

2146

MAN/00BW/LIS/2006/0001

LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
SECTION 27A (1)

Property: Flat B8 Monument Mansions Wigan Lane Wigan WN1 2LS
Applicant: Monument Mansions (Wigan) Management Limited
Respondent: Blackstone Developments Limited
Chairman: Mr G C Freeman
Surveyor Member: Mr E Burton MRICS
Lay Member: Dr J Howell
Date of Hearing: 25 April 2006

Order

The Tribunal orders that in respect of the service charge years 2005, the following amounts are reasonable in respect of service charge for flat B8 Monument Mansions Wigan Lane Wigan Greater Manchester and that the liability to pay the same falls on the Respondent:

The sum of £141.94 in respect of insurance premium
The sum of £300.00 in respect of the maintenance fees
The sum of £5,295.54 in respect of a contribution to refurbishment programme
The sum of £1,196.08 in respect of a contribution to the refurbishment programme

A Application

- 1 By its application dated 20 January 2006 Monument Mansions (Wigan) Management Limited applies for the determination of liability and of reasonableness of service charges for the above property where these costs have been incurred for the service charge year 2005 for the management of Monument Mansions 134 Wigan Lane Swinley Wigan WN1 2LE ("the Building").
- 2 The application discloses that the sums for which a declaration is sought are as follows:

Insurance fee £141.94
Maintenance fee £300.00
Contribution to first tranche of refurbishment programme £5,295.54
Contribution to second tranche of refurbishment programme £1,196.08
Small Claims Court fee £250.00.

- 3 These sums (except for the Small Claims Court fee) represent the proportion attributable to the Property owned by the Respondent and cover the following repairs:

Repairing the balconies to the front elevation of the Building
Repairing/replacing the lintols, parapets and brickwork to front elevation
Renewing the roof covering
Repainting the outside of the Building
Carpeting and redecorating the hallways and stairwells
Installation of security system between the entrance doors and each flat
Repair/replacement of broken communal windows

- 4 The Applicant is represented by McCarthy Bennett Holland Solicitors of 26 Bridgeman Terrace Wigan WN1 1TD (ref:PA PW MON M 9655) The Respondent is not represented

B Preliminary

- 5 The Building consists of a block of 28 flats and one shop erected on Wigan Lane Wigan. It is approximately half a mile from the town centre of Wigan in a predominantly residential area consisting largely of Victorian houses which have been converted into flats. The Building appears to have been constructed in the 1930's with each flat having a reinforced concrete open balcony on the front and another on the rear elevation of the building.
- 6 The Property comprises a three bedroomed flat on the top floor of the Building. There is a living room, kitchen and bathroom. It is in poor decorative order and in need of modernisation internally. Off the living room there is a small concrete balcony which is enclosed by a brick wall topped with concrete cappings at approximately waist level. Access to the Property is gained from the communal staircase. There is a rear door in the kitchen which gives balcony access to the entire length of the rear of the Property. This adjoins a similar size balcony to the adjoining flat. This balcony is of similar construction to the balcony to the front elevation. The rear balcony also contains a brick built rubbish chute which is now disused. On inspection, the Tribunal was advised that this rubbish chute provides structural support to the rear balconies.
- 7 The Applicant produced a copy of the Lease of the Property which is dated 04 June 1982 and is made between Dorothy Rhodes and David Gerald Fairhurst of the one part and Bernard Darwin of the other part. The lease is for the term of 999

years from 01 January 1975 subject to the payment of an annual ground rent of £10.00, a further sum of money towards the cost of insuring the building and a further sum of money equivalent to 1/28th part of the expenses incurred by the Landlord in performing its obligations under the Lease.

- 8 The reversion to the Lease is now invested in the Applicant which is a company limited by guarantee, the membership of which is restricted to flat owners at Monument Mansions. The Management Company does not employ managing agents. The Respondent is a member of the Applicant company.

