

**REF LON 00AZ/LSC/2007/0378**

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985**  
**SECTIONS 27A, 20ZA AND 20C**

**And In The Matter of 169-199 Bromley Road London SE6 2PG**

**Applicant**

**Marrionette Limited**

**Represented by**

**Ms M C Bleasdale counsel  
instructed by Bude Nathan  
Iwanier solicitors**

**Respondent**

**Various Long Leaseholders of  
169-199 Bromley Road London  
SE6 2PG**

**Appearance**

**Colin Thatcher Flat 179  
represented by Emmanuel Adu  
Baah, Tania Dosoruth and  
Oliver Williamson of the College  
of Law  
K West Flat 189**

**The Tribunal**

**Mr P Leighton LLB (Hons)  
Mr L Jarero FRICS  
Mrs G Barrett JP**

**Hearing Date**

**21<sup>st</sup> January 2008**

**Date of Decision**

**25<sup>th</sup> March 2008**

## **A Introduction**

- 1 By an application dated 12<sup>th</sup> September 2007 the applicant applied to the Tribunal for a declaration under Section 27A of the Landlord and Tenant Act 1985 ("the Act") that the cost of works of repair and maintenance to be carried out to the premises at 169-199 Bromley Road Catford London SE6 2PG ("the premises" were reasonably incurred
- 2 Directions were given for the conduct of the hearing on 30<sup>th</sup> October 2007 at which it was indicated that the Applicants be at liberty if so advised to issue a further application under Section 20ZA of the Act and that if such application was issued by no later than 26<sup>th</sup> November 2007 that it be joined with the original application and be heard together on 21<sup>st</sup> January 2008 the date fixed for the hearing.
- 3 On 16<sup>th</sup> November 2007 the Applicant issued an application under Section 20ZA for dispensation from any or all of the provisions of the Service charge (Consultation Requirements)(England ) Regulations 2003 in so far as they had not been complied with
- 4 Directions were given in respect of the second application on 23<sup>rd</sup> November 2007 and it was directed that both applications be heard together on 21<sup>st</sup> and 22<sup>nd</sup> January 2008

## **Inspection:**

- 5 The Tribunal inspected the premises on 21<sup>st</sup> January 2008.. They consist of a purpose built block of 20 flats built in about the 1920s and situated on a busy road in Catford .the property appeared to be in a poor state of repair and was in serious need of work being carried out to the block.

## **The Hearing**

- 6 The hearing took place on 22<sup>nd</sup> January 2008 and following some discussion with the Tribunal and between the parties, an agreement was reached with those leaseholders present that the works should be carried out and that payment should be made. The Tribunal also considered on the basis of the material before it that if the work were carried out at the price tendered the expenditure would be reasonably incurred.

- 7 The agreement with Mr Thatcher has been duly signed with the appendix attached. In the case of Mr West the front page of the agreement has been signed but the other pages have not been included and it is not certain whether Mr West received them. He went to Jamaica sometime after 8<sup>th</sup> February and may not have returned. In his email of 8<sup>th</sup> February he made it clear that he had received the main document but was not sure whether he had received all of the Appendix as his system was not working. An email in reply was sent on 8<sup>th</sup> February 2008 by Ms Bleasdale setting out the contents of the last page but there has been no reply.
- 8 The Tribunal concludes on the balance of probabilities that Mr West did receive the later email as there is no complaint from him to the contrary. He then went off to Jamaica content that he had signed the front of the agreement and did not ask for it to be held up until he returned.
- 9 The agreement with Messrs West and Thatcher is slightly more favourable than that relating to the other flats simply because they attended, were represented and negotiated concessions from the landlord. In the circumstances the Tribunal is prepared to approve the draft order of Ms Bleasdale in relation to all the flats except Flats 179 and Flats 189 as appendix A save that the times in paragraph 6.1 and 6.2 of the agreement be extended to 10<sup>th</sup> April 2008 and the time in 6.2 extended to 24<sup>th</sup> April 2008. Copies of the order as revised should be served on each of the leaseholders as soon as possible and in any event by 1<sup>st</sup> April 2008. A copy of the order is annexed at Appendix A.
- 10 The consent orders signed by Mr Thatcher and Mr West are also approved in the form annexed at Appendices B and C save that the time in Paragraph 4 is extended to April 24<sup>th</sup> 2008. A copy of the amended agreements should be served on Mr West and Mr Thatcher.

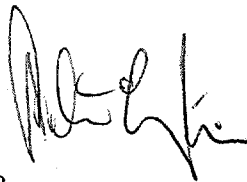
**Section 20C costs**

- 11 The application was brought by the landlord and the counter application arose only in respect of the tenants who appeared. Written submissions were addressed to the Tribunal by the representatives of Mr Thatcher from the College of Law on 22<sup>nd</sup> February 2008 and for Ms Bleasdale on behalf of the landlord. on 7<sup>th</sup> February 2008.

