CHI/29UL/LIS/2009/0013

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	15 & 35 Greeba Court, 54/56 Marina, St Leonards-on-Sea, East Sussex, TN38 0BQ
Applicants:	(1) Mr E Edib (2) Ms S Roeden
Respondent:	Yewside Properties Ltd
Application:	16 February 2009
Inspection:	27 May 2009
Hearing:	27 May 2009

Appearances:

Tenant

Mr E Edib	Leaseholder (Flat 35)
Ms S Roeden	Leaseholder (Flat 15)

For the Applicants

Landlord

Mr A Featherstone	Building Surveyor, Surveying & Design Partnership
Mr P Eaton	Countrywide Managing Agents

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr R A Wilkey FRICS FICPD
Mr P A Gammon MBE BA

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UL/LIS/2009/0013

IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF 15 & 35 GREEBA COURT, 54/56 MARINA, ST LEONARDS ON SEA, EAST SUSSEX, TN38 0BQ

BETWEEN:

(1) MR ENVER EDIB
(2) Ms SONIA ROEDEN

Applicants

-and-

YEWSIDE PROPERTIES LIMITED

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicants pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for determination of their liability to pay and/or the reasonableness of various service charges claimed by the Respondent in the 2008 and 2009 service charge years.

2. Both of the Applicants are the present long leaseholders of Flats 35 and 15 respectively in the subject property. Neither of them contends that they do not have a contractual liability to pay a service charge contribution under the terms of their leases. As the Tribunal understand it, the challenge being made by the Applicants is limited solely to the issue of the reasonableness of the disputed service charges. It is, therefore, not necessary to set out in any detail

the contractual terms in the leases that gives rise to their service charge liability. It is perhaps sufficient to note that in clause 3 of the leases, the tenant covenanted with the landlord to pay a 1/56th contribution for the service charge expenditure set out in the Fourth Schedule. The same clause also provides that the annual service charge year shall end on the 31st day of March of each year and the service charge contribution shall be payable by two equal instalments on the 24th day of June and the 25th day of December in each year. Again, as the Tribunal understands it, the Applicants do not contend that the service charge expenditure either incurred or to be incurred is not relevant service charge expenditure within the meaning of the Fourth Schedule of the leases.

The Issues

3. The initial application in this matter had been made solely by the First Applicant, Mr Edib. However, at the hearing the Second Applicant, Ms Roeden, confirmed that she wished to make the same challenges as the First Applicant and was formally joined as an Applicant in these proceedings.

4. The challenge being made by the Applicants appeared to be brought in two ways. Firstly, it seems that until the service charge year ended 31 March 2007, the freeholderhad sought to recover an annual service charge contribution of £600 per annum from each lessee. For the service charge years ending 31 March 2008 and 2009, the annual service charge contribution demanded had increased to £700 per lessee and the Applicants effectively put the Respondent to proof for the increase for each of those years.

5. Secondly, proposed major works were intended to be carried out to refurbish the internal common parts of the building. The Respondent had, through its managing agent, Countrywide Managing Agents, undertaken the statutory consultation process required by section 20 of the Act, which had included tendering for the works. The estimated cost of the proposed works is placed at £153,875.75 plus fees of £31,157.92 inclusive of VAT. The Tribunal was told that individual service charge demands of £3,125.60 had been sent to each lessee in January of this year. Therefore, the Applicants liability for these

costs fell within the service charge ended 31 March 2009. They told the Tribunal that, save for the installation of a new entry phone system, they accepted the scope of the proposed major works. Their only challenge was to the reasonableness of the estimated costs because they considered them too high in total. A collateral point raised by the Applicants was why the monies in the sinking fund were not being used to defray the cost of the proposed works for the lessees.

The Relevant Law

6. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(1) 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 at or by which it is payable, and*
> *(e) the manner in which it is payable.*
>
> *(2) Subsection (1) applies whether or not any payment has been made."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

7. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly."*

Inspection

8. The Tribunal inspected the internal common parts of the subject property on 27 May 2009. Greeba Court is a substantial terraced building arranged as self-

contained flats. It faces the sea front and the main coast road. The lift was not in operation at the time of the inspection and the Tribunal walked to the public ways on the top floor of the building by way of an external metal staircase. It was apparent that the public ways on this floor were in need of attention and redecoration. There was evidence of damage by vandalism and some replastering had recently been carried out. Grills had been placed across door openings to several flats. The Tribunal then inspected the common ways on the floor below which exhibited similar characteristics. Mr. Featherstone advised the Tribunal that the layout on this floor was typical of the other floors

