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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BJ/LSC/2007/0144

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A

Applicant: Ms Sarah Vinson Higgs

Represented by: Avril McDowell Solicitors

Respondent: Mr Oburnaeme Okoli and Ms Nicholina Ezechie

Represented by: Boatfield & Co Solicitors

Premises: Upper Flat, 8 Burland Road, London SW11 6SA

Date of Application: 24 April 2007

Date of Oral Pre-Trial Review: 17 May 2007

Appearances for Applicant: Applicant in person with Mr Sam O'Connor

Appearances for Respondent: Mr O Okoli

Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr Ian Thompson FRICS
Mr A D Ring

Date of Tribunal's Decision: 9 August 2007

LON/00BJ/LSC/2007/0144

UPPER FLAT, 8 BURLAND ROAD, LONDON SW11 6SA

BACKGROUND

1. This was an application dated 24 April 2007 pursuant to ss 27A and 20C of the Landlord and Tenant Act 1985 for determination of liability to pay service charges for the service charge year 2006 and limitation of the Landlord's costs in connection with the proceedings before the Tribunal. The subject property is an upper flat in a converted house divided into two flats. The Landlord is the owner of the ground floor flat. The subject flat is held on a Lease dated 14 November 2005 between Barry David Francis Grimaldi and Helen Mary Gourdin for a term of 189 years from 24 June 1985, of which the Applicant Lessee is the Assignee. An oral Pre-Trial Review was held on 17 May 2007, and was attended by the Applicant Lessee in person. There was no attendance by or on behalf of the Landlord.

2. At the Pre-Trial Review Mediation was discussed and the Applicant Lessee indicated a willingness to participate in mediation of the dispute, encouragement of which the Procedural Chairman recorded in the Directions, nevertheless also setting down a hearing date and associated prior Directions. In the event there was no mediation since there was no response from the Landlord to the clerk's correspondence or to the Directions themselves. Those Directions had designated 7 June 2007 for receipt by the Applicant Lessee of the Respondent Landlord's detailed case and had set out a precise menu of the documentation required to progress the case, whether by mediation, other settlement between the parties or determination by a full Tribunal. The listed documentation included

    - Identification of the service charge provisions in the Lease
    - Service charge accounts
    - Itemised list of the service charges for the year by reference to the heads in the service charge accounts

- Copies of bills, invoices and the insurance documents including the policy, schedule and premium demand
- Documentary evidence that the Landlord was the registered freehold owner of the property
- Legal submissions if liability is in issue
- Details of compliance with s 20 procedure

However no such Statement of Case was received from the Respondent Landlord by the Applicant, by 7 June 2007 or at all. Nevertheless the Applicant Lessee duly prepared a hearing bundle, as required by the Directions, and on 20 July 2007 sent one copy to the Respondent Landlord's solicitors and four copies to the Tribunal, where Receipt was duly recorded by the Tribunal's date stamp on that day.

THE HEARING

3. At the opening of the hearing, at 10 a.m. on 31 July 2007, only the Applicant Lessee was present, accompanied by Mr Sam Connor, (her solicitors not attending). Having waited for a few minutes to ascertain whether any attendance by or on behalf of the Respondent Landlord was likely, the Tribunal commenced the hearing by reference to the Applicant Lessee's Application and Statement of Case.

THE APPLICANT'S CASE

4. The Applicant, Ms Sarah Higgs, said that she had finally applied to the LVT because she had been unable to obtain any satisfaction in respect of inquiries into her liability to pay service charges from her Respondent Landlord, Mr Obernaeme Okoli and his wife, Ms Nicholina Ezechie. She said that she was perfectly willing to pay her service charges, but in accordance with the terms of her Lease and when properly demanded, which she considered they had not been so far. She said that when she had purchased her Lease of the flat, the Landlord had been Mr Grimaldi, but that the freehold had apparently

been acquired by Mr Okoli and Ms Ezechie on 19 January 2006. However Mr Grimaldi remained the registered proprietor at the Land Registry and no formal notification or address for service had been supplied by Mr Okoli who was now demanding service charges and harassing her for payment. She had some concerns as he had commenced extensive works in the ground floor flat, excavating a basement under it to extend the habitable space. These works had damaged the common parts and were the apparent reason for substantial service charge demands, for which there was inadequate detail, leading her to question whether she was liable for the charges demanded at all. In particular there had been no s 20 consultation either in respect of those extensive works or in respect of outside decoration and associated matters which surely comprised major works which should be the subject of such consultation. She was concerned about this administrative disarray since he had failed to respond to all requests for insurance details so she did not even know whether the property was properly insured or not. This was a concern since in view of the misery that she had suffered throughout the preceding year she had determined to sell her flat but could not do so until the outstanding service charge issues were resolved and proper insurance in place. She had attempted to negotiate a sale to the Respondent Landlord, since it appeared that he wanted her out of the building, but he was apparently unwilling to pay the market price of the property and had been pressurising her to accept an undervalue which she was unable to do since she wished to purchase another property in the same area.

