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HM COURTS & TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

On an application pursuant to sections 27A, 19 and 20C of the Landlord & Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges and an order preventing the Respondent from recovering costs in connection with the proceedings before the Tribunal

Applicants: Suzanne Moore and Matthew Moore (Leaseholders)

Respondent: Regis Group (Barclays) Limited (Landlord)
on whose behalf written submissions were made by Pier Management Limited (limited to insurance matters) and Blue Property Management UK Limited as Managing Agents

Property: 14 Lincoln House, Redcliffe Estate, Redcliffe Gardens,
Redcliffe Road, Nottingham NG3 5AW

Case number: BIR/00FY/LIS/2011/0027

Date of Application: 5 July 2011

Paper Determination: 8 February 2012

Members of the Tribunal: Mr. R. Healey LL.B., Solicitor
and Mr. J. Ravenhill FRICS

Date of determination: 15 MAR 2012

SUMMARY OF THE DETERMINATION

The Tribunal determines that –

- (i) The Applicants are not liable to pay the service charge for the period 25 August 2007 to 24 December 2007 in the sum of £252.40., or at all.
- (ii) The Applicants are not liable to pay the service charge for the period 25 July 2008 to 24 March 2009 in the sum of £504.80., or at all.
- (iii) The Applicants are not liable to pay any part of the service charge of £757.20. for the period from 25 March 2009 to 24 March 2010.
- (iv) Budgeted management charges for the year ending 24 March 2012 for Lincoln House (the building in which the property is situated) are reduced from £3,840.00 to £2,880.00 thereby reducing the annual charge from £9,720.00 to £8,760.00 and the apportioned payment by the Applicants from £607.51 to £547.50.
- (v) Budgeted management charges for the year ending 24 March 2012 for the Estate are reduced from £1,440.00 to £1,200.00 thereby reducing the annual charge from £18,000.00 to £17,600.00 and the apportioned payment by the Applicants from £300.00 to £296.00.
- (vi) Budgeted charges by the freeholder in respect of the insurance premium chargeable to the Estate for the period of cover from 30 May 2011 to 29 May 2012 are to be reduced from £19,198.00 to £12,000.00 giving an apportioned premium payable by the Applicants of £200.00.

Reasons for the determination

Introduction

1. This is an application by the Applicants for a determination of liability to pay and reasonableness of service charges by the Respondent Landlord in respect of the payability of the service charge for the periods from 25 August 2007 to 24 December 2007, from 25 July 2008 to 24 March 2009 and from 25 March 2009 to 24 March 2010; the reasonableness of the budgeted management charges for the service charge period from 25 March 2011 to 24 March 2012 and the budgeted yearly insurance premium in advance from 30 May 2011 to 29 May 2012 relating to the Property in accordance with the provisions of sections 19 and 27A Landlord and Tenant Act 1985 (“the Act”). The Applicants also apply for an order pursuant to section 20C of the Act preventing the Respondent from recovering costs in connection with the proceedings before the Tribunal.

The Law

2. The relevant law is set out in the Schedule.

Lease

3. The leasehold interest in the Property is held by the Applicants under a lease dated 30 September 1988 made between The Bradford Property Trust PLC of the one and David Elks of the other part ("the Lease") for a term of 99 years from 25 March 1988 a copy of which was before the Tribunal.

4. Clause 4(m) of the Lease requires the Lessee to contribute and pay on demand 1/60 of the cost expenses outgoings and matters mentioned in Part 1 of the Fourth Schedule (the Estate Charges) and 1/16 of the cost expenses outgoings and matters mentioned in Part 2 of the Fourth Schedule which relate to the block in which the Property is situated (the Building Charges)

Directions

5. Directions were issued on 4 August 2011 and further Directions on 16 November 2011.

Inspection

6. The parties inspected the communal areas and grounds of Lincoln House, Redcliffe Gardens, Redcliffe Road, Nottingham. The development comprises four blocks of flats with the Property found within the Lincoln Block. Three of the blocks comprise four storeys and one three storeys. In all there are sixty apartments with unallocated parking spaces for approximately forty vehicles. The communal areas in the Lincoln block, the exterior of the building and the general estate maintenance appeared satisfactory.

Matters for determination by the Tribunal

Payability of three service charge accounts

7. The Applicants challenged the payability of the service charge accounts -

- dated 15 December 2007 (for the period 25 August 2007 to 24 December 2007)
- dated 3 December 2008 (for the period 25 July 2008 to 24 March 2009) and
- dated 2 April 2009 (for the period 25 March 2009 to 24 March 2010).

