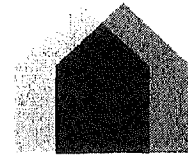


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**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference LON/00AN/LSC/2011/0036

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S27A LANDLORD AND TENANT ACT 1985**

Applicants : **Manjit Singh Dhillon Flat 2**
Harbans Singh Flat 3
Bruce Michael Lee Flat 5
Donna Brereton Flat 6
Maria Samir Ishak Flat 8
Jean Charles D'Urbec Flat 9

Represented By : **Mr Manjit Dhillon**

Respondent : **Grovetam Limited**

Represented By : **Mrs Gillian Godwin, Mr Stuart
Godwin & Mr Robert Godwin**

Premises : **161 Hammersmith Grove, London
W6 0NJ**

Date of Application : **11 January 2011**
Date of Oral Pre-Trial Review : **28 February 2011**
Date of Further Directions : **13 June 2011**
Date of Hearing : **29 September 2011**
Date of Decision : **11 October 2011**

Leasehold Valuation Tribunal : **Mr John Hewitt Chairman**
Mrs Alison Flynn MA MRICS
Mrs Lorraine Hart BA (Hons)

Decision

1. The decision of the Tribunal is that:
 - 1.1 The following costs were reasonably and properly incurred by the Respondent in pursuing arrears of service charges payable by the lessee of flat 4:

Solicitors' costs	£30,901.96
Managing agents fees	£ 3,122.35

and the Applicants are obliged to pay their respective proportions of such sums in accordance with the provisions of their respective leases;
 - 1.2 By consent an order shall be, and is hereby, made pursuant to section 20C of the Act to the effect that no costs incurred, or to be incurred, by the Respondent landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants or any of them.

Background

1. The premises known as 161 Hammersmith Grove comprises a building of 10 self-contained flats, all of which have been let on long leases. The freehold is owned by the Respondent landlord which is controlled by Mr & Mrs Stuart Godwin. Until December 2007 the Respondent had appointed Lamington Residential Lettings and Management Limited (Lamington) to be its managing agents. Lamington is also controlled by Mr & Mrs Stuart Godwin. With effect from 25 December 2007 the Respondent appointed Willmotts to be its managing agents.
2. The application was initiated by Ms Charlene Bolton at the time when she was the lessee of Flat 1. Evidently Ms Bolton was authorised to act on behalf of each of the Applicants. Ms Bolton has now sold the lease of her flat to a company associated with the landlord and Ms Bolton is no longer actively involved in the proceedings. At the commencement of the hearing on 13 June 2011 Mr Dhillon of Flat 2

told us that he had taken on the mantle in place of Ms Bolton and that he was authorised to represent the remaining Applicants, as listed above.

3. In general terms the issue for the Tribunal relates to costs of £41,987.48 incurred by the Respondent in pursuing service charge arrears of £5,078.06 allegedly due from the lessee of Flat 4, a Mr David Parry.
4. Directions were given on 28 February 2011. Subsequently some of the dates were varied to accommodate the parties. Further Directions were given at the hearing on 13 June 2011.

The service charge structure

5. It was not in dispute that the service charge structure is relatively straightforward. The landlord is obliged to effect repairs to the Building, to carry out redecorations, to insure the Building and to provide other services as set out in the leases. The lease of each flat obliges the tenant to pay a contribution to the costs incurred by the landlord. The contributions are calculated by reference to the respective rateable values of each of the flats as at the time when the leases were granted. Mr Dhillon told us there was no dispute between the parties as to the respective percentage contributions payable by each lessee. The service charge contributions are expressed to be recoverable as rent.
6. The service expenditure to which the tenants are obliged to contribute is set out in the Third Schedule to the lease. Included in paragraph 8 is:

“8. All other costs and expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Mansion or in relation to the flats therein or receiving of the rents and other moneys payable in respect thereof”

Mr Dhillon told us it was not in dispute that in principle costs incurred in the pursuit of the arrears claimed from Mr Parry were costs recoverable through the service charge and within the meaning of paragraph 8 of the Third Schedule. What is in dispute is whether it was reasonable for the Respondent to incur such large sums to recover a relatively modest amount. Mr Dhillon submitted that section 19 of the Act was engaged. Thus the question for the Tribunal was whether the amount of such costs were reasonably incurred and are reasonable in amount. Mr Dhillon submitted that the costs originally claimed at £41,987.48 were unreasonable in amount and that a lesser sum should be substituted. Mr Dhillon was not willing to specify what lesser sum he contended for; he explained that he and his fellow Applicants were content to leave it to the Tribunal to determine what lesser sum should be substituted.

