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Leasehold Valuation Tribunal For The London Rent Assessment Panel

LON/00AY/LSC/2006/0220

Landlord and Tenant Act 1985 (as amended) Section 27A

Property: **Elphinstone Court, Bladon Court and Ridley Court, Barrow Road, London SW16 5NG**

Applicants: **Ms Carol Pennicooke and other Leaseholders (Tenants)**
Represented by Ms C. Pennicooke (36 Elphinstone Court)

Respondents: **Gabegain Limited (Landlord)**
Represented by Mr M. Rothfeld of Goldspring Management (Streatham) Limited) (Managing Agents)

Also Present:

For the Applicant: **Mr K. Rye (48 Elphinstone Court), Miss M. Boothe (22 Ridley Court), Mr D. Carbin (32 Ridley Court), Miss M. Del Aguila (48 Bladon Court)**

For the Respondent: **Mr J. Eckstein (Goldspring Management), Mr H. Broder MRICS (Ord Carmell and Kritzler, Surveyors)**

Hearing: 23rd August 2006 **Inspection: 24th August 2006**

The Tribunal:

Mr L. W. G. Robson LLB(Hons) MCIArb. (Chairman)
Mr D. Levene OBE MRICS
Mrs T. Downie Msc

Preliminary Matters

1. This case relates to an application made under section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of the reasonableness of estimated service charges for the service charge year 2006 relating to major works ("the Works"). The Respondent claims these charges are payable by the Applicants under the terms of the leases of the property. A specimen of the leases was produced to the Tribunal dated 16th November 1984 relating to Flat 36 (the Lease). A copy of the Lease is attached to this

decision as Appendix A. By a letter dated 25th May 2006 the Landlord's managing agents advised leaseholders that a tender had been accepted to carry out a major refurbishment of the three blocks at a sum of £434,307. Including Surveyor's fees and management costs, the total sum became £601,340.97. After deducting the sum held in a reserve account the total to be collected was £511,340.97. Most of the leases provided that the lessee should bear 1.43% of expenditure and in these cases the sum demanded was £7,312.18. Lessees were requested to pay this sum by 30th June 2006 to enable the work to proceed.

2. In the Application the following leaseholders had requested to be joined; 2, 18, 34, 38, 46 and 48 Elphinstone Court; 12, 24, 34, 36 and 48 Bladon Court; and 6, 8, 22 and 32 Ridley Court. The Directions also gave the parties leave to make applications under Section 20C of the Landlord and Tenant Act 1985 (limiting the landlord's right to recover the costs of this application through the service charge)

INSPECTION

3. The Tribunal inspected the exterior and common parts of the property on the morning following the hearing in the company of Miss Boothe, and Mr Brooks (the caretaker).

4. The property subject to this application consists of three separate 3 storey and mansard floor blocks of flats set in communal grounds, and built about 1930. There are also some dilapidated garages at the rear and side of the grounds, but these are not included within the property or Major Works contract. The blocks appear to be of concrete frame construction with pitched tiled roofs. The upper flats have steel framed concrete balconies. Each block has two separate internal common parts comprising a hallway, stairs and landings. The internal common parts are controlled by entryphones. The roofs looked in relatively good condition, although old. All the blocks needed external redecoration, but Elphinstone and Ridley looked worse than Bladon, and the rear elevations to all blocks were in poor condition. At Elphinstone the concrete apron at the rear was badly cracked and there were signs of water overflowing from some of the drains there. The gutters and downpipes were generally original and looked in poor condition. Some appeared to be leaking. Many balconies appeared to have drainage problems due to their original design. Concrete was coming away from some balconies at Elphinstone. The grounds appeared generally neat and tidy.

5. The communal lighting systems were old and needed renewal. The common parts were clean but particularly dark. The wooden stairs had very old lino coverings which badly needed replacement. In parts they had been stripped off for safety, and looked unsightly. The fire extinguishers there had been last inspected in 1999. We had been informed that all the blocks had communal cast iron water tanks in the lofts, and that there were concerns about them. We gained access to one loft. The tank there was a cast iron one which appeared to have no signs of leaks, but very old and in need of replacement.

6. Overall, our impression was that the property had no serious structural problems, but needed significant maintenance.

Hearing

7. The parties made written submissions prior to the hearing, supplemented by oral submissions at the hearing. Regrettably the bundles of documents provided by the parties had not been agreed or paginated in accordance with the Directions, which often made it difficult to find and identify individual documents

8. The Tribunal found it useful to summarise the items complained of in the Application when dealing with the submissions as follows:

   a) Costing of the works;
   b) Length of time given to pay contributions;
   c) The charges to be made by Goldspring (the managing agents);
   d) What the money collected on account would be used for;
   e) Breaches of the Lease causing neglect of the property (explained at the hearing as increased costs of work due to failure to do work earlier).

