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LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAG/LSC/2010/0192

THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of the Landlord and Tenant Act 1985

Applicant: 18 Greenaway Gardens (Management) Limited

Respondent: Mr Meredith Yates

Premises: Flat 3, 18 Greenaway Gardens London NW3

Date of Hearing 15 September 2010

Appearances for Applicant: Ms Crew of counsel
Mr M. Bishop (Temple Crest Management Ltd)

Appearances for Respondent: Mr M. Yates

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr D. L. Edge FRICS
Mrs L. Walter MA (Hons)

Date of Tribunal's Determination 4 October 2010

1. This application, under Section 27A of the Landlord and Tenant Act 1985, was transferred from the Central London County Court by order of District Judge Silverman dated 4 March (ref Claim No 9CL00398).
2. At a Pre Trial Review on 7 April 2010 it was established that the costs in issue were £3,199. 72 in respect of major works, £3,534 in respect of service charges from 2007 and administrative charges in the sum of £251.13.
3. As a result of the Directions hearing the applicants were permitted to make an application under Section 20ZA of the Act. This was determined in the applicants' favour at the conclusion of a two day hearing on 13 July 2010, with Reasons being provided on 29 July 2010.
4. At the resumed hearing on 15 September 2010 the Tribunal considered the application under Section 27A in respect of the costs of the major works and the annual service charges.
5. At the commencement of the hearing the respondent indicated that he was no longer challenging the administrative costs in the sum of £251.53.

THE MAJOR WORKS

6. It was established at the hearing that the major works - the repaving of the forecourt - had cost, in total, £37,621.63. However, only £19,499.13 was now in issue since the remainder had already been paid from the reserve fund. The respondent's proportion of the amount outstanding was £3,199.80.

The Respondent's Case

7. The respondent claimed both that the cost was not reasonable and that the works had not been done to a reasonable standard. Questioned by the Tribunal he said that he considered that an appropriate proportion for him, in all the circumstances, was £1,600.
8. So far as the cost was concerned the respondent was adamant that more York stone had been ordered than had been required. He asserted that his measurement of the finished driveway indicated that only102 square meters had been used although a total of 135 square meters had been ordered.
9. He also claimed, on the basis of estimates which he had obtained at the time, that the work could have been done at a much cheaper price.
10. He maintained that some of the foundation work had been duplicated since the original contractors had quoted to excavate and back fill and this work had been included again in the quotation of the contractors who had finished the work.
11. He pointed out that work to the steps had originally been estimated at £500 but had actually cost £1,865.
12. With regard to the standard achieved he was critical of the cutting of the stone saying that, in places, it was not pleasing to the eye and that, eventually, water could penetrate.
13. He also claimed that the cladding to the steps did not match the stones of the rest of the driveway and that this detracted from the overall appearance of the property.
14. He asserted that without the reinforced concrete sub base that he had advocated the driveway would not last as long as it otherwise would have done.

15. He was concerned that the stones of the driveway had not been sealed and said that this made oil penetration a potential problem.
16. Finally, he suggested that the stone used was not, in fact, York stone. He had been in contact with the Technical Director of the Building Research Establishment who sent him an e.mail saying 'on the basis of the images you supplied I think that the colour and appearance of your slabs is more consistent with stone from India than traditional UK sourced York stone'.

The Applicants' Case

17. Ms Crew responded that the respondent's measurement of 102 square meters had not been independently verified and that, in any event, the additional York stone ordered, which had made up the total, had been authorised by Mr Aladese of Aladese Consultancy Ltd, the surveyor appointed by the applicants after the respondent had first suggested the firm.
18. Ms Crew accepted that the work could have been done more cheaply but alleged that the respondent's interventions in the works had caused the price to escalate. Moreover, she pointed out that the cost still fell within the range (when the VAT was excluded) considered reasonable, by the independent expert, Mr Stephen J. Roberts MRICS BSc (Hons) of Roberts Muir Chartered Surveyors appointed by both sides.
19. She called Mr Bishop of Temple Crest Management who said that by the time Marshall K. Paving Contractors Ltd commenced work in November 2007, some of the excavation work done by the original contractors, Kelco, needed to be redone because of damp penetration and general unevenness.
20. Mr Bishop said that the price of £500 originally quoted for the steps had related only to the labour involved in laying the stones and did not include the cost of cutting the stones. He said that Marshall K. Paving Contractors had not been prepared to do this work and another contractor, P. Liddle, had been employed. Mr Bishop said that no competing estimates had been obtained and he undertook to provide, after the hearing, the quotation obtained from P. Liddle. This was subsequently provided, dated 10 January 2008, showing a cost of £1,865. A letter, dated 18 March 2008 was also provided which had been sent by Mr Bishop to the respondent indicating that £500 of that cost had already been budgeted for.
21. Mr Bishop accepted that the stone of the steps did not match the stones of the driveway but maintained that the result was the best that could be achieved in all the circumstances.
22. Ms Crew reminded the Tribunal that the possibility of a reinforced concrete sub base and of sealing the driveway had been issues which the respondent had raised with Mr Aladese, the contract supervisor, who had been of the opinion that neither were necessary.
23. Ms Crew was of the opinion that the issue of whether or not the stone used was York stone, raised by the respondent for the first time only at the hearing, was not something which the Tribunal should consider.