- 12 Ms Bleasdale reminded the Tribunal that there are two different leases for the block. Lease A and Lease B . Lease A provides as follows\;-  
Clause 1(1) defines the “service obligations” which are those matters which the landlord covenants to carry out and other things undertaken hereunder  
*Clause 3(b) contains details of what the landlord has covenanted for but 3(b) (ii) provides “to take such proceedings as the Lessor deems necessary against any defaulting lessee in the building to ensure compliance with any lessee’s obligations in respect of payment of ground rent and/or due proportion of service charges hereunder.”*
- 13 Lease B provides in the Fourth schedule for the payment of the annual maintenance charge for the purposes of Clause 6 of the lease. . Clause 1M defines the maintenance contribution as *“the relevant percentage of the aggregate annual maintenance provision “*
- 14 Clause 6 contains the services to be provided and in particular 6(ix) which provides:-  
*“the entitlement to be reimbursed for the payment of all legal and other costs incurred by the maintenance trustee or by the lessor in the (a) in the running and management of the building and in the enforcement of the covenants ,conditions and regulations relating therein contained in the leases granted of the flats of the building”*
- 15 Ms Bleasdale submits that each of the clauses is wide enough to cover the recovery of legal fees and the representatives of Mr Thatcher in their submission do not disagree but merely submit that it would be unjust and inequitable for Mr Thatcher to pay towards the costs
- 16 It should be noted that the Tribunal has not been asked to rule on the clauses nor has the quantum of costs been discussed The sole issue is whether the LVT should exercise its discretion to disallow any of the costs in relation to Mr West, Mr Thatcher or any of the other lessees.
- 17 The criticism of the landlord is that it failed to enter into discussions with Mr Thatcher and Mr West and keep them informed of the nature of the works, If they had done so the costs of the hearing would have been averted...
- 18 Ms Bleasdale comments that in this case 10 of the 14 lessees had not paid their service charges and it was both necessary and reasonable for the landlord to bring the proceedings so that it should not be deprived of its costs

- 19 The Tribunal is conscious of the decision of the Lands Tribunal where it was stated that it must be shown to be just and equitable for the landlord to be deprived of costs for which he has an entitlement under the lease.
- 20 Although there was some correspondence in the papers in which the landlord appeared to express some frustration about complaints raised by Mr Thatcher the Tribunal is of the opinion that the landlord was justified in bringing these proceedings and that essentially there was no real defence shown on the papers. Regarding the tendering process and the process. Most of the tenants had not seen fit to appear or make any representations and the Tribunal considers that it would be unjust to deprive the landlord of its costs and accordingly makes no order under Section 20C and orders that the fees be reimbursed by each of the lessees in accordance with the proportion for which they are liable for service charge. Costs are not payable until the service of the next service charge demand and they are payable as part of the service charge liability
- 21 If it is considered that the costs claimed are excessive they can be challenged in next year's service charge demand.

Chairman Peter Leighton



Date 25<sup>th</sup> March 2008

Appendix A

**LONDON RENT ASSESSMENT PANEL  
IN THE LEASEHOLD VALUATION TRIBUNAL  
Case Reference: LON 00AZ/LDC/2007/0378 & 0069**

Draft order  
that Applicant  
asks LVT  
to make asap.

Applicant: Marionette Limited  
Respondent: Various long lessees of 169-199 Bromley Road London  
SE6 2PG

UPON HEARING Counsel for the Applicant,  
AND UPON HEARING Emmanuel Abu-Baah, Tania Dosoruth and Oliver Williamson  
representing Mr Thatcher and Mr West in person who do not oppose the making of this  
order

**IT IS DETERMINED THAT**

1. A budget figure of £143,165.22, based on the tender of Barry Dodd Maintenance Limited dated 9<sup>th</sup> January 2008, in respect of works of maintenance and repair to the exterior and interior of the buildings ("the Proposed Works") known as 169-199 Bromley Road London SE6 2PG ("the Buildings") is reasonable in amount.
2. The total budget figure of £143,165.22 shall be paid by the Lessees of the Buildings in the proportions set out in the Schedule to this order.
3. The Applicant is entitled under the Leases in Form A (as described in the Statement of Case filed by the Applicant) to seek payment on account of the Proposed Works from the Lessees in two instalments on 25<sup>th</sup> March 2008 and 29<sup>th</sup> September 2008.
4. The Applicant is entitled under the Leases in Form B (as described in the Statement of Case filed by the Applicant) to seek payment on account of the Proposed Works from the Lessees in four instalments on 25<sup>th</sup> March 2008, 24<sup>th</sup> June 2008, 29<sup>th</sup> September 2008 and 24<sup>th</sup> December 2008.

