RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UF/LIS/2009/0089

In the matter of applications under Section 27A of the Landlord and Tenant Act 1985 and Residential Property Tribunal (Fees) (England) Regulations 2006,.

Re: The Quarterdeck, Gosport Marina, Gosport, Hants PA 12 1AL

Applicants	Mrs I Usher, Mr D Hurman and Mrs JV Ross
First Respondent	Premier Marinas Limited
Second Respondent	Berkeley Homes (Hampshire) Limited
Date of Application	16 October, 2009
Date of Inspection	20 May, 2010
Date of Hearing	20 May, 2010
Venue	Gosport Discovery Centre, High Street, Gosport
Representing the parties	The Applicants in person Mr R Saville for the First Respondent and Peverel OM Limited Mrs S McGrath for the Second Respondent
Also attending	Mrs J Cottee, Mr and Mrs R Jenkins, P Catton, Mrs P Hurman, Mr R Tocknell, Mrs C Purkis, Mr and Mrs G Godfrey, Mr D Usher Mr T Allen (First Respondent), Mr D Pratt (Second Respondent), Ms F Bowen and Ms Z Poulton (Peverel OM Limited) Also attending: Dr. Merry, Mr Paice and Mr Waterman.

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
D Lintott FRICS	Valuer Member
Mr RT Dumont	Lay Member

Date of Tribunal's Decision: 3 June 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that, for The Quarterdeck, Gosport Marina, Gosport, Hants (the Property) in respect of disputed items of charge for the accounting years 2002/03 to 2007/08 the following sums are reasonable and payable for the Property in the proportion applicable to Apartments 31, 32 & 45 owned wholly or partly by any Applicant:

Item	**Full amount in issue**	**Agreed by Respondents and/or withdrawn by Applicants**	**Disputed balance**	**Total reasonable and payable as against full amount in issue**	*Percentage allowed of full amount in issue (where so calculated)*
Fire equipment maintenance:-					
2004/05 a/cs	1149.03	232.51	916.52	£861.77	75%
2005/06 a/cs	1132.60	-	1132.60	849.45	75%
2006/07 a/cs	950.67	-	950.67	713.00	75%
2007/08 a/cs	967.80	-	967.80	725.85	75%
External Decorations 2007/08	2350.00	-	Nil	Nil	
General cleaning (January to July 2008)	£3220.00	-	£3220.00	£720.00	
Bin store cleaning 2002 – 2007	£528.00	-	£528.00	£528.00	
Window cleaning:-					
External 2004/05	£2295.96		£298 06	£1997.90	
External 2005/06	£2258.74	£1377.24	£881.50	£1377.24	
2002/03 to 2007/08 external	£1827 09	-	£1827 09	Nil	
Internal	£4617.78	-	£2308.89	£2308.89	
Frames	£ 7 132.25	£1656.75	£5475.50	£4393.50	50%
Ledges	£609 03	-	£609 03	£304.52	50%
Peverel/OM Management fees 2002/03 to 2007/08	£35,438.00		£17,719.00	£26,578.50	75%

2. Under the Residential Property Tribunal (Fees) (England) Regulations 2006, Regulation 6 the Tribunal makes no order for reimbursement by any party of the whole or part of any fees paid by the Applicants in respect of the application.

Reasons

Introduction

3. Application was made by the Applicants to the Tribunal under Section 27A of the Act to determine whether certain service charges for the years mentioned in the decision are reasonable and payable. The application had also sought determination of other service charges but which had subsequently been either withdrawn by the Applicants or agreed between the parties so that no determination was required.

4. The Applicants further applied for an order under the Residential Property Tribunal (Fees) (England) Regulation 2006 Regulation 6.

5. Following a pre-trial review in the presence of the parties or their representatives, directions were issued on 27 November, 2009. So far as material to our consideration and determination, the directions recorded that

    a. in June 2007 the 2nd Respondent transferred the head leasehold title to the first Respondent and in October 2008 the Freehold title was transferred from the first Respondent to The Quarterdeck Gosport Limited.

    b. The landlord responsible for the management of the building and the collection of service charges were:

        i. from 2002 to June 2007: the 2nd Respondent;

        ii. from June 2007 to October 2008: the first Respondent.

Inspection

6. On 21 May, 2010 the Tribunal inspected the Property in the presence of representatives of all parties.

7. The Property comprises a purpose built block of 46 Apartments constructed in 2001/02 immediately on the waterfront at Gosport Marina in grounds largely laid out to the parking and driveways but including borders and bin stores.

