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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Building	:	The 10 Flats and Maisonettes 22 to 31 Church Green Row, Harpenden, Hertfordshire AL5 2TW
The Property	:	The Flats and Maisonettes in the Building, the shops below and the garages to the rear
Applicant	:	Merritts Properties Ltd
Respondents	:	Mrs Hughes, Mrs M. Day, Miss L. Broadbent, Mr & Mrs O. Mottram, Mrs H. Pamphilon, Mrs G. Buchanan, Mrs J. Wall and Mr & Mrs J. Richardson
Case Number	:	CAM/26UG/LSC/2006/0054
Date of Application	:	17th October 2006
Type of Application	:	Application under Section 27A Landlord and Tenant Act 1985
The Tribunal	:	Mr Duncan T. Robertson (lawyer chairman) Miss Marina Krisko BSc(EST MAN) FRICS, Mr John M. Power MSc FRICS FCIArb
Date of Hearing	:	23rd January 2007
Venue	:	Avalon House Hotel, 260 London Road, St. Albans AL1 1TJ
Appearances	:	
For the Applicants	:	Mr David M. Norman FRICS of Merrits Properties Ltd Mr Harry Blaker (Counsel) Mr Howard Schneider (Solicitor)
For the Respondents	:	Miss L. Broadbent Mr J. Richardson

DECISION

1. The Tribunal finds that reasonable insurance premiums for the following years commencing the 28th February each year relating to the Building are:-

   (a) for 2003 £2,314.00

   (b) for 2004 £2,356.00

   (c) for 2005 £2,582.00

   (d) for 2006 £2,600.00

   These sums relate only to the Flats and Maisonettes and not the garages or the shops.

2. The Tribunal makes an Order pursuant to Section 20C of the Act preventing the Landlord from recovering costs incurred in connection with the proceedings before this Leasehold Valuation Tribunal as part of the service charge.

REASONS

Introduction and Application

3. The Applicant asked the Tribunal to consider whether insurance premiums are fair and reasonable with regard to maisonettes and also garages for the years 2004, 2005 and 2006. The policy in each year commenced on the 28th February.

4. The Tribunal gave directions on the 14th November 2006 requiring amongst other things that the Landlords provide a copy of the policy documents and policy schedule relating to the sums insured with details of the claims record of the Building, the methods by which the

Landlord achieves a competitive premium and details of any commission or repayment or other benefits paid by or on behalf of the insurer to the Landlord the Landlord's agent or any associated individual or company. The Tribunal required the Respondents amongst other things to obtain two up to date written quotes based on the claims record supplied by the Applicant for insurance covering the amount and risks in respect of which the Applicant currently insures and the amount and risks argued by the Respondents as part of their case.

5. The Tribunal of its own volition made a further directions order on the 18th December 2006 that the Tribunal should determine the buildings insurance charges for the year commencing the 28th February 2003 as well as the years referred to in the Application. The Respondents had requested a determination on years prior to the 28th February 2004. At the Hearing as a preliminary issue it was agreed by all parties that by Section 20(B) of the Landlord and Tenant Act 1985 the Respondents are not liable to pay any of the relevant costs taken into account in determining the amount of a service charge which was incurred more than 18 months before the demand for payment. Because of this law and the fact that invoices had not been rendered until the 16th June 2004 the Tribunal was right in its further directions showing that the year commencing the 28th February 2003 also be assessed but not any earlier years.

6. In his opening address the Chairman made reference to insurance premiums incurred prior to the 28th February 2003 highlighting that it was no longer an issue that needed to be argued and therefore reference to them should be limited to them as a comparable. In this address the Chairman made reference to a previous insurer namely the Independent Insurance Company that went into liquidation. He stated that one of the reasons for liquidation was the fact that the Independent Insurance Company had been in certain cases charging too small a premium. Mr Richardson took exception to this remark

and demanded that his objections be noted as this was pre-judging an issue that he wished to make. The Tribunal notes that no issue was in fact raised and no party at the hearing made reference to the previous insurance with The Independent Insurance company.

The Property

7. The Tribunal before the hearing inspected all of the exterior of the Property including the Building at Church Green Row. They inspected the interior of one flat and one maisonette. The Building is brick built probably in the 1960's and is in reasonable to good condition.