5. That the Applicant having complied with the consultation procedure in respect of the works set out in the tender of Barry Dodd Maintenance Limited no further consultation with the Lessees of 169-199 Bromley Road is necessary.
6. The parties shall file written submissions on the Applicant's costs, any claim for reimbursement of fees, and the Respondents section 20C application as follows:
  - 6.1 The Applicant by 4<sup>th</sup> February 2008,
  - 6.2 The Respondents by 18<sup>th</sup> February 2008.

Dated this        day of                    2008

SCHEDULE

1. Flat 169: <sup>140</sup>/<sub>3701</sub> ths amounting to £5,415.60
2. Flat 169a: <sup>140</sup>/<sub>3701</sub> ths amounting to £5,415.60
3. Flat 171: <sup>140</sup>/<sub>3701</sub> ths amounting to £5,415.60
4. Flat 173: <sup>270</sup>/<sub>3701</sub> ths amounting to £10,444.37
5. Flat 175: <sup>186</sup>/<sub>3701</sub> ths amounting to £7,195.01
6. Flat 175a: <sup>157</sup>/<sub>3701</sub> ths amounting to £6,073.21
7. Flat 177: <sup>202</sup>/<sub>3701</sub> ths amounting to £7,813.94
8. Flat 177a: <sup>123</sup>/<sub>3701</sub> ths amounting to £4,757.99
9. Flat 179: <sup>186</sup>/<sub>3701</sub> ths amounting to £7,195.01
10. Flat 181: <sup>202</sup>/<sub>3701</sub> ths amounting to £7,813.94
11. Flat 189: <sup>227</sup>/<sub>3701</sub> ths amounting to £8,781.01
12. Flat 193: <sup>227</sup>/<sub>3701</sub> ths amounting to £8,781.01
13. Flat 195a: <sup>107</sup>/<sub>3701</sub> ths amounting to £4,139.06
14. Flat 199: <sup>202</sup>/<sub>3701</sub> ths amounting to £7,813.94

Appendix B

Agreement of  
Mr ThatcherRECEIVED  
29 FEB 2008**AGREEMENT DATED 21<sup>st</sup> JANUARY 2008****BETWEEN**

- (1) MARIONETTE LIMITED c/o Ord Carmell and Kritzier, Holborn House, 219 Golders Green Road, London NW11 9DD ("the Applicant") and
- (2) MR COLIN THATCHER of 175A Bromley Road London SE6 2PG ("the Respondent")

**IN THIS AGREEMENT**

- (1) "The Buildings" are the buildings known as 169-199 Bromley Road London SE6 2PG
- (2) "The Proposed Works" are proposed works of maintenance and repair to the exterior and interior of the Buildings as set out in the tender of Barry Dodd Maintenance Limited dated 9<sup>th</sup> January 2008
- (3) "The Budget Cost" is a budget figure of £143,165.22, in respect of anticipated costs and fees to be incurred in carrying out the Proposed Works

**IT IS HEREBY AGREED THAT**

- In consideration of the Respondent agreeing not to oppose the making of an order in the form of the attached draft order in the proceedings before the Leasehold Valuation Tribunal case numbers LON/00AZ/LDC/2007/0378 & LON/00AZ/LDC/2007/0069 the Applicant agrees to allow you to pay your share of the Budget Cost of the Proposed Works which is £6,073.21 in the monthly instalments of £253.05 (two hundred and fifty three pounds and five pence) commencing on 28<sup>th</sup> March 2008 and ending with a final payment of £253.06 on 28<sup>th</sup> February 2010.
- This agreement is reached only in respect of the Respondent's payments on account and does not affect (i) the Applicant's entitlement to claim from the Respondent his proportion of the full costs actually incurred by the Applicant in carrying out the Proposed Works (ii) the Respondent's entitlement to challenge the amount of the actual costs of the Proposed Works, the reasonableness of the

  
 MC Bleasdale  
 Counsel on behalf of Marionette Limited

  
 Mr C Thatcher



costs and the standard of the actual works carried out; and the Respondent's entitlement to seek any other set off to which he is legally entitled.

- 3. In the event that the Proposed Works are commenced with a contractor for a contract sum which is less than £109,276.00 (excluding VAT) the Applicant will adjust the instalments due from the Respondent pro rata and (i) inform the Respondent of the new instalment sum and (ii) give credit against the next instalment(s) due for any payment collected which would not have been payable had it been calculated on the lower contract sum in the first place.
- 4. If the Respondent nominates a suitable contractor to tender for the Proposed Works by 20<sup>th</sup> February 2008 the Applicant will give the contractor an opportunity to tender for the proposed works.
- 5. The Applicant to use best endeavours to get Cranescot Limited to tender for the proposed works.