8. The Applicants submit that they had no knowledge of the above service charge accounts until they visited the Managing Agents on an unrelated matter on 28 June

2011. They rely on section 20B of the Act which provides that a tenant is not liable for costs incurred prior to eighteen months before a demand for the payment of the service charge is served on the tenant unless the tenant has been notified in writing within that period that the costs have been incurred and would be required to be paid through the service charge. The Applicants submit that the first two service charge accounts are outside the eighteen month period and therefore not payable by them and that the third service charge demand is partially within the eighteen month period and they query their liability to pay all or part of it.

9. In rebuttal the managing agents for the Respondent, Blue Property Management UK Limited, rely on their statement to the Tribunal dated 5 October 2011. They submit that each of the three disputed service charge accounts was sent “within the time as per legislation, therefore the balance is due to Blue Property Management Limited” .

10. In accordance with further directions from the Tribunal requesting the Respondent to produce full copies of the disputed service charge invoices, Blue Property Management UK Limited submitted invoices bearing in each case an invoice address of 57 Laurel Crescent Kimberley Nottingham.

11. On 8 February 2012 the Blue Property Management UK Limited emailed the Tribunal Office as follows “In respect of point 1-3 in the attached document, please find attached original demands which we believe may have been omitted from our original submissions.” The attachments comprised the earlier statement dated 5 October 2011 and the earlier invoices which on this occasion were addressed to the Property.

12. The Tribunal finds the following facts –

(i) In the financial statement from Blue Property Management UK Limited the Applicants are shown as having made payments prior to the first disputed service charge demand, between the first and second service charge demand, between the second and third service charge demand and after the third service charge demand.

(ii) At the foot of each of the three disputed copy service charge demands supplied by Blue Property Management UK Limited to the Tribunal it states “Any further administration required to chase these payments after will incur a £25.00 arrears admin. charge however, we would hope that this would not be necessary”. There is no evidence before the Tribunal that any of the three disputed accounts were pressed for payment against the Applicants.

(iii) The statement on behalf of Blue Property Management UK Limited dated 5 October 2011 does not bear the name of an individual and appears simply to be signed in the name of the company.

(iv) Their statement gives no reason to explain the service charge accounts being left outstanding for some years without any action for recovery being taken.

(v) The disputed invoices referred to in paragraphs nine and ten and produced by Blue Property Management UK Limited bear different invoice addresses.

13. Having made the findings in the preceding paragraph the Tribunal determines on a balance of probabilities that the three disputed service charge accounts have not been served upon the Applicants.

14. It follows that the service charge accounts dated 15 December 2007 and 3 December 2008 relate to costs incurred prior to eighteen months before service of the service charge demands or written notification to the Applicants and the Tribunal determines that such accounts are therefore not payable by the Applicants.

15. The remaining service charge account dated 2 April 2009 falls partly outside the eighteen month period specified by section 20B. The Applicants in their application queried their liability to pay any part of the invoiced account either in respect of any costs incurred before or after 28 December 2009. The Tribunal in their Directions directed the Respondent to indicate the evidence on which it intends to rely in relation to the issue of liability to pay. The Respondent dealt with the issue of the service of the invoiced account but did not deal with the question of the dates when the costs were incurred during the financial year. In the absence of this information the Tribunal determines that the service charge account dated 2 April 2009 is not payable by the Applicants.

The reasonableness of the budgeted management charges for the year from 25 March 2011 to 24 March 2012

16. In the service charge budget calculation for the year 25 March 2011 to 24 March 2012 the proposed budget in respect of the Building Charge proposed by the Respondent is £9,720 of which the management charge comprises £3,840. In respect of the Estate Charge the Respondent submits for £18,000 of which the management charge comprises £1,440.

17. The Applicants submit the management charges are excessive.

18. Blue Property Management UK Limited on behalf of the Respondent submits that the Management Charge for both the Property and the Estate is reasonable and in line with the market average and that the Respondent intends to rely on evidence from various companies and corporate bodies in relation to the issues of reasonableness of the Management Charge. No such evidence from companies and corporate bodies was before the Tribunal.

19. The Tribunal finds that following an external inspection of the Property, the communal areas and the external garden and parking areas, the development did not reveal any management issues of an unduly complicated nature and no such issues were made known to the Tribunal.

20 Acting as an expert tribunal but without any special or secret knowledge the Tribunal find an appropriate management charge, for units of the present description, for each unit at two hundred pounds, apportioned as to £180.00 for the Buildings and £20.00 for the Estate.

21. The Tribunal therefore determines the Management charge for the Building is reduced from £3,840.00 to £2,880.00 and in respect of the Estate reduced from £2,000.00 to £1,200.00.

The Reasonableness of the Insurance Premium

22. The insurance of the development is dealt with on behalf of the Respondent by Pier Management Limited. In their invoice dated 13 April 2011 they submit for a premium of £19,198.43 payable to Brit Insurance for the period from 30 May 2011 to 29 May 2012. This is split between the 60 units and is charged at 1/60th to the Property at £319.47. In addition an insurance administration fee of £11.94 is charged to the Property.

