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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In Applications under Sections 27A and 20ZA of the Landlord and Tenant Act 1985

Case Number:	CHI/21UD/LSC/2012/0031
Property:	9 Mount Pleasant Road
	Hastings
	TN34 3SB
Applicant:	Braear Developments Limited
Respondents:	Lee Miles
	Samuel Marcus Pannett
	Andrew Graham Buck
Appearances:	Mr Pain of Counsel for the Applicant
	Mr A Pannett for Mr S Pannett
	Mr Buck
Date of hearing:	15 May 2012
Tribunal:	Mr A G Johns MA
	Lady Davies FRICS
	Mr S Lal LLM

Introduction

1. The Tribunal heard two applications dated 20 February 2012 made by the landlord Braear Developments Ltd ("Braear"):

1.1 To determine the tenants' liability for service charge for the year ended 23 November 2011.

1.2 To dispense, if necessary, with the consultation requirements in s.20 of the Landlord and Tenant Act 1985 ("the 1985 Act").

2. The applications concern a building known as 9 Mount Pleasant Road, Hastings TN34 3SB which comprises 3 flats. Works of exterior decoration and repair were carried out in the summer of 2011. Mr Miles, Mr Pannett and Mr Buck are the tenants of flats 1, 2 and 3 respectively. Braear's demand for service charge included the cost of works and associated professional fees. Mr Miles paid before the hearing of the applications. Mr Buck and Mr Pannett (together "the tenants") disputed the demands on the bases that the consultation requirements had not been met and that the sums were unreasonable.

Jurisdiction

3. The Tribunal has jurisdiction to deal with these applications. By s.27A of the 1985 Act the Tribunal may determine whether service charge is payable and in what amount. By s20ZA of the 1985 Act the Tribunal may dispense with all or any of the consultation requirements where it is satisfied it is reasonable to do so.

Issues

4. The issues which arose can be summarised as follows:

4.1 Was the sum of £5628 for the cost of exterior decoration and repair work unreasonable because not all of the specified work was carried out?

4.2 Was the sum of £900 representing the surveyor's fee associated with the works unreasonable because either (a) the surveyor failed to spot that not all of the specified work was carried out, or (b) it represented more than 15 percent of the cost of works?

4.3 Was the description of the works in the notice of intention dated 24 January 2011 or available for inspection sufficient to comply with the consultation requirements?

4.4 If not, is it reasonable to dispense with such requirements?

Facts

5. The background facts giving rise to those issues were not in dispute.

6. A notice of intention to carry out work dated 24 January 2011 was sent out to the tenants. Paragraph 2 of the notice was in these terms:

"The works to be carried out under the agreement are as follows:

Exterior Redecorations and Minor Repairs.

The description of the works to be carried out under the agreement may be inspected at 36 Norman Road, St Leonards on Sea at the following times by appointment:

Mondays, Tuesdays, Wednesdays, Thursdays between 10am and 1pm and between 2pm and 3.30pm".

7. Mr Buck went to inspect the description of works at 36 Norman Road, being the offices of Dawson, Harden & Tanton as managing agents for Braear. What he found was an 18 page document which, though titled as a "specification", comprised only standard instructions to contractors. There was no schedule of works, only the following description:

"The works comprise minor external repair to all elevations, together with external redecoration to a property known as:

9 Mount Pleasant Road, Hastings, East Sussex".

8. Mr Buck wrote to the agents for Braear on 19 February 2011 to the effect that there was no description, that the notice of intention was therefore invalid and requesting a schedule of proposed works. He added "I will then require a few days to respond" and requested an extension of the consultation period.

9. The specification including a detailed schedule of works was sent out to him under cover of a letter dated 24 February 2011. By such letter, the agents for Braear indicated that the consultation period would be extended a further seven days from the date of the letter.

10. There was then a handwritten letter from Mr Buck stamped received on 7 March 2011 by which he nominated a contractor, namely Ash Lee Designs, and asked Braear to consider carrying out additional works. The agents responded by letter of 16 March 2011 including by confirming that a quote would be sought from Ash Lee Designs.

11. Mr Buck's response came in a letter dated 26 March 2011 and included the following: "I am very happy with your arrangements".