The Policies

8. In the year commencing the 28th February 2003 the Applicant insured with Allianz Cornhill. A schedule of insurance was produced showing a declared value of £1,184,418.00 and premium of £3,033.48 attributable to the Building. No further information was available.

9. From the 28th February 2004 there has been a three year policy with Zurich. A full copy of that policy was provided with certificates of insurance showing:-

   (a) For the year commencing the 28th February 2004 a declared value of £1,295,000.00 and a premium for the Building of £3,087.93

   (b) For the year commencing the 28th February 2005 a declared value of £1,424,500.00 and a premium for the Building of £3,385.01

   (c) For the year commencing the 28th February 2006 a declared value of £1,621,900.00 and a premium for the Building of £3,407.94

The Lease

10. A copy of the Counterpart Lease dated the 29th November 1991 relating to Flat 22 Church Green Row was produced to the Tribunal

and all parties confirmed that all leases for flats and maisonettes in the Building are similar.

11. The Chairman highlighted the definition of Building on the second page of the lease which means the block of maisonettes standing upon part of the Property.

12. The provisions for insurance and payment by way of service charge are fairly normal except for the reference to Building in the sixth line of the second clause of the Eighth Schedule. We now set out an extract of this clause *"the Landlord shall insure the Property and keep it insured with underwriters or an insurance office of repute there being noted thereon the interest of all other persons having an interest therein against loss or damage by any of the risks usually or ordinarily covered in a policy of insurance on buildings of the type of the Building in an amount equal to the full replacement value and for Architects and Surveyors fees for rebuilding the Property".* Mr Blaker did not consider the reference to Building in the sixth line was significant and the Respondents had no observations to make. Although the clause states that the Property should be insured as a whole on one policy it does qualify the extent of risk to that usually ordinarily covered in a policy of insurance on buildings of the type of the Building; that is maisonettes and flats on their own.

13. The Ninth Schedule deals with computation and payment of service charges which includes insurance. These should be calculated after the year end with interest being added if appropriate. There is no provision for pre-payment. Therefore the current procedure of insurance premiums being demanded partway through the year does not comply with the terms of the lease.

14. The Ninth Schedule also makes reference to the cost of services being increased by any other costs and expenses reasonably and properly incurred by the Landlord in connection with the Property. The

Tribunal considered that this could trigger a claim for the Landlord recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.

The Law

15. A copy of the Counterpart Lease of the 29th November 1991 relating to garage No. 7 was produced to the Tribunal and all parties agreed that all the garages leases are in a similar format. The Tribunal of its own volition raised the issue as to whether it had jurisdiction under Section 18 of the Landlord and Tenant Act 1985 in relation to the garages. The garage leases are not of a dwelling used wholly or mainly as a private residence and are not tied in any way to the leases of the maisonettes and flats. They can be disposed of completely independently. Mr Blaker supported the argument that the Tribunal does not have jurisdiction over the garages and the Respondents did not object to this finding as they were mainly concerned about premiums relating to the maisonettes and flats and not the garages. The Tribunal decided that it had no jurisdiction on the insurance arrangements for the garages.

16. At the start of the hearing the Tribunal reviewed who should be shown as Respondents. It was agreed that Mr and Mrs Sullivan in maisonette 27 and Mr and Mrs Manohitharajah in maisonette 23 are not Respondents.

17. The Tribunal then reviewed with the parties Section 19 of the Landlord and Tenant Act 1985 to ascertain what tests of reasonableness should apply. Were the insurance premiums reasonably incurred?

18. The Tribunal considered that the normal Section 19 tests are extended and evolved by case law on insurance issues and they further need to consider:-

(a) Has the Applicant tested the market adequately?

(b) Is the insurance competitively obtained? It should not necessarily be the cheapest but it should not be excessive. If there is an excessive premium is this caused by excessive risks being covered, excessive sums assured or excessive amounts paid as commission or any other factor?.

(c) The Applicant is the primary decision maker but did it obtain its policies in the normal course of business? Was the Applicant reasonable in choosing this policy with this insurer? Is the insurer reputable?

(d) Commission and management fees should be considered as a whole and the Applicant tested as to whether it provides value for money in this respect.

(e) Comparable insurance as requested in the Directions and from other sources has been obtained and this should also be considered.