The Tribunal's Determination

24. The Tribunal was not persuaded that either the cost of the work or the standard achieved was not reasonable. In their opinion the relevant costs, as defined by

Section 19 of the Act had been reasonably incurred and the works had been effected to a reasonable standard. Accordingly, the costs were payable.

25. The final work had been supervised by a surveyor (who had been suggested by the respondent) and whilst the costs had escalated from those first estimated, the Tribunal was of the opinion that the blame for that escalation rested, at least in part, on the respondent.(See the Tribunal's determination of the Section 20ZA application for a history of the works). Moreover the independent expert agreed that the final cost, less VAT, fell within a range he considered to be reasonable. Whether or not the stone used was York stone was not a matter that the respondent raised in terms of the cost of the works.
26. The Tribunal accepted Mr Bishop's explanation that some duplication of work had been necessary because of the delay in completing the works and also that the work to the steps undertaken by Mr Liddle had been effected at a cost advantageous to the applicants.
27. With regard to the standard achieved the Tribunal was of the opinion, from their own inspection, that the standard was reasonable. They had noted the non matching steps but they accepted that the finish was the best that could be achieved in the circumstances. They had not noted the poor cutting of any stones and the respondent, when questioned at the hearing, admitted that he had not pointed this out to them.
28. They also accepted Ms Crew's argument that the respondent, in raising the issues of a reinforced concrete sub base and sealing, was merely rehearsing, again, points which he had made to Mr Aladese at the time and which had not been accepted by him.
29. All in all the Tribunal was satisfied that the saga of the repaving had eventually been completed to a reasonable standard and, in all the circumstances, at a reasonable cost.
30. Accordingly, the Tribunal determines the respondent's apportioned cost of £3,199.80 to be reasonable, reasonably incurred and, therefore, payable.

THE SERVICE CHARGE ARREARS

31. The claim in the County Court in respect of these arrears was dated 14 January 2009 but at the hearing the applicants produced service charge demands for the years ending 31 March 2007, 2008, 2009, 2010 and up to 15 September 2010. They sought, with the addition of interest and some additional payments to Temple Crest Management Ltd, £12.825.07 from the respondent in respect of this period.
32. The Tribunal was of the opinion that, since this claim had been transferred to them by the County Court, that court was best placed to deal with the question of interest.
33. Further, the Tribunal was not persuaded that they could properly deal with all the alleged outstanding arrears. They considered, noting that the respondent had paid £2,503.18 in March 2010, that they should confine their determination to the years ending 31 March 2007, 08, 09 and 10. Accordingly, the sum £7,965.57 was in contention.

The Respondent's Case

34. The respondent said that only the service charge demands of 1 April 2009 and 1 April 2010 had been in the prescribed form since the others had not had attached to them the Summary of Tenants Rights and Obligations as required by Section 21B of the Landlord and Tenant Act 1985.
35. Questioned by the Tribunal the respondent admitted that he was not sure, in making this point, what he saw as the consequences and, questioned further, he said that he was not saying that any of the individual service charge items were, of themselves, unreasonable.
36. The respondent also maintained that under the terms of his lease it was not possible to demand both a contingency payment and a reserve payment as had been done in the demand dated 1 April 2010. Since the Tribunal has decided not to consider the year commencing 1 April 2011 they make no determination on this issue.
37. The respondent said that the service charge was not due and owing because under the terms of his lease it is to be paid as rent by four quarterly payments in advance on the usual quarter days and it was not so demanded.
38. The respondent also maintained that the agreement between the applicants and their managing agents was a qualifying long term agreement under Section 20ZA(2) of the Landlord and Tenant Act 1985, having been entered into for a term of more than twelve months.
39. He said that Temple Crest Management Ltd had been appointed after a meeting with their representative, Mr Bishop, had taken place on 6 February 2007. He asserted that he had anticipated that the meeting, of which he had no prior knowledge, would be used to interview Mr Bishop rather than to appoint him and that he had expressed his reservations at the time that the appointment was not being properly conducted. He described himself as having been ambushed. The respondent added that he considered that he had been disadvantaged by the appointment since he had since found two firms prepared to do the work and charge less than Temple Crest. At the hearing he produced management services offers from Salter Rex and Floc Net to this effect.

The Applicants' Case

40. Ms Crew said that all of the other lessees in their witness statements, as well as Mr Bishop, had said that their service charge demands had been accompanied by the appropriate information and that, in any event, the respondent had been in possession of the necessary information since, at least, the start of these proceedings.
41. Ms Crew was of the opinion that whether or not the service charge demands had been served timeously, in accordance with the lease, the costs were due because under Clause 6 rent is due 'whether formally demanded or not'.
42. Ms Crew contended that the management agreement was not a qualifying long term agreement either because it was a contract of employment falling within Regulation 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 or because it was an agreement in force for more than 12 months before the regulations came into force. In support of this second limb she alleged that a managing agent had been in post in October 2003 (ie prior to the regulations) and there was, therefore, no need for consultation when only the name had changed.