12. A statement of estimates was sent out to the tenants on 12 May 2011. There were four estimates including from Ash Lee Designs. The lowest estimate was from Martin & Bowles Ltd in the sum of £6660 plus VAT.

13. In the correspondence which followed Mr Buck made clear he would not be paying on the bases that the sums were unreasonable and that the consultation requirements had not been met.

14. Works were completed by 20 October 2011 and demands for service charge made on the basis of an accountant's certificate which included the sum of £5628 for the cost of works and a surveyor's fee of £900 (being £750 plus VAT).

15. The leases of the flats in the building were in identical form. One such lease appeared in the documents before the Tribunal. No question turned on the provisions in the leases.

Inspection and hearing

16. The Tribunal inspected the property at 10am on 15 May 2012. It is a middle of terrace three-storey building c.1900. The external walls are rendered and painted under an interlocking tiled roof. To the front elevation is a three-storey bay. There is a two-storey back addition. The property fronts onto a busy road with double yellow lines prohibiting parking. Internal common parts are carpeted but very basic. An area of defective plaster was noted to the side of the front entrance door.

17. The parties drew the attention of the Tribunal to a soil pipe to which no works had been carried out, the extent of render repairs that had been done, and to a parapet wall where there was a dispute as to whether particular beading had been laid.

18. The hearing then took place at the nearby Horntye Park. Braear was represented by Mr Pain of Counsel instructed by Coole & Haddock. Mr Buck appeared in person. Mr Pannett attended but was represented by his father. The parties made submissions from the documents. Whilst Mr Pain sought to call a witness and to cross examine Mr Buck, the Tribunal did not adopt that course for reasons of fairness, relevance and proportionality. No witness statements had been prepared. And the only dispute of fact was as to whether particular beading had been laid to the parapet wall; an issue worth a maximum of £30.

Determination of the issues

Issue 1: Cost of works

19. The tenants' case as set out in a clear and concise written statement of case was that the sum of £5628 for the cost of exterior decoration and repair work was unreasonable because not all of the specified work was carried out. They relied on a short report from a surveyor, Mr Conlin. The schedule of work forming part of the specification included at item 3.3, 20 sq metres of render repairs. But only 15 sq metres of repairs had been carried out. Item 3.8 was the repair of a soil pipe. But no work had been done. Item 3.7 was works to parapet walls. But, Mr Conlin reported, "bell cast bead is missing". He attributed £30 to that item.

20. It was accepted by Mr Pain for Braear that not all the works in the specification had been carried out. It was correct that less render repair work had been done and that no works had been done to the soil pipe. But the case for Braear was that such works had not been charged for. Braear pointed to a final account dated 24 October 2011 signed by the contractor and Braear's surveyor. That document showed a deduction of £575 from the specification price for omitted render repairs and a deduction of £420 from the price in respect of the soil pipe. Mr Pain did not accept that there should be any deduction for any lack of bell cast beading.

21. By s.19(1) of the 1985 Act relevant costs shall be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred. Clearly they would not be reasonably incurred to the extent that they involved making a charge for work that was not done. But the Tribunal is satisfied that the sum of £5628 claimed does not include any charge for render or soil pipe repairs that were not carried out. Mr Buck accepted at the hearing, on being asked about the final account, that it did appear that deductions had been made from the price for those omitted works.

22. The Tribunal is not persuaded that a deduction needs to be made for beading work that was not carried out. Mr Conlin's report is very brief and refers to specific beading, namely bell cast bead. Such beading does not form part of the priced specification. No deduction therefore falls to be made even if it was not used.

23. The Tribunal therefore determines that the cost of £5628 for the works was reasonably incurred.

24. Whether the tenants are liable to pay their share of such cost by way of service charge therefore depends upon whether the consultation requirements have been met or, if not, whether it is reasonable to dispense with them.

Issue 2: Surveyor's fee

25. The tenants made two points as to why the sum of £900, being £750 plus VAT, was unreasonable as a surveyor's fee. First, no sum should be allowed to the surveyor because he failed to spot that some of the work in the specification had not been carried out. The Tribunal does not accept that point. The Tribunal has already determined that there was no such failure. Deductions were made for works not carried out. Second, that £750 represented more than 15 percent of the cost of the works before VAT.

