HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON MATTERS UNDER SECTIONS 20ZA AND 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AY/LSC/2012/0063 and LON/00AY/LSC/2012/0115
Premises:	86 Gleneldon Road, London SW16 2BE
Applicant (landlord):	Longmint Limited
Appearances for the Applicant	Ms Emma Louisa Thompson, Solicitor Thompson Allen LLP
Respondents (leaseholders):	Mr D Clarke-Joseph (Flat 1) Ms B Owuso (Flat 3) Mr Scott W Brown (Flat 2) – Respondent to the s.20ZA application only.
Appearances for the Respondents	Mr Clarke-Joseph and Ms Owuso in person
Leasehold Valuation Tribunal	Ms F Dickie, Chairman Mr A Manson, FRICS Ms S Wilby
Date of Hearing	26 April 2012
Date of Decision	12 June 2012

Decisions of the Tribunal

1. Estimated service charges of £7338.02 for the major works are reasonable and payable. On the application under s.20C the tribunal:

    a. Makes no order in respect of the s.27A application transferred from the County Court

    b. Makes an order in favour of all three Respondents to the S20ZA application.

Preliminary

2. The Applicant is the freehold owner of the block known as 86 Gleneldon Road, London SW16 2BE ("the Building"), which is a period house comprising of 3

flats all the subject of similar long leases. The Respondents are the lessees of flats 1 and 3, being two of the three converted flats in this three storey detached house of traditional construction built circa 1900. The building is of solid brickwork now with spardash rendered finish and having stone details and pitched concrete tile covered roof. Original doors and windows are of timber section, though several windows have now been replaced with pvc-u units.

3. A claim number IBN03661 was issued in the Brighton County Court against Mr Clarke-Joseph for recovery of:

    a. service charges £7338.02

    b. ground rent £125.00

    c. Legal Costs £120

    d. Plus legal costs on the claim and interest.

4. Proceedings in respect of the same arrears of service charge were also issued against Ms B Owuso (Claim number 1BN03662). The service charges claimed are in respect of the estimated costs of proposed major works. Mr Clarke-Joseph defended the claim on the ground that the works are neither urgent nor detrimental to health and safety, and none of the leaseholders in the building had requested them. The claims were transferred to the Croydon County Court. It was ordered on 31 January 2012 by District Judge Bishop that:

        i. "The matter be consolidated with claim number 1BN03662 on the basis that the claims arise from the same set of circumstances

        ii. The matter be transferred to the London Leasehold Valuation Tribunal for a determination of the service charges payable.

        iii. The Claimant's claim for ground rent remains within the jurisdiction of the County Court but is stayed pending the determination of the LVT as to the reasonableness of service charge"

5. The tribunal issued directions on both transferred applications after an oral pre trial review on 21 February 2012. The tribunal did not require the production of expert witness reports. The claim in respect of legal costs of £120 is for an administration charge and not a service charge, and was not therefore transferred to the LVT for determination by the County Court Order.

6. Until 31 July 2009 the Applicant's managing agent was Residential Management Group Limited. The Applicant went into administration on 24 January 2012. Price Waterhouse Cooper has been appointed as administrators. They have instructed solicitors to continue with the proceedings. Those instructions have been transferred from Juliet Bellis & Co. to Thompson Allen LLP.

The Hearing

7. The leases for flats 1 and 3, commencing 22 July 1996 and 26 September 1996, respectively were produced to the tribunal and are in the same terms in all material respects.

8. Mr Clarke-Joseph applied at the start of the hearing for an adjournment on the ground that the Respondents needed time to pursue the purchase of the freehold of the building or the right to manage. Though he said he had not received the hearing bundle, he acknowledged it contained only previously disclosed material apart from the Applicant's statement of case, which he was given time to consider. The tribunal had received the bundle a few days prior to the hearing and Ms Thompson said it had been sent to Mr Clarke-Joseph at the same time, who expressly confirmed he did not seek an adjournment on the ground of its late service.

9. The tribunal took time to consider the adjournment request and refused it for the following reasons. Regulation 15(2) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 provides:

   "Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –

   a. The grounds for the request
   b. The time at which the request is made; and
   c. The convenience of the other parties."

10. The tribunal finds there would be cost and inconvenience to the parties if the hearing was adjourned. The Applicant's statement of case did not contain any surprises and the tribunal considered that it could fairly determine the application, notwithstanding its late receipt, which did not cause prejudice to the Respondents. Mr Clarke-Joseph did not suggest that the Respondents needed time to consider whether further evidence was required in light of the contents of the Applicant' s statement of case. The adjournment was only sought on the ground of pursuing the purchase of the freehold of the building or the right to manage. Those are avenues which it had been within the power of the Respondents to investigate for a considerable time, and which they may still explore. These proceedings were issued on 7 December 2011 and must be resolved in a reasonable time. If the freehold or right to manage is to be acquired, it may in any event still be achieved before these works are carried out. In all the circumstances the tribunal found it was not reasonable to adjourn.

