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MAN/00BY/LSC/2010/0072

LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTHERN RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985  
SECTIONS 27A AND 20C  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002  
SCHEDULE 11 PARAGRAPH 5

Property: Apartment 26, Springhill Court, Wavertree, Liverpool L15 9EJ

Applicant: Blue Coat Court Management Company Limited  
Represented by: JB Leitch & Co Solicitors

Respondent: Ms Paula Swards  
Represented by: Brown Turner Ross Solicitors

Hearing Date: 8 October 2010

Tribunal: Mrs E Thornton-Firkin  
Mr I James

**Background**

1. Following a consent order before District Judge Masheder in Liverpool County Court on 3 June 2010, it was agreed that the applicant's claim and respondent's counter-claim were stayed and transferred to the Leasehold Valuation Tribunal (LVT) pending the LVT's decision.
2. The LVT was asked to determine items of the service charge for the years 2008, 2009 and 2010 and an administration charge in the year 2008.

3. The LVT issued directions on 29 July 2010. The applicant was to produce documents within 21 days together with a statement of case. The applicant complied with the directions.
4. Within 21 days following, the respondent was to produce a statement of case identifying the items within the service charge which were disputed. The respondent did not comply until the afternoon before the hearing which did not give the applicant any chance to comment on the respondent's case as allowed for in the directions. The last minute compliance by the respondent in producing the statement of case appeared to narrow the issues.
5. It was established at the outset of the inspection which matters were in dispute in order to limit the LVT's inspection. These items were the management charge, window cleaning, gardening and insurance costs. These had been listed in the respondent's defence and Part 20 claim to the County Court which the applicant had provided in their submission.

### **The Inspection**

6. The development consisted of part of the buildings of the Bluecoat School which had been adapted into apartments together with a block of new build flats. There was shared access between the school and the development to the car park in which the school had some allocated spaces.
7. The LVT inspected the grounds to ascertain the extent of the landscaping and planting to be maintained. They were shown the area of grass in front of the respondent's apartment, which the respondent stated had not been cut until April 2008. The subject apartment in the adapted block was on the ground floor with access from a central courtyard. It faced the new build block which had been built since the respondent bought the property. The apartment had windows to the courtyard and also overlooking the area of grass.

### **Lease Terms**

8. Under the terms of the lease, the respondent agreed to pay 2.1814% of the development expenses and 1.667% of the parking expenses.
9. The disputed items were contained within the development expenses which were defined as the monies actually expended or reserved for periodical expenditure by or on behalf of the lessor or management company in carrying out the obligations in Part 1 of Schedule 5. Schedule 5 included insurance, cleaning the external faces of all windows and tending and renewing any lawns, flowerbeds, hedges, shrubs and trees. It also included the obligation to generally manage and administer the development and employ a managing agent for the purpose.

## Law

10. Section 27A (1) of the Landlord and Tenant Act 1985 provides that "an application may be made to an LVT for a determination whether a service charge is payable and, if it is, as to ..... the amount which is payable".
11. Section 27A (3) provides that an application may also be made "if costs were incurred....."
12. Section 18 (1) states that "service charge" means an amount payable by a tenant.....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

Section 18 (2) states the relevant costs are the costs.....incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable
13. Section 19 (1) states that "relevant costs should be taken into account in determining the amount of the 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....., only if the services...are of a reasonable standard.and the amount payable shall be limited accordingly"
14. Section 19 (2) states that, "where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".
15. Section 20C (1) states that "a tenant may make an application for an order that all or any of the costs incurred.....by the landlord in connection with proceedings before a LVT.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant."

