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LON/00AH/LSC/2007/0278
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER LANDLORD AND TENANT ACT 1985
SECTION 27A

Address:	19 Nicholson Road, Croydon, Surrey, CR0 6QT
Applicant:	SPS Services
Respondent:	Mr Phillip Byrne Flat 19A Mr Nazir Badshah Flat 19B Mr Martin Johnson Flat 19C
Date of Application:	27 July 2007
Date of Hearing:	29 & 30 November 2007
Date of Inspection:	29 November 2007
Date of Decision:	30 January 2008
Appearances for Applicants:	Mr Gary Sharpe
Appearances for the Respondent:	Mr Phillip Byrne Mr Nazir Badshah
Members of the Tribunal:	Mrs F Burton LLB LLM MA (Chair) Mr P Roberts Dip Arch RIBA Mrs S Justice

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19 NICHOLSON ROAD, CROYDON,CRO 6QT

BACKGROUND

1. This was an application pursuant to s 27A(1) of the Landlord and Tenant Act 1985, Schedule 12 paragraph 10 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002, for determination of the payability of service and administration charges up to the present date in connection with collective enfranchisement of the subject property, a building containing three flats. Determination of the price payable for the enfranchisement and costs in connection with that issue had already been effected by a differently constituted Tribunal. There was also an associated application for determination of the amount of the statutory freeholder's conveyancing costs pursuant to s 33(1) of the Leasehold Reform Housing and Urban Development Act 1993. An earlier decision of a differently constituted Tribunal had on 18 December 2006 already determined the amount of the remainder of the statutory costs up to and with the exception of the conveyancing costs. Directions in relation these outstanding service issues had been given by the LVT on more than one occasion of which all parties were to some extent in breach.

2. The property is held by the three Lessees on a Lease dated 12 August 1988 for a term of 99 years from 24 June1988, of which all parties are assignees. The Lease provides for a stepped ground rent of £75 p.a .for the first 33 years, rising to £150 for the next 33 years and to £225 for the final period of the term, such ground rent to be paid annually in advance on 24 June together with the insurance premiums paid by the Landlord who by clause 1 covenants to insure, each Lessee covenanting to pay one third of these premiums. Pursuant to clause 5(ii) of the Lease the Tenant covenants to pay to the Landlord one third of the usual maintenance (and where necessary reconstruction) costs of the common parts and party walls, and by implication the structure of the building, which by clause 4(iv) the Landlord covenants to maintain. There is, however, no provision in the Lease for management charges although by clause 3(16) a "reasonable fee" may be charged for production of any transfer or other such document evidencing a dealing with the property to the Landlord's solicitors within one month of its execution.

INSPECTION

3. The Tribunal inspected the subject property on 29 November 2007 in the presence of all parties and found it to be a Victorian building on four floors (basement, raised ground floor, first floor and attic) comprised of yellow London brick under a tiled roof and in a pleasant leafy road. They noted a considerable amount of moss on the roof and recent cement pointing and lead flashing over the front bay, together with tired external decorations including leak marking on both front and rear elevations. There was some cracking to the brickwork on the front elevation above first floor level, this may indicate a rotted bressemer. The Landlord pointed out an airbrick, as well as felting and further pointing, for the installation of which he claimed no permission had been given by the freeholder. The Tribunal also noted a broken fence to the rear, that the front wall of the property was damaged and that some (rather poor) repairs had been made to the front gate pillars. The garden, which was somewhat unkempt, appeared to have had the benefit of no work other than the removal of rubbish referred to in the papers in the Tribunal's file. Internally, the Tribunal noted some (possibly historic) settlement, sinking floor and ceiling levels and bowing in brickwork (particularly in the top floor flat), although they were not able fully to inspect the eaves, due to the presence of the Lessee's possessions in the eaves storage cupboards; it was noted that some roof support timbers appeared to have been removed which could partially account for the defects noted.

THE HEARING

4. At the hearing which commenced following the inspection, all parties represented themselves, the Landlord's solicitor having ceased to act.

THE LANDLORD'S CASE

5. The Landlord, Mr G Sharpe, who stated that he was a professional Landlord and property manager trading as SPS Services and dealing with many properties, submitted that he had set out all his charges in detail and sent in service charge demands many times. These charges included some maintenance works and professional fees, including a structural survey, which had been done in connection

with planned extensive works to bring the property up to contemporary standards. He had also charged for various items of administration, including answering Lessee's questions and corresponding with them. He had finally sued for the unpaid charges in the Northampton County Court and the matter had been transferred to the LVT for determination of the amounts to be paid. He said that it was correct that the collective enfranchisement, the price for which had been determined by a differently constituted Tribunal, had not yet been progressed. In summary, his application (in respect of which he had started proceedings in the County Court) was for his service charges and ground rent to be paid up to date, although in practice he did not want to sell the property and considered that the enfranchisement proceedings should be reopened. He presented 2 written proofs of evidence, including one structured around the Lessees' Defence document in the County Court in which he claimed that the Lessees had, contrary to their assertion that they would be willing to pay a reasonable service charge, contested every demand that he had made. He had therefore set out in detail, supported by numerous appendices, the amounts that he considered were due to him. In answer to questions from the Tribunal, he said that he was himself a building surveyor and that his qualifications were MRICS, ACIOB, MIConstM, MICM. He did not, however, appear to be aware of the RICS Residential Property Management Code but believed he conformed to it. He had not initially brought the s 20 Notices he said he had served in relation to the major works required, nor the Schedule of Works and Tenders, nor any of the other 2004 survey and engineer's reports to which he referred, but undertook to do so on the second day of the hearing.