.....  
 MC Bleasdale  
 Counsel on behalf of Marionette Limited

  
 .....  
 Mr C Thatcher

  
 .....  
 MC Bleasdale  
 Counsel on behalf of Marionette Limited

  
 .....  
 Mr C Thatcher

**LONDON RENT ASSESSMENT PANEL  
IN THE LEASEHOLD VALUATION TRIBUNAL**

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- 2. The total budget figure of £143,165.22 shall be paid by the Lessees of the Buildings in the proportions set out in the Schedule to this order.**
- 3. The Applicant is entitled under the Leases in Form A (as described in the Statement of Case filed by the Applicant) to seek payment on account of the Proposed Works from the Lessees in two instalments on 25<sup>th</sup> March 2008 and 29<sup>th</sup> September 2008.**
- 4. The Applicant is entitled under the Leases in Form B (as described in the Statement of Case filed by the Applicant) to seek payment on account of the Proposed Works from the Lessees in four instalments on 25<sup>th</sup> March 2008, 24<sup>th</sup> June 2008, 29<sup>th</sup> September 2008 and 24<sup>th</sup> December 2008.**

  
.....  
**MC Bleasdale**  
Counsel on behalf of Marionette Limited

  
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**Mr C Thatcher**

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Dated this      day of                      2008

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.....  
MC Bleasdale  
Counsel on behalf of Marionette Limited

  
.....  
Mr C Thatcher

Appendix C  
FAO: Marie-claire Bleasdale  
From: Keith West.

1) Agreement signed by Mr West

2) Agreement sent to Mr West

**AGREEMENT DATED 21<sup>st</sup> JANUARY 2008  
BETWEEN**

- (1) MARIONETTE LIMITED c/o Ord Carmell and Kritzier, Holborn House, 219 Golders Green Road, London NW11 9DD ("the Applicant") and
- (2) MR KEITH BALENTINE WEST of 3 Grenville Place, London SW7 4RU ("the Respondent")

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- 2. This agreement is reached only in respect of the Respondent's payments on account and does not affect (i) the Applicant's entitlement to claim from the Respondent his proportion of the full costs actually incurred by the Applicant in carrying out the Proposed Works (ii) the Respondent's entitlement to challenge

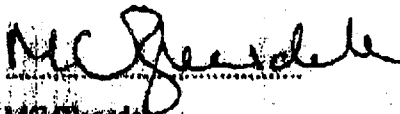
*MC Bleasdale*  
MC Bleasdale  
Counsel on behalf of Marionette Limited

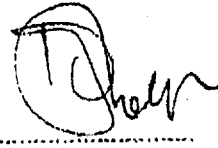
*Mr K B West*  
Mr K B West

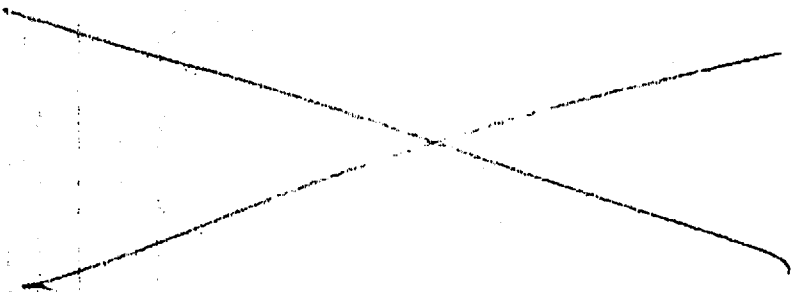
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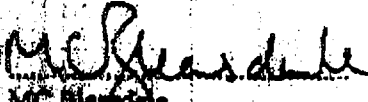
the amount of the actual costs of the Proposed Works, the reasonableness of the costs and the standard of the actual works carried out; and the Respondent's entitlement to seek any other set off to which he is legally entitled.

- 3. In the event that the Proposed Works are commenced with a contractor for a contract sum which is less than £109,276.00 (excluding VAT) the Applicant will adjust the instalments due from the Respondent pro rata and (i) inform the Respondent of the new instalment sum and (ii) give credit against the next instalment due for any payment collected which would not have been payable had it been calculated on the lower contract sum in the first place.
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 Counsel on behalf of Marionette Limited

  
 Mr K B West



  
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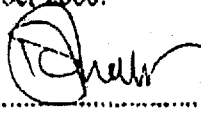
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4. The Applicant is entitled under the Leases in Form B (as described in the Statement of Case filed by the Applicant) to seek payment on account of the Proposed Works from the Lessees in four instalments on 25<sup>th</sup> March 2008, 24<sup>th</sup> June 2008, 29<sup>th</sup> September 2008 and 24<sup>th</sup> December 2008.

  
Counsel on behalf of Marionette Limited

  
Mr K B West