## Hearing

16. The applicant was represented at the hearing by Mr H Derbyshire of Counsel, J B Leitch & Co Solicitors. Mr B Spray and Mr L Ingram of Mainstay, the managing agents. The respondent was accompanied by Mr F Taff and represented by Mr T Marriott of Brown Turner Ross.
17. The items in dispute were confirmed by the parties and were confined to the service charge years of 2008, 2009 and 2010. The LVT was not asked to confirm the reasonableness or payability of any other item as these were already agreed between the parties. It was also agreed by the parties that the items in dispute were all payable within the terms of the lease but the amount charged and provision of the services was not agreed.
18. With regard to management charges Mr Derbyshire stated that the management fee which Ms Swards had to pay her proportion was £10,550.00 for the year 2008, £10,746.00 for the year 2009 and £11,420.00 for the year 2010. An enhanced management fee had been charged to each leaseholder in their initial service charge year which Ms Swards would have paid before the year 2008 and therefore the matter was not before the LVT.
19. It was explained by the applicant that the management contract was for three years with a break clause each year. The fees were based on an initial £200.00 per unit plus VAT with an indexed uplift each year. This gave the amounts charged as £230.00 for 2008, £234.00 for 2009 and a budget amount of £249.00 for 2010.
20. Mr Marriott's evidence was that the management fee was an excessive proportion of the overall cost of the service charge amounting to about 33%. Although she had no comparable evidence to put forward Ms Swards thought the fee should be about 10% to 12% of the cost of the services based on her experience of other properties she let.
21. The window cleaning and gardening items were dealt with together. Mr Derbyshire gave the figures for the three years window cleaning as £4175.00, £1612.00, £2000.00, which amounted to a payment for Ms Swards of £91.00, £35.00 and £44.00 He said that the windows had been cleaned monthly in 2008 and after a new contract had been made the frequency was reduced to quarterly in the following year. Ms Seward contended that the windows had never been cleaned before she moved out of the flat at Christmas 2008 except on the 9<sup>th</sup> May 2008.

22. With regard to the gardening Ms Swards' contention was that the lawn on the Prince Albert Road side of the apartment had not been cut until April 2008 and because the Management Company had not complied with the terms of the lease and maintained the lawn, she was unable to find a tenant for her apartment. The applicant had not established its liability to maintain the lawn until early that year. When the applicant had agreed its liability with the school then the lawn was cut and the cost of maintenance was increased by £100.00 per cut. Mainstay stated at the hearing that Ms Swards had not been charged until the cost was incurred. Ms Swards said that she had known that she was not being charged. The invoice in the applicant's bundle first showed this charge for the period 25<sup>th</sup> June 2008 to 24<sup>th</sup> July 2008. Ms Swards contended that despite the applicant's dispute with Bluecoat the lawn should have been cut to comply with the terms of her lease.
23. The respondent had insured the property in two parts covering the buildings and terrorism. The premiums had been subject to market testing by a broker. Mainstay received commission on the premium for which they carried out the administration of the policy. Mr Spray was unable to give the amount of the commission received. The policy was part of a block policy and was indexed.
24. The insurance premium was renewed from 1<sup>st</sup> November each year and the premiums together added up to £12,220.00 in 2007, £14,146.00 in 2008 and £14,862.00 in 2009. The amounts for insurance shown in the accounts were £7,511.00 for the buildings and £1,168.00 for terrorism in 2008, £12,913.00 for the buildings and £1,199.00 for terrorism in 2009 and £13,600.00 for the buildings and £1,280.00 for terrorism for 2010.
25. The sum insured for 2009 was £17,067,164.00 rising from £16,458,210.00 the previous year by indexation. Mainstay's evidence was that the amount insured was based on the valuation by the developers on the completion of the works. Mainstay had a policy of revaluation every 5 – 7 years.
26. Ms Swards had obtained a quotation of £5,466.00 from her broker in March 2010. The sum insured was £4,500,000.00 but no terrorism insurance was included in the cover. The sum insured had been estimated by the insurance company and the respondent objected to "the excessive creeping sum insured".

27. The applicant put forward administration costs for the LVT's consideration of £3.00 Land Registry administration fee and £79.25 for the solicitor's referral and Land Registry fee to be paid by the applicant.
28. The applicant also asked the LVT to consider that the respondent should refund the application and hearing fees to the applicant.

