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MAN/00BN/LSC/2007/0004

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985
SECTIONS 27A and 20C

PROPERTY	**42-44, Sackville Street, Manchester M1 3NF**	
Applicants:	Dr David Mathews and 15 others	
Respondent:	Artisan Holdings Limited	
The Tribunal:	Chairman:	John R Rimmer BA, LLM
	Valuer Member:	J W Shaw JP, FRICS
	Lay member	Mrs D Rivers FInstLEx
Date of Hearing:	5th June and 3rd August 2007	
Present	Dr David Mathews (with Mr David Lake on 5th June) for himself and the other Applicants	
	Mr Mark Emerton on behalf of the Respondent	

1. Application.

a. The Applicants applied under Section 27A of the Landlord And Tenant Act 1985 for a determination that the service charges for the seven financial years (1999-2000 to 2005-6) are reasonably incurred and payable by the applicants of the Respondent and for a further order of the Tribunal that the Respondent's costs of, and incidental to the substantive application should not be recoverable as otherwise provided for by the terms of the leases to the properties. The application of Dr Mathews, which might be regarded as the "master" Application, is dated 24th January 2007and is signed by him.

2 Background

a. The Applicants hold various long leases at low rent of their respective flats within 42-44 Sackville Street as either the first leasholders therof or as subsequent assignees of a lease. All leases follow a single template and are made between the Respondent (1) Current Land Limited (2) and the relevant applicant or their predecessor in title (3). They are granted at a premium for a period of 150 years from their commencement dates at a peppercorn rent and payment of further rent by way of a service charge.

b The specimen lease provided to the Tribunal (relating to flat 33) is poorly drafted as it is clear that the lease has been altered from the original template and clauses removed or renumbered without effecting consequential renumbering of references within particular clauses to other clauses. In particular in relation to the service charge the obligation to pay the charge, set out in clause 3.3 refers to the landlord's obligations in clause 6, whereas they are in fact in clause 5 as the lease is now drawn. In consequence the Tribunal has sought to construe the lease when required so as to make the most sense of it. It was also noted that clause 7 of the lease envisages the use of a surveyor to calculate the service charge.

c Within the Applicants' case as presented in the application form and associated correspondence there was a clear pattern of dissatisfaction with the management of the Property and a lack of transparency as to the way in which the sums collected for the service charge were applied. This related to both the present time when the Respondent and Current Land Limited are managing the property but more particularly to the time when management was carried out by Sutton City Living. Indeed during this period the Applicants advised the Tribunal that they had complained about the standard of management to artisan but nothing had been done until Sutton City Living had relinquished its role.

d The items within the service charge accounts, as now supplied by the Respondent, identified by the Applicants as giving particular cause for concern were as follows:
1999-2000 – sundry expenses £2933
2000-2001 – sundry expenses £3457
2001-2002 – sundry expenses £1245
2002-2003 – sundry expenses £6143, late filing charges £450
2003-2004 – sundry expenses £7257
2004-2005 – sundry expenses £5533, window cleaning £2882 and insurance £15042
2005-2006 – sundry expenses, window cleaning and insurance (no accounts for this final year being available at the time of the application)

e Directions for the future conduct of the application were given by a procedural chairman on 2nd February 2007 and subsequently, in partial compliance with the directions, the Respondent provided details of the service charge accounts for the relevant years together with explanations as to some of the entries therein and a reason for the paucity of such information in respect of others. Subsequently a pagineated and indexed bundle of documents was provided by the Respondent containing that further information relating to the service charge accounts.

3. Inspection

On the morning of 5th June 2007 the Tribunal inspected 42-44 Sackville Street and its environs. It is an imposing edifice that was formerly a warehouse dating from the Victorian era abutting the Rochdale Canal. It is of brick construction and has undergone sympathetic external modernisation during its conversion to residential flats in the 1990's. Internally the block has been divided into 29 flats on three floors whilst the basement has been converted to car parking and storage space with street access through large iron gates. There are however insufficient

spaces for there to be one for each flat. The building is convenient for the many amenities of Manchester city centre. The flats themselves are spacious and incorporate a number of unusual and individualistic design features. Both internally and externally there are repairs that need to be done, for example to window frames, letter boxes and the car park gates but overall the common parts appear to be in reasonable condition. Two sides of the building face onto the street whilst the back adjoins another building. The fourth side is immediately adjacent to the canal making access for work on that side of the building problematic.

