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IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AT/LSC/2006/0244

IN THE MATTER OF APARTMENT 40, 1 GOAT WHARF AND APARTMENT 4, 1 TOWN MEADOW, BRENTFORD, MIDDLESEX, TW8 0AS

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

BETWEEN:

IAN PERRY

Applicant

-and-

(1) HITHER GREEN DEVELOPMENTS LIMITED
(2) FERRY QUAYS MANAGEMENT Co LIMITED

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness to pay estimated block and estate service charges in respect of the subject premises for the service charge year 2006/07. The Applicant does not challenge his contractual liability to pay or the quantum of the estimated block and estate service charges. The sole issue to be determined in this application is the correct method of

apportioning the service charges as between the residential and commercial premises in the various blocks, of which the subject premises form part.

2. The Tribunal did not inspect the Ferry Quays development. It was told that it was a mixed development of 400 residential and 15 commercial units built between 2000 and 2004. Block 1 on the development is comprised of 1 Goat Wharf and 5 Ferry Lane, being 110 residential and 7 commercial units in total. Apartment 40 ("Apartment 40") is one of the residential units in 1 Goat Wharf. Block 2 in the development is comprised of 6 Ferry Lane, Soaphouse Lane and 1 Town Meadow, being 123 residential and 8 commercial units. Apartment 4 ("Apartment 4") is one of the residential units in 1 Town Meadow. There is a further block that forms part of the development, Block 3, but this plays no part in these proceedings.

3. The Applicant is the lessee of Apartments 4 and 40. The lease in respect of Apartment 40 is dated 21 September 2001 and was granted by the First Respondent, as freeholder, to the Applicant for a term of 125 years from 1 January 2001 ("the lease"). The Tribunal was not provided with a copy of the lease in relation to Apartment 4, however, this does not matter as it is common ground between the parties that the relevant service charge provisions in both leases are essentially identical. In any event, the Tribunal was provided with a copy of the lease granted in respect of Apartment 51, 1 Town Meadow, which confirmed the position, save for the apportionment of the block service charge.

4. For the same reason it is not necessary to set out the details of the relevant service charge provisions in the lease, save as follows. In the lease, the management of blocks 1 and 2 falls respectively on Ferry Quays Block1 and Block 2 Flat Management Co. Ltd. They are separate companies. The estate management is the responsibility Ferry Quays Management Co Ltd., which has sole responsibility for the entire estate or development. Under Part VI of the lease, it is also obliged to provide car park services, but the cost of doing so is not in issue in this application.

5. By clauses 3.5.1 and 3.5.3 of the lease, the Applicant covenanted with the First and Second Respondents and the estate management company to contribute and pay on demand to either the relevant block management company and/or the estate management company "a proportionate part" of the total expenditure for the provision of block and estate services. These are set out in Part IV-VI of the lease. Payment of these sums are to be made by equal half yearly payments in advance on 24 June and 25 December in every year. Paragraphs (j) and (l) of Part VII of the lease in relation to Block 1 provide that the proportionate part in respect of the block and estate shall be 1/109th part and 1/400th part respectively of the total expenditure for each of those service charge budgets. The lease in relation to Blocks 2 is identical save that the block service charge expenditure is calculated at 1/123rd part of the total annual expenditure.

6. It appears that since on or about 2001, the method adopted when calculating the "proportionate part" of the block and estate service charge contributions to

be paid by the residential lessees was to remove the commercial units' contributions before the residential proportionate formula was applied. This remained the position until 2006 when the Directors of the management companies of Blocks 1 and 2 decided to apply the relevant proportionate formulae to the entire block and estate service charge costs. A further 20% was charged to the commercial units in addition to the 100% applied to the residential units. It seems that attempts to resolve this matter in correspondence proved to be unsuccessful and the Applicant issued this application.

Decision

7. The hearing in this matter took place on 14 November 2006. The Applicant appeared in person. The First Respondent did not appear and was not represented. The Second Respondent was represented by Mr Doczi and Mr White, both of whom are Directors of the respective block and estate management companies.

8. The Applicant, Mr Perry, effectively restated the position set out in his statement of case. He submitted that the residents' service charge contributions for the block and estate costs should revert to the old method of calculating these in 2001. The present method adopted by the Second Respondent led to a collection of total service charge contributions in excess of 100% of the estimated expenditure. This in turn had led to an overall increase for him of 32% for Block 1 and 62% for Block 2, which had caused him financial hardship. Mr Perry conceded that some increase in costs was

inevitable but not to the extent being sought. He further complained that the Second Respondent had failed to consult the leaseholders in respect of the proposed change in calculating their service charge contributions.

9. Mr Doczi, for the Second Respondent, admitted that the present method of calculating the service charge contributions did initially result in a collection in excess of 100% of the total anticipated service charge expenditure. However, he went on to submit that when the contributions recovered from the commercial units and credited to the service charge accounts, the leaseholders would not be financially worse off when the account was reconciled. This method had been adopted on the advice of the new managing agents, Messrs Bruton Kiff, who were appointed in December 2005. The advice received was:

(a) the previous method did not follow the wording of the leases.

(b) the previous method did not follow the presentation on the audited accounts.

(c) the previous method left Block 2 short of operating funds.

(d) the final service charge demand takes the commercial contribution into account so there was no net difference to the residential lessees' overall service charge liability.

10. As stated earlier, the only issue before the Tribunal was the extent of the Applicant's contractual liability to pay service charge contributions for the block and estate service charges in respect of the subject

premises. In other words, it is how the apportionment of those costs should take place as between the residential and commercial lessees.

11. The Tribunal considered that the construction of the lease by both parties as to how the "proportionate part" of the block and estate service charge contributions were to be calculated was incorrect. The lease is quite clear as to how the apportionment should take place. Once the block and estate budgets, the relevant contractual proportionate rate expressly stated in the residential and commercial leases had to be applied to those figures. The Tribunal did not accept the Applicant's submission that the commercial service charge contributions should be deducted first of all from the overall service charge expenditure. There is no provision in any of the leases for this to take place and the Applicant accepted this when it was put to him by the Tribunal. Moreover, this approach would effectively result in the commercial leaseholders subsidising the overall service charge expenditure on behalf of the residential lessees. The proportionate part of the commercial lessees service charge contributions would be calculated on the total expenditure whereas the residential lessees contributions would be calculated only on the remainder once the contributions paid by the former had been deducted. The leases, quite clearly, did not envisage this. Equally, there is no express provision in the leases that allows the Second Respondent to apportion the estimated service charge expenditure in the manner presently adopted and then to subsequently re-credit the service charge account with any

or all of the contributions paid by the commercial lessees. The service charge contributions for both residential and commercial lessees have to be calculated at the relevant contractual rate on the total estimated service charge expenditure. This is the only valid basis for calculating the respective service charge contributions payable under the terms of the leases.

Fees

12. At the conclusion of the hearing, the Applicant made an application to have the fees paid by him to the Tribunal reimbursed by the Respondents. The Tribunal does not grant that application on the basis that the Applicant has not succeeded in bringing this application. In addition, it is clear to the Tribunal that neither party has adopted a constructive or sensible approach in an attempt to resolve this matter informally and without the need to appear before the Tribunal. Any application for the reimbursement of fees, therefore, had no merit.

Dated the 12 day of December 2006

CHAIRMAN..... I Mohabir .....

Mr I Mohabir LLB (Hons)