Decision

9. The hearing in this matter also took place on 27 May 2009. The Applicants appeared in person. The Respondent was represented by Mr Featherstone, a Building Surveyor and Director of Surveying and Design Partnerships, and Mr Eaton, the Regional Manager for the South East of Countrywide Managing Agents. Also in attendance, as observers, were a Mr Nick Cooper and a Mr Ron Davis. They told the Tribunal that they were from a firm known as Passive Investments who were employed by the leaseholders of 12 flats in the building to manage their interests. Mr Cooper and Mr Davies, therefore, played no part in these proceedings.

10. The First Applicant told the Tribunal that he had instructed a firm of solicitors about two weeks previously to represent him in these proceedings, but he had not had any communication with this firm in the interim. Nevertheless, it was his belief that he would be represented at the hearing. The Tribunal gave the First Applicant a short adjournment in order that he could make the necessary enquiries with his firm of solicitors. At the recommencement of the hearing, the First Applicant, on the advice of his solicitors, made an application for an adjournment. That application was refused by the Tribunal because it considered the First Applicant had been given sufficient time since the Directions in this matter had been issued to obtain independent legal advice and/or representation and he had failed to do so without good reason. Indeed, he had not complied with any of the Tribunal's Directions at all. In addition, the Tribunal could not be certain that an adjournment would necessarily result

in the better preparation of the First Applicant's case, for example, in the event that his firm of solicitors chose not to act for him for whatever reason. Furthermore, the Tribunal did not consider that it was fair or proportionate for the additional costs of the adjourned hearing should possibly be borne by the other lessees who do not participate in these proceedings or the Respondent, in the event that it could not recover its costs under the leases.

Annual Service Charge Contribution (2008 & 2009) - £700

11. It seems that the First Applicant acquired his leasehold interest in Flat 35 by way of a transfer on 24 April 2008. Mr Featherstone explained that he did not have any contractual liability to pay the annual service charge contribution for the year ended 31 March 2008. The Tribunal, therefore, ruled that the application in so far as it related to the service charge year was dismissed. Mr Featherstone also explained that the service charge accounts were presently being prepared for the actual expenditure incurred for the year ended 31 March 2009. The Tribunal explained to the First Applicant that at the time he made this application, the service charge contribution of £700 was based on an estimated budget of the anticipated expenditure for this year. Given that the actual expenditure incurred would shortly be known, it would be a largely academic exercise for the Tribunal to make a determination based on the budget estimate. The Tribunal explained to the First Applicant that a more appropriate course of action would be to wait for the service charge account to be published and then challenge, if necessary, the various items of service charge expenditure actually incurred by the Respondent. Having considered the matter, the First Applicant agreed to withdraw this part of his application on behalf of himself and the Second Applicant.

12. As to the Second Applicant, it was clear that she had a liability to pay the annual service charge contribution of £700 for 2008. As stated earlier, her position was the same as the First Applicant, that is, she put the Respondent to proof as to the increase from £600 per annum for the preceding years.

13. The evidence for the increase in the service charge contribution demanded for 2008 was, helpfully, set out in a statement prepared by Mr Eaton. He stated,

at paragraph 7, that the sum of £700 demanded for this year (and 2009) had been based on the anticipated increase in expenditure due to overall rising costs, the issues and vandalism. At paragraphs 9 to 13 of his statement, Mr Eaton gave he reasoned explanation for the increase in overall expenditure for 2008 and this was supported, at Tab 2 of the bundle, by the relevant documentary evidence of the actual expenditure incurred in this year.

14. In contrast, the Applicants had adduced no evidence to show that any or all of the heads of service charge expenditure had either not been reasonably incurred or not reasonable in amount. In the absence of any such evidence, the Tribunal was bound to conclude that the service charge expenditure incurred in 2008 had been reasonably incurred and that each item of expenditure was reasonable in quantum. Accordingly, the service charge contribution of £700 demanded from the second Applicant was payable.

Proposed Major Works (2009) - £3,125.60

15. As stated earlier, these proposed works concerned the refurbishment of the internal common parts of the building. From the documentary evidence adduced by the Respondent, the Tribunal was satisfied that it had properly specified the proposed works and had carried out a tendering process, which had resulted in the lowest tender being accepted. Moreover, the Tribunal was also satisfied that the Respondent had properly carried out statutory consultation with the lessees in accordance with section 20 of the Act. In addition, the Respondent had also carried out informal consultation with the lessees by having a residents meeting. These matters are set out in paragraphs 14 to 18 in Mr Eaton's statement. Mr Featherstone also set out his involvement in this process in his statement dated 15 May 2009.