5. Ms Higgs added that she had not been made aware of the sale of the freehold to the Respondent Landlord, and had not at the time been aware that she could have challenged this sale as her Lessee's legal right of first refusal had not been respected. She had only become aware of the transaction through "bumping into Mr Okoli in the hallway" when he had informed her that she would have large bills to pay in respect of the works that he was doing. She had responded that she would be willing to pay all charges for which she was liable, but would like official notification of his status together with an address for service. Receiving only generalised typed demands, often for immediate payment at short notice, she had eventually consulted

Wandsworth Council and the Leasehold Advisory Service, and ultimately (after attempting to deal with Mr Okoli by letters, telephone and email, and even mediation with a male associate present) had instructed a solicitor, whose communications with the Respondent Landlord's solicitors had met with similarly dismissive and unhelpful response.

6. Ms Higgs then took the Tribunal through the disputed items listed in her application. With regard to building insurance, she said that there had been no certificate available, despite many requests, verbally and in writing, no detail as to duration of cover, risks insured against or identity of the insurance company providing cover. She pointed to a solicitor's letter in the bundle asking for these details, but added that there had also been many other verbal and written requests which had been ignored. Nevertheless the Respondent Landlord was charging £600 for this item, and she had obtained a quotation for half that figure, although in the absence of any detail from the Landlord she conceded she could not be sure that the cover was the same. £700 had been charged for hallway electricity and water, whereas she paid her own water bill (since her flat was separately rated) and she had seen unpaid demands going to "The Occupier" of the ground floor flat. She could not conceive how much electricity could have been used in the common hallway especially as the single hall light and her own front door bell had been out of action for almost all of the year 2006 due to Mr Okoli's building works. She said there was no power point in the hall and the light was on a timer. There were no supporting invoices.

7. £600 had been charged for "Pump Service" and she understood that this was in respect of the new sewage system. However, she was concerned that this was not an item for which she was liable since the new sewage system (for which £2617 was being charged) had been occasioned by Mr Okoli's digging out a basement floor underneath the ground floor flat which had required replacement of the existing sewage system. She said there had been no opportunity for her to instruct a surveyor, as there had been no consultation. Since the pump appeared to be necessary to bring waste up to street level (as Mr Okoli had altered the drains so that the previous sewage system no

longer worked) she was not convinced that these costs fell within her liability under the terms of the Lease, but in any case there had been no s 20 consultation which was clearly required for major works of this kind.

8. Ms Higgs said that £900 had been charged for management and £200 for administrative costs but there had been no management and there was no detail of the administration charge. When she had asked for details of both these charges Mr Okoli had said that it would be much more expensive to have an independent professional manager and had threatened legal proceedings for non payment of her service charges.

9. The remaining item in her application was for decorative costs (the external decorations). For this only an estimate had been supplied and again there had been no s 20 consultation. She pointed to the estimate which included scaffolding (which had in fact been dispensed with), tiling of the entrance with classic black and white tiles (which had not been done), a new wooden floor for the hall (which had also not been done) and new plastering, but said that while there was no need for any of this since the hallway had been perfectly presentable beforehand, the builders had wrecked that during Mr Okoli's building works, including damaging the front door which for a time would not close and had been a security risk. They had also damaged the new plastering and decorations which would have to be done again. She said that the external decorations had also been the result of the building works, although she would have agreed to pay for them in any case since external decorations were covered in the terms of the Lease.

THE RESPONDENT'S CASE

10. At the conclusion of the Applicant Lessee's evidence, Mr O Okoli, arrived at the hearing. His explanation for his late appearance was that he had not known about the hearing until the previous Friday, 27 July 2007, when he had been informed of the arrival of the hearing bundle by his solicitors. However he had for some reason not obtained this bundle and therefore had no papers, had mistaken the time of the hearing (which he had supposed to begin at

10.30am) and had in any case been held up while travelling to the Tribunal. Having no papers he indicated that he was not able to assist the Tribunal much in respect of the evidence given by Ms Higgs since to every question about missing detail in the demands for service charges that he had made to Ms Higgs he said that he did not have that information and "would have to check".

