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LON/00BB/LSC/2009/0504

LON/00BB/LSC/2009/0609

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER SECTION 27A OF
THE LANDLORD & TENANT ACT 1985**

Address: 27, 33 and 99, Harrier Way, Beckton, London, E6
5YX

Applicant: Evelyn Mews (Beckton) Management Company
Limited

Respondents: (1) Mr E Boasiako (Flat 99)
(2) Mr O. Smith and Ms Arisoy (Flat 27)
(3) Mr F Egboh (Flat 33)

Applications: 5 and 26 August 2009

Hearing: 25 January 2010

Appearances:

Landlord

Ms R Georgiou

Mr S. Barrable

Mrs L. Babic

Solicitor

Hull & Company, Managing Agent

Director of Applicant company

For the Applicant

Tenants

Did not attend and were not represented

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr J M Power MSc FRICS FCI Arb

Mrs R Turner JP BA

IN THE LEASEHOLD VALUATION TRIBUNAL

**LON/00BB/LSC/2009/0504
LON/00BB/LSC/2009/0609**

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF FLATS 27, 33 AND 99 HARRIER WAY,
BECKTON, LONDON, E6 5YX**

BETWEEN:

EVELYN MEWS (BECKTON) MANAGEMENT COMPANY LIMITED
Applicant

-and-

**(1) MR E BOASIAKO (FLAT 99)
(2) MR O. SMITH & MS ARISOY (FLAT 27)
(3) MR F. EGBOH (FLAT 33)**

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. By three applications respectively dated 5 and 26 August 2009, the Applicant seeks a determination of the Respondents' liability to pay and/or the reasonableness of the service charge is claimed in respect of each of the service charge years from 2006 (save for Flat 27) to 2009. At the hearing, the Tribunal gave permission to amend the applications in relation to the Third and First Respondents to include the years 2005 and 2010.
2. The Applicant is the present freehold of the premises known as 34-56 (even) Evelyn Dennington Road and 19-185 (odd) Harrier Way, Beckton and parking

spaces and estate land, having acquired the freehold interest on 30 September 1997. The Applicant was incorporated on 26 May 1994 to carry out the management functions under the terms of the residential leases. The Applicant, is therefore, both the landlord and at the management company under the terms of the Respondents' leases.

3. The estate is comprised of a purpose-built block of 96 flats, common parts and car parking spaces. All of the flats are let on long residential leases, which the Tribunal was told have been granted on substantially the same terms. The present managing agent instructed by the Applicant is Hull & Company.
4. The Respondents are, respectively, the present leaseholders of Flats 99, 27 and 33 respectively. Their leases were granted variously for a term of 999 years from 1 January 1990 ("leases"). By clause 6 and clause 2 of Part I of the Sixth Schedule of the leases, the lessees covenanted to pay the estimated service charge and the service charge payable at the time and manner provided for in the Sixth Schedule. Part II of the Sixth Schedule sets out the heads of service charge expenditure that may be recovered as relevant service charge expenditure. The lessees are contractually liable to pay a service charge contribution of $1/96^{\text{th}}$ of the total expenditure.
5. The annual service charge year commences on 1 January and ends on 31 December of each year. The determination sought by the Applicant against the Respondents was in relation to the actual expenditure incurred in each of the service charge years from 2005 to 2008 and in relation to the estimated expenditure for 2009 and 2010. The actual and estimated expenditure from 2005 to 2009 is set out in Appendix 1, which is annexed to this Decision. The estimated expenditure in relation to 2010 is to be found at Tab 2 page 6 of volume 1 of the hearing bundle. It seems that the practice adopted by the Applicant is to set aside any surplus from the estimated service charge collected in a reserve fund in the event that the actual expenditure did not exceed the estimated expenditure. However, as can be seen from Appendix 1, save for 2007, there was no such surplus monies.