Applicant's Case

11. By Clause 8(a) of the leases the Respondents have covenanted to pay the Applicant a proportionate part of the sums incurred in carrying out its obligations in Clause 3 and in particular Clause 3(a) to maintain the Building, by which the lessor covenants "To maintain in good and substantial repair and condition the main structure and the roof (hereinafter defined) of the Building".

12. It was the Applicant's case that the Building is presently in need of maintenance: the bay roof required repair, defective rendering and rainwater goods require replacement, lead waste need maintenance, guarding to rear steps needs to be installed, the basement light well requires work and part of the boundary requires rebuilding. The building was also said to require general redecoration, and all of the work was intended to form part of a major works project. The demand for payment of £7,213.02 dated 1 April 2011 was on account of the costs involved.

13. Ms Thompson explained that the Applicant had sought to carry out works to the building in 2008, but the project was abandoned because of the lessees' objections. The Applicant did not consider it would be prudent or good estate management to leave the work outstanding for longer.

14. The tribunal heard evidence from Mr A Sullivan, from South East Property Services, the managing agent. He said that in response to objections from the leaseholders he had spoken to the surveyor about splitting the works into smaller projects, but he had said this would lead to rise in prices and not cost effective.

15. The Applicant produced evidence of the section 20 consultation procedure carried out, as follows:

    a. Notice of intention 25 May 2010. The Respondents did not nominate a contractor to tender but did make observations, which were considered and responded to.

    b. Statement of Estimates with summary of observations 23 November 2010

    c. Notice of reasons 13 July 2011

16. Stiles Harold Williams Building Consultancy had been instructed to prepare the schedule of works and tender documents, which were produced to the tribunal. The lowest priced estimate (from Mapleleaf Projects Limited) had been accepted. The tender report was produced. The estimate was £15958 plus 10% surveyor's fees, planning supervision fees for the managing agent at 3% and VAT, total £21639.04 of which each lessee was to pay one third. Mapleleaf having become insolvent, however, the Applicant now intended to award the contract to Ingenious Developments Limited, that company having offered to adhere to the Mapleleaf quotation plus 5%. A notice of reasons would be served after the contract is entered into.

17. In response to an objection raised by the Respondents to the reinstatement of the front right boundary wall, Ms Thompson said that this was the responsibility of the Applicant and the surveyor could comment on whether it should be reinstated.

Respondents' Case

18. The Respondents wanted the works carried out in a more planned and affordable way. Mr Clarke Joseph had purchased the property 15 years ago and had since then been charged around £1000 per year for service charges. He observed that the landlord had therefore received about £45,000 from all of the lessees, but no repairs or maintenance had been carried out.

19. Mr Clarke-Joseph could not recall receiving the unsigned notice of intention. He believed the works could be cut up into sections using smaller scaffolding / a tower. He did not propose how the works could be split. He observed that the landlord company and its managing agent South East Property Services have directors in common with each other and with the landlord's former solicitors, and disputed that the management charges were reasonable.

20. Mr Clarke-Joseph also made a number of objections to items on the schedule of works:

    a. The cost of redecoration was unreasonable, since the pebbledash was not to be painted. The quoted price of £4100 should include the cost of scaffolding in his view.

    b. He objected to expenditure on reinstating the unnecessary boundary wall, which had been absent at the front right of the house for the last 10 years. When present, people had used it to sit on while waiting at the bus stop outside.

    c. A charge of £50 for gaining access to the flats was unreasonable.

    d. He calculated rendering was £130 per square metre. He had not obtained his own quotes.

21. Mr Clarke-Joseph said that the contractors had not inspected but had simply quoted on the basis of the specification produced by the surveyor. He made reference to an earlier specification of works by Stiles Harold Williams in 2008 and the tender obtained on it from Mapleleaf. He said there had been additional items not repeated in the new schedule, including internal redecorations. In retendering, Mr Clarke-Joseph believed that Mapleleaf had not inspected the building again, since they had not sought access through the padlocked side gate and only the tenants had the key. He did not therefore consider the quote had been well informed.

Section 20ZA application

22. The notice of intention dated 25 May 2010 was acknowledged on behalf of the Applicant at the hearing to have been defective because it gave the wrong date for the end of the relevant period for receipt of observations. Consultation took place under Schedule 4, Part 2, of the Service Charges (Consultation etc.) (England) Regulations 2003, Paragraph (2)(d)(iii) of which requires the notice of intention to specify "the date on which the relevant period ends". The relevant period is defined as 30 days beginning with the date of the notice. In the notice, the relevant period is stated to end on 22 June 2012, but this was 28 days from the date of the notice.

23. The Applicant applied on 26 April 2012 for an order under section 20ZA of the Act dispensing with the defect in consultation. That application, as well as the directions of the tribunal issued the same day, was served on the leaseholders including Mr Scott W Brown, the leaseholder of Flat 2 in the subject premises. He had made written objection to the application.

