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LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C

Case Ref: LON/00BJ/LSC/2009/0600

Property:	Sherwood Court Chatfield Road London SW11 3UY
Applicants:	(1) Mr & Mrs J Murphy (Flat 80) (2) Mrs D Loke (Flat 22) (3) Ms Wong Eva Brenda Ye Wah (Flat 14)
Respondents:	(1) Riverside Plaza Limited (2) Peverel OM Limited
Appearances:	Mr & Mrs J Murphy Mr Douglas Chow (representing Ms Wah) For the Applicants Mrs C Banwell-Spencer (In-house Solicitor of the Second Respondent) Mr Ian Scott (Property Manager of Second Respondent) For the Respondents
Date of Application:	3 September 2009
Date of Pre-trial Review:	14 October 2009
Date of Hearing:	18 February 2010
Date of Decision:	24 February 2010
Members of Tribunal:	Mr S Shaw LLB (Hons) MCIArb Mr C Gowman MCIEH MCMI BSc Mrs L Walter MA (Hons)

DECISION

INTRODUCTION

1. This case involves an application dated 3 September 2009 made by Mrs J Murphy and Mrs D Loke. At the hearing to be referred to below, after discussion with the parties, and with their consent, Mr J Murphy and Ms Wong Eva Brenda Ye Wah were also added as Applicants. Accordingly the application is made by Mr & Mrs J Murphy, Mrs D Loke and Ms Wah ("the Applicants"). At the Pre-trial Review it appears that Mr D Chow was referred to as an Applicant, but in fact he is not a leaseholder at the property, and in the event he appeared at the hearing with written authority from Ms Wah (who is his sister) to represent her. As indicated in the title of this Decision the Applicants are respectively the leasehold owners of flats 80, 22 and 14 at the property. The company Riverside Plaza Limited (the First Respondent) is the freehold owner of the property, and Peverel OM Limited (Management Company) is the named management company within the respective leases of the flats, with responsibility for carrying out management services in relation to the property. In the event the First Respondent played no part in the proceedings. The application is made pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") and it is for a determination of various disputes in relation to service charges relating to the property.

THE ISSUES

2. At the Pre-trial Review, the Tribunal identified certain issues to be determined in the context of this application. At the hearing the parties confirmed that the issues had been correctly identified, but that they could perhaps be consolidated into two main issues. These issues are:-

    (i) the allocation of the costs incurred for external decorations at the property during the service charge year ending 31 July 2007.

(ii) the amounts claimed for the reserve fund for the service charge years ending 31 July 2008, 31 July 2009 and the budget in this regard for the year ending 31 July 2010.

3. It is proposed to summarise the respective positions in relation to each of these contentious issues and to give the Tribunal's determination in relation to each such issue.

THE ALLOCATION OF THE COST OF THE EXTERNAL DECORATIONS REFERRABLE TO THE SERVICE CHARGE YEAR ENDING 31 JULY 2007

4. During the course of the hearing, the Tribunal was referred to two separate bundles, one prepared by the Applicants (the red bundle) and one prepared by the Respondents (the yellow bundle). At pages 44 and 46 of the red bundle there are plans of a riverside development at Battersea Reach of which the property forms part. The development has both residential and commercial accommodation, coupled with certain open spaces referred to as "courtyards" and a "plaza." These various types of accommodation, coupled with private and public open spaces, have resulted in leases containing a dazzling array of different schedules and service charge percentages, depending on the nature and situation of the accommodation and the service charge concerned. The Tribunal was taken through this labyrinth by the parties in order to set the dispute in context. Happily, for present purposes, the issues in dispute are discrete and do not require an expansive explanation of these extremely detailed provisions. Suffice it to say for present purposes, that the Second Respondents have organised contributions to service charges by reference to 7 different schedules, which can be seen illustrated in a spreadsheet at page 111 of the yellow bundle. For the purposes of this dispute the Tribunal is concerned with the sums charged to the Applicants under schedule 2B. As indicated above, during the service charge year ending 31 July 2007 major works were carried out at the property involving external decorations. The overall cost of those works was £120,326 of which the schedule 2B contribution (relevant to the Applicants) was the sum of £9,630.08. The Applicants' part of the development comprises a restaurant commercial premises on the ground and first floors, and 4 residential units on

