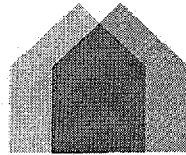


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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AG/LSC/2007/0135**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT  
ACT 1985 AND SCHEDULE 11 OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**Applicant: Nader Shakib**

**Respondent: Crestgrove Ltd**

**Premises: Basement Flat, 8 Thurlow Road, London NW3 5PJ**

**Date of Application: 12 April 2007**

**Dates of Hearing: 20 & 21 August 2007**

**Appearances for Applicant: Mr G Levine  
Mrs P Breitz  
Mr S Varlese  
(All of Shakib Properties Ltd)**

**Appearances for Respondent: Mr N Cheek – Director  
Mrs A Cheek – Company Secretary  
(Both of Crestgrove Ltd)**

**Leasehold Valuation Tribunal: Mrs B M Hindley LLB  
Mr T W Sennett MA FCIEH  
Mrs J Clark JP**

**Date of Tribunal's Decision: 24 August 2007**

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to determine the payability of service charges in connection with major works and consequent legal costs.
2. Prior to the hearing the Tribunal inspected the subject property accompanied by Mr Levine. The respondents did not attend and were not represented.
3. The Tribunal found the property to be a late Victorian, semi detached villa on four floors plus attic, converted into four self contained flats. The building is of traditional construction with rendered elevations at ground and basement levels and with facing brickwork above. The roof was seen to have been recently recovered and three dormer windows and a velux light installed.
4. Woodwork and rendered surfaces have been recently decorated and presently are in good order. The underlying rendering, particularly at low level, appears patchy and in need of further attention. There is a crack to the render above the entrance portico. The front garden wall and two pillars have been rebuilt using new bricks.
5. The Tribunal was able to view only the front elevation because access to the rear was not made available.
6. The respondents contested the costs on the basis that the Section 20 procedure had not been properly followed and that the costs were not reasonable.

#### Section 20

7. On 13 July 2005 Wallace LLP, acting as the agents of the applicants, served a notice of intention to carry out works of external decoration and associated repair on the respondents, giving them until 17 August 2005 to make any written observations.
8. On 22 July 2005 the respondents wrote to Wallace LLP requesting a schedule of works and suggesting the instruction of a surveyor.
9. On 19 August 2005 Wallace LLP, on behalf of the applicants responded that the respondent's letter of 17 August did not amount to an observation for the purposes of the consultation requirements.
10. On 27 September 2005 Wallace LLP served on the respondents a statement of estimates in relation to the proposed works and a notice accompanying a statement of estimates.
11. Three estimates had been obtained for the works and, separately, for required scaffolding.
12. Each estimate comprised one sheet of paper and was said to be based on a supplied specification. The first was from Kendell Property Services, dated 18 April 2005, @ £39,635 + VAT. The second from Express Residential was undated but with a faxed header of 25 May 2005, @ £46,750 inclusive of VAT. The third, dated 5 May 2005, was from Diamond Ltd @£41,500 inclusive of VAT.
13. The three estimates for scaffolding were from J and L Scaffolding Ltd @ £2,800 plus VAT, The Scaffolding Co Ltd @ £4,300 plus VAT and Vyntage Developments Ltd @ £2,960 plus VAT.

14. The respondents were informed that observations should be made within the consultation period ending on 31 October 2005.
15. On 28 September 2005 the respondents wrote to Wallace LLP raising various queries including whether any of the firms worked for the applicants.
16. On 6 October the respondents wrote again to Wallace LLP. They stated that they had visited the subject property and had found that scaffolding had been erected and a builder working on site had informed them that he was working for the applicants and that he had no knowledge of any of the three companies who had estimated for the works.
17. On 7 October Wallace LLP responded to the respondents' letter of 28 September and stated that they had been informed that the three companies from whom estimates had been obtained were unconnected with the landlord of the subject property or the applicants. They reiterated that the respondents had until 31 October to make observations on the estimates.
18. The respondents wrote on 19 October, 24 November, 15 December 2005 and 17 February 2006 expressing concerns about various aspects of the works but they received no response until 22 November 2006 when they received a letter from Mr Levine on behalf of the applicants. In it he asserted that the Section 20 procedure had been properly followed and that the works had now been completed to the satisfaction of their surveyor. He stated that the contractor, Diamond Ltd, had been paid in full.
19. The applicants in their hearing bundle provided a witness statement from Mr Krumov of Diamond Ltd. He explained that he had formed a company called Diamond Bathrooms and Kitchens Ltd but this had been dissolved, without his knowledge, on 7 December 2004. He had worked for the applicants and had been approached by Mr Varlese in April 2005 to provide an estimate for major works. He wrote that he did not have any headed notepaper, nor was he able to type, but a friend had typed the estimate under the name of Diamond Ltd.
20. When his estimate was accepted by the applicants he agreed with them that they would order and pay for materials and that they would pay labour costs direct. He was to liaise with Mr Varlese who would order and collect materials.
21. At the hearing Mr Varlese, who described himself as a one time electrician with his own business now working in a self employed capacity for the applicants as a property and maintenance manager, explained that a schedule of works having been obtained from Stuart Henley and Partners, Chartered Surveyors, he had personally sought estimates from Express Residential and Diamond Ltd in about April 2005. He had done this on the basis that he knew the principals involved and their standard of workmanship. He had, on site, shown them the schedule of works.
22. He expressed satisfaction with their one page, global sum estimates and had seen no need to make any enquiries as to their financial status or insurance cover.
23. He said that Diamond Ltd had been chosen because they 'seemed the most reasonable' and because they had worked for the applicants in the past.
24. Mr Varlese said that work had commenced on the August Bank Holiday weekend and that he had been involved from the start in buying materials and overseeing/managing the works. He volunteered that he had also worked on the

