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MAN/00BN/LSC/2010/0074

4, COLLEGE VIEW, 107, HAZELBOTTOM ROAD, MANCHESTER, M8 0GQ

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

Applicant:	Mr Arif Mehmood
Respondent: Represented by	BDW Trading Limited Premier Estates Limited
Application:	29 June 2010
Inspection:	8 November 2010

Members of the Leasehold Valuation Tribunal:

Mr. P. W. J. Millward. (Chairman)
Mr. D Pritchard.

The Application

1. By an application dated 29 June 2010, the Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of 4 College View, 107, Hazelbottom Road, Manchester M8 0GQ (the Property). The Applicant is the lessee of the property under a lease for 155 years (the Lease) granted to him on 17 December 2009 by the freeholder BDW Trading Limited (BDW). The management of the flat (together with all other flats in the same block) has since been transferred to Premier Estates Limited (Premier). The application relates to a demand in respect of the year commencing 1 March 2010 and ending on 28 February 2011 for the sum of £810.00 being the Applicant's share of the total estimated cost for the maintenance of the block of flats in which the subject property is located (the Advance Payment), including:-

   Gardening, Cleaning, Caretaking, Window cleaning, Water, Electricity, Repairs and Maintenance, Lift repairs, Cyclical maintenance fund, Sinking fund, Audit and accountancy,, Bank charges, Health & safety, Out of hours emergency cover,, Building and public liability insurance, Statutory

engineering insurance, Directors' and officers' liability insurance, Management fees, miscellaneous expenditure and VAT.

Pursuant to an appointment attended by both parties a procedural chairman issued directions to the parties on 16 September 2010 requiring the Respondent to file and serve a Statement of Case in reply to the application and that the Applicant may make a Statement in reply and confirmed that the matter would be determined without a hearing unless either party requested a hearing within 14 days of the date of the Directions. Neither party requested a hearing. Both parties made written Statements and the matter was thereafter set down for inspection and determination on 8 November 2010.

The lease

2. Clause 4.1 of the lease includes a covenant by the lessee to observe and perform the obligations on the part of the lessee set out in parts 1 and 2 of the 8th schedule of the Lease and all covenants and stipulations contained or referred to in the charges register of (title number GM627446) so far as the same relate to or affect the demised premises (other than any overriding rent) and further to observe and perform the obligations on the part of the lessee set out in part 2 of the said schedule.

3. The covenants in part 1 of the said schedule include (inter alia) covenants to pay the yearly rent reserved by the Lease(clause 1) and to pay to the lessor or its authorised agent the Advance Payment and the lessee's proportion in the manner and at the times provided for in the lease (clause 2) and to pay the initial annual sum and annual sum on the due date (clause 3). In clause 6 of the 7th schedule the Advance Payment is stated to be £810.00 and in clause 7 of the said schedule the advance payment is payable by 2 equal instalments on 1 September and 1 February in each year. By clause 5 of the said schedule the lessor must serve a certificate in writing signed by a director or its secretary setting out details of the Advance Payment and the lessee's proportion thereof.

4. In the particulars at the commencement of the lease it is stated that the part A proportion (estate costs) and part B proportion (internal common area costs) shall be 1.786% and 3.571% respectively (although the said proportions may be varied in accordance with the provisions set out in clause 6.9 of the lease).

The Law

5. Section 18 of the Landlord and Tenant Act 1985 (the Act) provides:

(1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 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 of works only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

Section 27A provides 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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The inspection

6. The Leasehold Valuation Tribunal (the Tribunal) inspected the Property and surroundings in the presence of the Applicant's wife on the morning of 8 November 2010. The Respondent was represented by two members of its team. The property is a ground floor, two bedroom flat with a combined living room and kitchen, an en-suite shower room off the master bedroom and a bathroom/w.c. The block in which it is located comprises 16 apparently similar flats over 4 floors and is one of 2 similar blocks on the estate.

The facts

7. On or about 1 March 2010 BDW appointed Premier to manage the estate built by it at Hazelbottom Road and as from that date Premier assumed responsibility for management of the building in which the Property is situate. However only management of one of the blocks of flats and the immediate surrounding area have been included in the appointment and the other areas in the estate such as the car parks and the second block of flats remain the responsibility of the BDW. The part of the development included in the appointment is delineated on a plan provided by Premier at 10.1 of its bundle of documents, although it became clear during the inspection that the appointment also included the bin and cycle sheds which were both outside the area delineated on the said plan.

8. Shortly after its appointment Premier prepared and submitted to the Applicant (and presumably the other lessees in the same block) a statement showing that the Advance Payment for the period of 12 months commencing on 1st March 2010 would be in the sum of £810.00. This total figure was broken down into constituent parts, including management fees. Although the statement included prospective work to both the adopted block and that which was yet to be adopted (28 units in all) Premier collect contributions from only those flats in the adopted block and therefore payments received were on account of the adopted block only.

