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LON/00AK/LSC/2006/0193

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985 AND UNDER S 20ZA OF THE ACT

Property: **Repton Court, 23 - 27 The Green, Winchmore Hill, N21 3BN**

Applicant: Repton Court (Winchmore Hill) Limited (landlord)

Respondent: Mr H Bogan (tenant, Flat 3)

Date heard: 23 August 2006

Appearances: Mr P E Williamson, Williamson & Dace Property Consultants, the managing agent
Mr P Tasker MRICS MCIOB, Adams, chartered surveyors
Mrs C Draper, director, Repton Court (Winchmore Hill) Limited
for the applicant

The respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr T Sennett MA FCIEH
Mr D Wills ACIB

Date of the tribunal's decision: 5 September 2006

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") by Repton Court (Winchmore Hill) Limited, the management company responsible for the provision of services under the leases of the flats in Repton Court. Repton Court is a purpose built three storey block of 14 flats, two of the original 15 flats having been converted into one. The block was built in 1999 and all the flats are held on long leases in common form. All the leaseholders are shareholders in the management company.

2. The application relates to the costs of major works of external decoration and repair to the block which are currently under way. The estimated cost of the works which are subject to a service charge, including fees and VAT, is £65809 and the works started on 10 July 2006. The contractor is Supreme Asphalt Co (Enfield) Limited and the contract administrator is Mr P Tasker MCIOB MRICS of Adams, chartered surveyors. All the leaseholders apart from the respondent, Mr Bogan, have paid the amounts demanded of them in advance for the works. Mr Bogan, whose share of the cost according to his lease is 6.5%, does not object to paying a reasonable amount but considers that the amount demanded of him is unreasonable and that the applicant has not properly complied with the statutory consultation procedures. The applicant will be referred to as "the landlord" and the respondent as "the tenant" in this decision.

3. It is agreed that the leases require the individual leaseholders to maintain and repair the window frames and the fences and surfaces of their balconies, but require the landlord to decorate the window frames and the fences of the balconies, the reasonable cost of which being recoverable as a service charge. The present works include some repairs to window frames which are the responsibility of the individual leaseholders and not subject to a service charge. These works are not within the jurisdiction of the tribunal and their cost is excluded from the figures given in the previous paragraph of this decision.

4. At the hearing on 23 August 2006 the landlord was represented by Mr P E Williamson of Williamson & Dace, Property Consultants, the managing agent, who called Mr P Tasker to give evidence. The tenant appeared in person and gave evidence. It was agreed that an inspection of the property by the tribunal would serve no useful purpose.

5. It was agreed that the issues were:

i. whether the notice of intention served by the landlord complied with the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the consultation regulations");

ii. whether, if not, dispensation from the relevant requirements should be granted under section 20ZA of the Act;

iii. whether the amount demanded of the leaseholders in respect of the cost of external decoration was reasonable;

iv. whether the costs of supervision and management incurred in relation to the works were reasonable.

6. The tribunal has power under section 27A of the Act to determine whether a service charge is payable and, if it is, the amount which is payable. By section 19(1), relevant costs are to be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred, and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

Decision

i and ii. Compliance with the Consultation Regulations and dispensation if necessary

7. The relevant consultation requirements are contained in Part 2 of Schedule 4 to the consultation regulations. Notice of Intention under paragraph 8 of the regulations was given on 9 February 2004 (page 45 of the bundle) and described the works as "external decoration". At that stage the description was accurate and comprehensive because the intention was merely to decorate those parts of the exterior which required it, based on a specification for that purpose prepared by the managing agent, and estimates were obtained on that basis. However, as time went by it and for reasons which are irrelevant to this part of the decision the landlord decided to instruct Mr Tasker to prepare a detailed specification and to supervise the works. Mr Tasker's specification, produced in the autumn of 2005, was for works which were more extensive than had been previously proposed and which included works to the roof flashings, boundary walls and re-pointing of the brickwork, as well as the works to the windows and balcony fencing which is agreed to not to be service chargeable. Although fresh notices of estimates and reasons for awarding the contract were sent to the leaseholders as required by the consultation regulations, the decision was taken not to send fresh Notices of Intention.

8. In these circumstances Mr Bogan argued that the Notice of Intention was defective. Mr Williamson agreed that some of the works could not really be said to fall within the description "external decoration", although he said that the works had been discussed at the Annual General Meeting of the management company on 29 November 2005 at which Mr Tasker was available to answer questions and which Mr Bogan attended. Mr Williamson invited us, if we found that the Notice of Intention did not comply with the relevant regulation, to dispense with compliance under section 20ZA of the Act. Mr Bogan agreed that it was appropriate for the tribunal to consider at the present hearing whether, if the Notice of Intention was defective, to dispense with

compliance with the relevant regulation, but argued that compliance should not be dispensed with because the landlord ought to have given the correct notice and because he had, by the inadequacy of the Notice of Intention, been denied the opportunity to nominate a contractor to price the specification on which the works were to be based.

