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**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1)**

Property: Apartment 15 Sovereign Chambers Liverpool L2 5BA
Applicant: Villagate Commercial Limited
Respondent: Mr Fintan Corrigan
Tribunal: Mr G C Freeman
Mr Tudor Roberts FRICS

Date of Meeting: 23 February 2010

ORDER

- A. No service charge is payable by the Respondent in respect of the Property for the periods in question until the Applicant has complied with the requirements of section 21B of the Landlord and Tenant Act 1985.
- B. Subject to the above, no service charge is payable by the Respondent in respect of the Property for the periods in question until the Applicant produces a certificate signed by a duly qualified surveyor or accountant of the proportion of service charges applicable in respect of the Property in relation to the Building and or the Estate as applicable, as provided by the Lease of the Property.
- C. Subject to the above, the service charge of £741.23 for the period ended 31st March 2007 for the Property is reasonable.
- D. Subject to the above, the service charge for the year ended 31st March 2008 of £667.37 is reasonable.
- E. Subject to the above, the service charge for the year ended 31 March 2009 of £975.22 is reasonable.

Application

1. By an application dated 8th October 2009 the Applicant freeholder seeks a determination of the liability to pay and reasonableness of service charges for the above property where costs have been or are about to be incurred for the service charge years 2007, 2008 and 2009. The Applicant named Mr Corrigan in their application as the Respondent.
2. The Applicant has issued proceedings in the Liverpool County Court under claim number 8LV26240
3. The Tribunal issued directions on the 2nd December 2009. The Tribunal determined that the matter was one which could be resolved by way of submission of "documentary and other written evidence A meeting of the Tribunal was fixed for 23 February 2010 in Liverpool to determine the application.

Inspection

4. The Tribunal inspected the Property on the morning of the meeting. It consists of a self contained flat in a former office building in Liverpool City Centre which has been converted to offices on the ground floor, and apartments on the upper five floors. There are twenty eight apartments of varying sizes. There is a communal entrance hall with an entry phone system. Each floor is served by a lift. The common parts are carpeted and have mains electric smoke alarms. There is an underground car park under the building of which the Property forms part as well as adjoining buildings. However, no car parking is included in the lease.

The Lease

5. The Applicant produced a copy of the Lease for the Property. It is dated 14th February 2006 and is made between Villagate Commercial Limited of the one part and Fintan Corrigan of the other part. The Lease grants a term of 150 years from the term commencement date as defined by the Lease but the Tribunal noted that no term commencement date has been inserted in the Lease, a certified copy of which was produced to the Tribunal. The Lease reserves a ground rent of £150.00 per year for the first five years. The rent then increases after each five year period in proportion to the increase in the index of retail prices.
6. The Lease also reserves as rent a proportion of the cost of insuring the building and the payment of a service charge to cover the expenses listed in part 7 of the Lease. These include repairing and maintaining the common parts, cleaning, security, insurance of plant and equipment, redecoration, the

cost of electricity, water and gas, employment of managing agents, and preparation and audit of service charge accounts. The amount to be paid by the Tenant by way of service charge is

"a fair proportion as conclusively determined by a duly qualified surveyor or accountant (acting reasonably) on behalf of the Landlord applicable in respect of the Premises in relation to the Building and/or Estate as applicable".

The Law

7. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
 - (3) For this purpose-
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
8. Section 19 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 of works only if the services or works are of a reasonable standard:
and the amount payable shall be limited accordingly.
9. Section 27A provides 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
10. No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.
11. In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Notices

12. Section 153 of the Commonhold and Leasehold Reform Act 2002 inserted an additional section 21B into the 1985 Act as follows:-

“21 B Notice to accompany demands for service charges

- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period of which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament”.

