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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAG/LSC/2010/0045

Premises at Camden Place, 106 to 110 Kentish Town Rd London NW5

AN APPLICATION UNDER SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985 ('the Act')

Applicants	Southern Land Securities Limited (Head lessee)
Representation	Ms Evans, Ms Toson and Mr Taylor of Hamilton King Management Limited (managing agents)
Respondent	Petworth Investments Limited (freeholder and landlord)
Representation	Mrs Bowring and Ms Gray of Ringley Legal Services
Hearing Date	27 April 2010
Inspection Date	28 April 2010
The Tribunal	James Driscoll (Lawyer chair), Richard Shaw FRICS and Alan Ring
Decision Date	28 May 2010

THE DECISIONS SUMMARISED

1. **The service charges for the periods 2006, 2007, 2008 and January 2009 were reasonably incurred.**

2. **No order is made under Section 20C of the Act limiting recovery of any professional costs incurred by the respondent as future service charges.**

3. **No order for the reimbursement of the fees payable in connection with these applications under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 is made.**

Introduction

4. This is an application under s 27A of the Act seeking a determination of liability for service charges. It is made on behalf of the Applicants who have a head lease of 15 flats on the fifth and sixth floors in a building called Camden Place, in London NW1. Each of the flats is held under a long sublease. The building also contains a number of commercial units. Leases of the commercial units were granted by Petworth Investments Limited, the owners of the freehold, the landlords under the head lease and the immediate landlords of the commercial leases.

5. The Applicants acquired the head lease at an auction sale and they have held the lease since 11 February 2009. They have appointed Hamilton King Management Limited as their managing agents in place of Ringley Limited. Ringley limited continue to act as managing agents for the freeholder. They were previously the managing agents for the whole building.

6. This application is made in connection with what are claimed as service charge arrears totalling £41,528.29. This is for service charge years 2006, 2007 and 2008, that is for periods before the Applicants bought the head lease in February 2009. We were told that the Applicants were unaware of the arrears at the time of the purchase. The parties agree that the Respondents are entitled to claim any service charge arrears from the Applicants even though they accrued before they purchased their interest.

7. Under the head lease of the residential units, the head lessee pays to the freeholder 26.73% of the main block expenditure and 30.69% towards the costs of maintaining the lifts in the building. We were told that the balance of the charges are paid by the commercial tenants. In turn the head lessee is entitled to collect service charges from the flat leaseholders.

8. In principle, therefore, the head leaseholder should be able recover all of the service charge expenditure paid to the freeholder and in addition to this a separate charge for its own costs and expenses in managing the residential part of the building. However, the flat lease service charge contributions were incorrectly drafted with the result that the head leaseholder can only claim a small proportion of their outlay. In other words they can only manage the residential units at a loss.

The Application

9. This discovery has led the Applicants to apply in a separate application to this Tribunal to have all of the flat lease service charge contributions varied. If they are successful they will in future be able to recover in full their outlay to the freeholder and a separate charge for managing the residential part of the building.

10. On 29 January 2010 the Tribunal wrote to each of the flat leaseholders with details of the two applications, advising them of the date of the pre-trial review and asking them to inform the tribunal if they wished to be joined as a party. They were asked to make this application within 14 days of the letter.

11. Directions were given by the Tribunal on 17 February 2010. A copy of these Directions was sent to the parties and to each leaseholder. None of the leaseholders has applied to the Tribunal to be joined as a party.

12. We were also told that the Respondents have commenced proceedings in the Mayor and City County Court to recover the sum of £41,528.29. These proceedings have been stayed pending the outcome of this application for a determination of the recovery of the service charges by an order of the Court dated 19 February 2010.

The hearing

13. We were disappointed to find that neither party had complied with the Directions in full. For example, the Applicant's bundle was not properly indexed and the Respondent's bundle,was also difficult to read. Both bundles were received late.

14. The Applicants were represented by Ms Evans, Ms Toson and Mr Taylor of Hamilton King Management Limited the agents appointed by the Applicants. The Respondents were represented by Mrs Bowring and Ms Gray of Ringleys, the agents appointed by the Respondents who had previously managed both the residential and the commercial part of the building.

15. Mrs Bowring told us that the previous head leaseholders, Redview Limited, sought to avoid this problem by instructing her firm to attempt to recover **all** of the freeholder's service charge demands from the fifteen flat leaseholders and only to seek monies from Redview if there was a shortfall in the recovery. Putting this another way, the freeholder's costs were passed on directly to the flat leaseholders even though they were not recoverable in full from them. The service charge demands to the flat leaseholders have therefore been incorrect since inception.

16. Copies of emails from Redview Limited and their five year management contract with Ringleys Limited were shown to us. They included a copy of an email recording that following a conversation with a David Pollock at Redview '..I confirm you should charge the Residential Units and not bill the Head Lessee unless otherwise instructed'.