4. The evidence and the hearing

a At the start of the hearing the chairman sought to clarify the issues that concerned and divided the parties and the tribunal was able to express its disquiet at the sloppy drafting or word processing of the lease as outlined at paragraph 1b, above. There did however appear to be a consensus that if the lease was read sensibly the service charge reserved as rent in clause 3.3 included those services for which the landlord Respondent sought to be reimbursed, subject, from the Applicant's perception, to the costs having been properly and reasonably incurred.

b The friction that was now occurring between the parties arises from the Applicant's dissatisfaction with the information that was received by all leaseholders as to how the service charges were incurred. The Tribunal is left with the clear impression, having heard from both Dr Mathews and Mr Emerton at length, that in the early years after the conversion of the building and sale of the flats no service charge accounts were provided at all and the account was based solely upon the premise that the charge of £100 per month from each flat was being spent with no details or breakdown provided. As years went by requests for further information or detailed accounts were ignored. That situation appears to have improved since day to day management passed from Sutton City Living to Artisan Holdings/Current Land. Even then it appears that only latterly, following Mr Emerton's involvement, has the dialogue become in any way constructive and information made available. Dr Mathew's made the point more than once that despite Mr Emerton's efforts trust in the openness and accuracy of service charge information was only being gained slowly.

c Even now the Respondent landlord does not appear to be managing the property in accordance with the guidelines of the Royal Institution of Chartered Surveyors Service Charge Residential Management Code for the management of residential flats nor reaching similar levels of management standards.

d It also became clear to the Tribunal during the course of the hearing that the Respondent was struggling to provide anything but the most basic details of the service charge expenditure for the years under consideration referred to in the application. This was usually in the form of the statement of account for the relevant year with very little background information to hand. This was largely, but not exclusively, due to the lack of information provided when Artisan Holdings took over the management of the building. The Tribunal felt constrained to adjourn the hearing to a new date and issue further directions as to the provision by the Respondent as to those service charge items that were referred to

particularly in the Application. Those directions were issued shortly after the 5th June and the hearing re-convened for 3rd August.

e Some considerable effort then appears to have been made by Mr Emerton to locate and provide the information requested. Such as he was able to find was presented in a further documented submission to the tribunal dated 25th June. Extensive information was provided in relation to the buildings insurance for the property with established professional brokers going into the insurance market and apparently placing the insurance with various insurers according to the best quotation for any particular year. The Respondent was also paying a credit fee yearly for the initial premium to be paid at the commencement of the insurance to be paid thereafter in monthly instalments. There was however much less information located or provided in relation to cleaning but the invoices for the most recent years for window cleaning and general property cleaning were provided. The window cleaning account details generated some comments from Dr Mathews as to the quality of the work done, together with the quality and effectiveness of the cleaning on the canal side of the building whilst acknowledging the logistical difficulties involved. Unfortunately no further information could be located in relation to the many invoices, for which expenditure is attributed in the service charge accounts relating to work done by Direct Security, and in one year, Wright Security. The evidence from Dr Mathews and Mr Emerton at both hearings on this issue was to the effect that regular expenditure was incurred in relation to the security gates to the car park without finding a permanent solution to difficulties with the operation of those gates. A further issue of dissatisfaction for the leaseholders was the apparent "mark up" between the cost to the landlord of the provision of new keys and fobs for the entry system when compared to the price charged to the leaseholders

f The Tribunal was therefore left to assume, if the Respondent's case was correct, that the expenditure that was shown in the service charge accounts was accurate or, if the Applicants' case was made out, that such expenditure was not properly accounted for and could not be relied upon as reasonable or appropriate.

5 Tribunal's Conclusions and Reasons

a The Tribunal was satisfied, by virtue of the only sensible reading of the lease, that clause 3.3, which ought properly to refer to clause 7 of the lease as to how the service charge was calculated and clause 5 as to the items of expenditure it covered, provide that the landlord is entitled to charge the cost of provision of the services mentioned in the application to the service charge account. This is subject to the overriding jurisdiction of the Tribunal to determine the liability to pay the charge and to determine the sums payable.

b The law relating to that jurisdiction is found in Section 27A landlord and Tenant Act 1985 as follows

(1) 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) 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, and
(e) the manner in which it is payable

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

c The above provisions are also subject to the overriding test of reasonableness provided by Section 19 of the Act in that relevant costs should only be taken into account to the extent that they are reasonable and that work done is to a reasonable standard.

d Within this application the crucial matters for the applicants were the items of expenditure listed in the application and listed at paragraph 2d above. They might usefully be dealt with by reference to the items in question rather than the account years in which they appear and according to the evidence upon those specific items provided to the Tribunal.

e Insurance: The Tribunal is satisfied that but for one matter set out below, the respondent has sought to place the buildings insurance policy for the building as advantageously as possible on the insurance market each year and has employed the services of a reputable broker to do so. The increase in premiums in recent years is not out of line with movements in the insurance market in the light of recent events. It is also reasonable to use a credit facility to pay the premium in full and then repay by instalments. The Tribunal is concerned however as to there being no satisfactory explanation for the figure of £4000 being charged twice, latterly in the 2004-5 accounting year, and no subsequent credit to be made to the accounts. Mr Emerton could not give any explanation for this and no explanation could be found by the tribunal in the papers before it. This item will therefore be disallowed.