7. The lease provides that the service charge periods are six monthly; namely the periods beginning on 24 June and 25 December in each year. By clause 4 (2) in respect of each period the landlord's auditor is to provide a certificate of the reasonable sum fairly attributable to each tenant for the ensuing period and at the end of each period the landlord's auditor is to provide a further certificate of the sum actually expended during the period and the amount of the balancing debit or credit as the case may be.

8. The total costs incurred in pursuing Mr Parry amounted to £41,987.48. This sum is made up of a number of invoices from the appointed solicitors, Ashfords who are based in Exeter and three invoices issued by Lamington:

Ashfords	£30,901.96
Lamington	£11,085.52

All of the invoices are listed on the third page of Mrs Godwin's witness statement and copies of the invoices have been included in the papers provided for use at the hearing. The three Lamington's invoices are as follows:

14.04.08	£6,326.78
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30.06.08	£4,142.87
12.11.08	£ 616.87

9. The proceedings involving Mr Parry started with a money claim for £5,078.06 service charge arrears issued by the Respondent in the West London County Court. At about the same time Mr Parry made an application to the Leasehold Valuation Tribunal pursuant to section 27A of the Act for a determination of the amount of service charges payable by him. The court proceedings were stayed pending the determination of the LVT application.
10. A hearing was held by the LVT and its Decision is dated 27 May 2008. The Decision was duly communicated to the court. The LVT also made an award of costs in the sum of £500 in favour of the Respondent due to Mr Parry's unreasonable conduct during the course of the proceedings. There is evidence on file from Ashfords in which they confirm receipt from Mr Parry of the service charge arrears determined by the LVT and the £500 costs
11. Evidently there were further issues raised by Mr Parry in the court proceedings in relation to interest and costs. It appears that a number of applications were made and hearings held. In the papers provided to us there is a copy of an order made by District Judge Lawrence dated 12 October 2009 in which he ordered:
 1. Mr Parry to pay interest of £306.02; and
 2. Mr Parry to pay the costs of the proceedings including the costs of the subject application, such costs to be the subject to a detailed assessment if the amount payable was not agreed, with the sum of £2,000 to be paid on account by 20 October 2009.
12. The process for a detailed assessment of costs was put underway and the claim to costs was finally compromised by the parties to the

litigation at £13,000, which sum, we were told, has been paid by Mr Parry. It was not in dispute that it was reasonable for the Respondent to compromise the assessment of its costs at £13,000.

13. In summary the position at the hearing on 13 June 2011 was follows:

Total costs incurred/claimed	£41,987.48
Less recovered from Mr Parry	<u>£13,500.00</u>
Balance	£28,487.48
Claimed by Lamington in the service charge certificate for the period ended 24 December 2007	<u>£12,555.60</u>
Unclaimed as yet	£15,931.88

14. At the hearing on 13 June 2011, it appeared that none of the balance of legal/professional costs of £15,931.88 had been included in any of the six monthly certificates of actual expenditure issued by Willmotts since they took over in December 2007. Instead it appeared that debit entries have been entered on the individual cash accounts of each lessee in sums equivalent or close to their percentage contributions to service charges. On 13 June 2011 it was accepted by Ms Fisher of Willmotts that this was not the correct way to deal with this expenditure because it should properly feature in a six monthly certificate along with other routine service charge expenditure. It appeared to those present on 13 June 2011 that the most convenient way to correct the position was for all the incorrect debit entries in the individual cash accounts to be reversed and for the balance of the legal/professional costs which the Respondent now wishes to claim to be included in the service charge certificate to be issued for the period ending 24 June 2011.

15. It appears that has now been done and the Tribunal was shown copies of cash accounts as between the Respondent and each of the Applicants as at 13 July 2011. The service charge certificate for the period ended 24 June 2011 has been issued and includes, so far as material:

Legal costs re Mr Parry (Ashfords)	£ 9,064.82
Managing agents (Lamington)	<u>£ 2,755.37</u>
	£11,820.19

It will be noted that this sum is less than the balance of £15,931.88 referred to in paragraph 15 above. Mrs Godwin explained the reason for this was that in the light of observations made at the hearing on 13 June 2011 Lamington had decided to reduce its claim to fees from £11,085.52 to £6,973.83.