17. Mrs Bowring accepted that the demands for payments from the flat leaseholders were in excess of the amounts recoverable under the terms of their leases and that those flat leaseholders who had overpaid could seek recovery of the overpayment. Mrs Bowring also told us that when Redview discovered that it could not recover all of their potential costs payable under their lease they decided to sell the head lease at auction. As noted above, the applicants purchased the head lease at auction on

11 February 2009, unaware, they told us, of these problems with the wording of the leases and the arrears of service charges.

18. This position is clearly unsatisfactory for all the parties.

19. There were complaints from those advising the Applicants that the service charges are too high. There were also complaints that they had not been given full details of the charges, receipts and other relevant documentation.

20. Those advising the Applicants were unable to challenge the reasonableness of the charges other than to say that they were too high. In the event they agreed that the charges for the water supply were reasonable. They remain unhappy, however, at the fact that there is just one water metre for the building. It is difficult, they argue, to judge whether the Applicant is paying a fair share of the water charges.

21. They also reluctantly agree the cleaning charges as well as the charges for cleaning the windows. They had particular concerns over the electricity charges. For service charge year March 2008 to April 2009, for example, the share of these charges amounted to £92,219.30. Mrs Bowring had re-examined some of the charges and agreed the cleaning charges (£5,444.21) and the window cleaning charges (£789.53).

Our inspection

22. We inspected the premises on 28 April. We were able to view both main entrances to the building (one on Kentish Town Road, the other in College Street). The whole of the building is air-conditioned. We inspected flat 5 on the fifth floor and flat 9 one of the very large flats on the sixth floor at the top of the building (called the penthouses). The owner of flat says that he does not have the benefit the air conditioning.

23. Both the flats we viewed are well-constructed and in good condition. In the course of our inspection we also saw the common parts including the lifts and the stair cases and we also were able to view parts of the commercial premises, including the architect's business premises. We noticed that the corridors to the residential units are very warm and that the corridor lighting is constantly in use. The premises are close to the centre of Camden Town. Both the leaseholders we spoke to stated that

they were impressed with the quality of the new management arrangements provided by the Applicant's managing agents.

Reasons for our decisions

24. We accept that the Applicants have purchased an interest which for the time being will be difficult to manage. We were told that the Applicants when they purchased the head lease at auction they were unaware of the service charge arrears. However, we have concluded that whatever occurred at auction the leasing arrangements are clear although unsatisfactory. As currently drafted the head leaseholder can only recover a relatively small part of its charges payable to the landlord. This will remain the case until such time, as any, when the flat leases are varied.

25. The Applicants have been unable to satisfy us that the charges are too high or otherwise unreasonable or irrecoverable . As applicants they carry the burden of proving that the charges are too high and they have not been able to do so. Whilst they may have experienced difficulties in obtaining information, documents and other information following their purchase at auction we have concluded that they did eventually receive documents relevant to the service charges claimed. In the course of the hearing those representing them told us that they accepted many of the charges.

26. We can see why the applicants question the electricity charges. There is one electric metre for the whole building serving all commercial and residential properties. This may seem unfair but the liability amount is set out in the head lease. For the service charge year ending in April 2009 these charges amounted to £345,003 of which £92,219.30 was charged under the head lease. This may seem a very high charge and we can see some merit in the Applicant's questioning this particular item. However, the Applicants were unable to produce any evidence that would show that these charges were unreasonably incurred. However, we noticed in the course of our inspection that the lights are switched on constantly and that the corridors were very warm. It is also possible that much of the electricity usage is for the commercial parts of the building. In line with current policies on energy use it would be in everyone's interest if the consumption of electricity could be reduced. Measures

such as using timing switches and other conservation measures might be considered as part of an energy saving programme. If no such measures are explored and high consumptions continue challenges to the level of these charge might in future be successful.

Costs

27. We heard representations on costs. This is not a case where an order under section 20C of the Act is justified. As the parties could not agree on what charges are recoverable an application to this Tribunal was necessary. The Respondents commenced proceedings in the County Court whilst the Applicants applied to this Tribunal. We have found substantially in favour of the Respondents. Equally the Applicants make a fair point that they had to make an application to this Tribunal to obtain full information on the charges that had been levied. From the Respondent's perspective they are entitled to take proceedings where they claim that service charges have not been paid.

28. For the same reasons we have concluded that this is not a case where an order directing reimbursement of the application fees is justified (that is under regulation 9 of the Leasehold Valuation Tribunals (Fees) Regulations 2003).

Signed: James Driscoll

James Driscoll LLM, LLB Solicitor (Lawyer Chair)

28 May 2010