f Late filing charges: These relate to the late submission of company accounts to Companies House. The particular item highlighted by Dr Mathews is the charge in the 2002-3 account in the amount of £450. this is however re-credited in the following year's account. There are however two amounts of £100 appearing in the 2000-1 and 2001-2 accounts where no subsequent re-credit is made to the accounts. They appear in sundry expenses and not as a separate item but might usefully be dealt with here. It is not appropriate, without clear and documented good reason, for these charges to fall to be paid by the leaseholder and they are dis-allowed.

g Sundry expenses. The details in respect of these were sparse but during the course of the hearing Mr Emerton was able to explain some of the entries in the accounts in more detail and Dr Mattews took a pragmatic view as to the necessity for some expenditure to be incurred on the items shown in the account. He did however also detail in his correspondence to the Tribunal, the difficulties he had in trying to find any detailed information. Indeed if reference is made to the breakdown of the sundry expenses for 1999-2005 provided in the Respondent's original submission the tribunal, from its own

expertise in these matters, is aware of the inevitability of many items of expenditure. The Tribunal is however concerned as to the lack of information as to the many and varied invoices for Direct Security, and in 2000-1, Wright security. The best information that the Respondent could supply was in its letter of 7th March. The Tribunal heard at length as to the amount believed to have been spent in failing satisfactorily to remedy the difficulties experienced with the car park security gates without any concrete information as to what proportion of expenditure was attributable to this or why the problem still persisted. The separate issue in relation to key fobs is referred to at paragraph 4e above and was also a concern for the applicants. In thelight of any satisfactory explanation as to the basis upon which the security invoices were incurred the tribunal feels constrained deliberately to take a broad brush approach to the payment of these elements of the respective accounts and determines that only one half of the account for direct security and Wright security should be recoverable from the leaseholders for each of the account years in which they appear. (There is no amount shown in the latest 2005-2006 account for "Sundry Expenses").

h Window cleaning: Information was provided in the form of the quarterly invoices of the cleaning company and both parties gave evidence as to the work done and the difficulties presented by the Rochdale canal and electricity cables on one side of the building which made access expensive and cleaning of ground floor window on that side problematic. Given those difficulties the tribunal is satisfied that these charges are appropriate and are recoverable from the leaseholders. (In the latest account for 2005-2006, window cleaning is not shown separately and therefore no separate entry is made in the Order set out at paragraph 7, below)

6 Section 20C Application

a The Application also seeks an order under Section 20C Landlord and Tenant Act 1925 preventing the landlord from adding to the service charge the cost of conducting these proceedings before the Tribunal.

b The Tribunal is satisfied as a matter of law that the Respondents are entitled to recover these costs under Clause 7.5.k if appropriate. This is subject to the discretion conferred upon the tribunal by Section 20C. The tribunal is aware that the leading authority on the exercise of this discretion is the Lands Tribunal decision in the "Doren" case (The Tenants of Langford Court (Sherbani and others) v Doren Limited(LRX/37/2000)) and the extensive guidance therein from the Lands Tribunal as to how this tribunal might consider exercising its discretion in this matter. The Tribunal will follow that guidance.

c The primary consideration is what is "just and equitable in the circumstances" (Section 20C(3)). The landlords here have certainly not acted vexatiously, capriciously, or frivolously and indeed latterly and belatedly joined with the Applicants in trying to provide information. Nevertheless the Applicants have clearly won their case on significant parts of the application and the Respondent has failed to produce significant information in relation to many of the issues before it. The applicants were constrained to make their application because of that lack of information. In the circumstances the Tribunal's view is that that the balance as to what is just and equitable falls in favour of the Applicants and those costs and disbursements of the

respondent in dealing with this application shall not be recoverable in the service charge.

7 Order

a The recoverable amounts, for service charge purposes, for the provision of those services set out below for the years 1999-2000 to 2005-6 inclusive are as follows:

1999-2000 Sundry expenses	**£2233.00**
2000-2001 Sundry expenses	**£1295.50**
2001-2002 Sundry expenses	**£823.50**
2002-2003 Sundry expenses	**£3441.00**
2003-2004 Sundry expenses	**£3750.00**
2004-2005 Sundry expenses	**£3508.00**
Insurance	**£11042.00**
2005-2006Sundry expenses	**NIL**
Insurance	**£12209.00**

and they shall replace those amounts currently stated in the accounts for those elements of the service charge for the relevant years.

b The landlord shall not be entitled to add to the service charge account for any year in question the professional costs and disbursements incurred in responding to the tenant's applications herein.

J.R Rimmer

Chairman.

28/08/07.