16. Thus the net costs claimed in connection with the Parry claim, as certified in the service charge accounts are:

December 2007	£12,555.60
June 2011	<u>£11,820.19</u>
	£24,375.79

However, in August 2011 in a further endeavour to resolve matters amicably Lamington expressed a willingness make a further reduction of its fees down to £3,122.35. Mr Dhillon and his colleagues did not see fit to respond to that offer one way or the other evidently because they did not understand it. Mrs Godwin explained that despite this the rebuff Lamington remained content to limit its claim to fees to £3,122.35.

17. To recap the claim to professional fees and expenses now claimed by the Respondent is as follows:

Ashfords	£30,901.96
Lamington	<u>£ 3,122.35</u>
	£34,024.31
Less paid by Parry	<u>£13,500.00</u>
	£20,524.31

18. Now that the sums claimed by the Respondent have been clarified and compliant certificates and demands have been issued to the Applicants, the Tribunal is able to determine what sum the Respondent is entitled to recover having regard to section 19 of the Act and the submissions made by Mr Dhillon.

Findings and Reasons

19. Evidence was given by Mrs Godwin and Mr Dhillon. Both were cross-examined by the opposite party and both answered questions put to them by members of the Tribunal.

20. Tribunal had before it two substantial lever arch files containing many documents relevant to the proceedings. Not many of them were controversial. The documents included two witness statements made by Mrs Godwin, one of which included a detailed account of the history of the tortuous litigation with Mr Parry. Also included was a copy of the LVT's decision in the Parry case from which it is evident that Mr Parry took issue with each and every service charge item of expenditure over the five year period under review which inevitably made the proceedings time consuming and costly to deal with. That Tribunal expressed its view about Mr Parry's unreasonable conduct in the proceedings by making an award of costs against him in the sum of £500, the maximum permitted. It was not in dispute that Mr Parry was and is a difficult and unreasonable person to deal with.

21. In the light of the oral and documentary evidence before us we make the findings set out below.

22. As at December 2007 the Respondent had an investment portfolio of about 100 residential units under management. The portfolio was managed by Lamington acting by Mrs Godwin with clerical assistance from time to time. Mrs Godwin was not a professionally qualified managing agent but she had picked up experience over the 20 or so years she had managed the properties.

23. By 2007 Mrs Godwin and her family wished to consolidate their business activities and take them in a slightly different direction. They decided that they would give up the day to day management as it was becoming time consuming. Having made enquiries the decision was

taken to place the whole of the portfolio with Willmotts, a long established and experienced local firm of managing agents.

24. As at December 2007 Mr Parry was in arrears with his service charges to the tune of about £5,000. This had gradually built up over the preceding five years or so. Mrs Godwin said, and we accept, that Mr Parry was always difficult to deal with and forever asking for copies of this and that but generally gave the impression that he would effect payment once he had been supplied with the information he sought. Thus to an extent Mrs Godwin pandered to his whims and his requests and endeavoured to supply him with what he asked for, in the hope that payment would be forthcoming shortly.

25. Mrs Godwin told us, and we accept, that she had not previously come across a tenant who had totally failed to pay his or her service charges. In her experience all of her lessees had all paid sooner or later although some required a deal of encouragement but paid up in the end. Thus Mr Parry was not a situation that Mrs Godwin had previously encountered. In late 2006/early 2007 consideration was being given to the need for external redecoration and other major works. Mrs Godwin was concerned about recovering the contribution from Mr Parry, without which there would not be adequate funds for the project. The view was taken that Mr Parry had given them the run around for long enough and that legal advice was required. Mrs Godwin had no knowledge of solicitors with experience of residential service charge collection. The Respondent was a member of the UK Landlord's Association and looked to it for advice. They recommended a firm of solicitors in Devon, Ashfords. Mrs Godwin contacted Ashfords and instructed them. Mr Dhillon accepted that it was not unreasonable for the Respondent to do so.