26. Mr Pain for Braear accepted that the fee represented more than 15 percent of the cost of the works but argued that the sum was not unreasonable because it was a minimum fee. He relied on Atkinson Beeston's terms and conditions which provided on contracts of £0-£10,000 for a charge of 15 percent subject to a minimum fee of £750.

27. Both parties left it to the Tribunal to rely on its own expertise to decide whether such a minimum fee was reasonable.

28. The Tribunal considers that a fee of £750 is reasonable. The work which needs to be done by a surveyor on a works contract does not reduce significantly because the contract is worth £4000 odd instead of £5000. And so whilst a fee of £750 may represent a slightly higher percentage of the cost of the works that is not unreasonable.

Issue 3: Compliance with consultation requirements

29. The tenants' case on the alleged failure to meet the consultation requirements was set out clearly in a written statement of case. It was that the detailed specification of works was

not seen until 24 February 2011, well after the works referred to in the notice of intention dated 24 January 2011.

30. The relevant requirement is to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003, Schedule 4, Part 2 at paragraph 8(2)(a): "The notice shall – describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected".

31. Mr Pain for Braear highlighted the words "in general terms" and argued that the description on the face of the notice met this requirement. Failing that, the words in the document Mr Buck inspected at 36 Norman Road did so. The legislation does not require, he submitted, a detailed specification of works.

32. The Tribunal accepts that a detailed specification of works is not required. But it has found the question whether "Exterior Redecorations and Minor Repairs", or the similar phrase in the document Mr Buck inspected, meets the requirement to describe in general terms the works proposed a difficult one.

33. Construing the requirement in its context, the Tribunal considers that what is required is a description that enables tenants to make informed observations on the proposed works.

34. The words used in the notice of 24 January 2011 are, at the very least, sparse. And the notice does not appear to regard them as a description for the purposes of the regulations; indicating that the description can be inspected elsewhere.

35. But in the end the Tribunal has decided that the words used are just sufficient to meet the requirement. In view of the simple nature of this building the words give enough information to enable the tenants to make their observations. Whilst Mr Buck posed the question 'What if it were Windsor Castle?', it is not Windsor Castle.

36. It follows that the Tribunal determines that the consultation requirements have been complied with so that Mr Buck and Mr Pannett are liable for their share of the cost of works by way of service charge.

37. But having heard argument on the question of dispensation, the Tribunal has gone on to consider whether, if the words used did not meet the requirement, it is reasonable to dispense with such requirement.

Issue 4: Dispensation

38. The Tribunal is satisfied that it would be reasonable to dispense with the requirement so far as necessary. It has reached that conclusion for two related reasons.

39. First, even if the description in the notice of intention was not sufficient to meet the requirement, it at least represented some description. Indeed, it can only have fallen a little short. This limited extent of the failure to meet the requirement is a factor in considering reasonableness.

40. Second, the approach to the question of prejudice where there is a minor failure is as summarised in Stenau Properties Ltd v Leek [2010] UKUT 478 (LC) at para.22: "Where there has been a minor breach of procedure it will be important for a tribunal to find evidence that respondents were prejudiced or disadvantaged". The Tribunal was not able to find such evidence of prejudice. On the contrary, having received the detailed specification and been given the requested opportunity to comment Mr Buck wrote by his 26 March 2011 letter that he was "very happy" with the arrangements. Mr Pannett made clear at the hearing that that also represented his view.

Summary of the decision

41. The Tribunal therefore determines that:

41.1 The cost of exterior decoration and repair works in the sum of £5628 was reasonably incurred.

41.2 The surveyor's fee of £900 was also reasonably incurred.

41.3 The consultation requirements in s.20 of the 1985 Act were complied with.

41.4 If that were not the case, it would be reasonable to dispense with the requirements insofar as necessary.

41.5 Accordingly, Mr Buck and Mr Pannett are liable for the service charge as demanded for the year ended 23 November 2011.

Signed .....

Alan Johns (chairman)

Dated 24 May 2012