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RESIDENTIAL PROPERTY TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
Landlord & Tenant Act 1985 – Section 27A (1)

Applicant:	Mr Sean Martin
Respondent:	Sefton Street Developments LLP represented by Mr Mark Connor, Chief Executive of Vermont Capitol Ltd. Mr Mike Huston, Finance Director of Vermont Capitol Ltd.
Subject Property:	Apartment 304, 14 Plaza Boulevard, Liverpool, L8 5RS
Date of Hearing;	4 June 2010 Cunard Buildings, The Strand, Liverpool
Tribunal:	Mrs E Thornton-Firkin (Chairman) Mr D Pritchard Miss C Roberts

Application

1. Mr Sean Martin (the Applicant) applied to the Leasehold Valuation Tribunal (LVT) on 14th January 2010 for a determination of the liability to pay and the reasonableness of his service charges for Apartment 304, 14 Plaza Boulevard (the Property) during the service charge years of 2009 and 2010.

2. The application stated that the service charges were increased by the failure of the developer to complete the development of which 14 Plaza Boulevard formed part.

3. Directions were issued to the parties on 19th March 2010.

Property

4. The Tribunal inspected the site, the common parts of the development and the Property on the morning of the hearing.

5. The development, Sefton Street Quarter, was planned to consist of 110 flats comprising 14 Plaza Boulevard (Phase 1), 75 flats in Phase 2, a hotel in Phase 3 and a mixed commercial, retail and residential block in Phase 4.

6. Phase 1 is complete and occupied with hoardings separating it from the site of Phase 3. Phase 2 at present is a building site adjacent to Phase 1 with only the building frame erected. Work on the site is temporarily halted. A hoarding, acting as a security fence, screens Phase 2 from the road but there is no barrier between Phase 1 and Phase 2. The Property overlooks Phase 2, a building site.

7. The externally landscaped entrance area to Phase 1 is maintained to a good standard as are the internal common parts. The Tribunal inspected the lighting in the area outside the lift. On each floor this feature lighting is causing problems with replacement bulbs due to a design fault in the light fittings.

8. The underground garage, where tenants hold spaces under separate leases, is accessed by a roller shutter operated by a fob key. A separate fob key operates the access to the residential part of the building. CCTV cameras operate on the outside of the roller doors. There is no camera within the car park which at present is screened from Phase 3 by a hoarding with unprotected openings cut in at a high level.

The Lease

9. The lease of the property dated 28th August 2008 made between Sefton Street Developments LLP (the Respondent) and the Applicant is for a term of 250 years from 1st January 2008.

10. The Estate is defined in the lease as being situated at Sefton Street Quarter together with any adjoining land which may be added thereto.

    The Estate includes the building of which the demised premises form part.

11. Communal areas include common parts of the building and the estate.

12. Maintenance expenses are defined as all costs and expenses incurred by the lessor during a financial year providing all or any of the services and the specific costs, expenditure and other sums in paragraph 6 of the sixth schedule. Paragraph 6 of the sixth schedule defines the services to be provided.

13. **The Law**

    Section 27A of the Landlord and Tenant Act 1985 provides that "an application may be made to an LVT for a determination whether a service charge is payable and, if it is, as to ..... the amount which is payable and the date by which it is payable".

    Section 27A(3) provides that an application may also be made "if costs were incurred .....".

    Section 18(1) provides that a "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.

Section 19 (1) states that "relevant costs should be taken into account in determining the amount of the 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 ....., only if the services.... are of a reasonable standard.and the amount payable shall be limited accordingly".

Section 19(2) states that "where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".

Section 20 C (1) provides that "a tenant may make an application for an order that all or any of the costs incurred by the landlord in connection with the proceedings before ..... a Leasehold Valuation Tribunal..... are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable".

Evidence, Hearing and Decision

14. Both parties had responded to the Tribunals directions. The Respondent, represented by Vermont Capitol, the managers of the Property, had provided the accounts as directed. Mr Martin replied to the Respondent's submission but made no comments on the figures in the accounts. The points Mr Martin raised were replied to by letter of the 20th May 2010 from Mr Huston.

15. The Tribunal had been given accounts for the first 18 months (July 2008 – December 2009) of occupation of Phase 1. Mr Martin had asked for consideration of the years 2009/2010. The Tribunal asked if he would amend the application to include the first 6 month period which he agreed to.

16. The inspection and hearing were attended by Mr Martin and Messrs Connor and Huston on behalf of the Respondent.

17. Mr Martin accepted that the items included in the service charge account were chargeable under the terms of the lease. He disputed the amount charged.

