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MAN/00BN/LIS/2007/0010

LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTHERN RENT ASSESSMENT COMMITTEE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985  
SECTIONS 27A and 19

Property: Flat 14, Hudson Building, 29 Great Ancoats Street,  
Manchester M4 5AE

Applicant: Mr Hisham Mazher  
Hudson Building Management Company

Respondent: Mr Livas Vali Patel and Mr Zahuruddin Vali Patel

Hearing Date: 1 February 2008

Parties Present: Applicant : Mr H Mazher

Respondent : Not present nor represented

Tribunal: Mrs E Thornton-Firkin  
Mr D Pritchard  
Mrs D Rivers

## **Application and Preliminary**

1. The Tribunal received an application dated 5 October 2007 from the managing agent of Hudson Building. The application concerned the liability of the respondent to pay service charges for October to December 2004, the whole of 2005 and 2006 and for the future years at the time of the application of 2007 and 2008.
2. The application asked the Tribunal to consider if the service charges were "value.....as due under the lease agreement". The applicant required this information to forward to the respondent's mortgagor to obtain payment of the service charge. The leaseholder had not responded to any demand for payment from the applicant.
3. Directions were issued by the Tribunal on 31 October 2007 asking for a copy of the lease for the subject property, consolidated or overall service charge accounts for each year, demands sent to the respondent and any other relevant documents.
4. The applicant sent to the respondent on 15 November 2007 a copy of a lease (not that for the subject property), a statement of the amount outstanding and copies of correspondence. Further prompting from the Tribunal produced budget accounts for the years 2005.2006, 2007 and 2008 from the applicant. No reply to any of this was received from the respondent.

## **Law**

5. Section 27A (1) of the Landlord and Tenant Act 1985 provides that "an application may be made to an LVT for a determination whether a service charge is payable and, if it is, as to ..... the amount which is payable".
6. Section 27A (3) provides that an application may also be made "if costs were incurred.....".
7. Section 19 (1) states that "relevant costs should be taken into account in determining the amount of the service charge payable for a period :-
  - (a). only to the extent that they are reasonably incurred, and
  - (b). where they are incurred on the provision of services....., only if the services....are of a reasonable standard.And the amount payable shall be limited accordingly"
8. The LVT must therefore decide:--
  - a. whether the service charge is recoverable under section 27A of the Act and under the terms of the lease
  - b. if so recoverable, whether the amount charged is reasonable

## **Lease Terms**

9. The management company provided a lease relating to flat 3.4, Hudson Building, Ancoats dated 29 January 2004 for 125 years commencing 1 January 2004 at a rent of a peppercorn per annum. This lease referred to a third floor two bedroom flat. This lease did not provide the accompanying plans nor the fifth and sixth schedule. The respondent held a lease of a fourth floor three bedroom flat.
10. 4.2 of the recitals of the lease stated that the landlord wished to dispose of each of the flats on the development by leases in substantially the same form.
11. There is provision in the lease that the freeholder, on the sale of the last flat, will transfer the freehold to the management company who will take responsibility for the services and general management. The lessees will each hold one share in the management company.
12. The leaseholder will pay their proportion of the service charge to the management company by twelve monthly installments in advance.
13. The landlord and the management company have an obligation to provide services throughout the term subject to the service charge being paid. They have an obligation to keep proper account books with respect to all sums of money expended and costs incurred in the provision of services and sums of money or credit received by way of service charge and with regard to the expenses of collecting the service charge. The expenses can include the costs of borrowing and employing caretakers, staff and managing agents.
14. The management company will obtain a written summary from the accountant as soon as possible after the end of each service year. The statement will be certified by the accountant as being a fair summary sufficiently supported by the accounts, receipts and other documents produced to him.
15. There is provision within the lease to collect a sinking fund.
16. The second schedule of the lease provided, gives the services as " the provision, replacement, renewal, repair, maintenance, decoration, improvement and cleaning" of 1) the common parts, structural parts, service installations, lighting, heating and fire equipment 2) any other amenities the management company deem reasonable or necessary. The second schedule also lists the costs incurred by the management company in managing the development in general but specifies the costs of insurance, employing managing agents, caretakers and procuring loans.

## **Inspection**

17. The Tribunal inspected Hudson Building on the morning of the hearing and found it as stated in the application which described it as a listed building converted from a former brewery comprising 12 two bedroom flats and 2 three

bedroom penthouses. The Tribunal was accompanied by Mr Mazher and the tenant of flat 10 who acted as caretaker.