26. At the outset it was expected that a couple of firm letters from Ashfords would do the trick. This did not occur. County court proceedings were issued. Mr Dhillon accepted that it was not unreasonable for the

Respondent to issue proceedings against Mr Parry. At about the same time Mr Parry made an application to the Leasehold Valuation Tribunal for a determination of the service charges payable by him. The court proceedings were stayed pending the outcome of the Tribunal proceedings. Mr Dhillon accepted that it was not unreasonable for the Respondent to participate in the Tribunal proceedings to establish the amount of the arrears payable by Mr Parry.

27. Mr Parry proved to be a most difficult litigant in person. Evidently he is a substantial property investor well versed in litigation procedures and 'up to every trick in the book'. The Tribunal gave its decision on 28 May 2008. It found that apart from one error in the sum of £100 concerning a VAT overpayment, all of the sums claimed by the Respondent were payable by Mr Parry. The Tribunal expressed its disapproval of the way in which Mr Parry had conducted his case and exercised its powers to make an order for costs against him in the sum of £500, the maximum permitted. Mr Dhillon did not dispute that Mr Parry was a difficult litigant to deal with.
28. The LVT having issued its decision the court proceedings were revived to deal with interest and costs. These issues also proved tortuous to deal with. Eventually, by October 2009 Mr Parry was ordered to pay interest and costs. A bill of costs for a detailed assessment of costs was drawn up by Ashfords which sought to recover about £18,000. Hearings were set and adjourned. Ultimately the costs claim was compromised at £13,000. Mr Dhillon accepted that it was not unreasonable for the Respondent to compromise the costs claim at £13,000.
29. It was not in dispute that Mr Parry paid the service charges due and the costs due fairly promptly.
30. Mrs Godwin said, and we accept, that at the outset she had no idea that the costs of Ashfords would be so substantial and that she would

end up spending so much time and effort in dealing with requests for information and documents to support the service charges claimed and challenged by Mr Parry. In December 2007, when the management went over to Willmotts, Mrs Godwin decided to retain responsibility for the Parry litigation partly because she was so familiar with the issues and partly because she genuinely anticipated that it would be concluded fairly promptly. She had no idea it would drag on for so long or become so expensive.

31. The documents shown to us persuaded us that Mrs Godwin kept an eye on the costs charged by Ashfords and challenged them on occasion sometimes achieving reductions, one quite substantial.
32. During the course of the hearing Mr Dhillon drew attention to an email from Ashfords dated 18 November 2009 in which the writer suggested that at the outset, in February 2007, Mrs Godwin had been informed the amount being sought and the costs likely to be incurred did not make it '*commercial to pursue the claim*'. Mrs Godwin was adamant that no such advice or comment had been given or made. Mrs Godwin was clear that the writer of the email was not present at the initial interview. Mrs Godwin said, and we accept, that when legal proceedings against Mr Parry were under consideration Ashfords' costs estimate was £5,000. Not only do we accept Mrs Godwin's evidence on this point we also bear in mind that Mr Dhillon accepted that it was not unreasonable for the Respondent to issue the proceedings against Mr Parry. Mr Dhillon also accepted that a landlord faced with this type of situation could not simply write off the arrears. If no action was taken there was a real risk that other tenants would also decline to pay their service charges and the position would become untenable.

The respective cases

The Respondent

33. The gist of the case for the Respondent was that it was reasonable to instruct Ashfords to act in the claim against Mr Parry and in the LVT application made by Mr Parry and that the substantial costs run up were largely due to the conduct of Mr Parry in the proceedings and the need to react to various ploys adopted by him.
34. It was also reasonable to instruct Lamington to assist Ashfords and provide documents, information and evidence to support the claim. Most of this work was undertaken by Mrs Godwin who evidently charged out her time at £75 per hour. There is included in the papers a schedule of time spent which purports to justify a good deal of the time claimed but it is not fully comprehensive.

The Applicant

35. In the event the gist of the case for the Applicants was that:
1. The Respondent should not have allowed arrears to accrue over a five year period and should have taken more decisive action sooner;
 2. In 2009 when the legal bills were mounting the Respondent should have found and instructed a less expensive solicitor; and
 3. During the whole process there should have been more consultation with tenants - and although this was not a legal obligation on the landlord Mr Dhillon submitted that it was a moral obligation.

Discussion

36. Taken at face value the expenditure of £30,000 to £40,000 to recover arrears of £5,000 appears to be unreasonable. It is plain that at the outset the Respondent had no expectation that the level of such costs would be incurred. We are satisfied that if the Respondent had known that the amount of the costs would grow to such an amount they would have been horrified and a different course would have been taken. But they did not know that the costs would mount up in that way.