11. Asked why he had not complied with Directions to present a detailed case to Ms Higgs by 7 June 2007, he said he had not been aware of the Directions which had listed the documentation that was required. He said that his wife was a barrister and dealt with that sort of paperwork and he was "sure she would have dealt with it". He said that he was a busy man with many properties and did not deal with paper which was her responsibility. Asked by the Tribunal why, in that case, there had been no compliance with the Directions, which had listed in detail the documentation required for a proper disposal of the case at the hearing, he repeated that he was sure his wife would have dealt with the matter. Asked whether he knew about the hearing, he repeated that it had only come to his notice the previous Friday, too late for any papers to be assembled. Asked why he could not have at least obtained the bundle duly sent by the Applicant Lessee (in compliance with the Directions) to his solicitors, he had no answer but to repeat that his business was complex and he needed more time to access archive storage of supporting service charge vouchers. When it was pointed out to him by the Tribunal that in respect of such a small property there would be few documents to collate – a handful of copy invoices at most, and the insurance details – and that he had had the entire weekend and the day prior to the hearing (the Monday immediately following the weekend) to prepare, he replied that he could not do so as all his invoices and other papers were "filed away". Asked why he had not brought his solicitor to the hearing he said that they were "busy".

12. Upon examination of the clerk's file, it appeared that solicitors apparently representing the Respondent Landlord had written to the clerk on 17 May 2007 (having apparently been so instructed by Mr Okoli's wife, Ms Ezechie) to

indicate that they would not be attending the Pre-Trial Review. Indeed correspondence received by the clerk from these solicitors (who were therefore on the Tribunal's record as representing the Respondent Landlord in this case) indicated that the issue of service charge demands to the Applicant Lessee was (in their words) "a sham" since it was intended that the Respondent Landlord would purchase the Applicant Lessee's flat. Mr Okoli explained that this was so that the service charge demands as such could furnish a basis on which the purchase price could be reduced since the Applicant Lessee had told him she could not afford to pay service charges. He said that the delay in registration of the freehold purchase was because of the intention to purchase her flat, so that registration of the whole building could go forward at the same time.

13. With regard to the detailed charges demanded, Mr Okoli said that he had consulted Ms Higgs throughout and that she had known about everything done in the building. Asked if he realised that that was not the same as following the s 20procedure set down by law, he said he did not know if a s 20 Notice had been served but that Ms Higgs had in any case obtained a quotation of her own for the outside decorations (although he conceded that he had already started work through other self employed decorators by that time so that her quotation was useless and had certainly not been obtained, let alone considered, as part of the statutory consultation process). He said that he had put it to her that she "should" pay 50% of all the works, although he reluctantly conceded that she was not contractually obliged to do so under the Lease. He said that he did not know that she paid her own water bill but if she did obviously that was not chargeable by him and the £600 allowed for this item should therefore be deleted. He said there was no separate meter for the hall electricity so he had estimated the liability for the common parts (although he had no comment on the fact that this seemed an excessive estimate since the bill in the file for the upper flat was for only £180).

14. With regard to the building insurance, he confirmed that the building had been insured throughout, and would have to telephone the solicitors to ask which company that was with as he did not know. He considered £600 to be a reasonable figure but could give no information on the value insured or the risks

covered, but he could say that Ms Higgs' liability was therefore half of that i.e.£300. With regard to the pump he conceded that this might be ineligible for inclusion in the service charge since it was provided due to his alterations to the ground floor flat.

15. With regard to the management and administration charges Mr Okoli said that management was required to oversee the building works. The building had been very run down when he had purchased the freehold and the ground floor flat and the Applicant Lessee had to realise that there would be expense in bringing it up to standard. The bills were for his time in organising all that. He did not employ an external managing agent since he had his own property company, Oby Management. Asked by the Tribunal to identify which costs benefited the Applicant Lessee, he said that in the year in which the building works were going on they would all be for her benefit, but normally he would estimate that £200 p.a. should be sufficient to manage ongoing maintenance. He said that the Administration Charge billed was for paperwork (but did not appear to realise that this was normally a part of management and that an "Administration Charge" as such was provided for in the Commonhold and Leasehold Reform Act and referred to charges for acts of administration in relation to the Lease, such as preparation of a licence to underlet or make alterations, and confirmed that there had been no charges made for such matters since none had occurred).