C Inspection

- 9 The Tribunal inspected the Property and the Building on the morning of 25 April. It is a red brick building which is rendered externally at ground-floor level. The floors of each flat are of reinforced concrete out of which the reinforced concrete balconies project. The Tribunal was accompanied on its inspection by the Solicitor and the Barrister for the Applicant and a Mr Sharatt, who described himself as a civil engineer who was originally employed by the Applicant to assist with the book keeping. Mr Sharatt explained that when the structural problems in the Building were discovered, he was asked to assist in resolving those problems. Mr Sharatt is not a member of the management company nor is he a flat owner.
- 10 Of the 28 flats 22 are two bed roomed flats and six are three bed roomed flats. Access is obtained via a communal entrance halls and staircases which the Tribunal considered to be narrow and cramped. Light to the communal areas was from single glazed wooden framed leaded windows. The communal entrance hall and stairs were carpeted in a light coloured carpet which the Tribunal observed showed a number of marks. The Tribunal were informed that this carpeting had been carried out in 2003. From a notice on the staircase the Tribunal noted that the carpets had been professionally cleaned in October 2005.
- 11 The Tribunal was informed that the walls to the communal halls and staircases had been repainted in 2004/2005 and a new CCTV security system had been installed at that time which enabled flat owners to control access to the entrance hall and staircases. Flats are situated on the ground floor and three further floors. A new roof was installed in 2004/2005 which consisted of rubberised fabric with a 30 year guarantee. The Tribunal considered that the communal parts were in a good general state of repair.

D Lease Provisions

- 12 The first schedule of the Lease contains a description of the Property by reference to the plan annexed to it. This refers to red edging. Despite being requested to do so by the Tribunal, the Applicant was unable to produce a coloured copy of the plan. The description of the Property includes a declaration that "every internal

wall floor and ceiling separating the demised premises from adjoining premises shall be deemed to be a party wall severed medially”

- 13 Clause 1(c) requires the Tenant to pay the “Maintenance Payment” which is to be 1/28th of the costs to the Lessor of complying with the Lessor’s covenants contained in the Lease. The Landlord’s obligations in this respect are set out in clause 4 and include at sub clause (iii), the obligation to maintain the “external main walls and roof and the front rear and side approaches of Monument Mansions (including the external stone cement and stucco and brickwork)”. There is no mention of the balconies

E Hearing

- 14 Directions were given by the Tribunal on 15 February 2006 and further directions were given on 06 April 2006. The Tribunal were disappointed to note that the Applicant failed to respond to the latter directions.

- 15 A Hearing was held at the Residential Property Tribunal Service, First Floor, 26 York Street, Piccadilly, Manchester on Tuesday 25 April 2006 at 12 00 noon. Mr I Somerville of Counsel represented the Applicant. The Respondent did not attend and was not represented.

F Applicant’s Case

- 16 At the outset Counsel confirmed that the application to determine the reasonableness of the Small Claims Court fee of £250.00 was withdrawn.

- 17 The Applicant produced a bundle of documents consisting of a copy of the Lease, a copy of the Memorandum and Articles of Association of the Applicant, Land Registry View of the Respondent’s title, Minutes of Extraordinary General Meetings held by the Applicant and correspondence between the Applicant and the Respondent and their respective agents.

- 18 With regard to the sum for insurance, Counsel stated that this was the total amount of the premium divided equally by the number of flats in the Building. He pointed out that there was no letter or any statement from the Respondent disputing the apportionment for the share of the insurance premium attributable to the Property.

- 19 Counsel drew the attention of the Tribunal to the provisions of the Lease referred to above. Although he admitted that the Lease was silent as to the ownership of the balconies and the liability for their maintenance, he urged that it was a matter of common sense that the floors formed part of the main structure of the building and put in evidence copies of judgements in support of his argument.

20 Counsel referred to the minutes of the meetings of the Applicant at which it was agreed that the refurbishment works should proceed. A representative of the Respondent, a Mr Hyatt, is recorded as having attended such meetings and as having asked questions. There is no record in the minutes of such meetings of the Respondent's representative having objected to the Applicant's proposals.

21 Counsel drew the Tribunal's attention to letters from the Respondent's agents dated 20 January 2004 in which it is stated "I am quite happy to pay for the refurbishment however, feel that this should be paid once work has been completed satisfactorily"; dated 28 January 2004:-

"We have given a guarantee that the invoice will be paid on satisfactory completion of the work" a further letter from the Respondent's agents dated 25 February 2004 states "at this time we will be happy to pay and in the meantime you are in receipt of our guarantee that the money will be paid on satisfactory completion of the works".