9. We have come to the conclusion, on balance, that the Notice of Intention was not adequate to describe the works which were to be carried out. Paragraph 8(2)(a) of the consultation regulations requires the Notice of Intention to "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 ... ". In our view the works in the new specification went significantly beyond external decoration and a new Notice of Intention should have been given. We are however satisfied that it is reasonable to dispense with the requirement to serve a fresh Notice of Intention and we accordingly do so. The works are well under way, and if we were to determine that compliance with the relevant part of the consultation regulations should not be dispensed with and, accordingly, that most of the cost of the works could not be recovered as a service charge, the irrecoverable cost would inevitably have to be met by the shareholders, namely the leaseholders, since it appears to us inconceivable that it would have, in the circumstances presented to us, have to be met by the directors personally as the tenant suggested. Moreover, it seems to us from the documents put before us that the managing agent carried out a considerable amount of informal consultation in correspondence and at company meetings. Accordingly we dispense with compliance with those parts of the consultation regulations which were not complied with. We are satisfied that it is appropriate to do so within the present proceedings in order to save costs, the leaseholders other than Mr Bogan having paid their share of the estimated costs. This decision does not, of course, prevent any leaseholder from challenging the reasonableness of the final costs or the standard of the works if it is considered appropriate to do so.

iii. The reasonableness of the cost of decorating

10. The contractors who quoted in 2004 for the decorating works covered by the more limited specification prepared by the managing agents had offered to do the work for amounts which, excluding VAT, varied between £16,680 and £24,596. The tenant argued that the amount now being charged for the decorating component of the current contract significantly exceeded that amount and that it was therefore self-evident that it was excessive. He was also, prior to the hearing, not satisfied that works to leaseholders' flats which were not service chargeable were not included within the amounts being sought as a service charge, but having heard Mr Williamson's breakdown of the costs he accepted that that was not the case. He had also queried the cost of window cleaning included in the contract, but when it was explained that this was cleaning at the end rather than the beginning of the works he accepted the explanation and withdrew his objection to that item.

11. Mr Williamson and Mr Tasker said that the amounts being charged for the decoration component of the contract were reasonable, in that the contract had been competitively tendered, the specification on which the present works were based was far more comprehensive than the previous specification had been, and the quotation of the chosen contractor was, in their opinion, competitive and fairly priced.

12. We are satisfied that the cost of decoration is within the band of reasonable costs for such work. The contract has been competitively tendered and is being supervised by a competent building surveyor, and we have no evidence that the charges are excessive or the specification too wide.

iv. Supervision and management

13. The contract administrator proposes to charge a fee of 11% of the cost of the works for supervising the works and the managing agent proposes to charge 2.5% for management and administration, in each case plus VAT. The tenant argued that these charges are excessive and that a fee of no more than 10% in all should be charged for supervision and management. He believed that nothing should be paid to the managing agent because it had not done a proper job and, in particular, had given him insufficient information about what was to be done.

14. The fee which Mr Tasker had proposed to charge for supervision was 12.5% of the cost of the works but, as a good will gesture, in response to a request from Mr Williamson, he had agreed in March 2006 (page 243 of the bundle) to reduce the fee to 11% plus VAT. He said that he visited the site at least once a week and kept an eye on it in the meantime. Mr Williamson described the very considerable effort which these works had required of his firm since February 2004 and said that the management fee which his firm charged for general management, excluding major works, was £2750 per annum, the equivalent of £183.33 per annum for each flat. The work which this contract had engendered justified, in his view, a fee much higher than 2.5%.

15. We are quite satisfied that the fees charged for supervision and management are well within the acceptable band of price percentages for the work. 11% for supervision by a building surveyor is relatively modest for a contract of this nature, and even12.5% would not have been excessive. We regard 2.5% for management and administration by the managing agent as reasonable in the circumstances, given the relatively modest amount charged for other aspects of management and the very considerable volume of work which this contract has engendered, as the bundle of documents clearly shows.

Schedule 12, paragraph 10

16. Mr Williamson invited us to make an order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the ground that the tenant had acted unreasonably in relation to the proceedings in putting the landlord, which is a tenant company, to very considerable expense in circumstances when all the other leaseholders were content with the approach which the landlord had taken. The tenant opposed such an order and asked that a similar order should be made in his favour.

17. We do not consider that it is appropriate to make such an order against either party. It is certainly inappropriate to make such an order against the landlord, who has in our view acted reasonably, though not always decisively, throughout. On balance we do not believe that it would be appropriate to make an order against the tenant, who has successfully highlighted a failure, albeit relatively minor, to comply with the consultation regulations. Orders under paragraph 10 of Schedule 12 are draconian orders, to be made, in our view, only in exceptional circumstances of which this is not one.

Section 20C

18. The tenant asked us to make an order under section 20C of the Act, the effect of which would be that the landlord's costs in connection with the proceedings should not be the subject of a service charge. He considered it appropriate that the directors should personally shoulder the costs. However, we consider that the landlord has acted reasonably in relation to the proceedings and, applying the reasoning of His Honour Judge Rich QC in *The Tenants of Langford Court v Doren* (LRX/37/2000), we decline to make such an order.

Reimbursement of fees

19. Mr Williamson applied for an order under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the tenant reimburse the landlord for the application and hearing fees which it has paid in connection with the application. In the exercise of our discretion we make such an order since, we are satisfied, these proceedings would have been unnecessary but for the tenant's attitude, which was unjustified. In our view the circumstances which may justify such an order are wider than those which might justify an order under paragraph 10 of Schedule 12 to the 2002 Act.

CHAIRMAN.....

DATE.....