

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/43UE/LCI/2007/0001

BETWEEN :-

VICTORIA GATE MANAGEMENT CO LIMITED

Applicant

AND

FREEHOLD MANAGERS PLC
AND C G FREEHOLDS LIMITED

Respondents

PREMISES: 23 – 52 Ellesmere Place, Walton-on-Thames,
Surrey ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr R A Potter FRICS

DETERMINATION DATE: 9th May 2007

DETERMINATION AND REASONS

1. THE APPLICATION

1.1 On 16th January 2007 the Applicant on behalf of the lessees of the Premises issued an application for a determination under Section 27A of the Landlord & Tenant Act 1985 as to the reasonableness of service charges rendered by the Respondents in respect of the insurance premiums charged to the lessees for the years 2004-2005, 2005-2006 and 2006-2007. It was directed that the matter be dealt with as a paper determination.

1.2 The amounts charged by the Respondents in respect of insurance premiums for the years in question were as follows:-

1 st February 2004 to 31 st January 2005	£ 9,354.26
1 st February 2005 to 30 th November 2005	£10,070.80
1 st December 2005 to 30 th November 2006	£13,051.19
1 st December 2006 to 30 th November 2007-05-15	£13,871.50

2. THE APPLICANT'S CASE

2.1 First the Applicant challenged the Respondent's right to effect the insurance in respect of the premises and to recoup the same from the lessees.

2.1.1 The Applicant was of the view that the Lease of each of the apartments, by clause 5 in the Fifth Schedule required the Management Company to effect the insurance. This clause was said to provide as follows:-

"To keep insured or procure to be kept insured with such well established insurance company or underwriters of repute as the Management Company may from time to time prescribe the Transferor the Management Company and the Transferee against all third party claims resulting from the use of the maintained property by the Transferee his friends servants agents and invitees and other lessee or person whomsoever."

2.1.2 It was submitted by the Applicant that this meant that it was the Management Company who had the responsibility to insure the Premises.

2.1.3 Next it was submitted that even if it was the Respondent's duty to arrange the insurance the premium was unreasonably high for the years in question.

2.1.4 The reason why it was claimed by the Applicant that the said premiums were unreasonable was as follows:-

From the time when the property was converted in 2001 until 2004 the lessees' Managing Agents, Messrs Ringley, Chartered Surveyors, arranged the insurance. The insurance premium arranged by them for the period 1st February 2003 to 31st January 2004 through Royal & Sun Alliance was £5,114.68. In August 2004 the freehold was sold to CG Freeholds Limited. The premium for the insurance for the year 2004 – 2005 arranged by the new freeholders was £9,354.26. In its statement of case the Applicant said that this was an increase of £4,952.20 or 112.59% on the previous premium but in fact the increase was 4,240.42 (i.e. £9,354.26 - £5,115.68) or 82.89%

2.1.5 The Applicant stated in its statement of case that it understood that the level of cover was comparable between the insurance it arranged and that arranged by the new freeholder and accordingly argued that the increase in price was unjustified.

2.1.6 For the year 1st December 2005 to 1st December 2006 the premium was £13,051.19 representing an increase of £3,696.93 over the previous year – a further 39% increase.

2.1.7 For 1st December 2006 to 1st December 2007 the premium was £13,871.50. The Applicant accepted that this was a reasonable increase over the previous year's premium but overall since 2004 the increase was, it was claimed, unreasonably high.

2.1.8 The Applicant produced a valuation from Ringley Chartered Surveyors dated January 2006 which valued the Premises for insurance purposes at £8,854.095 whereas the landlord's insurance for 1st December 2005 was based on a sum insured of £8,966.572.

2.1.9 The Applicant had obtained quotations from Norwich Union in January 2007 for £9,290.91 (to include terrorism cover) and from Alianz Cornhill in the sum of £9,306.66, the latter being for a standard construction block of flats built in the 1950's with concrete floors.

3. THE RESPONDENT'S CASE

3.1 The Respondent pointed out, first, that the Applicant had seemingly quoted from a draft transfer of the freehold rather than the lease in identifying the party responsible for insurance. The

lease provides that it is the landlord who has the responsibility of insuring the structure, fabric and common parts of the Premises. By clause 11.2 it states that "the lessor will at all times during the term to keep the buildings, refuse facility, walls and fences and other structures within the communal areas (hereinafter called the insured buildings) insured."

- 3.2 The Respondent claimed that in comparing quotations for insurance premiums the Applicant was not comparing like with like. First, the sums insured were not the same. Secondly the cover for contents of the communal parts is not the same. The Landlord has insured for £20,920 whereas the Applicant's quotes are based on a figure of £12,500. Further, some of the Applicant's quotations were not on the basis of a converted building but rather a purpose built block of flats. When a revised quotation based on a converted building was obtained by the Applicant at the Landlord's request this produced an increase in the premium payable. Further the Respondent stated that there were other differences in cover provided by the Landlord's insurer the Zurich, compared with those from whom other quotations had been obtained. For example, it included £10 million Property Owners' Liability and £5 million Employer's Liability which some of the others did not include. Alternative accommodation/loss of rent in the event of the Premises being destroyed was provided at 40% by Zurich as opposed to 33.3% with some of the others.