37. We accept that during the course of the litigation Mrs Godwin and her family thought there was just one more hurdle to overcome to achieve an outcome only to be met with yet another ploy adopted by Mr Parry. Having reviewed the course of the conduct of the proceedings we are satisfied that it cannot properly be said that the course taken by the Respondent was unreasonable. Indeed Mr Dhillon does not complain about the conduct of the litigation. He conceded it was not unreasonable to bring and pursue the proceedings and it was not unreasonable for the Respondent to see them through to the end.
38. We reject Mr Dhillon's first submission that proceedings ought to have been brought sooner. It is pure speculation as to what the outcome would have been. We find that it was not unreasonable for Mrs Godwin to use her efforts to try to persuade Mr Parry to pay up and for her to respond to his requests in the hope that he would do so. We conclude that sometimes it is not unreasonable for arrears to accrue to a certain level to make it an economical sum to pursue. Bearing this in mind and that major works were under active consideration we find that it was not unreasonable for the Respondent to instruct solicitors and to issue proceedings in 2007 when it did so.
39. We also reject Mr Dhillon's second submission. There was no challenge to the quantity or quality of work undertaken by Ashfords. Mr Dhillon did not challenge any of Ashfords invoices or its charge-out rates or the time spent. Mr Dhillon did not draw to our attention any work undertaken by Ashfords which might have been undertaken less expensively by a different firm.
40. Ashfords is a firm based in Exeter, Devon. It was recommended by a trade association. We infer that it had the necessary expertise in a very highly regulated sector and that its charge-out rates were competitive. There was no evidence before us that this was not so. There was no evidence before us that a different law firm with the necessary expertise would have been willing to undertake the instruction at a

lower charge-out rate. By 2009 the LVT decision had been given and the only outstanding issue was interest and costs. We infer that it was sensible for Ashfords to deal with costs as they had all the information, the history of the proceedings and the files. Further where a new law firm is instructed part way through a project there is always a cost of the new firm 'reading in' which is an additional cost to be borne.

41. There is no material before us from which we could properly conclude that it was unreasonable for the Respondent to continue to instruct Ashfords through to the end. It is clear to us that Mrs Godwin kept a careful eye on Ashfords costs and challenged them and on occasion achieved reductions.
42. We are satisfied that the costs of Ashfords were reasonably incurred and are reasonable in amount. They are thus payable by the lessees according to their respective proportions.
43. We have also given careful consideration to the fees claimed by Lamington. We find that it was not unreasonable for the Respondent to instruct Lamington to deal with this matter on its behalf and we infer it was reasonable and cost effective for this matter to remain with Lamington post December 2007 rather than be passed over to Willmotts. We find that it is not unreasonable for Lamington to be properly remunerated for the work it did and we have no doubt that that was a very substantial amount of work. It was however largely of a clerical/administrative nature supplying documents and information and the giving of instructions.
43. We had some reservations about the reasonableness of a rate of £75 per hour for Mrs Godwin's time and some concerns about the amount of time claimed. If Lamington had maintained a claim to fees of £11,085 we would have made an adjustment. Lamington has made a voluntary adjustment down to £3,122. We consider this to be a very helpful, even generous, gesture. It is unfortunate that the Applicants

to balance this, a credit of £3,851.48
ount/certificate to be issued.

costs £24,375.79 already included in
t been challenged by Mr Parry and
% share of this sum.

said that it did not propose to seek
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account in arriving at this decision is

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were not able to respond to the
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Applicants have achieved a co
by reduction in its fees of £7,96:

44. Given the amount of work unde
Mrs Godwin assisting Ashfords
in finding fees of £3,122.35
reasonable in amount. We do r
by us is required.

45. We also reject Mr Dhillon's thin
that the Respondent did not ha
but he asserted it had a moral c
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46. Thus we find that net profes
connection with the Parry litiga
costs of £24,375.79 have alre

and the amount payable shall be limited accordingly.

Section 20C(1) of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that 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.

Commonhold and leasehold Reform Act 2002

Schedule 12

Paragraph 10 provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in circumstances where he has made an application which dismissed by virtue of paragraph 7 or he has, in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount which a party may be ordered to pay is currently limited to £500.

.....
John Hewitt

Chairman

11 October 2011