16. The Applicants had adduced no evidence in this matter. Their case amounted to no more than to bare submissions. Firstly, the Applicant submitted that the replacement of the existing entryphone system to the building was unnecessary because it was still working. Mr Featherstone, in his statement, explained that the decision to replace the existing entryphone system was made to improve the security of the building. In order to keep this cost to a

minimum, it was originally intended to lease such a system. However, when the provisional cost of doing so became known, it was decided that it would not provide value for money for the tenants when compared to an outright purchase. Two prices were obtained for the cost of purchasing an entryphone system and the lowest figure was included in the section 20 notice served on the lessees.

17. The Second Applicant readily admitted that acts of vandalism and the general security of the building was an ongoing problem. She had actively pursued this matter with the police on several occasions. She appeared to accept that, if the new entryphone system did in fact improve security, it would be welcomed by her. Having regard to this and the evidence given by Mr Featherstone, the Tribunal determined that the estimated cost of replacing the existing entryphone system was reasonably incurred.

18. As to the sinking fund, the service charge statement revealed that the sum of £84,787.16 was being held by the Respondent. The Applicants wanted to know the reason why this money was not being used in whole or in part to defray the cost of the proposed works. Both Mr Eaton and Mr Featherstone explained that, of the total amount held in the sinking fund, £70,000 had been collected from the lessees to carry out major works in 1999. Apparently, there's works had been commenced but the contractor had failed to complete them when it went into administration. Potentially, the Receiver appointed to deal with the administration had a claim in respect of those monies. The Respondent, who acquired the freehold interest last year, had inherited this dispute and if the claim succeeded, it would be obliged to pay the sum of £70,000 to the Receiver. In that event, any surplus amount held in the sinking fund would be used to offset the cost of any future major works. In the meantime, the sinking fund monies were being held in a separate interest-bearing account. The present small surplus held in the sinking fund was used to meet the cost of responsive repairs and/or maintenance until such time as the six monthly service charge demands had been issued and paid by the lessees. Neither Mr Eaton nor Mr Featherstone could give any indication of the timescale for the resolution of the potential claim by the Receiver.

19. Secondly, as to the remaining costs of the proposed major works, the Applicant submitted that this was generally too high. When asked by the Tribunal, the First Applicant said that this submission was based entirely on his personal experience of this kind of work. There was no evidence before the Tribunal that he possessed any expertise in relation to the proposed works and perhaps this was a reason why the First Applicant was unable to propose an alternative figure he considered reasonable for the works.

20. There was simply no evidence whatsoever before the Tribunal on which it could make a finding that the estimated cost of the proposed major works was unreasonable. Accordingly, it had little hesitation in determining that the estimated cost was reasonable. It follows from this that the service charge contribution of £3,125.60 demanded from the Applicants was payable.

Section 20C - Costs

21. A further application was made by the Applicants under section 20C of the Act. By making this application, the Applicants are inviting the Tribunal to make an order preventing the Respondent from being able to recover all or part of the costs it may have incurred in these proceedings. It should be noted that when considering any such application, the Tribunal is only concerned with a landlord's *entitlement* to recover any such costs and not the actual amount of those costs. If and when a landlord subsequently seeks to recover those costs through the service charge account, it is open to a tenant to make a further application under section 27A of the Act for a determination of the reasonableness of any such costs.

22. Section 20C of the Act gives the Tribunal a discretion to make an order when it is just and equitable to do so, having regard to all the circumstances of the case.

23. The Tribunal was satisfied that paragraphs 7 of the Fourth Schedule of the leases gave the landlord a *prima facie* entitlement to recover its costs. The Tribunal fully accepted the submission made on behalf of the Respondent that

the application was bound to fail because the Applicants had adduced no evidence whatsoever in support. In the circumstances, the Tribunal concluded that it would be unjust and inequitable for the Respondent to be unable to recover the costs it had incurred in these proceedings as it had been obliged to respond. Accordingly, the Tribunal made no order preventing the Respondent from being able to recover its costs. It was not necessary for the Tribunal to consider the matter of reimbursement of fees because the Applicants had not paid any to the Tribunal.

Dated the 9 day of June 2009

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)