16. With regard to the external decorations, Mr Okoli said that these had cost £3950 overall of which Ms Higgs' share was £1795. He had not used scaffolding in the end but had painted off a ladder, and had used the direct labour of self employed decorators to keep costs down. He conceded that Ms Higgs' quotation was cheaper but said that he had to obtain a quality job. He had not used black and white tiling in the end, but marble, as it reduced the need to make good. He said that the existing quarry tiles had been damaged and could not be matched. He had replaced clear glass in the hall way with frosted glass for security. The solid wood floor had not in fact been done.

17. Following the luncheon adjournment, Mr Okoli produced the insurance details,

including the schedule, for the current insurance policy, providing cover from 17 July 2007 for one year. However he was unable to produce similar details for the service charge year 2006. He further insisted that his solicitors had only received the hearing bundle from the Applicant Lessee on the previous Friday. He was shown the LVT's date stamp on the bundles before the Tribunal and Ms Higgs' recorded delivery counterfoil which she had obtained from the Post Office the same day. Ms Higgs gave evidence that she had, as recommended, tracked delivery 48 hours later on 22 July through the telephone number on the counterfoil, and had found that the bundle had been delivered by that date, but he nevertheless repeated that his solicitors claimed later delivery. Asked why she had sent the bundle to the solicitors rather than to Mr Okoli personally, Ms Higgs said that she had considered that as they were dealing through solicitors this was the proper course. It was agreed that an inspection would not be helpful.

S20C, REIMBURSEMENT OF FEES AND COSTS

18. Following final submissions in summary of each party's case, the Tribunal invited representations on the s 20C application. Mr Okoli said he did intend to charge the costs of his time in attending the LVT to the service charge but could not direct the Tribunal to the clause of the Lease permitting such a charge, nor could he say what those charges would be. Ms Higgs, on the other hand, strongly contended that such costs on the service charge would be unfair as she should not have had to come to the LVT in order to resolve the issues she had brought before us. Mr Okoli had threatened to take her to court over the charges he had demanded and which she had not paid and he had not justified when asked, nor had any of her solicitor's communications been answered. For the same reason she sought reimbursement of her application and hearing fees. Mr Okoli similarly opposed this, on the grounds that the matter could easily have been sorted out between the two of them without incurring such charges.

DECISION

19. At present there appears to be no valid demand for service charges since the typed "Invoices", "Charges" and "Estimates" on the file are not valid service charge demands made by or on behalf of the registered freeholder, showing a notified address for service and made within the period required by the legislation (18 months of their being incurred) in accordance with ss 47 and 48 of the Landlord and Tenant Act 1987. However if such demands were duly reissued in due form they could be payable if reasonable in amount and reasonably incurred.

20. **Buildings insurance.** £300 for the upper flat's share would not be unreasonable, provided the building was actually insured in the service charge year 2006 and the relevant documentation can be produced, which it has not been upon numerous oral and written requests from the Applicant Lessee and her solicitor. At present nothing is payable since there is no evidence at all that the cost was incurred in 2006, and this remains the position unless and until Mr Okoli produces the full 2006 documentation required to Ms Higgs whereupon she should pay her share of the insurance premium which should not exceed £300.

Communal parts water and electricity. The non-applicability of water charges was conceded, and £50 for the upper flat would be reasonable *if* there had been electricity provided. However it was conceded that there is apparently no separate meter for the hall which receives its electricity from the ground floor flat, which was empty and being gutted, there is no bill submitted and there was evidence given that there was no electricity supplied to the hall light or front door bell for virtually the whole of 2006. In the circumstances, nil is recoverable for this item.

Pump installation and service. It was not established that the pump was a repair of any kind, but a new installation to suit the Respondent Landlord's conversion of the ground floor flat to a two storey maisonette through the excavation of a basement floor. There was also no s 20 Notice and improvements are not an allowable service charge item under the terms of the Lease. Mr Okoli conceded that he had nevertheless thought Ms Higgs "should" contribute to these works and had expressed this view to her. The cost of installation and service is

therefore disallowed.