19. Before the hearing of evidence and in summing up the parties were given the opportunity to say if these tests were not appropriate. Mr Blaker in particular agreed that they were and he made reference to various cases. He produced the Lands Tribunal Case of **Forcelux Limited v Sweetman and another** and also three Leasehold Valuation Tribunal cases dealing properties at 30 Ickborough Road, London E5, 59a Southampton Road, Lymington and Flat 294a Norwood Road, London SE27. The Tribunal explained to the Respondents that the Tribunal were not bound by the Leasehold Valuation Tribunal cases but would take a note of the decisions. These cases in turn referred back to **Forcelux Limited v Sweetman and another** and also the well known case of **Berrycroft Management Co. Ltd and others v Sinclair Gardens Investments (Kensington) Ltd.** Mr Blaker wished to highlight the fact that there is

no implied covenant to take the cheapest quote, the market rate should be considered and any comparables must be on a like for like basis.

Evidence

20 This is a review of the evidence given primarily at the hearing. It must of course be read in conjunction with the detailed written representations that were made by both parties.

21. There was an important fact that came out in the evidence and that was the Applicant's insurance arrangements are primarily concerned with commercial property. The Building is the only residential property in the block policy and only accounts for about 5% of the premium and sum insured.

22. Most of the evidence given related to the current three year policy with Zurich. It would appear that the insurance company primarily decided the proportion of the overall premium attributable to the Building.

23. The current sum insured shows an uplift of 30% over the Building's declared value to cover inflation and other factors and the Applicant assures the Tribunal that the premium is only assessed on the Building's declared value and not on the sum insured figure.

24. A three year contract for insurance was entered into by the Applicant in good faith. They thought that premium rates would rise but they have reduced in the last couple of years. They agreed that with the benefit of hindsight a three year contract may not have been the best decision.

25. The Respondents fundamental case remains that insurance premiums doubled between 2001 and 2003 and the Applicant says this is largely due to the problems in the insurance market after 9/11. The Respondents said the doubling of insurance premiums is excessive and unreasonable.

26. The Respondents complained of mismanagement and a failure to communicate properly on the part of the Applicant over the collection of insurance premiums by way of service charge in particular prior to June 2004.

27. The Respondent also argued that there should be economy in scale in that more properties in a block policy should result in lower premiums.

28. There was substantial evidence given in relation to declared values. The Applicant relied on calculations made by Cushman and Wakefield, Healey and Baker and the Respondents on the report of AT Surveys Limited. This report was prepared by Mr. A. Tight a local Chartered Building Surveyor and Building Engineer. Mr Norman who is a chartered surveyor was in particular critical of the deductions made by AT Surveys Limited for no foundations.

29. As regards reinstatement costs, the Applicant's Surveyors added 10% for demolition and 15% for professional fees. The Respondent's Surveyor used the BCIS rebuilding cost which includes these extra fees. There is a major difference of opinion as to how reinstatement costs should be calculated in particular over VAT with the Applicant saying it should be added and the Respondents saying that it should not.

30. Little evidence was given with regard to the risks that should be covered. The Respondents were most concerned that they were having to pay for the additional risks element of commercial property. The Applicant assured the Tribunal that there were no risks attributable to other properties that have an impact on this Property but this Property has to be insured with a commercial risk factor because of the shops on the ground floor.

31. The Applicant confirmed its written representations that it had tested the market and obtained premiums on a competitive basis using two

brokers who then reviewed matters with at least 10 insurance companies. The Respondents argued that this was not necessarily the best way to test the market because this could be done by direct insurance arrangements.

32. Considerable evidence was heard concerning the comparables obtained by the Respondents as a result of the Tribunal Directions. On the whole the Applicant considered these supported its case. The Respondents had a major concern that they were not landlords and therefore were not in a position to obtain like for like quotations. They thought that their quotations obtained from other sources were better comparables.

33. The Respondents primarily wished to rely on comparables that they have obtained for Rothamsted Court the adjoining flats and a similar developrnent involving flats above shops at Anvil House, High Street.

34. Commission and management charges were reviewed. In 2003 the Applicant was not certain how much commission was earned but it did levy a 10% management charge on the insurance premium. In 2004, 2005 and 2006 the Applicant took a commission of 20% from the insurance company. The Applicant cannot say how much commission is being taken by the broker. For their total £12,000.00 commission on the block policy for the year 2006 they had to do well over 20 days work. Because of a European directive on insurance the Applicant believes they can no longer levy a management charge of 10% and must now rely entirely on commission earned.

