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HM Courts & Tribunals Service

**LEASEHOLD VALUATION TRIBUNAL**
**Case no. CAM/00KF/LSC/2012/0068**

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| **Property** | : | **32-34 Preston Road, Westcliff-on-Sea, Essex SS0 7ND** |
| **Applicants** | : | **Juliet Jane Arthur (32)**<br>**David Antony Gardner (32a)**<br>**Mark Robert & Ieva Brown (32b)**<br>**James Allan Galley & Katie Louise Cummins (32c)**<br>**Dawn Victoria Wallington (34)**<br>**Ryan Reay Bremerton Hickling & Victoria Sayer (34a)**<br>**Linda Rose Line (34b)**<br>**Martin Paul Lamb (34c)** |
| **Respondent** | : | **Sandhu Investment Ltd.** |
| **Date of Application** | : | **28th May 2012** |
| **Type of Application** | : | **To determine reasonableness and payability of service charges and administration charges** |
| **The Tribunal** | : | **Bruce Edgington (lawyer chair)**<br>**Marina Krisko BSc (Est Man) BA FRICS**<br>**Jane Clark JP** |
| **Date of hearing** | : | **27th September 2012** |
| **Venue** | : | **Southend Magistrates' Court, Victoria Avenue, Southend-on-Sea, Essex SS2 6EU** |

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# DECISION

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1. Of the amounts claimed by the Respondent since 2006, the decision of the Tribunal is that none of the amounts claimed from the Applicants by way of service charges or administration fees are presently payable.

2. The Tribunal finds that no details of the service charges actually incurred by the Respondent were given to the Applicants until the end of 2010 when the Right to Manage company asked for details. Therefore the actual service charges incurred before 30th June 2009 would not be payable in any event apart from insurance premiums.

3. The Tribunal further determines that up until the year 2009, the lessees had paid the insurance premiums without any reservation or complaint and that accordingly they were admitted and/or agreed at the time and the Tribunal has no jurisdiction to assess the reasonableness of premiums paid before then.

4. In the event that the Respondent provides to the Applicants (a) proper service charge demands with the required statutory information and (b) a certificate from an accountant who has audited the relevant service charge accounts, the Tribunal finds that only the following service charges are reasonable:-

| Year | Item | Amount (£) |
|---|---|---|
| 2009 | insurance | 1,800.00 |
| | Gardening services | 65.00 |
| | Management fee | 250.00 |
| 2010 | insurance | 1,900.00 |
| | Gardening services | 80.00 |
| | Izod & Burnip | 6.80 |
| | S & A Supplies | 157.50 |
| | Management fee | 250.00 |
| | | 4,509.30 |

Subject to the above condition precedent and/or the comments below, this amount will be payable by the 8 flats in equal shares according to the terms of the leases save for those who have paid all or part of these monies.

5. Of the £50 per item claimed by the Respondent as Administration fees, these are not payable in any event as it is clear from a letter written by the Respondent to all lessees on the 31st May 2006 that they were intended to be a management charge of £50 per letter rather than a penalty for late payment and they therefore do not come within the definition of Administration Charges. As management charges, they are not considered to be reasonable.

6. Tribunal makes an Order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the Act") preventing the landlord from collecting its costs of representation before this Tribunal as part of any future service charge demand.

## Reasons

**Introduction**

7. The applicants are long lessees of the eight flats in the property and the Respondent is the freehold reversioner. In September 2010, a right to manage company took over the management of the building and the Applicants are now challenging service charges and administration fees claimed since 2006.

8. As usual, pre-hearing directions were ordered by the Tribunal. This was on the 1st June 2012. As the insurance premiums were being disputed, the first direction was to order the Respondent to file and serve a statement setting out (a) the claims record for the building, (b) the methods used by the Respondent to obtain competitive quotes for premiums and (c) "*full details of any commission or repayment or other benefit out of the insurance premium paid or given to the landlord, the landlord's agent or any associated individual or* company". The landlord was also ordered to include, within that statement, its justification in principle and law for the service charge demands made.

