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MAN/00FB/LSC/2009/0102

RESIDENTIAL PROPERTY TRIBUNAL SERVICE.

LANDLORD & TENANT ACT 1985. Section 27A & 20C

Property : 7,8,11 &12 The Main House, Anlaby House Estate, Hull, HU10 7AY

Applicant Ms. K Boulter.

Represented by Mr J. Hardcastle

Respondents: Brickright Ltd. (1)

Anlaby House Management Limited. (2)

Represented by Mr R. Gilbert – Rollits LLP

Tribunal Members: J Hall. JP. J Platt. B Sc. M Simpson LL.B

8th November 2010

Decision on Costs.

That all but for £2400 of the Respondents' costs shall be regarded as not being relevant costs to be taken into account in determining the amount of service charge payable by the Applicant.

REASONS

1. We have considered the representations of 13 October from Rollits on behalf of the Respondents and those of Mr Hardcastle (undated but eventually received at the Tribunal office on 3rd November) on behalf of the Applicant.
2. We accept that this is not a suitable case for any direct Order as to costs under Schedule 12 of CLARA 2002.
3. We note the concession, in our view properly given, that these proceedings were properly and necessarily brought and that a Section 20C Order is

inevitable for the period prior to 10th June 2010, being the date when the service charge accounts were properly formulated to show the amounts claimed.

4. We are required to consider what would be just and equitable so far as costs are otherwise concerned.
5. We have regard to the outcome of the determination. Costs generally, and a Section 20C determination in particular, do not merely follow the event. The outcome is, however, a significant indication of the reasonableness of the merits of the Applicant's challenge.
6. We have regard to the conduct of the parties. Both parties were slow to focus on the issues. (In Mr Gilbert's case, because of the nature of the instructions, or lack of detailed information, from his two clients and not any apparent failing on his part). Both parties made some attempt to settle and compromise, but the best offer from the Respondents was, overall, almost 14% above the Tribunal's determination and, in respect of some important specific items, such as insurance, significantly more.
7. We have regard to the amount of the costs claimed (indicated at circa £12000 post 10th June 2010). We have no reason to suggest that, as between him and his clients, Mr. Gilbert's costs are anything other than reasonable. This was a case that generated a lot of paperwork. That, in part, was due to the failure of the Respondents to properly formulate the service charge claim at an early stage and that had a knock on effect, even post 10th June 2010. The instruction of lawyers is however a matter for the Respondents and their managing Agent. This turned out to be a detailed, but not legally or intellectually challenging, case. Had the management been conducted to an appropriately high standard from the outset, it would have been well within the capabilities of a Managing Agent to deal with this case on behalf of the Respondents at much reduced cost. The retaining of a lawyer as competent as Mr. Gilbert did considerably assist the Tribunal and shortened the length of the hearing time. He, on behalf of the Respondents, undertook the onerous but important task of preparing the Hearing bundles, which would normally have been a task that would fall to the Applicant.
8. Mr Gilbert rightly avers that any S20c Order will relate only to the 4 flats of the Applicant, because no other leaseholders are party to these proceedings. If costs were not excluded under S20C any leaseholder could still challenge the reasonableness of the costs incurred in a subsequent Section 27 application.
9. He says it would be unjust and inequitable for them to have to pay the costs through their service charges. Therefore Ms Boulter should pay. The Tribunal are of the view that the argument should be presented the other way round. If it is unjust and inequitable for Ms. Boulter to pay then it is likely, all

other things being equal (and they may very well not be), that an application to an LVT by other leaseholders to resist the subsequent imposition of those costs on them alone, would succeed.

10. If the ability of the management Company, of which the Leaseholders are shareholders, with the power to appoint Directors, to recoup these cost is inhibited by a S20C Order, it is said that the company may be insolvent. That will be a matter for the leaseholders to address as shareholders . They may have remedies against those actually responsible for the decisions taken, or they may have endorsed those decisions. We do not know.
11. We bear in mind that LVTs are intended to be low cost accessible tribunals from which applicants tenants should not be deterred by the likelihood of them having to pay, through the service charge, for the landlords' unsuccessfully resisting the application to the Tribunal.
12. In the circumstances, and in the exercise of our discretion regarding the Respondents' costs, we direct that it would not be just and equitable for the costs of either Respondent to be regarded as relevant costs in determining the amount of service charge payable by Ms Boulter, save for such proportionate share as she bears under the terms of each lease in respect of the sum of £2400 in respect of which we decline to make a Section 20C disallowance. That is the sum in our view reasonably attributable to the work carried out by Mr Gilbert that benefited the Tribunal and Ms Boulter or which would otherwise have had to be carried out by her or on her behalf. It is a reasonable and proportionate cost when viewed against the benefit obtained by the Tribunal process (for all leaseholders, in the event). That, technically, does not preclude a Section 27 application from any leaseholder for the year in which the charges are applied, which would have to be viewed on its merits, but taking into account this Determination and these Reasons for it.
13. As conceded the hearing fee should also be reimbursed to Ms. Boulter. That, and the Application fee (already ordered to be reimbursed) should be apportioned as to ¼ to each of her leases.



Martin J Simpson

Chairman

8th November 2010