43. Finally Ms Crew said that if the Tribunal considered that the management agreement was a qualifying long term agreement the applicants were applying for a dispensation under Section 20ZA of the Act.

The Tribunal's Determination

44. The Tribunal was not persuaded that any of the points raised by the respondent led to the conclusion that the service charge demanded from him (£7,965. 57 – see paragraph 33 above) was not reasonable, reasonably incurred and, therefore, payable. Indeed the respondent himself did not contend that that the service charge costs in question were not reasonable. He appeared to be making the point that proper procedures had not been followed and, because of this, costs were not payable.
45. With regard to the service charge demands not being in the prescribed form the Tribunal accepts the evidence of the other leaseholders and Mr Bishop that the demands had been accompanied by the appropriate information. Even if they had not all been the Tribunal accepts Ms Crew's contention that, at least from the commencement of these proceedings, the respondent had been properly informed. Accordingly, the Tribunal determines that this ground of the respondent's defence provides no basis on which his service charge proportion should be either reduced or waived.
46. With regard to the timing of the service charge demands the Tribunal notes that, according to the minutes of a residents' meeting on 16 March 2007, it had been agreed that in future all service charges would be demanded at three monthly intervals.
47. It is recorded that at that same meeting Temple Crest had been appointed, with the respondent arguing that three estimates should be obtained for any long term financial commitment. According to the witness statement of Mrs Natsis the other leaseholders had been minded to appoint after the interview on 6 February. However, the respondent, at that stage, had argued that that meeting had been called without the requisite notice and the decision was, therefore, not taken until 16 March. The respondent then resigned as chairman.
48. The Tribunal accepts Ms Crew's contention that the appointment was a contract of employment rather than a qualifying long term agreement. However, even if they had found it to be a qualifying long term agreement the Tribunal would have granted a dispensation for all of the reasons already set out in their decision relating to the major works.
49. The Tribunal was not persuaded that the respondent was prejudiced by the appointment. They noted that he had not queried the costs of any of the service charge items (see paragraph 35 above) and, in particular the management charge. Accordingly, they found it difficult to see how he could, subsequently, claim prejudice on the ground that the service could have been provided more cheaply.

SECTION 20C of the LANDLORD and TENANT ACT 1985

50. The Tribunal asked Ms Crew whether it was the applicants' intention to put the costs of the application onto the service charge account of the respondent. She said that it was and that the costs were likely to be in the region of £25,000.

51. The Tribunal queried with the respondent that, despite the Directions referring to the possibility, he had not made a Section 20C application. He said that he had been informed by his solicitors that the Tribunal's power, in this connection, was limited to £500 and for that reason he had not made the application and, indeed, for the same reason, he was not represented at this second hearing.
52. Informed by the Tribunal that their powers were not so limited he asked to make the application and the Tribunal allowed him to do so.
53. Ms Crew said that the applicants had been put to considerable expense as a result of the respondent's interventions in the major works and his non payment, without good reason, of the annual service charges.
54. The respondent said that he was a truthful person and he was upset that the Tribunal had described him as 'a reluctant, evasive and unforthcoming witness' (see paragraph 71 of the previous decision). He provided on the morning of the hearing an eleven page document detailing what he described as untrue statements in the witness statements of Ms Conway, Mr Bishop and Mrs Natsis, most of which were not relevant to the issues under consideration that day.
55. The Tribunal has no hesitation in refusing to grant the Section 20C application.
56. Given the history of non payment by the respondent the applicants had no alternative but to commence proceedings and the respondent has argued every step of the way (his only concession being administrative cost of £251.53 at the commencement of this hearing) with the result that the costs have escalated
57. In the circumstances of the respondent's seeming inability to accept majority decisions when he was no longer permitted to take the lead himself, the Tribunal determines that it would not be just and equitable not to allow the costs to be taken into account in determining the amount of the service charge to be paid by the respondent.

COSTS UNDER CLAUSE 10 of SCHEDULE 12 of the COMMONHOLD and LEASEHOLD REFORM ACT 2002

58. Under this provision a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings if he has, in the opinion of the Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
59. In the Tribunal's opinion the respondent has acted unreasonably in defending this application. The Tribunal's determination of the Section 20ZA application (which itself took two hearing days) was a robust condemnation of the respondent's behaviour throughout the progress of the major works and the Reasons, provided well in advance of this hearing, offered an opportunity for the respondent to settle the outstanding issues. He chose not to do so and his grounds for non payment have all been rejected by the Tribunal.
60. In all of these circumstances the Tribunal considers that it is just and equitable and, indeed, proportionate that the respondent should pay £500 towards the costs of the applicants.

B. M. Hindley 4 October 2010