Management and Administration Costs. Mr Okoli conceded that these were one and the same and that no Administration Costs within the meaning of the Commonhold and Leasehold Reform Act had been incurred. The £900 claimed for supervising the works (£450 per flat) were fees incurred for the benefit of the Respondent Landlord. It was the evidence of the Applicant Lessee that the common parts did not require work, but even if they did there was no consultation, and that the works are neither finished nor properly done where it is claimed that they are complete. In the circumstances none of these management charges are validly charged to the service charge account. The £200 claimed for "Administration" i.e.paperwork, which is really a part of the Management function and should be expressed to be a Management Charge or included therein, is more akin to the annual management charge which Mr Okoli conceded would be appropriate for routine management outside a major works context (£100 per flat). If this were to form part of properly demanded service charges (in respect of which properly presented service charge accounts were supplied) £100 might be appropriate for the Lessee of the upper flat to pay. However there have been no service charge accounts, no interim service charges have been demanded in accordance with the Lease, and no balancing account has been prepared at the end of the service charge year as required by the Lease, so such an account has not been certified by auditors either. This is required by the Lease although it would not be required by law for a building with only two flats in it. Accordingly, if this item is eventually properly demanded, £50 only would be appropriate for such poor performance on the part of the Respondent Landlord who has apparently chosen to be his own property manager on the grounds that he is a Landlord with many properties and with his own management company which he told Ms Higgs would be "expensive".

External decorations. Some at least of this decorating was not necessary, since evidence was given that the front door was in good condition until Mr Okoli's builders damaged it and his building works, in excavating the basement, turned the front of the house into a building site. The failure to serve a s 20 Notice cannot be rectified. These costs should therefore be capped at £250 in accordance with the legislation.

S20C COSTS, REIMBURSEMENT OF FEES AND COSTS

21. It is quite clear that a s 20C order should be made here for the protection of the Applicant Lessee who should never have had to approach the LVT to resolve these matters. It is equally clear that Mr Okoli has no idea of his obligations as a freeholder managing a property subject to the legislation, and in view of his claim to have a management company, Oby Management, he should have been well aware of those obligations. Whether or not he is professionally qualified or trained he should be aware of the existence of the Royal Institution of Chartered Surveyors Residential Management Code, copies of which may be obtained from that institution, and of the underlying law which is well explained therein, obligations under the law (including the criminal law) being clearly identified from those parts which are purely advisory as examples of good practice. Obviously he was either not aware or preferred to ignore the entire corpus of the literature, and of the training on property management which is provided by the property managing profession, since he also ignored the entire LVT process. Indeed he treated the Tribunal with such contempt that he had clearly not even availed himself of any of the advice aimed at the layman which is offered through the Tribunal's advisory booklets produced for the Tribunal by the Department for Communities and Local Government. His contempt was made worse by his frequent claims that his wife is a barrister who looks after the paperwork in their property empire. His wife should equally clearly regard this as a very disturbing claim to be made about her since any barrister aware of tribunal proceedings who allowed her a Tribunal to be treated in the way that Mr Okoli has behaved would be in breach of the Bar Code of Conduct which applies to a member of the Bar of England and Wales in all areas of life, whether delivering legal services in independent practice or as an employed barrister, or as a private person.

22. In addition to making a s 20C order, the Tribunal considers it just and equitable that the Applicant Lessee's application and hearing fees should be reimbursed since she should never had had to incur them. Warning of this power of the

Tribunal was given in the Directions which were sent to the Respondent Landlord and which Mr Okoli assured us his wife "would have dealt with". The Tribunal orders that these fees of £250 and £150 (£400 in total) should be refunded to the Applicant within 14 days of the date of this decision. With regard to costs, the Tribunal does have a limited costs jurisdiction pursuant to paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 up to the statutory maximum of £500 if a party has behaved, inter alia, "abusively", "frivolously" or "vexatiously". The Tribunal is of the view that the Respondent Landlord has been both frivolous and vexatious in ignoring the LVT process, obliging the Applicant Lessee to incur unnecessary solicitors' costs and wasting public money in causing an unnecessary hearing to be held through sheer ignorance of proper procedures in the management of property and in discharging the clear obligations of a Landlord in such a defective manner. The Respondent Landlord is therefore ordered to pay a further £400 towards the costs of the applicant Lessee who also bore all the burden of preparing the hearing bundle in the absence of any cooperation from the Respondent Landlord. It is ordered that this sum shall also be paid within 14 days of the date of this decision.

Chairman..... F. R. Burnett

Date..... 9. 8. 07.