6. The determination sought by the Applicant against the First and Third Respondents relates to the estimated and actual service charge expenditure years 2005 to 2010. As against the Second Respondents, it relates to the years 2007 to 2010. In 2009, the Applicant also seeks to claim an administration charge of £25 against each of the Respondents. This is considered further below.
7. As part of this application, the Applicant also sought to claim interest on the service charge arrears owed by each of the Respondents. The Applicant's solicitor explained that this was an "opportunity cost" whereby the service charge monies paid by the other lessees was effectively being used to subsidise these Respondents. The Tribunal ruled that this was not a service charge within the meaning of section 18 of the Act and, therefore, it did not have jurisdiction in relation to this matter.
8. The Applicant also sought a determination under section 168 of the Commonhold and the Leasehold Reform Act 2002 that the Respondents were in breach of the relevant service charge terms of their leases by failing to pay the service charge contributions claimed against them for each of the service charge years set out in paragraph 6 above. Again, the Tribunal ruled that he did not have jurisdiction in this application to make such a finding and that the Applicant would have to make a separate stand alone application under section 168 of the 2002 Act.
9. The Applicant also made a further application seeking a determination under section 20C of the Act front order that the Respondents pay the legal costs it had incurred in these proceedings. This is not an application the Applicant can properly make because a proper reading of section 20C reveals that it can only be made by a tenant and not a landlord. Consequently, this application did not fall to be determined by the Tribunal either.

The Relevant Law

10. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

(2) Subsection (1) applies whether or not any payment has been made."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

11. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

"(1) Relevant costs shall be taken into account in determining the amount of a 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 or the carrying out works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly."*

Decision

12. The hearing in this matter took place on 25 January 2010. The Applicant was represented by Miss Georgiou, a Solicitor. None of the Respondents attended nor were they represented.
13. The Respondents had played no part in these proceedings and that their position in this case was not known. Nevertheless, the Tribunal felt that it was incumbent on the Applicant to satisfy it that, certainly in relation to the major items of service charge expenditure, the Applicant had reasonably incurred those costs and that they were, *prima facie*, reasonable in amount.
14. In relation to the window cleaning, the Tribunal was told that the contractor is "Sparkle Clean" who is based in Harlow, Essex. The contractor is a medium-sized firm which was inherited from the previous managing agent. The duties

carried out are the cleaning of the 15 hallways on a weekly basis during which the carpets are hoovered and the banisters and window sills are washed down. The windows on the estate are cleaned every six weeks. A cleaning note is left in the communal areas so that tenants can notify the contractor about what works need to be done, for example, changing light bulbs.

15. The Tribunal was told that the buildings insurance is placed using insurance brokers. In fact, different brokers had been employed the previous year to obtain better value and the buildings insurance premium obtained represented the best value as it had been tendered in the market. The cover provided by the policy included Directors' liability with an indemnity for £500,000. The claims made annually are very small and approximately 3 every year.
16. From 2000 several contractors had carried out the gardening. This was now being done by two men who are firemen. Gardening is carried out fortnightly from April to October and thereafter monthly in each year. The contractors mark the areas on a site plan when they have carried out work and this is put through a Director's letter box. Typical duties include maintenance of shrubs, laws, pergolas, etc. The contractors work from 8 a.m. to 4 p.m. The cost of this work is carried out at an annual fixed-price which is agreed before the annual budget is prepared. The Applicant submitted that the grounds on the estate are well kept.
17. The cost for general and lighting repairs represents a rolling programme to replace the basic lighting system installed on the estate. This includes replacing old fittings and installing PIR's to enable any lights to be automatically switched off when not being used.
18. As to the TV aerials and entryphone expenditure, the Tribunal was told that the former maintenance contract had been cancelled in 2008 because it was too expensive. This had been inherited from the developer. The cancellation of the contract is the main reason why this estimated head of expenditure for 2009 was less. A reserve fund provision of £7,870 had been provided for in 2009 to upgrade the existing system to digital TV. A similar provision had not

been provided for in the 2010 budget estimate because priority expenditure was now being given to other matters.

19. As to the general reserve fund provision in each of the service charge years, the Tribunal was told that there was still going to be a shortfall because only £35,000 remained in the fund and approximately a further £85,000 was needed to carry out major works on the estate. Apparently, no capital expenditure had been incurred since 2005.