18. The development had been completed in 2003 and comprised common areas to the ground floor, three further floors, each with 4 of the two bedroom flats, and the top floor which was shared between the 2 three bedroom flats, each with a private outside area, and a common area between the two which provided access to the roof.
19. The ground floor had a separate access for the office at the rear through a shared gated paved area, part of which was used for parking.
20. The common parts on the ground floor consisted of an entrance hall with a door entry system to the flats, meter rooms for the electricity and water and a dustbin store. The caretaker changed the large dustbin when full and put out the bins. The common area was heated by two storage heaters and the lift serving all floors was situated in this area.
21. It was pointed out that the exterior of the windows had to be cleaned by use of a cherry-picker.
22. There were 50 lighting units to the common parts and those at the front area of the hall were operated by sensors. 4 CCTV cameras had been installed, 3 to the ground floor including one to the rear outside area and 1 on the fourth floor.
23. The respondent occupied flat 14 which was one of the two three bedroom flats on the top floor. The Tribunal pressed the door entry system for number 14 on arrival and received no reply.

### **Hearing**

24. The hearing was held at the Panel Offices following the inspection. It was attended by Mr H Mazher. The respondent had been notified and any evidence received prior to the hearing had been copied to him. No response of any kind had been received.
25. At the hearing, the chairman pointed out to Mr Mazher that the Tribunal's directions of 31 October 2007 had not been complied with. The lease for number 14 was not submitted but the lease for 3.4 Hudson Building had been substituted. This lease had not included the sixth schedule which comprised the responsibilities concerning English Heritage.
26. Mr Mazher stated originally all the leases were in the same form save for flat 15 which had now been revised to comply with the others.
27. Mr Mazher stated that the office was completely separate apart from the communal courtyard and the use of the meter rooms. The service charge covering the office was kept separate from the service charges to the flats. All the flats paid one-fourteenth of the service charge.

28. The management company with the shareholder lessees had not been formed as envisaged by the lease and, therefore, Mr Mazher had been appointed as the managing agent by the freeholder. He had not got a written contract.
29. The Chairman asked for the certified accounts as asked for in the Directions. Mr Mazher said, because of the high number of repossessions, there was no money to pay the accountants and certified accounts had not been obtained.
30. The Tribunal took Mr Mazher through items in the budget accounts in the order they occurred. Many of the figures shown were rounded upwards and were not actual amounts. Mr Mazher could only be sure which were actual amounts in some cases. The budget accounts produced to the Tribunal were those sent to the leaseholders.

Mr Mazher's evidence was as follows:-

#### 31. Insurance

The insurance figure was £2,950.00 and not the rounded figure of £3,000.00 shown in the budget figure for 2005. This latter figure was increased to £3,100.00 for 2006 and 2007 and to £3,200.00 for 2008. An insurance broker was employed.

#### 32. Lift Maintenance

The figure in the budget account of £1,000.00 was an actual contract figure. There were extras for lift repairs which were not quoted in the service charge account. He had paid the extras himself. These amounts were attributable to the respondent and Mr Mazher would recover the amounts directly from Mr Patel.

#### 33. Loan Repayments

The item included in the service charge was to cover a loan to pay for the buildings insurance as there was no reserve fund when he took over the management of the building. The loan of £5,000.00 was for 5 years.

#### 34. Communal Locks Changed

This item occurred in June 2004 when he took over the management of the flats. Many keys were unaccounted for at this time. The charge was included in the 2005 accounts.

#### 35. Communal Cleaning

The figure of £3,400.00 was a rounded-up figure. The service comprised cleaning the common parts, brushing the rear yard and cleaning the internal face of the communal windows every 2 weeks. The employed contractor was reliable.

#### 36. Wifi/Tel

The service was provided on a fixed contract for 4 years on the completion of the building.

#### 37. Management Fee

Mr Mazher said he was a legal graduate and that he had an open-ended, unwritten contract with the freeholder to manage the property. He did not know what his legal obligations were nor what the RICS Service Charge Management Code was. His company was the Hudson Building Management Company set up in 2004. He visited the building monthly and employed the caretaker on a casual basis. The service charge monies were kept in a separate account in the management company's name.

#### 38. Exterior Window Cleaning

The amount was £250.00 including VAT per quarter and it was necessary to use a cherry-picker.

#### 39. Bulb Replacement

This was carried out by Adler & Allen who were qualified electricians. All the bulbs had been replaced in November 2007.