8. The Property appears to be in good condition for its age and character, being well maintained and decorated except that some external decoration is now required.

Hearing, Representations & Consideration

9. A hearing was held the same day, those attending being noted above. Evidence and submissions were received and the case papers were considered so far as the Tribunal was directed to them. References below to:

    a. the applicant's case and the respondents' case is intended to identify the issues which we found to be of particular importance to our consideration, but we also

took into account the other aspects contained in their respective written submissions;

b. "respondents" refers to the first respondent or the 2nd respondent as the case may be.

Lease terms.

10. There were no issues as to the payability of all charges the subject of the issues between the parties so particular terms of the leases, which are in standard form, are not set out here other than as necessary. We refer to the underlease of Apartment number 32 and car parking space number 32 dated 9 April, 2002 which shows that

    a. the Apartments are let for periods of 150 years from 27 June 2000 (less 5 days) ;

    b. service charge is payable in respect of the general services which the landlord covenants to provide in the 5th Schedule to the underlease which includes painting cleaning and decorating of the exterior of the development;

    c. under the lease of the development dated 27 June, 2000 the head lessee is required to carry out external decoration during every 3rd year of a term of 150 years commencing on the Certificate date which is the date on which it is certified that the works had been completed. We, the Tribunal, do not have evidence of the Certificate date but we consider it reasonable to assume that the work was completed prior to the grant of the lease of Apartment 32 on 9 April, 2002 so that external decoration would have been required to be carried out by the head lessee no later than the year ending 9 April, 2005.

Disputed items.

11. Fire Equipment Maintenance.

    a. The Applicants' case was essentially that the fire equipment consisted of fire alarms, smoke alarms and smoke evacuation equipment and all other fire related equipment; that on the evidence the maintenance company was not aware of the 3 Automatic Opening Vents (AOVs) on the roof which had not therefore be maintained, thereby

        i. completely compromising fire safety in the building;

        ii. completely negating the value of any maintenance of all the fire equipment;

        iii. furthermore, that the occupiers of the building were thereby potentially put at risk of their lives;

        iv. that the occupiers should not have to pay anything for a service which has been not delivered.

    b. The Respondents accepted that the maintenance company did not know of the roof AOVs and therefore did not charge for maintaining them. They did not accept that

the non-maintenance of the roof AOVs negated the worth of the other parts of the fire installation. For instance, if there had been any resulting problem from smoke not being extracted from the building, that would not compromise safety because the safety procedure was that the alarm system was simply to alert occupiers but they were to remain in their Apartments until rescue. Therefore the entire fire safety system is not entirely compromised and the occupiers had received value from the cost of maintenance carried out.

c. On the evidence we heard on fire safety aspects, we were far from satisfied that the occupiers were aware of the drill as referred to by the Respondents. However, we did find that there was value in the other parts of the fire safety installation notwithstanding that the roof AOVs were not maintained. We also considered that as the maintenance company was apparently unaware of the roof AOVs, they had not charged for their maintenance. However, we considered the level of actual charge made under this heading would only be reasonable if it did include the maintenance of the roof AOVs. As it did not, we found a reasonable charge would be reached by making a deduction of 25% for each year.

12. Abortive external decorations.

a. The Applicant's case was that if the matter had been dealt with properly and in a timely fashion the contract could have gone ahead as planned in 2007. However, Peverel's delay had caused the project to be aborted and it was unreasonable for the occupiers to pay any part of the abortive cost.

b. The Respondents' case was that they had to go through the Section 20 procedure; that they had communicated with the residents during the tender period and there may have been delays in the tender process. They also said that significant delay was due to the need to consult with the new landlord at the time this was happening.

c. We considered the following points to be material: --

i. as noted above decoration had been due not later than April 2005 so the project was already over 2 years late;

ii. in the statutory consultation procedure, the first notice was dated 22 May 2007 and the 2nd notice 14 September, 2007, the last contractor's tender having been received in the first half of July.

iii. ICI paint was to be used and in their letter of 22 October, 2007 they had made various recommendations which we considered meant that by the time of the 2nd notice it would have been inappropriate to commence work at that time or indeed through the ensuing winter.

iv. We did not consider it material to the issues whether or not the residents association Was recognised or whether it was consulted.

v. The project became aborted because of unwarranted delay, not only for over 2 years before the first notice but also between the first and 2nd notices by reason of lack of diligent management and then the impending enfranchisement of the Property. Leaving aside the last aspect, none of this was the fault of the residents and it is not reasonable that they should pay any part of these costs.