9. The Respondent originally denied having received the directions order which had been sent by the Tribunal office but a copy was then sent to it by the Applicant's solicitors on the 28th June 2012. A copy of the receipted letter from those solicitors is in the Respondent's section of the bundle which meant that it must have been received. However, there is no statement from the Respondent giving any of the information ordered by the Tribunal.

10. From documents supplied by the Respondent, it seems that the insurance premiums for his 'block' insurance policy have been:-

| | |
|---|---|
| 2006 | £5,467.26 |
| 2007 | £5,952.14 |
| 2008 | £6,331.35 |
| 2009 | £5,542.91 |
| 2010 | £3,639.02 |
| 2011 | £2,915.79 |

The insurance has been with AXA Insurance UK PLC throughout. At the hearing the Respondent's representative said that this block policy included other properties but he could give no details because of data protection issues. Mr. Sandhu was asked how he had apportioned the amount of premiums to this property and he just said that he acted on the advice of his insurance broker. He could not explain the basis for this advice. Accordingly, it was impossible for the Tribunal to find out how the proportion of the total block policy premium was split and, therefore, whether it was a fair split in respect of the subject property.

11. The insurance certificate produced by the Applicants for the year commencing 17th September 2011 is £1,060.00 including tax. This is based on a declared value for the building of £1,000,000 and a sum insured of £1,250,000. It appears to be a landlord's insurance with Ageas Insurance Ltd. although it does not include terrorism cover or Home Assistance both of which one would normally expect to see in a landlord's policy.

12. With regard to the remainder of the claims, the Respondent appears to have written to the long leaseholders on the 31st May 2006. Copies of some of these letters appear at pages 75, 99, 109 and 129 in the bundle. They seem to be laying down a practice for the collection of monies in the future. The letter says that a service charge of £250.00 will be collected each year to cover the general maintenance of the building and that £50 will be collected each time the Respondent has to write a letter to the leaseholder.

**The Lease**

13. What appears to be a copy of the lease for 32c Preston Road is in the bundle. It is in fairly standard terms. According to the Land Registry documents all 8 leases run from the 1st January 2005 for 99 years. The landlord is responsible for insuring the building and keeping the structure and common parts in repair. Clause 4 deals with the service charge provisions.

14. On 1st January and 1st July in each year, the landlord is entitled to claim a payment on account of service charges likely to be incurred that year. There is then a requirement for audited accounts to be produced and for a reconciliation to take place with the lessee paying any shortfall and any overpayment going forward to next year.

15. The 8 lessees are liable to pay one 8th each of any service charges.

**The Inspection**

16. Members of the Tribunal inspected the property in the presence of Mr.S.S. Sandhu and Mrs. E. Dimitrijevic from the Respondent company and 2 of the long lessees. It was a bright, sunny morning. The original building was a pair of individually designed semi-detached houses built in the early part of the 20th century of brick construction under a tiled roof in reasonably generous grounds. There has been at least one large extension to the original building which has more or less doubled in size and has been turned into the 8 flats involved in this case. The extension is of rendered brick/block construction under a concrete interlocking tiled roof. The Tribunal was told that there is also a small flat roof.

17. The windows including 2 dormer windows at the front are uPVC. The general condition of the property was fair with some external maintenance and decoration required. The grounds consist of grass and parking areas

at the front with surfaced areas going around both sides of the building to the rear where there are more parking spaces and 4 dilapidated garages which appear to be retained by the Respondent. The 'garden' area, particularly at the rear is in poor condition.

18. The property is close to Westcliff town centre with good rail and bus connections to Southend town centre and central London.