floors above (although there were in fact 5 leases one of the top floor flats also having a separate lease of further accommodation on the roof). The Applicants are then respectively charged a proportion of these costs by reference to the percentage within their particular leases. For example the percentage contribution from Mr & Mrs Murphy according to their lease is 33.36%. These figures themselves were also subject, as understood by the Tribunal to some further adjustments after the actual costs became clear (as opposed to the estimate cost) but the precise figure may not be so significant as the point in principle taken by all Applicants to which the Tribunal will now turn.

5. The Applicants' contention (as articulated by Mrs Murphy at the hearing) was that the allocation of the overall expense of these redecorations as between the different schedules (and thus the different leaseholders) was inherently flawed and unfair. She put forward three main reasons for this contention. The Tribunal will deal with these contentions below.

6. The first contention raised on behalf of the Applicants was that a significant part of those costs (£34,609) was referable to the redecoration of a car park area. These costs, said the Applicants should have been taken out of the schedule 2B costs either wholly or in part, in such a way as to relieve the Applicants of having to make a contribution towards these costs, which were properly payable by other leaseholders holding car park leases. The figure mentioned was obtained by a schedule at page 58 in the red bundle as a schedule of additional works. In response to this on behalf of the Second Respondents, Mrs Banwell-Spencer (the Second Respondent's In-house Solicitor) informed the Tribunal that in fact the work had never been done nor had it been charged to the Applicants and that only the cost referable to 50 fixings for bikes in the sum of £4,200 had formed part of the Applicants' charge in this regard (see page 80 of the yellow bundle). This was one of the reasons, as understood by the Tribunal, that the Applicants each received a significant credit to their service charge account in the following year (see pages 111 and 112 of the yellow bundle). The fact of this credit was not disputed by the Applicants, although of course they argued that the charge should never have been so high in the first place.

7. The difficulty from the point of view of the Applicants was that, certainly so far as Mr & Mrs Murphy were concerned, they were not present during the course of these works, but were abroad for a period of 2 years during the period of which the works were carried out. They were not in a position to rebut the contention on behalf of the Respondents that the works were limited in this way, and indeed the accounts did tend to suggest that a credit had been given. On the evidence before the Tribunal, the Tribunal was unable to find that there had been any particular overcharging in this regard.

8. The second point taken on behalf of the Applicants is that the restaurant premises on the ground and first floors of Sherwood Court had been given, in effect, preferential treatment because they had not been asked to contribute to these costs either at all or in any significant degree. Mrs Murphy's point was that the restaurant premises account for some 40% of the schedule 2B area or costs, and yet they had been effectively absolved from any contribution to these costs.

9. The evidence from the Respondents was that the restaurant premises were not charged for these works because in fact no works were carried out to the restaurant at ground floor level, with the exception possibly of cleaning the windows by water jetting in order to make good any consequential damage caused by the other works above. These works, as understood by the Tribunal involved work to the brickwork, window frames, and part of the roof above. This contention was confirmed by an e-mail from Michael Grieve of Carlile Associates, which firm, so the Tribunal was informed, supervised the works. Mrs Banwell-Spencer informed the Tribunal that Mr Grieve is a surveyor. His e-mail indeed confirms that no works were specified to the ground floor retail unit.

10. It was unfortunate that there was no formal statement from Mr Grieve, nor, even better, an appearance from him at the hearing in order to deal with the queries raised by the Applicants. This was explained on behalf of the Respondents on the basis that his attendance would only have inflated yet further the cost of

these proceedings and would have been an extra cost to be added to the service charge in due course.

11. Against this contention, the Applicants were unable to call any evidence that work had in fact been carried out to the commercial premises. As mentioned, Mr & Mrs Murphy were out of the country at the time, Mr Chow on behalf of Ms Wah was unable to offer any assistance and the other Applicant (Mrs Loke) did not attend the hearing and made no written representations. The Tribunal was therefore left with a firm assertion on behalf of the Respondents coupled with some documentary evidence to the effect that no such work was in fact carried out, which evidence the Applicants were unable to rebut by contrary evidence. Accordingly, on the evidence before the Tribunal, once again, the Tribunal was unable to make any finding in favour of the Applicants in this regard.