   At the start of the hearing the Tribunal ruled that item e) was not a matter within its jurisdiction. Actions for breaches of lease obligations are matters dealt with by the Court. The relevant part of Section 27A effectively limits the Tribunal's jurisdiction to whether the work and the cost of the work is reasonable, and by whom it is payable. Whether the work could have been done more cheaply if done earlier, is not covered by Section 27A.

9. Ms Pennicooke confirmed at the hearing that the Applicants were satisfied with the specification of the works and the contractor's tender, their main concerns were the short period given to pay the demand for advance service charge, and the costs being charged by Goldspring Management. They had concerns as to what would happen to the money if it was not all used for the Works. She referred to the poor condition of the property, notably exterior decoration, leaking balconies, old water tanks needed replacing, interior common parts were shabby and the lino was lifting, water not draining away properly, and cracked hardstanding in front of the garages. She also drew attention to the state of the garages and ongoing garden maintenance, but the garages are not within the subject property, and the application raised no issue on the ongoing maintenance so these items could not be dealt with.

10. Ms Pennicooke then dealt with the remaining points in the application.

a) Time to Pay – the leaseholders had been sent a demand on 26th May 2006 and had only been given 30 days to pay. Goldspring had allowed a further period until the end of July, but this period had been too short, for many leaseholders to make satisfactory arrangements. They had written to Goldspring suggesting alternative payment arrangements.

b) She referred to Goldspring's fees amounted to £40,000. which had been added to the estimated cost of the works. These were detailed in the Respondent's written submission and are set out out at para. 11e) below. She accepted item ii) but disputed items i) and iii).

c) Ms Penicooke did not refer to how the money would be used if not used for the Works, but this was dealt with by Mr Rothfeld in his submission.

d) She said that she had now paid the demand but was very concerned whether she would get "value for money". Works had been carried out previously to defective balconies which had not been redecorated following completion of the work and were left in a very unsightly condition. This gave her little confidence that the works now proposed would be carried out to a proper standard.

e) She was critical of the tenants' association which she considered worked closely with the landlord and failed to communicate properly with tenants.

Mr Rye also spoke in support of and expanded on the points raised by Miss Pennicooke

11. The Respondent's submissions on the remaining points are summarised as follows:

a) The Landlords had been contemplating work since 1998. A previous consultation exercise had been carried out, but the tenants considered the scheme at that time was too expensive and the Respondent did not proceed with the work.

b) In November 2002 the Respondent decided that a full refurbishment was necessary, and commenced consultations with the leaseholders and Residents Association. Some wanted only minimal repairs carried out, others wanted a full refurbishment. No agreement could be reached. Eventually Ord Carmell Kritzler was retained in May 2004 and it then consulted residents, seeking tenders in May 2005.

c) All money collected from the blocks is paid into a separate bank account in the names of the blocks, and interest accrues to the leaseholders' account.

d) The owners wanted the works to start in the summer of 2006. Thus a letter of demand was sent on 17th June 2006, with a reminder at the beginning of July. Leaseholders who made contact were given the opportunity to pay by the end of August. The owners wish to see the majority of the monies received prior to signing a contract.

e) The £40,000 management fee includes VAT and breaks down into 3 sections:

i) Professional time since November 2002 – May 2004 negotiating with the leaseholders on the extent of the works, and since then to date, a period of 4 years. These were not charged on the annual charge as they were considered a separate item. These costs total £12,500 plus VAT

ii) Professional time to be spent in meetings with Respondent and the surveyors during the contract estimated at £2,000 plus VAT

iii) Administration of major works charges including chasing bad payers, not including litigation charges to be debited to individual lessees, and dealing with queries and questions from leaseholders during the contract, estimated at £20,000 plus VAT

f) The Respondent has built up a sinking fund of £90,000 which will be used towards the Major Works.

g) The Respondent had consulted the tenants and the Residents' Associations. The Applicants were a small minority and did not object to the works until after the demand had been sent out.

12. The Tribunal considered the submissions and the evidence before making the findings below.

Time to Pay

13. The Applicants did not query the Section 20 notice, and there was nothing in the evidence before us to suggest that it had not been served correctly. However, payment of service charges is governed by the terms of the Lease. For the Respondents Mr Rothfeld was unable to point to a specific term in the Lease which allowed the Respondent to receive payment other than in accordance with Clause 3 of the Lease which requires the Landlord to demand maintenance charges by two equal instalments on 29th September, and 25th March in respect of the relevant Maintenance Year ending on 30th September. The Leasehold Valuation Tribunal is not entitled to vary the terms of the Lease regarding payment, unless a specific application has been made under Section 35 of the Landlord & Tenant Act 1987. Both parties are thus obliged to comply with the contractual terms of the Lease. The Tribunal decided that the Respondent's demand of 26th May 2006 was not in accordance with the terms of the Lease. It is open to the Respondents to raise a charge against those lessees who have not yet paid the contribution towards the costs of major works by including the charge in the service charge accounts for the year 2006/7 by two equal instalments in accordance with the provisions of the lease.