4. THE PREMISES

- 4.1 The Tribunal inspected the premises on 9th May 2007. These comprised 30 apartments in an impressive building constructed in stages in the 1860's and originally built as a hospital or sanatorium. It is a Grade II listed building with, it is believed, wooden flooring. The property was converted to a high standard into apartments by Berkeley Homes in 2001. The conversion seems to have been very well executed. There are five entranceways to the apartments which lead off communal halls and stairways. The central part of the block is three storeys high and is served by a lift whereas the wings on either side are of two storeys and have no lift. The communal halls and staircases have high quality carpeting and light fittings. There are electric radiators in the hallways and emergency lighting as well as letterboxes for all the apartments near to the entrance doorways. Otherwise, there are no further Landlord's contents in the common parts.
- 4.2 The Premises are approached via a security gate and are set in well-tended grounds and parking areas. The apartments have the benefit of an underground car park.

5. The Law

- 5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable

- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. THE LEASES

6.1 The relevant clause in the lease as to the responsibility for insuring the Premises is contained in clause 11 and has been quoted at paragraph 3.1 above. The full text of clause 11.2.1 of the lease is as follows:-

"at all times during the Term to keep the Building the Refuse Facility walls and fences and other structures within the Communal Areas (hereinafter together called "the Insured Buildings") insured against loss or damage by fire and other usual comprehensive risks as the Lessor shall deem to be expedient or desirable in such well established Insurance Company of repute as the Lessor may from time to time prescribe and through such agency as the Lessor shall nominate in a sum which in the reasonable opinion of the Lessor represents the full reinstatement value thereof plus Architects' Surveyors' and Civil Engineers' fees on such full reinstatement value at the current scales for the time being of the Royal Institute of British Architects the Royal Institution of Chartered Surveyors and the Institution of Civil Engineers legal and other professional fees and the costs of any expenses related to works of demolition and of removal of debris. And also to insure against such other risk for such amounts which in the opinion of the Lessor may from time to time be considered reasonably necessary and to make all payments necessary to keep such insurance in force within seven days after the same shall become payable and to produce to the Lessee once a year on demand a certificate or certificates of such insurance or other evidence thereof and the receipt for or other evidence of every such payment."

7. THE DETERMINATION

7.1 It is clear that the Applicant was mistaken as to where the responsibility for insuring the Premises lies in accordance with the lease, namely with the landlord. The Applicant was mistaken in thinking that the matter was governed by the document annexed to its statement of case which turns out to be a draft, not of the lease but of a transfer of the freehold and referring to claims by third parties against the lessees' use of the premises. The Tribunal has no hesitation in finding, therefore, that it is the landlord who insures the Premises, save for third party claims referred to above.

7.2 As far as the amount of the premiums that have been charged are concerned, it is always difficult to challenge premiums, particularly where the party arranging the insurance has used brokers who have gone out into the market and have recommended the most appropriate contract in their opinion. Further, it is not easy to compare like with like when comparing

insurance policies. Seldom do they provide the same cover and it is difficult to ensure that the same risk factors have been taken into account. In this case, the sums insured and the Landlord's contents of the common parts was not the same as for the examples quoted by the Applicant. Further, there are other differences in the extent of the cover provided: A quotation obtained by the Applicant from Norwich Union increased from £6,465.13 (plus £942.80 for terrorism cover) to £8,345.11 (plus £942.80 terrorism cover) when the description of the Premises was changed from a standard construction with concrete floors to a conversion of a Victorian building. But the latter did not mention the fact that this is a Grade II listed building and that this had been taken into account when assessing the premium. The Tribunal considered that that fact alone could well have had a significant affect on the level of premium.

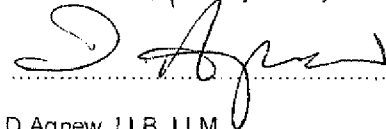
- 7.3 The Applicant had complained about the level of the sum insured. In January 2005 the sum insured was £8,333,245 for the buildings plus £20,920 for the contents of the common parts. In December 2005 the buildings sum insured had risen to £8,966,572. The Applicant's own valuation in January 2006 was £8,854,095.93: a difference of £112,000 which on a building of this kind, which is not easy to value precisely, the Tribunal found within a reasonable tolerance.
- 7.4 The Tribunal did not consider £20,920 for the sum insured for the contents of the common parts to be unreasonable.
- 7.5 The main increase in premiums was in February 2004 when they went up from £5,370 to £9,354.26. The Respondent did not address this point in its Reply to the Applicant's case. It is not clear, therefore, what the cause of this significant increase was but by working back from the Tribunal's decision that the premium for 2006/7 is reasonable and that the increases from 2004 have been in line with what might be expected, the Tribunal could see no reason to find that the premium for 2004/5 was not reasonable.

8. SUMMARY

- 8.1 The Tribunal finds that the responsibility for arranging the buildings insurance for the Premises is that of the Landlord.
- 8.2 The following insurance premiums for buildings insurance were reasonably incurred and are payable by the lessees, namely:-

1 st February 2004 to 31 st January 2005	£ 9,354.26
1 st February 2005 to 30 th November 2005	£10,070.80
1 st December 2005 to 30 th November 2006	£13,051.19
1 st December 2006 to 30 th November 2007	£13,871.50

Dated this 17th day of May 2007



D Agnew LLB, LLM
Chairman