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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00BF/LBC/2013/0014
Premises:	53b North Street, Carshalton, Surrey SM5 2HG
Applicant(s):	Mr David Glass
Representative:	Mr Howard Lederman of counsel
Respondent(s):	Mr A B Clifton and Mrs M Clifton
Representative:	Mr Clifton in person
Date of directions:	28th February 2013
Date of decision:	24th April 2013
Leasehold Valuation Tribunal:	Mr Adrian Jack, Mr Hugh Geddes RIBA

Procedural

1. By an application dated 12th February 2013 the landlord sought a determination that the tenants were in breach of one of the the requirements of clause 1(x) of their lease made 30th June 1965.

2. The Tribunal gave directions on 28th February 2013 and the matter came on for hearing on 24th April 2013. The landlord was represented by Mr Lederman of counsel. Mr Clifton appeared representing himself and his wife, the other tenant.

Facts, law and discussion

3. The lease grants a term of 99 years from Lady Day 1964. Clause 1(x) contains a covenant by the tenants (so far as relevant) "to insure and keep insured the demised premises from loss or damage by fire flood storm and tempest in the joint names of the Lessor and of the Lessee in the Road Transport and General Insurance Company Limited in the Agency of the Lessor or in some other Office of repute and Agency as shall be approved in writing by the Lessor in the full value thereof..." (Capitalisation is as in the original.)

4. The Cliftons have owned the lease for some 30 years and have always insured the property through their mortgagees, the Nationwide. The landlord raises no issue as to the suitability of the insurer or the tenants' right to chose the insurer pursuant to section 164 of the Commonhold and Leasehold Reform Act 2002. Instead the landlord complains that the Cliftons have not insured the property through a broker approved by himself.

5. The landlord's preference is that the property be insured through the brokers used by himself, Lorica General Insurance Ltd, but he says that he is willing to consider other brokers. The reason, he says, is that he has a portfolio of some 8,000 properties and wishes to ensure that he knows which tenant is insuring with which insurer. The Tribunal needs make no determination as to the landlord's reasons, but it notes that he has singularly failed to explain this policy to long lessees. In particular, if he has such an extensive portfolio he may well be able to obtain much cheaper insurance for the lessees, but he appears to have made no attempt to convince tenants of the advantages of using Lorica.

6. The issue for the Tribunal is whether the expression "Agency" in clause 1(x) extends to a broker acceptable to the landlord. Mr Lederman accepted that the lease needed to be read as it would have been in 1965.

7. Back in the 1960's it was still common for insurance companies to appoint agents, who would write insurance on the insurer's behalf and obtain a commission for the service. It used to be a common perk of bank managers, if the bank manager was able to sell a policy to a customer. The first part of the clause in the current lease clearly envisages M J Gleeson (Contractors) Ltd having an Agency from the Road Transport and General Insurance Co Ltd. "Agency" in that part of the clause can in our judgment only refer to such an arrangement; it is not possible to read it as including a broker employed by Gleesons. The word should have the same meaning when it is used in the next part of the clause.

8. Mr Lederman sought to argue that "Agency" as a word was wide enough to include an agent, such as a broker. We disagree. If the lease had meant to include the landlord's agent, it could have said so. Instead it used the word "Agency", which in the 1960's was a recognisable institution by which insurers sold insurance. It was not an expression which included a broker nominated by the landlord. Under an old-style Agency from an insurer, the Agency was acting as agent of the insurer, whereas a broker acts as agent of the assured.

9. Since insurance is no longer sold through an Agency in this sense, that part of clause 1(x) is obsolete and cannot be broken. Mr Lederman did not seek to argue the contrary. His point was that the landlord was entitled to approve the broker. Since we are against him on that point of construction, it follows that the lessees are not in breach of the terms of the lease.

10. Nonetheless, since the point is of potentially wider importance, we accede to Mr Lederman's application for permission to appeal.

11. There were no applications in respect of costs.

DECISION

The Tribunal accordingly determines

(1) that the tenants are not in breach of the terms of their lease;

(2) that permission to appeal be granted, limited to the true construction of "Agency" in clause 1(x) of the lease.

Adrian Jack

Adrian Jack, Chairman 24th April 2012