9. Thereafter the Applicant entered into correspondence with Premier in relation to its demand, stating (inter alia) that he should not pay for the maintenance of the lift and upper common areas as he did not use them and that the management fees were excessive. Premier responded to this

correspondence by referring the Applicant to his lease and requesting payment. From the contents of the Applicant's application form, Premier also wrote to the Applicant's mortgagees confirming the payments due under the Lease were outstanding.

10. As the Applicant felt that no progress was being made as a result of that correspondence, he submitted his application to the Tribunal.

The submissions of the parties

11. The Applicant's statement includes (inter alia) the following submissions. That

11.1 the electrical element is very high and unreasonable.
11.2 The lift repairs and maintenance element is unnecessary and unreasonable.
11.3 The repairs and maintenance element is highly unreasonable for replacing
general items such as light bulbs
11.4 The cyclical maintenance fund is unreasonable and unnecessary as the building
is brand new and insured for the next 10 years by NHBC.
11.5 The sinking fund element is unreasonable, again because the building is brand
new and major works will not be necessary for many years
11.6 The audit and accountancy charge is unreasonable and unnecessary, as is the
bank charges element, as these should be included in management fees.
11.7 The provision of out of hours emergency cover in unreasonable and unnecessary
as there is already a repair and maintenance fee of £2,760.00.
11.8 The statutory engineering insurance is unnecessary as it is for inspection of the
lift which he does not use.
11.9 The management fee is very large and very unreasonable (Applicants
underlining) and that he would accept paying a proportion of it.
11.10 The miscellaneous element is unnecessary and that he does not know what it is
for.
11.11 That the demand included expenditure on the the block not yet maintained by Premier.

12. The Applicant further submitted that as his flat was on the ground floor he did not use the lift, stairs or other common areas (other than the ground floor access passage from the back entrance to the building) and should not have to contribute to the cost of maintaining or repairing these parts.

13. Premier in reply submitted a substantial bundle of documents to rebut the Applicants own submissions, including a resume of its understanding of the Applicant's case, its own statement of case, a statement of its understanding of the Law, its conclusions and comments on the application for an order under s20(C) and an application for an order for a contribution to its own costs. The case put forward by Premier need not be set out in details here as the same has been copied to the Applicant, who therefore has full knowledge thereof, but the following are the submissions which the Tribunal consider of most importance

    13.1 The Applicant has an obligation to pay the Advance Payment under the terms of

the Lease. He covenanted at clause 4.1.1 and paragraph 2 of the 8th schedule to pay the same. Furthermore the amount of the Advance Payment is clearly set out at paragraph 6 of the 7th schedule of the Lease, and therefore the amount could not have come as a surprise to the Applicant.

13.2 The Applicant's application is both misguided and premature.

13.3 Under section 19 of the 1985 Act service charges are limited to the extent that

they are reasonably incurred and the services or works to which they relate are of a reasonable standard. There is no provision within the 1985 Act or any other legislation for a lessee to challenge, or for the Tribunal to determine, whether it is reasonable for a lessee to contribute toward the relevant cost.

13.4 There is no case to plead in respect of expenditure on electricity, lift repairs and maintenance and statutory engineering insurance as a result.

The Tribunal's determination

14. The Tribunal considered very carefully the written submissions of the parties and also took into account its own expertise. It is not disputed that Premier were entitled to submit the request for the Advance Payment – only whether or not the Applicant was able to challenge its reasonableness and his liability towards all or only part of it.

15. The issues to be determined therefore are (a) is the demand for the Advance Payment valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent if any the Applicant should pay towards the same.

16. The Tribunal determined that the request for the Advance Payment is fully in accordance with the terms of the Lease and the items of expenditure referred to therein are all payable by the Applicant under the terms of his lease.

17. The Tribunal further determined that the request is for a sum stipulated in the lease and accordingly the Tribunal is not able to determine whether or not the same is reasonable. A request for such a determination should only be made after the expenditure has been incurred – not when the request is for a payment (a) based upon estimated expenditure and (b) in accordance with the terms of the lease under which it becomes payable.

18. The application is therefore dismissed.

19. The Applicant also asked the Tribunal to make an order under s20C of the 1985 Act to restrict the Respondent from adding its costs to the service charge. The Tribunal determined that it would make the order asked for.

Costs

20. The Tribunal is also asked by Premier to make an order that the Applicant should pay a contribution of up to £500.00 toward its costs upon the basis that the application is frivolous, vexatious and/or an abuse of process.

21. The Tribunal does not find that the application (although premature) is either frivolous, vexatious or an abuse of process and accordingly makes no order as to costs.

Mr Paul Millward
Chairman

10th November 2010