18. The cyclical maintenance fund was stated to be an issue in Mr Martin's application. The Respondent addressed the matter in response to the directions. Mr Martin did not raise the fund again as an issue either in his response or at the hearing. The Tribunal determines the amount is

reasonably incurred provided it is a ring-fenced sum for the use of 14 Plaza Boulevard only and that the amount is reviewed from time to time according to the RICS Service Charge Residential Management Code.

19. The items outstanding for Mr Martin were:-

a) Gardening and Landscaping

Mr Martin's evidence was partly related to Phase 2 which his property overlooks. When Phase 2 is completed the property will overlook a landscaped area. Mr Huston explained in his written submission that no charge would or has been made to Mr Martin for this area as any charge would be included in the Phase 2 service charge. No charge for any gardening and landscaping was made in the Phase 1 service charge account for 2008 – 2009. On inspection the Tribunal was told that the caretaker carried out the maintenance to the paved square at the entrance to Phase 1. The area was tidy and well planted. The budget for 2010 included an amount of £1,000 for landscaping and gardening.

Decision:

No amount was charged for this item during the period July 2008 – December 2009 and therefore nothing is payable. The budget figure of £1,000 for the year 2010 is payable on account for that year and is reasonably incurred.

b) Cleaning

Mr Martin considered that the building site was creating extra dirt and therefore impossible to keep Phase 1 clean. Mr Martin considered the developer should pay the cleaning charges until the development was complete. The Respondent stated that the caretaker carried out the

cleaning amongst his other duties and that he maintains the common areas to a very high standard.

Decision:

The Tribunal understands Mr Martin's concern that a building site will generate extra dirt, however, when Mr Martin bought his flat he should have known that Phase 2 would have been a building site until at least the end of 2009 (the date Mr Connor gave as the original completion date) and that building work will continue when Phases 3 and 4 are built. The Tribunal cannot find any extra expenditure incurred because of the developer's activity. The caretaker would have been employed and will continue to be employed to do the cleaning to the same standard when and if the building work resumes. The charge for caretaking shown in the accounts for 2008 – 2009 and the budget for 2010 are reasonable and payable.

c) Security

This is the highest cost item in the service charge amounting to £47,674.39 for the 2008 – 2009 period and £48,100 budgeted for the year 2010. Mr Martin stated that the original plan was only for 24 hour CCTV plus an emergency telephone number for residents. Mr Martin considered that the failure of the developers to complete the site was the cause of the extra security needed and that the developers should pay the cost until the site is finished and then revert to the original plan. Mr Connor denied this saying the plan was always to provide some extra security. He considered that it was necessary to have a security guard to cover all people entering the building to stop any tailgating by unauthorised persons. He also told Mr Martin that when Phase 2 was completed the security guard cover would be 24 hour and

the charge would be shared between the two buildings. During the period of the application, the developer had employed security guards and the costs had been shared between the developer and the lessees prior to the practical completion of the building.

Decision:

The Tribunal has examined the figures produced by the Respondent including the re-charged amounts for the period before practical completion when the developer was sharing the costs. The Tribunal considers that the security costs for this standard of building in this location is reasonable for the periods in question.

d) Window Cleaning

It was agreed by the Respondent, when brought to their attention by Mr Martin, that his windows had only been cleaned once to a poor standard that the contractors were not carrying out the cleaning. The intention was to clean the external windows every 3 months using a cherry picker. The cherry picker could not gain access to Mr Martin's side of the building through Phase 2 since the security hoarding to the road had been erected. When the landlord's agent (Mr Huston) was notified, he checked and was looking into alternative means. He acknowledged at the hearing that the windows had not been cleaned.

Decision:

The Tribunal agreed with Mr Martin that he had not received the service he was being asked to pay for which the Respondent acknowledged. The managing agent was in the process of looking at alternative means to clean the windows and, therefore, the Tribunal includes an amount in the budget for the rest of the year 2010 on the basis that some window cleaning will take place. A half year's charge amounting to £23.14 is all that should be demanded of Mr Martin for the year 2010. The Tribunal considers Mr Martin should not pay any amount for the period 2008 – 2009 and, therefore, deduct £43.63 from the service charge.

e) Repairs & Maintenance

Mr Martin's challenge to the repairs and maintenance costs item of the accounts was limited to the purchase of light bulbs. He contended that a proper system of purchasing needs to be put in place.

The Respondent said they had ordered light bulbs from different suppliers on the basis of least cost and said that there were hundreds of light fittings in the communal areas which are on permanently to light the internal corridors, hence the significant cost of replacement bulbs. On inspection the Tribunal were told that the bulbs were replaced by a caretaker. A problem had arisen with the bulbs for the fittings in the lift area on each floor which are available at high cost from only one supplier. The fittings were also defective.