23. The Applicants submit the insurance premium to be unreasonable. They rely on a quotation from Aviva, obtained through local brokers, offering a premium in the sum of £9,999.10.(including commission of £2,829.23). They also challenge the insurance administration fee.

24. Mr. D. J. Bland LLB (Hons) AIRPM of Pier Management Limited has on behalf of the Respondent submitted a statement dated 21 October 2011 setting out their entitlement to the insurance premium demanded.

25. Mr Bland states that the insurance is placed by the Respondent, through their brokers, on a portfolio basis and not by individual property. Commissions are paid on the portfolio as a whole.

26. Mr Bland refers the Tribunal to the decision in *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited (1996) EWHC Admin 50*. Mr Bland submits that the Court of Appeal held that despite the level of insurance premium, the costs were reasonably incurred in the normal course of business. It was considered acceptable for a large commercial landlord to place insurance on a block policy with one single insurer.

27. Mr Bland submits that block policies issued on a large corporate scale enables a landlord to obtain favourable terms and benefits included in the policy that would not normally be available to a private individual and that these terms in most cases would be more advantageous to a leaseholder in the event of a claim.

28. The Tribunal is referred to the decision in *Forcelux Limited v. Sweetman and Another* ("2001) 2 EGLR 173. Mr Bland submits that it was confirmed and accepted that the insurance premium should be in line with the market norm. Mr Bland submits that it would be reasonable and sensible to assess the market norm as being the average of all comparable quotes.

29. The Respondent submits that it is obligated to provide insurance that is reasonably incurred and reasonable in amount and there is no obligation to obtain the cheapest available.

30. Mr. Bland refers the Tribunal to the judgment of Evans LJ in the case of *Havenridge Limited v. Boston Dyers Limited* (1994) 49 EG 111 namely –

"the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to 'shop around'. If he approaches only one insurer, being one insurer 'of repute' and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed."

31. Mr Bland submits that the burden of proof is on the Applicant to show that the premium is unreasonable *Schilling and Others v. Canary Riverside Development PTD Limited & Others* (LRX/26/31/47/2005).

32. The Tribunal make the following findings –

(a) The Respondent failed to respond to item 5(a) of the Tribunal's Further Directions dated 16 November 2011 directing that they submit their response to the suitability of the alternative policies produced by the Applicants.

(b) The Respondent failed to respond to item 5(b) of the Further Directions requesting details of commissions payable on the premium.

(c) As an expert Tribunal but not relying on any special or secret knowledge the Tribunal finds that the average norm in the market place for an insurance premium with an insurer of repute in the normal course of business in respect of the development is in the region of £200.

(d) The Tribunal accepts that the Respondent is not required to find the cheapest premium and that with a block policy inevitably there must be some element of "swings and roundabouts" with each development.

(e) The Tribunal finds that the premium must be reasonable if it is to be properly charged.

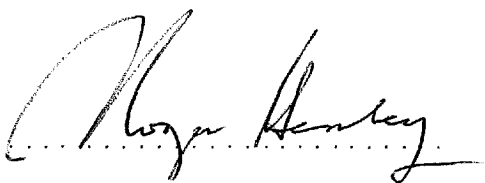
(f) The Tribunal finds that the premium offered by Aviva is likely to have been obtained as the cheapest reasonably available for this particular development and it may be unreasonable to expect the Respondent to achieve this even after taking into account the savings that one may expect the Respondent to obtain by having economies of scale.

(g) The Tribunal finds no basis for an "Insurance Administration fee". This should be covered either by the commissions payable or be a normal management function chargeable with the management fee.

33. After taking into account their findings in the preceding paragraph the Tribunal determines the allowable insurance premium at £12,000.00 in substitution for £19,1298.43.

Landlord and Tenant Act 1985 section 20C

34. The Tribunal determines that none of the costs incurred or to be incurred by the Respondent in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

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Roger Healey

Chairman 15 MAR 2012

The Schedule

The Law

35. Section 27A of the Landlord and Tenant Act 1985 ('the Act') sets out the jurisdiction of the tribunal and the relevant clause (1) provides:

S27A Liability to pay service charges: jurisdiction

(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 amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

36. Section 19 of the Act limits the amount of service charge payable and provides ;

S19 Limitation of service charges: reasonableness

(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 provisions 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.*

37. Section 20 of the Act requires notification to the Tenant of service charge items within certain time limits and provides ;

Section 20B Limitation of service charges; time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under

the terms of his lease to contribute to them by the payment of a service charge.

38. Section 20C relates to payability of Landlord's costs and provides ;

S.20C Limitation of service Charges: Costs of proceedings

(1) 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

(3) The...tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.