13. General cleaning

a. The Applicant's case relates to cleaning of internal communal areas from January to the end of July 2008. During that time they say the work was not carried out to an acceptable standard and that they made a series of complaints throughout the period. In mid June a "free clean" was scheduled but they were not aware of it having happened and the visitors book was not logged by the cleaner. They also said that some of the cleaning from which they were charged never took place, on one occasion the cleaners arrived and left within 7 minutes and that the residents had on occasions to clean up after the cleaners. (This was refuted by the respondents). They considered the standard of work to be dreadful.

b. Ms Poulton told us that complaints they received were forwarded to the cleaner and she understood that the cleaners had dealt with them. She had inspected on one occasion and found the cleaning to be of an acceptable standard. She was not aware of cleaning issues coming up in any meetings with residents.

c. Neither the first Respondent nor the managing agents have provided us with much documentation to show us their management activity (other than of periodic general inspections carried out by Ms Bowen and another from August 2003 to September 2005) on this item or indeed any other. That would have been of assistance in enabling us to consider whether the level of complaints mentioned by the Applicants was accurate and what steps the agents may have taken in dealing with the alleged problem in actually checking not only the validity or otherwise of complaints but also whether they had been followed up properly by the cleaner. Equally we have little evidence of them actually passing on complaints but we are prepared to accept that they did so. As it is, the weight of the evidence is that a series of justified complaints were made about poor cleaning standards and those complaints were not dealt with adequately or at all: we did not accept that simply passing complaints on to the cleaners is an effective means of supervising and managing a contract. We found that a reasonable sum would be £720 for this item.

14. Bin store cleaning 2002 to 2007.

a. The Applicant's case is

i. that they were unaware until 2007 as to the actual specification for cleaning the 2 bin stores; the specification dated from 2004 specifies "bin stores to be kept swept,, washed out and disinfected. Jet wash and disinfect all metal refuse bins".

ii. That the manner in which cleaning would have had to have been done would have been made the cleaning apparent to residents, but it was not. During the period they calculate there would have been 23 cleans but they accept that only one was actually done.

b. Ms Bowen told us that they received no cleaning complaints. Ms Bowen's reports specifically refer to the bin stores but indicate no cleaning problems with them.

c. We found there was no satisfactory evidence to show that the bin store and bins cleaning was unsatisfactory or did not comply with specification. This is corroborated by Ms Bowen's inspection reports. We are certain that had the cleaning of these stores and bins not been carried out or not carried out satisfactorily, it would have given rise to the very significant complaints from residents and there is inadequate evidence of complaints having been made. Accordingly we found that the amount charged of £528 to be reasonable.

15. Window cleaning – external 2005

a. The Applicant's case is:

i. there was an 18% increase in the cleaners' quotation and other quotes should have been obtained; in May 2005 the contractor admitted that only 60% of the windows could be cleaned; in May 2005 Peverel said

1. they would not pay the full contract price for cleaning;

2. and would not pay for testing but have done so;

ii. they had been charged twice for testing;

iii. although the total initial claim under this heading of £2295.96, they had withdrawn £1997.90 leaving a disputed amount £298 06.

b. The Respondent's case was that at page 156 of their bundle a credit for £329; the 2nd amount of £1147.98 was an accrual for testing and was subsequently released in 2005/06; the costs incurred were for statutory testing which took place and are chargeable.

c. On the evidence we did not accept that the Applicants had been charged twice for testing. We did accept that the Applicants had apparently been charged partly for work that could not be done and therefore that a reasonable sum would be the initial claim less the disputed sum i.e. £1997.90 (£2295.96 - £298 06).

16. Window cleaning external 2006

a. The Applicant's case was that because anchorage devices had been installed to replace eyebolts, higher labour costs had resulted: that this should have been avoided by ensuring that proper eyebolts were available for use. They therefore disputed £881.50 of the item of £2258.74.

b. The Respondent accepted that problems had arisen as eyebolts had been replaced with anchorage points suitable only for a two-man abseil team on which the contract price was quoted, while the contractors advised that a three-man team was required thereby increasing labour costs.

c. We found that the Respondent ought to have ensured that the eyebolts were functional and this would have avoided the increased labour costs which could result. We accordingly found that the full amount charged of £2258.74 was unreasonable and that a reasonable sum was to be found by a deduction of £881.50, leaving a balance payable of £1377.24.