#### 40. Electricity Bill

The rounded-up amount of £400.00 had been used.

#### 41. Reserve Fund

This was accumulated from the total of the amounts which had been rounded up.

#### 42. Water Leak Insurance Excess

There had been a leak to the communal parts and the excess amount, not covered by the insurance, was charged to the service charge in 2006.

#### 43. Repairs Following Vandalism

Repairs which were not attributable to one specific tenant, but which had been reported to the police, were included in the service charge. He was not able to identify the items.

#### 44. Improvements

In the year 2007, four items of improvement had been carried out. CCTV was installed. This was provided by a single contractor and the figure of £3,000.00 was the actual cost.

Three other items, which were painting the communal areas, fitting an extractor fan to the bin store and replacing the carpet, were carried out by one contractor. The amounts came to £5,000.00 and, when asked if he had carried out a Section 20 consultation, Mr Mazher was not aware of the legal requirements of carrying out a consultation process. He had not asked the leaseholders if they wished to suggest other contractors but he did say he had given the quotations obtained to those who had asked.

The amounts in the reserve fund had been used to offset the cost of the improvements.

45. Mr Mazher asked that the budget for 2008 be included in the application. The budget had been issued to the leaseholders two weeks previously.

#### Decision

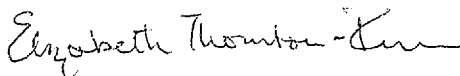
46. The Tribunal found it difficult to come to their conclusion. The total lack of communication from the respondent and the failure of the applicant to supply the lease, any certified accounts or receipts and contracts for the service charge items, threw them back on their own knowledge and experience. Mr Mazher was not a professional manager and had failed to comply with the Tribunal's directions. The Tribunal considered issuing further directions for items to be produced but verbal evidence had been given that there was no written management agreement and an auditor had not been appointed. The Tribunal considered that it was unlikely that further directions would produce any helpful information. The Tribunal proceeded with the written and verbal evidence from the applicant.
47. Having examined the budget service charges for each year, the Tribunal found that the items included were recoverable under section 27A of the Landlord & Tenant Act 1985 and under the lease.
48. Without the service contracts with the suppliers, the Tribunal could only rely on their experience and Mr Mazher's verbal evidence. The Tribunal considered the cost of the cleaning contract was at the higher end of their expectations but all the items were within the range the Tribunal would expect in the budget estimate.
49. The service charge for 2007 included improvements costing £5,000.00 carried out by a single contractor. This amounted to £357.00 per flat. Mr Mazher had given evidence that he had not carried out a consultation under section 20 of the Landlord & Tenant Act 1985. Under the Service Charge (Consultation Etc)

(England) Regulations 2003, Regulation 6, the maximum relevant contribution to any qualifying works of more than £250.00 is not payable without a Section 20 consultation. The consultation requirements may be dispensed with by the Tribunal (section 20ZA Landlord & Tenant Act 1985).

50. Mr Mazher was not familiar with the consultation requirements and gave the Tribunal to understand that he had not carried out the consultation in its statutory form. The contracts concerned all the flats in Hudson Buildings and the Tribunal considered all the lessees should be notified if a 20ZA dispensation were requested. The Tribunal limited the amount payable for the painting, extractor fan and carpets in 2007 to £250.00.
51. The Tribunal considered the amount shown in the unaudited budget accounts to be reasonable and payable, but when the accounts are audited, if the actual sums are less than the amounts paid, then the surplus will be carried forward as allowed in clause 8:3:2 of the lease.
52. The Tribunal calculated the amount payable for 2004 to be £175.50 which was made up of £80.00 per month for November and December and £15.50 equalling the proportion of the service charge applicable to the time between the completion day (25 October 2004) and 31 October 2004.
53. For the year 2007, the amount payable will be made up of the usual service charge of £80.00 per month (£960.00 per annum) plus £214.00 towards the cost of providing CCTV and £250.00 towards the cost of the painting of the communal areas, providing the extractor fan and the communal carpet replacement.

#### **Order**

- 54. For October – December 2004, the respondent will pay a service charge of £175.50.**
- 55. For the years 2005 and 2006, the respondent will pay a service charge of £960.00.**
- 56. For the year 2007, the respondent will pay a service charge of £1,424.00.**
- 57. For the year 2008, the respondent will pay a service charge of £960.00.**



Mrs E Thornton-Firkin  
Chairman  
March 2008