12. The final basis upon which this part of the cost was challenged on behalf of the Applicants was that the proportion of costs put against block or schedule 2B amounted to approximately 8% of the overall costs. Their contention was that this was entirely unfair because their particular flats were modest in size and nature compared to the other flats on the riverside front, which were much bigger and had more complex balconies and other features which would have increased the cost. When asked what would have been a fairer percentage of the costs, they were unable to answer directly but simply said that it ought to be calculated by reference to the size and complexity of the flats enjoying the benefits of the works. They were unable to call upon any expert evidence or particular measurements which might assist in this calculation.

13. So far as the Respondents were concerned, they told the Tribunal that they had acted on the basis of advice from the supervising officers of the work. This advice was once again contained in an e-mail from Mr Grieve of Carlisle Associates to Mr Scott the property manager on behalf of the Respondents, who appeared before the Tribunal. The e-mail is dated 27 February 2008 and appears at page 47 in the red bundle. In that e-mail Mr Grieve sets out his apportionment and breakdown of the costs and says that this should be a *"fairly*

accurate proportion of costing". He continues that *"it is, however, only proportionate costings as when the certification was written the project was based at one overall scheme and was not broken down into the individual blocks so, therefore, accurate prices cannot be given".*

14. He then sets out the apportionment which results approximately in an 8% contribution from block 2B.

15. Accordingly, the Respondents said that they acted on expert advice and that this was entirely reasonable for the purposes of the lease and the Act. They added that in any event the Applicants point about the size of the flats was misconceived because we were here concerned with external areas, and although the internal floor areas of the flats on the riverside front may be bigger, the amount of the "footprint" exposed on the exterior elevation was in fact not proportionately greater. They pointed out that there were some areas at the front of the development (presumably dividing flats), which were not part of the residential units.

16. It was difficult for the Tribunal to speculate about whether a particular allocation was fair or reasonable within the meaning of the leases and the Act. The Applicants were handicapped by having no evidence supported by their own surveyor or indeed anyone else as to the appropriate measurements and dimensions of the external areas concerned. Against that there was at least some explanation on behalf of the Respondents, supported, as indicated by written evidence from the supervising firm. The Tribunal considered that, once again, on the balance of the evidence before it, there was insufficient evidence marshalled by the Applicants to support the contention that the allocation in this regard produced "unreasonableness" for the purposes of the Act.

17. Accordingly on the first point taken by the Applicants, that is to say the complaint about the proportion of the allocation of these external decoration costs to schedule 2B, the Tribunal was unable on the evidence to find that these allegations were made out and no adjustment of the service charge is made based on this challenge.

THE CHARGE TO THE RESERVE FUNDS FOR LONG TERM REPAIRS FOR THE SERVICE CHARGE YEARS ENDING 31 JULY 2008, 2009 & 2010

18. The second main area of complaint on behalf of the applicants was that very high sums are repeatedly demanded by way of contribution to the reserve fund each year, which boosts the service charge contribution to an unreasonable level. By way of illustration, the Tribunal was referred to page 84 in the red bundle, which shows that the contribution to reserves for schedule 2B as demanded has been £21,500, £12,520 and £12,520 for the years 2008, 2009 and 2010 respectively. This compares to figures of £11,500, £12,105 and £13,000 for the much bigger units governed by schedule 1A. Moreover there are 17 units spread over 7 floors enjoying 4 lifts in schedule 1A, whereas schedule 2B comprise just 4 flats of much smaller dimensions and no lift.

19. By way of response, Mr Scott on behalf of the Respondents told the Tribunal that for historic reasons, much lower reserves have been built up in relation to schedule 2B flats, and that whereas schedule 1A had a healthy reserve balance, there was much less in the "pot" for schedule 2B. He further pointed out that although the schedule referred to did indeed have a contribution of £21,500 overall for the year ending July 2008, this had ultimately been reduced to £7,500 and a credit allowed to the Applicant leaseholders. He told the Tribunal candidly that he had no objection to a lowering of the reserve fund contribution, but that the risk of overall higher charges would have to be taken by the Applicants in the event that some unbudgeted expenditure occurred. He told the Tribunal that he was concerned to build up extra funds for a possible roof replacement over the course of the next 10 – 15 years. He however accepted that there were no particular problems with the roof at present and that he was taking this course as a matter of prudence rather than by reference to any actual perceived expenditure on the horizon.