Management Charges

14. It is convenient to deal with these in the same order as the parties did so.

15. The period 2002 – 2004, (£12,500 plus VAT) – Mr Rothfeld referred to work done in the period 1998 – November 2004, not just to the period 2002-2004. It seemed clear from the evidence that the work done by Goldspring between 1998 and 2002 in connection with the work proposed in 2002 was abortive, and Mr Rothfeld in his submission impliedly appeared to accept that this work could not be charged for. The Tribunal considered that the work done by Goldspring between 2002 and November 2004 was not in fact work done in connection with the current project of Major Works. The evidence suggested that Goldspring had been negotiating with the leaseholders over the principle of doing work, but not actually working on this project. The work done had not been particularised satisfactorily by the Respondent, nor was there a copy of a bill in the papers. There is no provision in the lease to charge retrospectively for fees incurred in earlier years. Also under the provisions of Section 20B of the 1985 Act no valid demand can be made for costs incurred more than 18 months before the date of the demand.

16. The Tribunal considered that only when Ord Carmell Kritzler was instructed in May 2004 could it be reasonably said that work being done was attributable to this project. Further, it was only the work of Ord Carmell Kritzler which could be charged. That firm was charging a fee of 10% of the contract cost for drawing up the specification, supervising the work and serving the necessary notices. That figure did not seem unreasonable, but it seemed unusual and inappropriate for Goldspring to also charge a fee. It appeared from the evidence that Ord Carmell Krizler was solely in charge of the project.

17. The work done by Goldspring in the period from November 2004 to date appeared to be within its duties of general management of the block, for which it was separately charging. An additional difficulty with this proposed charge was that the Section 20 Notice dated 10th May 2005 and the demand made on 26th May 2006 referred only generally to professional fees. The Tribunal considered that any reasonable leaseholder reading these documents would not assume that it was proposed to charge fees for work done going back to 2002. Thus the Tribunal decided that this element of the proposed charge was unreasonable.

18. *Charges for Meetings with head leaseholder and surveyors until completion of works estimated at £2000 plus VAT* – The Applicants accepted this item was reasonable, and it needs no further comment.

19. *Administration of Major Works Charges including chasing of bad payers, estimated at £20,000 plus VAT* – Mr Rothfeld broke this figure down at the hearing for us. He considered that £8,000 was intended for the cost of collecting the money needed for the Major Works (excluding litigation costs), and £12,000 was intended for dealing with general queries, questions and contact with the leaseholders relating to the Works. The Tribunal considered that the collection of money for the Works was effectively collection of service charges which was already part of the managing agent's duties. Thus the proposed additional figure of £8,000 was unreasonable. The sum of £12,000 for general additional work was an estimate. It seemed to the Tribunal to be quite high, given the supervisory role of Ord Carmell Kritzler. Also, once that figure had been finally quantified either party would be entitled to make a further application to the Tribunal under Section 27A to establish whether it was reasonable or not. The Tribunal decided that a sum of £10,000 (plus VAT) was reasonable for this item.

20. The Tribunal thus decided that a total sum of £14,100 (including VAT) was reasonable for the estimated management charges of Goldspring in respect of the major works.

Standard of Works

21. The Tribunal noted the concerns expressed by the Applicants but accepted that there were good reasons for leaving the balcony repairs unfinished pending the complete redecoration of the blocks. The proposed works were now to be supervised by Chartered Surveyors and there was no reason to suppose that they would not be carried out in accordance with the Specification.

Money collected on account

22. Ms Pennicooke did not pursue this point very far at the hearing but this matter is governed by the general law and Section 42 of the Landlord & Tenant Act 1987 requires service charge monies to be held upon trust and in a designated client account. Mr Rothfeld produced copies of bank statements for the relevant client account, and clearly articulated the legal position relating to payment of interest. There was no evidence before the Tribunal that the money would not be accounted for in the proper way and therefore it made no finding.

Section 20C Application

23. Mr Rothfeld considered that the Applicants had been unreasonable in challenging the costs after the Section 20 Notice period had expired but the Respondent had not operated the payments terms contained in the Lease. The Applicants had tried to negotiate the payment period without any significant concession from the Respondent. The Applicants have been at least partially successful in their application, and the Tribunal decided that they had little option but to bring the application. The Tribunal accordingly makes an Order under Section 20C that the Landlord is not entitled to recover the costs of this application through the service charge.

Summary

24. After considering the application and representations of the parties the Tribunal decided as follows:

A. The proposed Works were reasonably necessary, and the cost of the successful tender was reasonable.

B. The estimated costs of Goldspring Management totalling £40,000 included in the demand dated 26th May 2006 should be reduced to £12,000 plus VAT (i.e. £14,100 in total), and be paid in accordance with the terms of the Lease.

C. The Applicants having been substantially successful, the application under Section 20C should be granted.

Signed: ..... (Chairman)

Dated: 2nd October 2006

Attachments:

Appendix A – Lease dated 16th November 1984