based solely on the 15% administration charge set against the annual service charge since 2000.

28. The Tribunal found that the inadequacies as referred to above merited the disqualification of the sums of £17,097 (for Supervision) and £31,814.22 ( for Administration ) claimed by the Respondents , and that they were therefore neither reasonable nor payable.
29. Regarding the labour costs, the Tribunal gave careful consideration to the actual works carried out, and after inspecting the property, the quality of the final product. The Tribunal found the quality of the works satisfactory and considered the labour costs claimed by the Resondents reasonable.
30. They find that the day labour rate of £150 per day is reasonable, and that therefore the total sum claimed of £89,543.75 is both reasonable and payable.
31. **Application under Section 20C**
32. Having considered all the evidence, and in the light of their findings, the Tribunal Order that the Landlords shall not recover costs in the proceedings in any event.

**33. Reimbursement of Fees**

The Tribunal further find that the Landlord shall reimburse the Tenants their fees for the Application and Hearing totalling £500.

CHAIRMAN .....

*C A Lewk*

DATE .....

*15<sup>th</sup> March 2007*

JG