20. In respect of this challenge, the Tribunal was sympathetic to the Applicants. The average annual service charge in relation to the flat owned by Mr & Mrs Murphy was in the order of £6,000. Ms Wah's flat, which is much smaller, was also paying proportionately very high annual charges. It was conceded even on

behalf of the Respondents that these figures are high figures, notwithstanding the fact that these are desirable properties adjacent to the river. Some of the explanation for this may be referable to the manner in which the leases are drafted, but whatever the position, it seemed to the Tribunal that the Respondent would have to justify the sums demanded by way of contribution to reserves by reference to some clear building survey prepared by professionals justifying the sums charged. In the event, the possibility of a roof replacement within a period of 10-15 years, on the evidence seemed to the Tribunal to be speculative, and not borne out by any evidence before the Tribunal. Given that the charges are already very high and in the absence of some kind of survey justifying the level of charge referable to the reserve funds, the Tribunal takes the view that this part of the service charge should be reduced by 75%. The reason for reaching this conclusion is that there was no clear evidence on behalf of the Respondents of a need for such large contributions to be added to charges which were already at a very high level.

COSTS

21. At the end of the hearing, the Applicants applied to the Tribunal to make a Direction under Section 20C of the Act to the effect that all or part of the costs incurred by the Respondents in dealing with this application should be disallowed in terms of any subsequent addition to the service charge account. The reasons put forward for this were that the Respondents had failed to produce sufficient breakdowns of the figures claimed to justify the charges made. Secondly, it was said that the Respondents had unreasonably refused mediation. Thirdly a general allegation was made to the effect that the Respondents had been unhelpful throughout the history of this case.

22. So far as the Respondents were concerned, they initially took the Tribunal to the provisions in the lease entitling them to add the costs of these proceedings to the service charge account. Those provisions appear at part 4 of schedule 6 to the lease, and in particular at paragraph 15 of schedule 4 (page 193 in the red bundle). The Tribunal was satisfied that provision entitled the Second Respondent to recoup such legal costs as part of the service charge. Mrs

Banwell-Spencer told the Tribunal that she accepted that approximately 16 hours of work at an hourly rate of £175 would have been involved in the case generally, thus £2,800 plus VAT. This was an approximation, and it seems appropriate to round this out to £3,000 plus VAT.

23. It is very difficult for the Tribunal to make any finding as to the rival contentions concerning alleged failure to mediate, provide documentation or general unhelpfulness during the proceedings. All of these allegations were denied by the Respondents save for one. It was accepted that there had been a delay of about 7 weeks beyond the time stipulated by the Tribunal in Pre-trial Directions, before the Respondents had produced their Statement of Case. Mrs Banwell-Spencer explained that this had resulted from domestic difficulties with which she had had to deal. The result of this was that the Applicants themselves had had correspondingly less time to prepare for this hearing. The Tribunal in no way doubted that these difficulties had arisen, but it was unclear why within the Second Respondents' administration, these matters could not have been dealt with by someone else.

24. Communication between the parties in this case has not been of the best, and it is possible for the Tribunal only to take a "broad brush" approach on the issue of costs. Whilst it was accepted on behalf of the Respondents there could be a reduction in the reserve charge contribution apparently this matter was not compromised at an earlier stage. The reality is that in the context of this case, in relation to the two main issues the Applicants have succeeded on one, and the Respondents have succeeded on the other. Doing the best it can on the information before it, the Tribunal exercises its discretion so as to allow approximately half of the costs incurred in these proceedings to be added to the service charge account and limits this to the sum of £1,500 plus VAT.

25. No other applications were advanced, and no further Orders are made.

Legal Chairman: S. Shaw

Dated: 24 February 2010