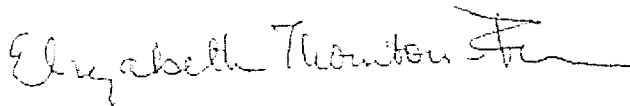
### **Decision**

29. The LVT considered the items in dispute, the first of which was the management fee. They considered that the development was reasonably easy to manage. The applicant's evidence was that, apart from Ms Swards, the lessees had not complained. The LVT considered the issues raised by Ms Swards concerning the lawn and the window cleaner should have been dealt with when they occurred. The lawned area which was not mown was within the area defined as the development in the lease and as such it was the lessor's duty to maintain.
30. While the LVT accepted that it is good management practice to deal with outstanding debts promptly, procedures should be in place where genuine grievances can be dealt with, especially where specific amounts are being withheld for services not carried out. Ms Swards' letters of complaint should have been dealt with by the management company before taking her to the County Court. There appeared to be a lack of communication between the accounts' department and the on-ground management parts of the company.
31. The LVT limits the amount payable by the respondent for management fees for each of the three years to £150.00 + VAT.
32. Following Ms Swards' evidence concerning the amount of window cleaning, the LVT were conscious that she could not be there all the time to check that it was being carried out especially after the property was tenanted. The LVT looked at the invoices provided especially at the period of change-over from monthly to quarterly cleaning. The change of contract between 2008 to 2009, when the window cleaning was reduced, showed a gap of underlying invoices between September 2008 and April 2009. The invoices amounted to £3,419.25 for the year 2008 and to £1,500.00 for 2009. The LVT limits the amount payable to these figures. For the year 2010 the LVT accepts the budget figure of £2000.00

33. With regard to the landscaping, the respondent's argument with the landlord is centred on the lawn not being cut. The respondent is not being charged for cutting when the work was not carried out. The LVT finds that the landscaping charges are both reasonable for what was carried out and payable by the respondent but have no jurisdiction concerning any loss which Ms Swards considered she suffered while the lawn was being cut.
34. The LVT considered on looking at the cover notes and the quotation for insurance provided by Ms Swards that, excluding the terrorism cover, the rates and terms used to produce the premium were within the same range as the insurance provided by the respondent. The dispute between the parties which produced the large discrepancy of premium was the building sum insured, that is in 2009/10 between £4,500,000.00 quoted by Ms Swards and £17,000,000.00 insured by the respondent. The LVT considers the figure to be somewhere between the two but without further evidence cannot give a precise figure they would consider appropriate.
35. Mainstay could not be criticised for erring on the cautious side and using the valuation figures given by the developer, but the LVT would expect that a correct valuation would be carried out sooner rather than later. The LVT accepts Mainstay's evidence that they do receive commission to carry out the administration of the policy and the processing of claims for the broker. Without any evidence of the amount, the LVT cannot say that the amount of commission was unreasonable.
36. The LVT determines that the insurance premiums are reasonable and payable.
37. The LVT decided the administration costs of £3.00 and £79.25 are not payable by Ms Swards because, had Mainstay responded to her letters, it was probable that the court proceedings for non-payment of service charge would not have occurred.
38. With regard to the repayment by the respondent of the fees to the LVT incurred by the applicant, the LVT took into account the outcome of these proceedings. The respondent had succeeded in part only but had the management issues been resolved it was probable that the action would not have occurred and therefore the LVT does not order repayment.

**Order**

- 39. The LVT orders that the amounts to be paid by the respondent in respect of the management charges will be limited to £150.00 + VAT in the years 2008, 2009 and 2010.**
- 40. The LVT orders that the amounts to be paid by the respondent in respect of the window cleaning charges are limited to 2.1814% of £3,419.25 for 2008 and £1,500.00 for 2009 and £2000.00 for 2010.**
- 41. The respondent will not be liable for the administration charges of £82.25 or a repayment of the LVT fees to the applicant.**



Mrs E Thornton-Firkin  
Chairman  
3 December 2010