13. The Regulations referred to in section 21B (6) are contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 (S.I.2007 No 1257) which came into force on 1 October 2007. These provide that a summary of rights and obligations must accompany a demand for service charges. Among other requirements, it is a requirement that a tenant must be informed of his right to apply to a Leasehold Valuation Tribunal for a determination of reasonableness and payment of service charges.
14. The Tribunal find as a fact that no such summary has accompanied the demands for payment of service charge sent to the Applicant since the coming into force of the Regulations.
15. There are transitional provisions in the Regulations. The requirements of section 21B (3) and (4) do not apply to a further demand for the payment of service charges where the first demand was served before 1 October 2007 in respect of service charges due for payment before 1 October 2007, but they do apply to a further demand for payment where the first demand was served before 1 October 2007 in respect of service charges due on or after 1 October 2007.

The Tribunal's Findings

16. The Applicant provided a statement of case via their solicitors, DWF. Despite purporting to attach copies of the freehold and leasehold titles with the statement, no such copies were attached. The Tribunal also noted that the Applicant stated that it had provided the Tribunal with copies of all invoices, letters and other correspondence sent to the Respondent at paragraph 11. However, no underlying invoices were supplied to the Tribunal as required by Direction (1). The statement of case also states that the Respondent has not made payment to the Applicant of any of the rent, insurance rent or service charge since the Respondent purchased the Property (paragraph 9). However, while this may be factually true, in the Applicant's bundle there is a copy of a letter dated 11 July 2006 addressed to the Respondent from the then managing agents acknowledging a payment by Liberty Asset Management for service charges up to 20th May 2006. The amount paid has not been disclosed to the Tribunal.
17. The Tribunal has no jurisdiction to consider the reasonableness and payability of rent, interest on rent or the Landlord's solicitor's costs, under section 27A. However, the Tribunal consider that the Landlord's solicitor's costs constitute an administration charge within the meaning of section 158 and Schedule 11 part 1 of the Commonhold and Leasehold Reform Act 2002. Paragraph 2 of Schedule 11 states that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. There was no application

before the Tribunal to consider the reasonableness of this administration charge and the Tribunal therefore makes no determination on this matter.


The Tribunal's Conclusion

18. The Tribunal concluded that the amount payable by the Respondent for the provision of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
19. Having decided this, the Tribunal must then apply a three stage test to the application under section 27A:-
 - 19.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
 - 19.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the 1985 Act?
 - 19.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended.
20. Applying the recoverability test under paragraph 18.1 above, the Tribunal noted that the Lease permits the Respondent to recover service charges.
21. The Tribunal noted none of the copies of the demands for service charges produced to the Tribunal contained the information required by section 21B of the 1985 Act. Although not part of this decision, the Tribunal noted that the same criticism can be made of the administration charges referred to above. The Lease also requires a certificate to be issued by the Landlord's surveyor or accountant as to the proportion of service charge due. The Tribunal noted that none of the service charge accounts for the years ended 31st March 2007, 31st March 2008 and 31st March 2009 contained a signature to such certificate and as such did not therefore comply with the terms of the Lease.
22. The Tribunal concludes, in the absence of any evidence to the contrary, that the services charges are reasonable and are payable by the Respondent, subject as follows:
 - 22.1 No service charge is payable by the Respondent in respect of the Property for the periods in question until the Applicant has complied with the requirements of section 21B of the Landlord and Tenant Act 1985.
 - 22.2 Subject to the above, no service charge is payable by the Respondent in respect of the Property for the periods in question until the Applicant produces a certificate signed by a duly qualified surveyor or accountant of the proportion of service charges applicable in respect of the

with the requirements of section 21B of the Landlord and Tenant Act 1985.

- 22.2 Subject to the above, no service charge is payable by the Respondent in respect of the Property for the periods in question until the Applicant produces a certificate signed by a duly qualified surveyor or accountant of the proportion of service charges applicable in respect of the Property in relation to the Building and or the Estate as applicable as provided by the Lease.
- 22.3 Subject to the above, the service charge of £741.23 for the period ended 31st March 2007 for the Property is reasonable.
- 22.4 Subject to the above, the service charge for the year ended 31st March 2008 of £667.37 is reasonable.
- 22.5 Subject to the above, the service charge for the year ended 31 March 2009 of £975.22 is reasonable.

Dated 26th February 2010


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G.C. Freeman
Chairman