24. The Court of Appeal in *Daejan Investments Ltd v Benson and Others* [2011] EWCA Civ 38 has considered that the following factors are relevant to the Leasehold Valuation Tribunal's exercise of its discretion under s.20ZA(1) to dispense with statutory consultation:

    a. The financial effect of the grant or refusal of dispensation is an irrelevant consideration when exercising the discretion.

    b. all other things being equal, the following situations might commend the grant of dispensation:

        i. The need to undertake emergency works;

        ii. The availability, realistically, of only a single specialist contractor;

        iii. A minor breach of procedure, causing no prejudice to the tenants.

    c. A less rigorous approach may be justified in respect of lessee owned/controlled landlords, but this is not relevant to the present case. The Court of Appeal emphasised that significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion

25. Having considered all the circumstances and the representations of the tenants the tribunal takes the view that the breach of procedure by the landlord has been minor and has not caused prejudice to them. Indeed, the tribunal notes that none of the tenants has alleged any prejudice by the breach. The tribunal therefore considers it reasonable to grant dispensation from the Paragraph (2)(d)(iii) of Schedule 4, Part 2, of the Service Charges (Consultation etc.) (England) Regulations 2003. The tribunal finds that in all other respects there was compliance with the requirements of section 20. In

particular, it is satisfied that the notice of intention was served, the tenants having made observations in relation to it.

Determination of the tribunal on s.27A application

26. The tribunal issued further directions on the section 27A matter on 26 April that the Respondent produce further evidence from its surveyor regarding a number of items, and an additional statement of case answering these points was produced dated 9 May 2012:

    a. Whether the external render is of a type (Spardash) usually painted and whether in this case it requires painting.

    b. How much of the Mapleleaf Projects Ltd. quote is reasonably attributable to painting the external render.

    c. What is the full specification for the scaffolding

    d. Whether tower scaffolding / a cherry picker is sufficient if the render is not to be painted.

    e. What is the precise location of the boundary wall to be reinstated, whether it is still absent and whether this work is still required at the present time.

27. From the further comments from the surveyor, the tribunal is satisfied that painting of the Spardash is not included in the tender, but painting of some previously painted stone / render detailing is. About 20% of the quotation is said to be attributable to the latter. The scaffolding was not specified to the contractor. Mapleleaf has included this cost in their preliminaries (which total £4773 and include £800 of other specified costs). That boundary wall to be reinstated is that to the front of the property, which had been knocked over.

28. The tribunal has given careful consideration to the specification of works and all of the available evidence. It has formed the conclusion that the full cost of the service charge demanded from the Respondents in the sum of £7338.02 each is reasonable and payable for the following reasons:

    a. The Respondents have not produced any evidence to support their assertion that the estimated cost is unreasonably high. They had the opportunity to nominate a contractor of their choice in the statutory consultation procedure but did not do so. They did not produce alternative quotations to the tribunal for any of the work. The landlord has conducted a competitive tendering exercise involving three independent contractors who each returned quotations, and the proposed contract is based on the cheapest of those. There is no persuasive evidence that the tender process did not produce a competitive and reasonably priced quotation.

b. The cost of reinstating the boundary wall is reasonable in amount for the work specified. The maintenance of that wall is the responsibility of the landlord under the terms of the lease. There may be perceived advantages and disadvantages in having a physical boundary wall, but ultimately this is not a matter for the tenants to decide. The estimated cost and planned work is reasonable, assuming it does not impact on the tenants' ability to park using any curb which the Council has dropped for that purpose.

c. The tenants' request for phasing of the works was taken into account by postponing the internal redecorations for a year or two in response to observations made during the consultation procedure. The tenants have had knowledge for four years that these works were forthcoming, and have therefore had more than enough time for financial planning to accommodate them. Indeed, since it is the tenants' case that little maintenance has been carried out for 15 years it can hardly be surprising that major works are now required. None of the annual service charges demanded from the leaseholders in previous years have been in respect of the items of work now planned – they related to matters such as insurance and management charges which were not the subject of the present proceedings.

d. There is no evidence that the works could be further phased at any significant economic advantage to the tenants and in a way which still ensure compliance by the landlord with its repairing obligations (in particular because of the length of time since any external repairs have taken place).

e. There was nothing improper about the landlord appointing a related company as its agent, and the management and supervision fees estimated in respect of the major works are reasonable in amount.

f. It is not irregular for the contractor to have quoted on the basis of the surveyor's detailed specification of works and without further inspection.

g. It is not unreasonable for the contractor to charge a small fee for the time involved in dealing with leaseholders to ensure appropriate access is obtained throughout the project.

Costs and fees

29. The leaseholders made an application under s.20C of the Act in respect of the landlord's costs of the proceedings. However, in view of the landlord's success in respect of the service charges demanded, the tribunal considers it inappropriate to make such an order (but has reached no determination as to the recoverability of such costs as a service charge under the terms of the lease, the matter not having been the subject of argument before it).

30. The tribunal makes an order under s.20C in favour of all three Respondents in relation to the landlord's costs of the s.20ZA application only. Those costs may not be recovered through the service charge.

Signed .....

Chairman

12 June 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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

(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 provisions 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.

(2) 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.

Section 27A

(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 amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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