35. Questions were pursued with regard to the claims history and there appears to have been only one recent claim concerning this Property. In the last year only seven or eight small claims have been made on other properties covered by the Block Policy. This the Applicants believe is not a major problem.

36. The Respondents also sought to introduce evidence concerning insurance premiums on individual properties and then said that premiums for the Building should be less than this due to the economy of scale. The Applicant was adamant the economics of scale do not apply to block policy insurance. Block policies were arranged mainly for ease of administration.

Conclusions

37 The Tribunal considered again Section 19 of the Landlord and Tenant Act 1985 and the various cases that provide the tests as to whether premiums were reasonably incurred. The policies in question were obtained in the Applicants normal course of business and reasonable for the commercial purposes of the Applicant but this does not necessarily mean that the policies were creating a premium reasonably incurred in relation to the Building in accordance with the terms of the Lease.

38. The Tribunal considered that the current declared value of the Building should be approximately £1,250,000.00 this being based on 1,050 square metres of floor area and building costs of £1,000.00 per square metre including demolition and professional fees. 1050 square metres is an average between the surveyors' of the two parties. A further £200,000.00 is added for issues such as VAT and other contingencies. We hope this is of assistance to the parties in particular bearing in mind that a new insurance contract has to be negotiated for the period commencing the 28th February 2007.

39. The Tribunal was disappointed that neither parties expert could be present to have their evidence tested. They did prefer the evidence of the Respondents expert although the extent to which rebuilding costs will incur VAT was something of a grey area. The Tribunal considered that the current declared value of £1,621,900.00 is excessive equating as it does to £1589 per square metre based on the Applicant's measurements.

40. On the issue of risks the Applicant has a large block policy covering primarily commercial properties. The Building is the only residential property covered by this policy and accounting for only about 5% of the total sum insured. The Building is flats and maisonettes above shops and it is entirely proper that the Property should be insured as one unit. The Tribunal in particular at this point considered the wording of the Lease on the issue of risk to be insured. They came to the conclusion that the tenants are being penalised by excessive risks.

41. On the issue of commissions and management fees the Tribunal noted that the brokers are receiving commission direct from the insurance company but it is uncertain as to the percentage being paid to them. The Tribunal considered the Applicant should be entitled to 10% either by way of management fee as provided for in the Lease or commission. A commission of 20% being retained for its own administration work is excessive.

42. Of all the comparables the Tribunal preferred the Norwich Union Insurance for Rothamsted Court. The Tribunal does appreciate it is not exactly like for like. For example, it has higher excesses and no terrorism cover. The Tribunal considers the cost of rebuilding shops should be less than the rebuilding of flats. It is appreciated that we do not have full details of this policy but it is after all a property next door built at the same time. It had a declared value of £1,057,376.00 in August 2005 with a premium of £1,289.89 which the Tribunal considers supports strongly the argument that the premiums for the policies in question are excessive.

43. The Tribunal considers that the Applicant has properly tested the market by using two brokers to explore insurance with various companies. The Respondents idea of seeking direct quotations is not viable.

44. The Respondents argument that there should be economy of scale is wrong. The Tribunal's knowledge and experience of block policies leads them to the conclusion that an economy of scale is for various reasons rarely achieved.

45. Taking into account the various issues referred to in this conclusion that are excessive the Tribunal decided to make a global deduction to give a reasonable insurance premium for the year of 2006 of £2,600.00.

46. The Tribunal then considered the assessment of previous years and the problem of the market then going up and then coming down. They decided that the best way of assessing the correct premium for those years would be to take the premium in question and then multiply it by the fraction £2,600.00 to £3,408.

47. The Tribunal considered the evidence in connection with these proceedings relating to the Section 20(C) Application and in particular the concern as to the poor management and communication of the Applicants in earlier years. They reviewed all the circumstances as well as the conduct of the parties and also the outcome of these proceedings. They decided it is just and equitable to make an order preventing the Landlord from recovering costs incurred as part of service charges.

48. Bearing in mind all of the problems that have been experienced by the parties and the fact that this Building is such a small part of the total sum insured in the primarily commercial Block Policy of the Applicant the Tribunal recommends that the Property has its own individual policy.

Duncan Robertson

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DUNCAN T. ROBERTSON
Chair
02 February 2007