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Ref: LON/00AZ/LIS/2007/0028

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Property:	17 Berkshire House, Southend Lane, London SE6 3NE
Applicant:	Mr M Zwiebel
Respondent:	The Mayor and Burgesses of the London Borough of Lewisham
Application Date:	1st March 2007
Date of Oral Pre-Trial Review:	28th March 2007
Hearing Date:	14th June 2007
Representatives:	Mr Gold (business colleague of the Applicant) Mrs E Mills (Leasehold Services Manager for the Respondent)

Members of Tribunal

Mr PJ Korn (chairman)
Mr PS Roberts Dip Arch RIBA
Mr LG Packer

INTRODUCTION

1. This is an application under Sections 27A and 20C of the Landlord and Tenant Act 1985 (as amended) (the "**1985 Act**") for a determination of liability to pay service charges.

2. The issues are (a) liability to pay service charges of £7,293.62 relating to major works in the service charge year 2003 and (b) whether the procedure required by Section 20 of the 1985 Act was correctly followed in respect of such major works.

3. A Pre-Trial Review at the Leasehold Valuation Tribunal took place on 28th March 2007.

THE COMMON GROUND

4. Mr Gold confirmed on behalf of the Applicant that the application was not to contest the reasonableness of the amount being charged by the Respondent. The Applicant was making no comment either way on this point. The application was simply based on the Respondent's alleged failure to comply with the procedure required by Section 20 of the 1985 Act in respect of the major works to which this application relates.

5. It was also common ground between the parties that the amount being disputed was the sum of £7,293.62 (being the larger of the two sums referred to as being due for payment in the letter to the Applicant from Hannah Weekes of the Respondent dated 11th November 2005).

6. As regards the Section 20 Notice served by the Respondent, Mr Gold did not argue that the contents of the notice were inadequate in any respect; the Applicant's case was simply that it was not properly served.

THE APPLICANT'S CASE

7. Mr Gold said that the Applicant wrote to the Respondent on 20th December 1998 stating that the Applicant was not resident at the Property and requesting that the Respondent send all correspondence to Smartglobe Limited (the company then managing the Property on behalf of the Applicant) at 23 Filey Avenue, London N16. A copy of a letter bearing that date and containing that information has been seen by the Tribunal.

8. The Section 20 Notice relating to the works which are the subject of this application was sent to "The Lessee" at the Property on 15th August 2000, a long time after the Respondent had (according to the Applicant) been notified of a change of address for correspondence. The Applicant did not receive the Notice and only became aware that he should have received a Section 20 Notice some time between May and October 2003, well after the works had been carried out. The Respondent's alleged failure to serve the Notice properly meant that it had not complied with the consultation requirements of Section 20 and that therefore there was a limit on the amount of service charge that it could claim from the Applicant.

9. Prior to the date of the Section 20 Notice, the Respondent's rating department wrote to Smartglobe Limited at 23 Filey Avenue, which suggested that the Respondent was aware of the change of address. The Tribunal pointed out that the fact that the rating department was aware of a change of address for

rating purposes did not necessarily mean that the Home Ownership Unit was aware of the change of address for the purpose of service charge demands.

10. Mr Gold acknowledged that Interpage Limited (who by then had taken over from Smartglobe Limited in managing the property on behalf of the Applicant, albeit operating from the same address) wrote to the Respondent on 29th August 2000 acknowledging receipt of service charge reminders. However, these related to two other outstanding amounts and not to the amount to which the Section 20 Notice related. Indeed, the fact that Interpage Limited wrote to the Respondent on 29th August 2000 stating that it had not received those service charge demands should have alerted the Respondent to the need to re-serve the Section 20 Notice.

RESPONDENT'S RESPONSE

11. Mrs Mills for the Respondent denied that the Respondent had ever received the letter dated 20th December 1998 requesting correspondence for the Applicant to be sent to a different address, and the Section 20 Notice was served on the Applicant at the Property on 15th August 2000 in the same way as notices were served on other lessees. On receipt of the letter of 29th August 2000 referred to in the paragraph above the Respondent became aware for the first time that the Applicant was not resident at the Property, its records were duly updated and future correspondence has been sent to that correspondence address.

12. On 13th May 2003 the Applicant was asked if he wanted to be considered for a possible service charge reduction in connection with the bill for the major works to which this application relates and/or to apply for a service charge loan. He replied yes to both but did not dispute the validity of the Section 20 Notice at that time.

13. Whilst accepting that this was not relevant to the validity of the Section 20 Notice Mrs Mills pointed out that, following an LVT decision as to recoverability of service charge in relation to another property in the same block, the Respondent had unilaterally reduced the service charge amount in respect of the subject Property to an amount which – according to Mrs Mills (but in any event not disputed by Mr Gold) – was reasonable.

14. As regards the Section 20 Notice itself, Mrs Mills argued that the notice provisions of the Lease entitled the landlord to serve notices on the tenant at the demised premises. The Tribunal noted that numbered page 2 was missing from the copy of the Lease supplied by the Applicant, and it was this page that Mrs Mills believed contained the notice provisions. The Tribunal, with the consent of both parties, adjourned the proceedings and requested that both parties try to obtain a copy of the missing page of the Lease by fax. Mrs Mills managed to obtain a copy of what she understood to be the missing page

and the Tribunal and Mr Gold accepted that it was indeed the missing page. It contained a clause specifying how notices should be served, and Mrs Mills argued that the clause supported her contention that the notice was validly served.