20. Having regard to the explanation given and the extensive documentary evidence before it, the Tribunal was satisfied that each of the heads of expenditure and the reserve fund provision for the actual and estimated expenditure for the years 2005 to 2009 had been reasonably incurred and were reasonable in amount. Accordingly, save for the claim for interest, the service charge contributions claimed against each of the Respondents in respect of each of the relevant service charge years is due and payable less any sums already paid by them.

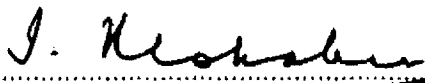
21. As to the administration charge of £25 claimed separately in 2009 against each of the Respondents, the Tribunal was satisfied that the Applicant could contractually recover this cost either under paragraphs 2 or 10 of Part II of the Sixth Schedule of the leases. The Tribunal found that this charge was recoverable under paragraph 1(1)(c) of Part I, Schedule 11 of the Commonhold and Leasehold Reform Act 2002 because it had been incurred in respect of a failure by the Respondents to make payment of the service charges that are the subject matter of this application by the due date to the Applicant. Furthermore, the Tribunal found that the charge was eminently reasonable within the meaning of paragraph 2 of Part I, Schedule 11 of the 2002 Act. The Tribunal was satisfied that the relevant notice required under paragraph 4 had been served and, therefore, this charge was recoverable separately and in addition to the service charges claimed by the Applicant.

Fees

22. The Tribunal was told by the Applicant that each of the three applications that had been issued against the Respondents had required a separate issue fee of £100. In addition a single hearing fee of £150 had to be paid to have all of the applications heard. The Applicant sought reimbursement of these fees.
23. Having regard to the fact that the Applicant had entirely succeeded on the issues before the it, the Tribunal considered it was just and equitable to make an order requiring the Respondents to each reimburse the Applicant the issue fee of £100 in respect of each application. In addition, the Tribunal also made an order that the Respondents, whether jointly or severally, reimburse the Applicant the hearing fee of £150.. The total fees are to be refunded by the Respondents within 28 days of this Decision.
24. Finally, and for the avoidance of doubt, the Tribunal make their determination in relation to the legal costs incurred by the Applicants in these proceedings. In the event that the Applicant seeks to recover these costs through the service charge account and the Respondents or other lessees seek to challenge them, then they will have to be the subject matter of a separate application under section 27A of the Act brought either by the Applicant or a lessee.

Dated the 24 day of March 2010

CHAIRMAN.....



Mr I Mohabir LLB (Hons)

B: BUDGET A: ACTUAL		HARRIERS WAY, LONDON E6									
ITEM	2005		2006		2007		2008		2009		
	B	A	B	A	B	A	B	A	B	A	
1	12000	11625	13640	9885	13640	10465	13640	10401	13640	N/A	
2	3500	3767	3000	4689	4500	4650	4500	5342	5000	N/A	
3	9000	8930	8000	9547	9000	10378	9000	11596	11500	N/A	
4									500	N/A	
5	9000	9800	9000	11241	9000	9569	9000	9180	9000	N/A	
6	5900	6094	7000	6592	5900	5274	5900	3832	5000	N/A	
7	5200	4915	5400	5021	5200	5598	5200	3929	1500	N/A	
8	1000	1786	800	2100	1000	499	1000	4607	5000	N/A	
9	900	2127	900	1810	900	2155	900	1623	1000	N/A	
10	140	229	120	473	140	215	140	196	140	N/A	
11	8460	8460	9500	9500	10000	9500	10000	10324	10700	N/A	
12	700	729	800	746	800	764	800	765	850	N/A	
13										N/A	
14		44350								N/A	
15		4070								N/A	
SUB TOTAL £	£55,800	£106,882	£58,160	£61,604	£60,080	£59,067	£60,080	£61,795	£63,830		
RESERVE FUND	£9,480	-	£10,000	-	£10,000	-	£11,920	-	£27,370		
GRAND TOTAL	£65,280	£106,882	£68,160	£61,604	£70,080	£59,067	£72,000	£61,795	£91,200		