Decision:

Mr Martin was being charged 50p per month on average for light bulbs over the 18 month period of the 2008 – 2009 accounts based on £681.01 shown in the accounts. Mr Martin's percentage worked out at £9.00 of that sum. Light bulbs do fail and therefore the Tribunal considers that it is a reasonable repair item to charge. Some of the fittings have a manufacturing fault. If the amount charged is excessive due to a manufacturing defect in some of the fittings, it is the fault of neither party, but if the managing agent, who the Tribunal understands is negotiating with the suppliers, obtains a discount, then that would reflect in the service charge in future years.

The Tribunal therefore consider the amounts Mr Martin is charged are reasonable and payable.

f) Building Insurance

Mr Martin's argument was that the building insurance premium was higher because Phase 1 is part of an open building site and the insurance may cover the whole development and not just the erected flats. He quoted the amount of the insurance as £38,000.00 per year. In fact the figure given by Mr Huston was £37,900.00 for the18 months of 2008 – 2009 with a fall in premium for the following year to £20,814.26.

Mr Connor gave evidence that the broker was independent of the freeholder and that Vermont Capitol Ltd did not receive commission from the broker. Phase 1 was insured separately from the rest of the development site. He explained to Mr Martin the reason for a claim under the building insurance. The freeholder was bound to provide insurance under the

terms of the lease which was payable as a service charge item. The insurance had an excess amount which was charged to the service charge following any claim.

Mr Martin had difficulty understanding that the freeholder provided insurance for the whole building and any excess amount which was not covered by an insurance claim would be included in the service charge. An amount had been included in the charge following a leak between two flats. Mr Martin did not consider he should pay towards the cost of his neighbours' leaks.

Decision:
The Tribunal decides the amount shown in the accounts for 2008 - 2009 had been reasonably incurred and the budget for 2010, which showed a much reduced figure, was reasonably incurred.

g) Management Fees

Mr Hudson and Mr Connor had explained to Mr Martin in their written submissions and at the hearing that he was not paying a management charge to Vermont Capitol Ltd. As Sefton Street Developments still owned 82 flats in the block, they were employing Vermont Capitol Ltd. as both managing agents for the block and letting agents for those flats owned by Sefton. None of these agent's fees were charged back to the other 28 leaseholders. The Respondent gave evidence that if the freeholder had not been paying the management charges, then the management fees for the building would have been about £18,000.00 per annum.

Sefton did employ Premier Estates to send out invoices and collect payment of ground rent and service charges for the 28 flats for which Premier were paid 10% of the moneys collected. This amount was shown in the service charge and, therefore, shared between and collected from all 110 flats.

Decision:

Sefton is entitled to employ managing agents under the terms of the lease and would be entitled to charge a reasonable fee for Vermont Capitol's services. Mr Martin is receiving a good management service for which he is not being charged. The Tribunal consider that the amount Mr Martin has been charged in 2008 – 2009 is reasonable and payable and the budget amount for 2010 is also reasonable.

20. The Tribunal do not accept Mr Martin's general argument that the developers should be bearing much of the service charge costs because the development is incomplete thereby increasing his service charge. When Mr Martin bought off plan, he must have known that the timescale for all phases was 5 years and that building work would be continuing, to complete the later phases, during the initial service charge years.

21. **In conclusion, the service charges demanded for the period 28th August 2008 – 31st December 2009 are reasonably incurred and payable except for a reduction of £43.63 due to lack of window cleaning. The budget for the year 2010 is reasonably incurred and payable except for a reduction of £23.14 due to lack of window cleaning. The Tribunal orders these amounts to be adjusted according to the terms of the lease at the end of the relevant financial year.**

Costs

22. Mr Martin asked that the Tribunal orders that the Respondent reimburses his £150.00 hearing fee. The Tribunal declined to do so because the sum which had been awarded to Mr Martin concerned the window cleaning and had been dealt with in Mr Huston's letter of 20th May 2010 before the Tribunal hearing. The Tribunal did not accept any other of Mr Martin's arguments.

23. Mr Martin had not made a Section 20c application (that is an application that any costs incurred by the landlord in connection with the proceedings before the Tribunal if allowed by the lease could be charged to the service charge). The Tribunal raised the matter at the hearing and said they would consider an application. The Tribunal decided not to make such an order for the same reasons they did not order the reimbursement of fees. However, the Respondent gave an assurance that they would not be charging any costs of the proceedings to the service charge.

Elizabeth Thornton-Firkin

Mrs E Thornton-Firkin

Chairman
13 July 2010