THE LESSEES' CASE

6. For the Lessees, Mr P Byrne had collated the Lessees' written responses to the Landlord's case. He drew the Tribunal's attention to the Lessees' separate Defences to the County Court proceedings. In summary he said that none of the Lessees recalled receiving service charge demands from Mr Sharpe and when they had asked for them they had been told that they would have to pay a fee for such demands in advance before they could be issued. Mr Sharpe had been in the habit of communicating with the Lessees by email or by leaving letters for them at their flats. In summary there had been endless problems as it had been Mr Sharpe's practice to ask them for substantial sums for works in advance, including for surveys that he had

commissioned, and at one point had told them that they must leave the property as it was dangerous (and the building uninsurable) until essential works were effected, which had caused them considerable anxiety and expense in renting alternative accommodation. He added that two independent surveyors (Mr McColl a structural engineer employed by Atkinson Bray, Structural Engineers, and Mr Oldham, a Chartered Building Surveyor employed by CBNS) had challenged Mr Sharpe's survey which had been conducted by a Mr Juchau, Structural Engineer, and had been claimed to justify this dangerous situation. A Building Control Officer from the London Borough of Croydon had also inspected and confirmed that the property was not structurally unsafe. Mr Byrne said that two unjustified s 20 Notices had been served on the Lessees in this connection, Mr McColl had said that the faults noted by Mr Juchau were not uncommon in Victorian buildings and could be remedied by clanbolts, and Mr Oldham had estimated the necessary repairs at £30,000, one third of the figure claimed by Mr Sharpe.

7. Mr Byrne's first point was that Mr Sharpe persistently duplicated work and charged over inflated prices for his administration: for example, he had previously claimed £10,110.31 before the LVT which when broken down proved to only justifiable as to £3,553.56: the balance had been shown to be in respect of unsubstantiated works for which the Tribunal had awarded only £150 for associated time. He said that it was the Lessees' case that the same situation had occurred in respect of Mr Sharpe's present claims. Moreover, he added, Mr Sharpe was currently in possession of £3,408.30 paid by Abbey National, the mortgagee of one of the Lessees (Mr Martin Johnson), and also of £1,500 which he had himself paid to Mr Sharpe in 2004 in respect of investigative works to be done in 2004 to address the allegedly dangerous condition of the property (which since the works had not been effected he had asked not to be touched other than for deduction of valid service charges, but Mr Sharpe had refused to invoice or account for this). Mr Byrne's second point was that the Lessees had been charged for Mr Sharpe's correspondence with themselves in connection with the alleged structural defects and the defective s20 Notices. Mr Sharpe had claimed that essential repairs to the top floor flat would cost £79,389.77, although in 2005 he had then estimated that these works would be in the region of £19,280.33. Mr Byrne said that as none of these works were ever done it was the Lessees' contention that Mr Sharpe was entitled to nothing for any of the

administration for which he sought to charge in connection with any works, since the Lease did not provide for management or administration charges, although it might have been arguable that some such charge might have been justified (especially as Mr Sharpe claimed to be a qualified property professional who could have supervised them) if the works had actually been done. Similarly the Lessees' challenged the claim to payment through the service charge of the structural engineers employed by Mr Sharpe.

8. Mr Byrne's second point was that Mr Sharpe was trying to claim solicitors costs incurred with Radcliffes Le Brasseur who had been acting in connection with the enfranchisement claim but not in connection with the service charge issues (which the firm had confirmed in writing, a copy of which document was in the bundle). There was similarly a claim for solicitors' costs of a firm called Bradbury Steel which related to Mr Sharpe's purchase of the freehold from the former owner, Mrs Harding, and was in no way concerned with the service charge dispute. He submitted that neither of these items was appropriately charged to the service charge, and that claims for administration charges for any correspondence in connection with the transaction with Mrs Harding were similarly unrecoverable.

9. Mr Byrne's third point was that the charges sought by Mr Sharpe in connection with correspondence relating to insurance of the property were also not recoverable through the service charge, since (it having become apparent that there was no evidence that Mr Sharpe had insured the building) he had himself provided Mr Sharpe with evidence that the insurance of the building was in order in 2004. This situation appeared to have been confirmed by Mr Sharpe himself who had made available to the Lessees his broker's correspondence indicating that the building was uninsurable due to Mr Sharpe's own claim that it was dangerous until repaired. Nevertheless Mr Byrne had himself been able to obtain insurance for the basement flat on the basis that there was no such danger to the structure.

