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LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/00ML/LIS/2009/0111

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

Address:	Princes House, 165-169 North Street, Brighton, BN1 1EA
Applicants:	(1) Paul Christmas (2) Alessandro Cockman (3) Marialaura de Simone (4) David Bell and Shona Bailey (5) Paul Gorman
Respondent:	The Baron Homes Corporation Ltd
Application:	9 November 2009
Hearing:	30 March 2010

Appearances:

Tenant

Mr H Hodgkin	Counsel
Mr P. Christmas	Leaseholder

For the Applicants

Landlord

Miss Whiteman	Solicitor, Dean Wilson LLP
Mr Blencowe	Director of Respondent company

For the Respondent

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr A O Mackay FRICS
Ms J K Morris

DECISION

Introduction

1. This Decision is supplemental to the Tribunal's earlier Decision ("the earlier Decision") in this matter dated 21 June 2010 and should be read together with the latter.

2. The last hearing in this matter took place on 30 March 2010. On that occasion, the Tribunal heard evidence on various heads of service charge expenditure challenged by the Applicants that were the subject matter of the earlier Decision. The heads of expenditure relating to the British Gas payments and reserve fund provisions for 2007 and 2008 were adjourned with directions for the Respondent to provide draft 2009 accounts by 31 May 2010 reflecting any appropriate adjustments for these matters. It was hoped that the parties would be in a position to agree the remaining issues once the appropriate adjustments had been made. Unfortunately, this did not occur and the matter was relisted before the Tribunal for determination.

Hearing

3. The adjourned hearing took place on 4 October 2010. The lead Applicant, Mr Christmas, was represented by Mr Hodgkin of Counsel. Other Applicants and interested parties were also in attendance but were not represented and played no part in these proceedings. The Respondent was represented, again, by Miss Whiteman, a Solicitor from the firm of Dean Wilson LLP.

4. At the commencement of the hearing, Mr Hodgkin told the Tribunal that the quantum of the necessary adjustments for the British Gas payments and reserve fund provision for 2007 and 2008 were agreed. The only issue before the Tribunal was whether the Respondent had reflected those adjustments (together with the determination made by the Tribunal in the earlier Decision) in the draft 2009 accounts. However, after further negotiation by the parties during a short adjournment, they were able to agree all of the necessary adjustments required to be made in the 2009 account in relation to the British cash payments and reserve fund provision for 2007 and 2008. Furthermore,

the parties were able to reach agreement in relation to the other adjustments necessary for the 2009 account to reflect the determination made by the Tribunal in the earlier Decision, even though these matters were not strictly before the Tribunal on this occasion. The consent agreement is annexed to this Decision. The only issue that fell to be determined by the Tribunal was the application made by the Applicants under section 20C of the Act.

Decision - Costs

5. In addition to the Applicant section 20C application, Mr Hodgkin made a further application under Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002 (as amended) that the Respondent pay a contribution of £500 towards the Applicants' costs.

6. Mr Hodgkin told the Tribunal that his submissions in relation to both applications for costs were the same. Mr Hodgkin made three main submissions as to the necessity for the application made by the Applicants. Firstly, that they had been misled by the Respondent about the extent of the British Gas payments that have been made and the status of the reserve fund in 2007 and 2008, which it later conceded. Secondly, that of the Applicants had succeeded on most of the heads of expenditure challenged on the last occasion. Thirdly, the reason for adjourning the last hearing was to enable the Respondent to obtain further information and clarify the outstanding matters. Mr Hodgkin argued that these matters would not have come to light unless the Applicants had made this application. He submitted in terms, therefore, that the Respondent, by its conduct, had acted unreasonably and it was just and equitable for the Tribunal to make an order under section 20C of the Act preventing the Respondent from being able to recover any of the costs it had incurred in these proceedings through the service charge account. In addition, it was also appropriate for the Respondent to contribute the sum of £500 towards the costs incurred by the Applicants in having to bring this application.

7. Miss Whiteman, for the Respondent, had helpfully set out her submissions on costs in a written skeleton argument. She submitted, firstly, that the

Respondent was contractually entitled to recover the costs it had incurred in these proceedings are variously under clauses 2(D)(iii), 5(D)(v) and (xiv) of the Applicants leases. This was not challenged by Mr Hodgkin.

8. Miss Whiteman then went on to set out the principles to be applied by the Tribunal when considering making any order under section 20C as enunciated by the Court of Appeal in ***Iperion Investments Corporation v Broadwalk House Residents Ltd 1995*** (Court of Appeal 2 EGLR 47) and the Lands Tribunal in ***The Tenants of Langford Court v Doren Ltd.*** For the reasons set out in her skeleton argument, she submitted that it was just and equitable for the Applicants between them to bear 16.25% of the Respondent's costs as they were individually liable to contribute a proportion of 3.25%. As will become apparent below, it is not necessary to set out in any detail the arguments relied on by Miss Whiteman.

9. The Tribunal firstly considered the section 20C application. Under this section the statutory test to be applied by the Tribunal was whether it is just and equitable to make an order having regard to all the circumstances of the case. In the present matter, the Tribunal determined that an order should be made preventing the Respondent from being able to recover any of the costs it had incurred from the commencement of these proceedings until 28 May 2010, when the draft 2009 account was served on Mr Christmas. The Tribunal accepted the general submission made by Mr Hodgkin that this application had been properly made. It was beyond doubt that the 2007 and 2008 service charge accounts were factually incorrect in a number of material ways. For example, the reserve fund provision had been entirely omitted and it was clear that the gas account payments had not been properly reconciled. In addition, it was not until the last hearing that the Respondent conceded that the service charge accounts were inaccurate. Furthermore, on that occasion, the Applicant had succeeded on most of the issues before the Tribunal. Having regard to all of these matters, the Tribunal determined that it was just and equitable that the Respondent be distentitled to its costs.

10. However, the Tribunal made no order under section 20C in relation to the costs incurred by the Respondent after 28 May 2010 when the draft 2009 account had been served on Mr Christmas. It was clear from the *inter partes* correspondence that the substantive issues between the parties was confined to how the largely agreed adjustments were to be applied to the 2009 account. This amounted to no more than a forensic accounting exercise and, in the Tribunal's judgement, did not require a further hearing. In any event, the parties were able to agree these matters during the short adjournment. Accordingly, the Tribunal made no order for the period after 28 May 2010.

11. In relation to the application under Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002, the Tribunal also make no order requiring the Respondent to pay a contribution of £500 towards the Applicants' costs. It was clear that the service charge accounts for 2007 and 2008 had been badly prepared by the Respondent. However, the Tribunal was satisfied that there had been no dishonesty on its part and it had made real efforts to rectify the (admitted) errors. The Tribunal found that the Response conduct in these proceedings had not been sufficiently serious to satisfy the test of unreasonableness under Schedule 12, paragraph 10(2)(b) and it made no order in this regard.

Dated the 11th day of October 2010

Signed

CHAIRMAN.....

Mr I Mohabir LLB (Hons)