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IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985: SECTION 27A & 20C

LON/00AJ/LSC/2009/0549

Premises: Flat 6, 11 Avenue Crescent, London W3 8ET

Applicant: Mr. R Broadbent

Represented by: In person

Respondent: Mr. Erno Abelesz

Represented by: Mr. Mendelsohn, R A Management Limited

Tribunal: Ms. LM Tagliavini, LL.M. DipLaw, BA Hons
Mr. C White, FRICS
Mr. A Ring

Date of Hearing: 25 January 2010

1. This is an application made by the lessee of Flat 6 pursuant to section 27A of the Landlord and Tenant Act 1985. The Applicant seeks a determination as to the reasonableness of, and liability to pay service

charges for the costs incurred for surveyors fees, in respect of proposed but unimplemented major works in 2008.

2. The subject premises are a first floor flat in a converted Victorian building containing six flats. A copy of the lease made in 1983 for a term of years (unspecified in the copy lease) was provided to the Tribunal. However, the lease for Flat 2, which was said to provide near identical terms, was granted for a period of 99 years from 25th March 1983.

The Applicant's Case:

3. The Applicant's case was clearly set out in a written statement. The proposed major works were suspended at the leaseholder's request after a specification of works was produced and put out to tender. Invoices were sent to the lessees on 14 March 2008 requesting payment of 1/3 of the total cost of these works amounting to £78,298.79 inclusive of all fees and taxes.
4. On 15 May 2009, invoices were received from the managing agent, which included a demand for a share of £4,186 in respect of surveyor's fees. It was claimed that an earlier invoice dated 19 July 2008 seeking payment of this sum had been sent to all leaseholders, but none recalled having received such a demand. Further, by 2009 the percentage charged by the managing agent R A Management Limited, and included in this amount had risen from 8% to 10%.
5. The Applicant took issue with sum demanded, as it was felt to be unreasonable that the surveyor fees should be payable to an extent that unfairly penalised the lessees. A challenge was made to the adequacy of the survey and specification as it dealt only with the

exterior of the property and omitted reference to a significant drainage problem on the right flank of the property. A collapse to an internal ceiling six months after the survey should have been identified and prevented. The Applicant asserted that the value of the work was more reasonably in the region of £1,500 and that despite requests, the leaseholders have not been provided with service charge accounts.

6. Although Mr. Broadbent stated he was acting on behalf of all the lessees except for the lessee of Flat 3, the Tribunal had received no written request from any other person seeking to be joined as a party; *regulation 6 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003*. As a decision of the Leasehold Valuation Tribunal is a binding one, and enforceable in the County Court, the Tribunal does not consider it appropriate to join an applicant without their written authority, as the ramifications for any individual who is so joined can be far reaching and may include a judgment debt being recorded against them. Although, Respondents are often as a necessity, substituted or added to an application they are then put on notice of this and an opportunity afforded to them, to have their name removed from the proceedings.

7. In this case, Mr. Broadbent asserted that he had been informed at the pre-trial review hearing on 29 September 2009m that the other lessees would be recognised as parties, but it appears not to have been made explicit that the other lessees should request should be to be joined as parties to the application, and not simply indicate that they wanted Mr. Broadbent to represent their interests. Thereafter, the directions given on that date or at anytime after do not acknowledge any of the other lessees as parties to this application. This leaves any of the other lessees free to make a similar application to the Tribunal, although no doubt all parties will have regard to this Tribunal's decision in that process. In any event, costs of this litigation, if provided for by the

lease are added to the service charges as a whole and payable by all and not a single lessee, unless the Tribunal exercises its discretion not to allow such costs added to the service charge pursuant to the provisions of section 20C of the Landlord and Tenant Act 1985.

8. At the hearing, Mr. Broadbent told the Tribunal that he had received the section 20 notices sent on 19/3/07 and 22/1/08. The delay between the two notices being sent was at the lessee's request and occasioned by their attempt to enfranchise. It was said that In October 2008, the Right to Manage had been granted to the lessees. Mr. Broadbent repeated what he had said in his written statement and reiterated that although he accepted he had a liability to pay service charges, the amounts charged were unreasonable. He queried only the £3,805.45 surveyors' fees (including VAT), to which was added 10% for managing agent's fees although this had originally been shown as 8%.

9. Mr. Broadbent asserted that calculated on a per hour basis Mr. Broder's fees should more reasonably total £1,500 as quoted to him when he made an anonymous enquiry, or £2,468 plus VAT based on the hourly rate quoted by Mr. Broder.

The Respondent's Case:

10. In a written statement made by Mr. Mendelsohn on behalf of the Respondent, it was said that Ord Carmell Kritzler (OCK) were engaged in 2007 to carry out a survey and prepare a specification of works required to the exterior of the building. The terms of their instruction were set out in a statement of Mr. Broder of OCK. The invoice submitted by OCK to RAM dated 7 April 2008 for these works was settled on 4 September 2008. Copies of an invoice dated 19 July 2008

to a lessee were provided to the Tribunal as well as a document detailing how fees are calculated by OCK.

11. In a written statement, Mr. Broder attached a scale of fees he had previously advised to the Respondent, as OCK had previously carried out work for them. He stated he had inspected the subject building and drew up a specification of works. Section 20 notices were served on the lessees and various communications were had with the lessees. The works were sent out to tender and the lowest tender chosen. On April 7, 2008 an invoice for on account fees was submitted which were calculated at 11.5% of the cost of the works tendered for £56,325.00 which comprised 10% for the main works and 1.5% in respect of CDM (Construction Design & Management Regulations). and therefore the total fees amounted to £6,477.38. As per the scale of fees, a 1/3 of the fee was due on completion of the Schedule of Works amounting to £2,159.12. A further 1/6 of the total fee was due on receipt of the tenders amounting to £1,079.56. The total fees amounted to £3,238.68 plus VAT of £566.77. No additional fees were charged for service of the section 20 notices or correspondence entered into.

The Tribunal's Findings:

12. The Tribunal finds that the surveyor's fees were reasonably incurred to the extent that they were entitled to charge 10% of major works over £20,000, and the work required of OCK was reasonably carried out. However as no CDM work was carried out this 1.5% is disallowed. Further, the Tribunal finds that the costs incurred in respect of surveyors fees have been reasonably incurred and properly demanded, whether demanded in July 2008 or May 2009. Therefore, the Tribunal finds that the final bill due from the lessees in respect of the surveyor is £3,309.09 inc. VAT. Further, the Tribunal finds that the managing agent fee of 10% is within the range of what is considered

reasonable for the work carried out and the Tribunal allows the sum of £281.62 being 10% of the adjusted surveyors fees before VAT. The Tribunal considers it unreasonable for the managing agent to seek to charge a 10% fee on sums that are inclusive of VAT and therefore, makes this adjustment accordingly.

Costs:

13. In so far as the lease does allow for the recovery of legal costs, the Respondents' costs of this litigation are recoverable through the service charge. However, the Tribunal exercises its discretion pursuant to section 20C, and determines that in all the circumstances of this matter, including the past history between the parties, which has led to the lessees acquiring the right to manage. The Tribunal therefore directs that the costs of this litigation are not to be added to the service charge. Further, in light of the decision the Tribunal does not direct the reimbursement of the Applicant's fees.


Chairman : LM Tagliavini:

Date: 1 March 2010