10. Mr Byrne's fourth point was that the Lessees also challenged a specific invoice from A P Beard Builders for building work of which they had not been informed in advance and which they did not wish to be done. These builders had also left rubbish in the garden which the Lessees had had to remove themselves. Finally

he said that there had been many false accusations made against the Lessees by Mr Sharpe who had engaged in harassment and intimidation throughout the period since he had purchased the freehold, the worst incident of which had been the demand that they should move out of the building on the grounds that it was dangerous when this had proved to be untrue.

11. In response, Mr Sharpe said that the service charge demands had been provided both by sending them to the leaseholders solicitors, Ormerods, and also putting through Lessees' doors. However Mr Byrne insisted that no Lessee had ever seen any such demands. Mr Sharpe was also forced to concede that he was not in fact a Member of the Royal Institution of Chartered Surveyors although he was in the process of qualifying.

FINAL SUBMISSIONS

12. Mr Byrne had nothing further to add to his earlier submissions but requested a costs order pursuant to the Tribunal's powers under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002, on the basis that the Lessees should not have had to defend the freeholder's unwarranted claims. He said that copying, printing and postal costs had amounted to about £280. Mr Sharpe made the same request on the grounds that he had also incurred substantial costs in preparing paperwork for the hearing. He nevertheless accepted that the Lease did not permit him to make some of the charges which he had raised but submitted that he had merely attempted to run the building in a professional manner and in accordance with contemporary practice which would have permitted him to levy management and administration charges. He had not realised that the Lessees had not agreed to this when upon taking over from Mrs Harding he had sent them notice of his normal charges for property management and they had not declined to agree to them.

DECISION

13. It appeared to the Tribunal that the bulk of the service charges for general management and administration claimed by Mr Sharpe were unjustified since there was no provision for them in the Lease. In the circumstances, the only such charges

which the Tribunal could allow (in view of Mr Sharpe's occupation as a professional manager and building surveyor) would be a reasonable percentage fee for works actually effected at the property in performance of the Landlord's maintenance and repairing covenants, and possibly any expenses in connection with his covenant to insure, although as there has been no evidence that he did in fact insure the property (since he claimed and provided evidence to the effect that insurance was not available from his broker for the building in its unrepaired state so that the Lessees were obliged to attend to this matter themselves) it is doubtful whether there are any qualifying insurance expenses.

14. With regard to qualifying maintenance and/or repairs, however, the only items which appear to the Tribunal to be appropriate service charge matters are the two surveys by Mr Juchau (£450) and Mr Thompson (£1,200), a total of £1,650. It appears, however, that the disputed builder's bill from Beards (which has never been properly demanded through the service charge account) is excessive for the work done (which apart from repair of the brick entrance gate pillars and the poor pointing noted on the Tribunal's inspection appears to amount to clearing up the garden but then leaving the rubbish on the premises despite numerous requests from the Lessees to remove it since it was unsightly and constituted a health hazard). The Tribunal is of the view that a total of £250 should be sufficient for all this work and this sum is the maximum allowed. However Mr Sharpe's 15% supervision fee should not be added since he did not oversee the removal of the rubbish complained of and did not discharge the functions expected of a professional overseeing such works which is to see that the work is properly done throughout and signed off when completed.

15. There was also a substantial legal bill from Radcliffes Le Brasseur (£2,091.50) which appeared to be concerned with investigating the Landlord's powers and obligations under the Lease. However the Lease does not provide for such advice to the Landlord to be recharged to the Lessees through the service charge.

16. The total outstanding service charges payable by the Lessees are therefore determined to be £1,900. It follows that the balance of the sum of £1,500 paid by Mr Byrne in 2004 (now in excess of Mr Byrne's share of the outstanding monies) should be refunded to him by Mr Sharpe forthwith. A similar adjustment will need to be

made in respect of the monies demanded from Mr Johnson's mortgagees and which they have requested to be returned.

THE LANDLORD'S STATUTORY COSTS IN RELATION TO CONVEYANCING PURSUANT TO THE COLLECTIVE ENFRANCHISEMENT

17. No evidence (or estimate) was provided of the amount of these costs. Nothing had been received from Radcliffes Le Brasseur in respect of exchange of contracts and receipt of the deposit although it appeared that other solicitors were to date charging £250. The Tribunal therefore determines that, in accordance with the tariffs which it normally encounters for collective enfranchisement conveyancing of a building of the type of the subject property, the maximum sum allowed in relation to any remaining conveyancing charges is £350+ VAT.

THE COSTS APPLICATION

18. On the basis of Mr Sharpe's concession that he had charged unwarranted administration and management charges, and that so little of those sums which he had sought from the Lessees were justified, the Tribunal is of the view that the Lessees should have the costs of defending his unjustified claims before the LVT, and direct that pursuant to the Tribunal's power under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 the sum of £280 be paid by the Landlord to Mr Byrne in respect of the Lessees' costs, and that this should be done within 14 days of the date of this Decision.

Chairman.....

Date.....30.1.08