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**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL  
of the LONDON RENT ASSESSMENT  
PANEL**

**Property** Flat 6, Bardell House  
Dickens Estate  
Parkers Row,  
London SE1 2DH

**Claimant** London Borough of Southwark

**Defendants** Anthony Suarez and Susan Ann Suarez

**Case Number** LON/00BE/LSC/2012/0809  
(2YL86653 – County Court)

**Type of Case** Case transferred from Court for  
determination of the amount of  
service charges payable – Section 27A  
of the Landlord and Tenant Act 1985  
(the Act)

**Tribunal** A.J.ENGEL M.A.(Hons.) - Chairman  
S.REDMOND M.R.I.C.S.  
P.CLABBURN

DECISIONS

- A. Nothing is payable by the Defendants to the Claimant in respect of Claim 2YL86653 in the County Court.**
- B. All of the costs incurred or to be incurred by the Claimant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Defendants.  
(Section 20C of the Act)**
- C. The Claimant's application for re-imburement of fees is refused.**

## REASONS

(Reference to numbered pages are to pages in the Bundle)

### **Parties**

1. The Defendants are the (long) lessees of the Property. The Claimant is the Landlord.

### **Lease**

2. The Third Schedule of the Lease is headed "Annual Service Charge". It provides:-

- 1(1) In this Schedule 'year' means a year beginning on 1<sup>st</sup> April and ending on 31<sup>st</sup> March

- (2) Time shall not be of the essence for service of any notice under this Schedule

- 2(1) Before the commencement of each year (except the year in which the lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge (as hereinafter defined) in that year and shall notify the Lessee of that estimate

- (2) The Lessee shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal quarterly instalments on 1<sup>st</sup> April 1<sup>st</sup> July 1<sup>st</sup> October 1<sup>st</sup> January in each year (hereinafter referred to as 'the payment days')

.....

- 4(1) As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Lessee of the amount thereof

- (2) Such notice shall be accompanied by a summary of the costs incurred by the Council of the kinds referred to in paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule

5(1) If the Service Charge for the year .....exceeds the amount paid in advance under paragraph 2.....of this Schedule the Lessee shall pay the balance thereof to the Council within one month of service of the said notice

(2) If the amount so paid in advance by the Lessee exceeds the Service Charge for the year.....the balance shall be credited against the next advance payment due from the Lessee.....

### **Court Proceedings**

3. On 24<sup>th</sup> August 2012, the Claimant commenced proceedings in the County Court for arrears of service charges in the sum of £1,362-87.

4. On 28<sup>th</sup> November 2012, the matter was transferred by the Court to the Leasehold Valuation Tribunal (LVT).

### **Hearing**

5. A hearing took place before the LVT on 11<sup>th</sup> April 2013 when the Claimant was represented by Miss Sorbjan and Anthony Suarez appeared on behalf of himself and his co-Defendant. Mr Suarez was assisted by Peter Kokkinos, also a Lessee of a flat in Bardell House

### **Evidence**

6. At the hearing, oral evidence was given by Anthony Suarez, Nigel Rice, Chris Brain, Joe Sheehy, and Chris Flynn.

7. In addition, the Tribunal viewed a DVD produced on behalf of the Defendants and a Bundle of documents was adduced in evidence.

### **The Facts**

8. The following facts were established on the evidence and not disputed:-

(i) Major works took place in Bardell House in 2012.

(ii) On 26<sup>th</sup> April 2012 (Page 84) an Invoice (Page 86), dated 30 March 2012, was sent by the Claimant to the Defendants demanding

payment of £1,362-87 being the estimated service charge due in respect of the major works.

### **Section 20 Consultation**

9. We are satisfied by the evidence that the requisite Section 20 Consultation Notices were served on the Defendants and we so find as facts.

### **Amount of the Estimate**

10. The Defendants contend that the works have been carried out to a standard which is unreasonably low and that the content of the DVD establishes this contention.
11. In our view, the DVD does not show that the work was sub-standard but even if we are wrong on this point, we are dealing with an estimated charge – not a final charge. Thus, any complaint about the standard of the work done or the cost thereof falls to be resolved when the final service charge account in respect thereof is demanded and not at this stage.
12. We are satisfied, on the evidence before us, that the estimated charge of £1,362-87 is reasonable for the work referred to in the Section 20 notices.
- Is payment of the estimated charge now due?**
13. Mr Flynn explained to us the problems that the Council has to try to overcome in respect of the financing of major works. We recognise that these problems exist but service charges are only payable if payment is due under the terms of the lease.
14. Miss Sorbjan reminded the Tribunal of the cases which make it clear that leases should be interpreted having regard to the factual background.
15. However, we cannot see how it is possible to construe the provisions of this lease in a way that would render the County Court claim payable.

16. The service charge year began on 1<sup>st</sup> April 2012 but it was not until 26<sup>th</sup> April 2012 that the estimated charge was notified to the Defendants. On any view this was not “before the commencement” of the year – as required by the lease.
17. Reference was made to Paragraph 1(2) of the Third Schedule of the lease – which provides that time shall not be of the essence for service of any notice under the Schedule but this provision cannot cure the defect identified at No.16 above.
18. Accordingly, no part of this (estimated) charge, which is the charge claimed in the County Court proceedings is payable as a result of the County Court proceedings.

#### **Other matters**

19. As there has been no application made to us to exercise powers which are given directly to LVTs by legislation, our jurisdiction in this case is limited to the matter transferred by the County Court to the LVT. It follows that we are not permitted, in these proceedings, to rule on whether this charge is payable as a result of matters arising since the County Court proceedings were instituted or whether it will become payable (in whole or in part) in the future.
20. Further, we do not, in the circumstances, need to consider other points, such as:-
  - (i) Does the fact that this charge was not notified together with other estimated service charges have an effect?
  - (ii) Does the fact that the County Court proceedings were issued in August 2012 have an effect – having regard to the payment days set out at Paragraph 2(2) of the Third Schedule of the lease?

#### **Section 20C and Re-imbusement of Fees**

20. Having regard to our findings as set out above, we consider it just and equitable to make the Orders set out at B and C above.

SIGNED:

A handwritten signature in black ink, appearing to read "A. J. Engel". The signature is written in a cursive style with a prominent initial "A" and a long, sweeping underline.

(A.J.ENGEL – Chairman)

DATED:

25<sup>th</sup> April 2013