17. Window cleaning – external - all years

a. the Applicants claimed a further reduction of £1827.09 for all years in question on top of the above items for external window cleaning in 2005 and 2006. This was on the basis that, on their calculation, 3% of the external windows could not be reached to be cleaned by contractors who had been paid to clean all of those external windows.

b. The Respondents said that the works specification should have stated "all accessible windows" but that the quotation was based on hours and equipment, not the number of windows to be cleaned.

c. However the quotation is calculated, we accept that it was on the basis of cleaning all windows and that the residents cannot be expected to pay for something which was not actually done. We accepted their calculation of a reduction of £1827.09 as being reasonable in the circumstances.

18. Windows cleaning - internal

a. The Applicants say that this could only be carried out above first floor level by use of eyebolts or a tower: that a tower was never used and the eyebolts were condemned; therefore that they were being asked to pay for work which was impossible. As a result they contend that they should only have to pay half of the amount charged i.e. £2308.89.

b. The Respondent accepted that problems had arisen at the end of 2004 with 3 eyebolts being condemned and this affected the costs from 2005 onwards due to increased labour. Contrary to the Respondent's case set out in the Scott Schedule, Ms Bowen said that platforms were never used.

c. We accepted the Applicant's evidence and found that a reasonable sum would be £2308.89 instead of £4617.78.

19. Window frames and ledges

a. The Applicants believed that it was the intention for the contractor to wipe down and leave tidy window ledges and for an annual wiping over of all frames but that neither was ever done. They claim a reduction of £5475.50 in total costs in April and November 2006 and September 2007.

b. The Respondent says that the original specification included wiping down window ledges but did not include cleaning of window frames say residents were not paying for them to be cleaned. The specification was subsequently amended to include window frames.

c. We consider that bearing in mind the nature and height of the Property it would have been reasonable to expect any specification for cleaning windows to include cleaning their frames and ledges at the same time; further that the residents were entitled to expect that this work was included in the window cleaning contract. As we concluded on the evidence that the work was not done for the items in issue, we consider that a reasonable sum for each of those 3 items would be one half so the amount payable for frames to include 2005 would be £4393.50 (£5475.50/2 = £2737.75+ £1656.75).

d. For the same reasons we considered that for ledges one half would be reasonable i.e. £304.52.

20. Management fees

a. The Applicants say that the managing agents did not comply with their obligations or the standards with which they professed to comply citing issues arising from the above items. Management charges have been charged for the years 2002/03 to 2007/08 inclusive totalling £35,438.51 and the Applicants consider they should only be required to pay one half.

b. The Respondents say that a large number of the references to standards quoted by the Applicants relate to current business practices of the managing agents and not to those applying during the period of management. They refer in their Scott schedule to matters which they say the managing agents have carried out. Additionally, Ms Bowen said that she was not aware of any dissatisfaction during her time of management from 2003 to 2006. She also said that despite the Applicants having complained about Peverel to ARMA, they are still accepted as members of ARMA.

c. In our consideration of all the evidence relating to the other issues as set out above and to our conclusions in those matters, it is evident that insufficient consideration has been given to the particular nature of the Property, its maintenance requirements and supervision and that most of the issues which have arisen have resulted from a lower level of management than the residents were entitled to expect. However, management fees have to cover the establishment costs of the managing agent, accounting and other administrative costs as well as dealing with aspects of management which have arisen in this case, so we do not consider that one half of the management fees charged would be a reasonable sum. We consider that a 25% reduction to be reasonable and accordingly we reduced the management fees for this period to £26,578.50.

21. Reimbursement of fees.

a. The Applicants applied for an order under the Residential Property Tribunal (Fees) (England) Regulations 2006, Regulation 6 that the Tribunal require the Respondent to reimburse them for their fees paid to the Tribunal in this matter.

b. We did not have representations from either party at the hearing on this matter. In our opinion the power to make such an order should be used and is only used in exceptional circumstances where, for instance, the Tribunal is satisfied that an application has only been necessary by reason of extreme misconduct of another party. While we have recognised shortcomings in the management of the Property, we do not consider that the conduct of either the Respondents or the managing agents has been of that level and accordingly we decided to make the order.

22. The Tribunal made its decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Leasehold Valuation Tribunal
appointed by the Lord Chancellor