- site in his capacity as an electrician because the applicants had been, at the same time, carrying out major works involving re-roofing and a loft extension.
25. Questioned by the Tribunal he said that he was not aware that there was a written contract for the service charge works. He explained that he collected time sheets from the various subcontractors who had been provided by Mr Krumov. He did not audit these but passed them to Mrs Britz, who was the applicants' administration and accounts manager.
  26. Mrs Britz said that she had been employed by the applicants since May 2005. She was a dentist by profession and had no previous experience of property management.
  27. Mrs Britz explained that the works had commenced in September 2005 but it had quickly become apparent that Mr Krumov did not have the necessary financial resources to undertake the contract. The director of the applicant company had been keen to assist Mr Krumov in his endeavours to establish himself in this country and had, therefore, been willing to allow the work to proceed on the basis that the applicants would provide and pay for all materials and pay labour costs on the provision of weekly time sheets.
  28. She said that Mr Varlese supplied her with invoices annotated to designate the materials attributable to the service charge works at the subject property and she was thus able to compile a spread sheet, which was referred to as the final account in the hearing bundle. She asserted that she was thus able to differentiate these costs from those attributable to the works of loft conversion being carried out at the same time and from works at other properties managed by the applicants.
  29. Mrs Britz stated that the works had commenced in September 2005 and this was also confirmed by Mr Levine. Both of them admitted that there had been 'shortcomings' in the compliance with the required statutory procedure. However, they claimed that since both of the experts, employed as a result of the Directions of the Tribunal, were of the opinion that the works were necessary and agreed that whilst the cost had been too high, a reasonable cost would have been in the region of £35,000 inclusive of VAT, the 'shortcomings' should be overlooked and that the Tribunal should themselves determine a reasonable cost.
  30. Having noticed from the invoices supplied and apparently included in the final costings, that the applicants had commenced to purchase materials for the works as early as 22 August 2005, the Tribunal enquired why the works had commenced before the end of the statutory consultation period.
  31. Mrs Britz explained that complaints had been made about the dangerous condition of the portico and that it had been necessary to commence work. No evidence of this assertion was provided nor had any Section 20ZA application been received.
  32. Mr Levine suggested that if the Tribunal was not prepared to overlook the admitted 'shortcomings' that the Tribunal should grant the necessary dispensation.

The Tribunal's Determination.

33. The purpose of Section 20 is to ensure that, before service charge payers are committed to paying significant sums of money for works, they are informed about and given the opportunity to comment on the nature of the works, their cost and the choice of contractor.
34. The landlord has to have regard to any observations received and this means that he has to come to a conclusion on them that any reasonable landlord would do.
35. The Tribunal is not persuaded from the evidence that the applicants had any regard to the observations of the respondents and they find support for this view from the fact that the applicants commenced work before the end of the consultation period which was in itself a significant failure to follow the consultation procedures.
36. Further, allowing the respondent to believe that the works were being carried out by an independent contractor when, in fact, from the beginning they were being carried out in house, is entirely contrary both to the spirit and to the letter of the Section 20 procedures. In this connection the Tribunal notes that the fiction was maintained throughout – particularly in a letter from Mr Levene dated 22 November 2006 when he stated that ‘Diamond Ltd have been paid in full’, in the spreadsheets produced by Mrs Breitz as the final account, and repeated in the service charge accounts prepared by the managing agents and certified by Langford & Co, their accountants, on 3 April 2007.
37. On the basis of all of the above the Tribunal determines that there has not been compliance with the Section 20 procedures and they are of the opinion that the departures from the required procedures are too fundamental to allow a dispensation were one to be sought.
38. Accordingly, the respondents’ liability for the cost of the works is limited to £250.
39. If the Tribunal is wrong in their determination of the Section 20 requirements they would have considered, on the basis of the reports from Mr Stevens FRICS MCIarb and Mr Stockbridge BSc MRICS, that a reasonable cost for the works would have been £32,500 and, therefore, the respondents’ contribution under the terms of their lease would have been £8,125.
40. Mr Levine applied under Schedule 11 for legal costs in the sum of, originally, £1,273.33 and, at the hearing, a further £4,204.26, He contended that these were administration charges incurred by the applicants in recovering unpaid service charges.
41. Alternatively, he submitted that such costs were recoverable under Section 2(6) (a) of the lease as costs incidental to the preparation and service of a Section 146 notice.
42. As a further alternative he referred to the Fourth Schedule of the lease at 7), and suggested that they were fees for the general management of the building.
43. The Tribunal is not persuaded that these charges are administration charges under the 2002 Act, nor are they legal costs incidental to the service of a Section 146 notice, nor can they be considered as the fees of the landlord’s managing agents. Accordingly, they do not consider them recoverable under the terms of the lease.

44. In any event if they are recoverable under the terms of the lease the Tribunal would accede to an application by the respondents that the applicants should not be allowed to charge the respondents for their very considerable failings.
45. If the Tribunal is wrong on all counts and the costs are recoverable the Tribunal would consider the claimed costs not to be reasonable and would limit the costs to £300 as they consider that much of the claimed work did not require Mr Levene's legal input and was well within the competence of a professional managing agent.

Chairman

*R T Handley*

Date

24/8/07.