APPLICANT'S FURTHER COMMENTS

15. Mr Gold denied that the Applicant's response to the Respondent's letter of 13th May 2003 demonstrated that the Applicant accepted the validity of the Section 20 Notice. Although the reasoning was not entirely clear to the Tribunal, Mr Gold maintained that the Applicant did not fully appreciate at that point that there was a question regarding receipt of the Section 20 Notice, and therefore it only raised that issue on 9th October 2003.

16. Mr Gold noted the notice provisions of the Lease but argued that they should not be taken literally in circumstances where the tenant has asked the landlord to write to him at a different address.

NO INSPECTION

17. The members of the Tribunal did not inspect the Property. Neither party requested an inspection, and it was clear that inspection was not necessary in order for the Tribunal to make a determination in the circumstances of this particular case.

THE LAW

18. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) "whether a service charge is payable and, if it is, as to...the amount which is payable...".

19. Section 20 of the 1985 Act requires landlords to comply with certain consultation requirements prior to carrying out works if the amount that their tenants will be required to contribute to the costs of those works will exceed a certain amount. The old Section 20 has been substituted by a new Section 20 by the Commonhold and Leasehold Reform Act 2002, but the new provisions only apply to qualifying works which were not begun prior to 31st October 2003. It was common ground between the parties that the works were commenced much earlier than that date. Therefore the old provisions apply.

20. Under the old provisions, where the consultation requirements apply but are not complied with, the maximum amount that a landlord may recover from its tenants in respect of the relevant works is the greater of (a) £50 per dwelling or (b) a total of £1,000.

21. It was common ground between the parties that the issue was simply whether the Section 20 Notice was validly served. Mrs Mills did not argue that no notice was required and Mr Gold did not argue that the notice (had it been validly served) would not have complied with Section 20. It is therefore not necessary to go into the details of the information required to be included in a Section 20 Notice.

APPLICATION OF LAW TO FACTS

22. Numbered paragraph 2 on page 2 of the Lease provides (inter alia) as follows:-

"Any notice to be given under this Lease shall be in writing and any notice to the Lessee shall be deemed to be sufficiently served if left at the Demised Premises or sent by pre-paid post to the Demised Premises ...".

23. As Mr Gold did not dispute Mrs Mills' evidence that the Section 20 Notice was sent by pre-paid post to the Demised Premises, the issue was whether the notice should nevertheless have been sent to the alternative address referred to in the Applicant's letter of 20th December 1998.

24. First of all there is no independent evidence that the letter of 20th December 1998 was sent. The Respondent denies having received it and it was not sent by registered post or by any other method in respect of which there would be evidence of delivery. If it was never received then the Respondent clearly cannot be expected to have acted on it.

25. However, it is possible that the letter was received but was not acted upon. Assuming for the sake of argument that this is what happened, would such failure to write to the Applicant at the new address constitute a breach of the notice provisions of the Lease? In the view of the Tribunal, the notice provisions of the Lease are unambiguous and state that service on the Applicant at the Demised Premises constitutes valid service. Sometimes notice provisions specify an address for service other than the demised premises or state that the tenant can change the address for service of notices by notifying the landlord, but this is not the case here. Therefore, whilst it is arguable that it would be good practice for a landlord to write to its tenant at an alternative address notified to it, in the Tribunal's view in this case there was no legal obligation to do so, given the express wording of the Lease. Nor was any compelling evidence brought to demonstrate that it was impossible (or even very difficult) for the Applicant to retrieve notices served on him at the Property.

26. In addition, it seems that a number of Section 20 Notices were sent at or around the same time to the various tenants of the Block, each addressed to "the Lessee". It does not seem unreasonable that each notice should have

been sent to the relevant lessee at the relevant premises, given the clear wording of the notice provisions contained in each lease and the fact that Section 20 itself requires only that a notice must be served on the tenant and does not provide that a tenant may specify an alternative address for service. In the circumstances, it seems to the Tribunal that it would in any event be quite hard on the Respondent to treat the Section 20 Notice served on the Applicant as invalid on the basis that it should have amended its records based on information contained in a letter sent to it nearly 2 years previously (assuming of course that the letter was ever received).

27. The Tribunal therefore takes the view on the evidence placed before it that the Section 20 Notice was validly served.

DETERMINATION

28. The Tribunal determines that the Section 20 Notice was validly served and therefore that the Applicant is liable to pay the service charge item which is in dispute, namely the amount of £7,293.62 referred to in the Applicant's application.

29. The Tribunal does not consider in the circumstances of this case that it should make any order under Section 20C of the 1985 Act. In other words, the Tribunal is not making any order preventing the Respondent from recovering through the service charge all or any of the costs incurred by it in connection with these proceedings (to the extent that the Lease permits).

30. The Applicant has applied under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for reimbursement by the Respondent of the fees paid by the Applicant in connection with these proceedings. It has also applied for a contribution by the Respondent towards its legal fees under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. In view of the decision of the Tribunal on the main issue in this case, both of these applications are refused.

CHAIRMAN.....
Mr PJ Korn

Date: 21st June 2007