22 The Tribunal noted the statement of account included in the bundle which recorded that every other flat owner had either paid the service charge contributions which are the subject of this application or had agreed to pay and had made payments on account.

G Respondent's Response

23 No written representations were received from the Respondent. No representative from the Respondent appeared at the Hearing. However, the Tribunal considered from the documents supplied referred to above that the Respondent appears to have agreed that the costs of the work are reasonable and that they would be paid once completion of the work had been carried out.

H The Law

24 Section 19 (2A) of the Landlord and Tenant Act 1985 provides that "An Application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to - (a) Whether costs incurred for services were reasonably incurred and (c) the amount which is payable".

25 Section 19 (2b) of the Landlord and Tenant Act 1985 provides that an application may also be made "If the costs were incurred they would be reasonable."

26 No guidance is given in the 1985 Act as to the meaning of the words "reasonably

incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal

- 27 In *Veena S A Cheong* [2003 EGLR p175] Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].
- 28 Section 20 of the Act (inserted by section 151 of the Commonhold and Leasehold Reform Act 2002) provides that service charges are to be limited under sub sections (6) and (7) unless certain consultations requirements are met. These requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") which came into force on 31 October 2003. The provisions of the Act to apply to "qualifying works".
- 29 The Tribunal are satisfied that the work of refurbishment redecoration and carpeting referred to earlier were qualifying works within the Act and that the consultation requirements are those set out in the first schedule to the Regulations.

I The Tribunal's Conclusion

- 30 The Tribunal must first decide whether the Lease provides for the recovery of the relevant expenditure. If it does then it must go on to decide if that expenditure was reasonably incurred and whether the costs were reasonable
- 31 The sums of £141.94 for the insurance contribution and £300.00 for the maintenance fee are not qualifying works or qualifying long term agreements and there is no obligation on the Applicant to consult. Turning to the remainder of the works the Tribunal concluded that the balcony floors consist of reinforced concrete which are an extension of the reinforced concrete floors to the flats themselves. They therefore form part of the structure of the development. However, the balconies are suspended in space from the external wall of the building and there is no flat below them. To this extent therefore the declaration that the floors are to be divided medially and are to be regarded as a party structures, does not apply to the balcony floors. Applying the test of common sense the balcony floors and the balconies themselves, consisting as they do of bricks and a concrete lintel, are the responsibility of the Landlord under Clause 4(iii) of the Lease.
- 32 The Tribunal went on to consider whether the consultation requirements of the regulations had been complied with. The Tribunal finds as a fact that the Applicant did not comply strictly with the consultation requirements. No evidence was produced to the Tribunal addressed to the flat owners prior to carrying out the work with detailed estimates for the work, names and addresses of the proposed contractors from which tenders were to be sought, costings and reports from its experts (other than that from a consulting structural engineer employed by the

Applicant). However, the Applicant did call meetings of the company at which the company's proposals for refurbishment were discussed and members' views canvassed. These meetings were by way of Extraordinary General Meetings of the company and that is not, in the Tribunal's view, consultation within the meaning of the Regulations.

- 33 Section 20 (ZA) provides that at the Tribunal may, if satisfied that the Landlord acted reasonably, dispense with all or any of the relevant requirements. Counsel for the Applicant was invited to address the Tribunal on whether such dispensation should be given and he so invited the Tribunal to make such an order.
- 34 Having carefully considered the conduct of the Applicant, in calling Extraordinary General Meetings of the company to discuss the proposed refurbishment work and of which there was evidence that the Respondent had attended, the Tribunal considers that the Applicant has acted in a reasonable manner and therefore it is reasonable to dispense with the requirements of the Regulations.
- 35 From its inspection the Tribunal concluded that the works which are the subject to this application have been completed in a reasonably good workmanlike manner, and for the purposes of the letters from the Respondent referred to at paragraph 21.
- 36 From its own experience the Tribunal considers that a reasonable service charge for a three bedroomed flat within a development of the age and type of the Building would be £25.00 per month which Flat B8 will pay. This equates to £300.00 per annum.



G.C.FREEMAN

Chairman of the Leasehold Valuation Tribunal

8 May 2005