**The Hearing**

19. The hearing was attended by those who attended the inspection plus Mr. Robert Plant, solicitor, who appeared to represent the Applicants. After introducing the Tribunal members, the chair asked Mr. Sandhu and his colleague a number of questions. Regrettably the answers were not as straightforward as they could have been. In essence, the issues dealt with were as follows:-

    (a) Included in the hearing bundle were copies of all the letters the Applicants say they had which requested service charges. Apart from insurance premiums, "administrator's charges" and general payments on account of service charges, no details were given. The bundle also included lists of service charges incurred which had been produced by the Respondent. Mr. Sandhu was asked several times when the lessees had been made aware of the details. After giving the first answer, the Tribunal chair made a note of what had been said and read it out loud as it was being written i.e. "*before the right to manage company started asking questions about previous years' service charges, no details of the service charges were sent*". Mr. Sandhu and his colleague then said that the details had been sent before by Mr. Sandhu's ex-wife until 2008 and then by Mrs. Dimitrijevic. They were asked exactly when and they were asked to produce the copy letters enclosing them. They could not answer either of these questions. Mr. Plant said that his instructions were that the first time the Applicants had seen the details was when the Respondent's documents for the hearing bundle were received.

    (b) Mr. Sandhu conceded at one stage that that no audited accounts had been prepared. He said that because the lessees were not paying service charges, his bank had frozen his bank accounts and he could not afford to pay for any audit. He could not explain why he had not had the earlier service charge accounts audited when service charges were evidently being paid. Later in his evidence he did try to suggest that the accounts had been audited but he could not produce any evidence of this.

    (c) Mr. Sandhu also conceded that none of the service charge demands had been accompanied by the required statutory information for the lessees.

(d) He was asked why he had not complied with the Tribunal's directions to provide details of the insurance claims record for the building, how the market was tested so that reasonable premiums were being charged and whether commission was being paid and to whom. At first he repeated that he did not receive a copy of the Tribunal's directions order. When evidence was pointed out to him that his solicitors had received the order in June 2012, he did not seek to challenge that or suggest that he did not become aware of what was in the order. He could not say why the questions had not been answered.

20. It may be helpful at this stage to say that the Applicants have described the service charge years as including 2 years e.g. 2006/7. The Tribunal has decided to use single years for description purposes. For example, in the application form and the payment schedule produced by the Applicants, the years 2006/7, 2007/8, 2008/9 and 2009/10 are described both in the decision above and these reasons as 2007, 2008, 2009 and 2010 respectively.

21. Continuing what happened at the hearing, Mr. Plant was asked about the payments record of the various lessees. He conceded that most of the lessees had paid the demands sent up to and including 2008. They had paid because they were ignorant of the law and felt threatened because they did not want to be without insurance. In respect of 34C, Mr. Plant's helpful schedule suggested that the lessee had paid for the years 2007 and 2008 but the Respondent denied this. The probability was that cheques had been sent to the Respondent but they may have been returned by the bank. It was agreed by both Applicants and Respondent that that particular lessee – who was not present at the hearing – had at least tried to pay for those years.

22. There was contested evidence and comment about whether the Respondent had in fact provided proper management and had complied with the terms of the lease in that regard. As the management fee claimed was only £31.25 per flat per annum, the Tribunal did not think that this dispute was particularly relevant to the issues being determined. The Applicants should understand that this is a very low figure and no lessees should expect much 'management' for that sum. A professional managing agent would be expected to charge in the region of £250 per flat per annum including VAT.

23. Questions were asked of Mr. Sandhu by the Tribunal about the actual service charges incurred in the years 2009 and 2010. In 2010, for example, there were 3 claims for water rates from 2 different water companies and a claim for council tax. He conceded that as his bank accounts had been frozen, he was using the monies in the 'client' account he had set up for the management of this property to pay some personal

liabilities. He accepted that this was a mistake and they were not service charges.

24. The Tribunal was extremely concerned about this evidence. Apart from anything else, it was put to Mr. Sandhu that this evidence showed that it was extremely unlikely that this account had been audited by an accountant. He had no answer to this.

**The Law**

25. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent which is payable for, amongst other things, insurance, and which varies 'according to the relevant costs'.

26. Section 19 states that relevant costs are payable 'only to the extent that they are reasonably incurred'.

27. A tenant may apply to a Leasehold Valuation Tribunal pursuant to Section 27A of the 1985 Act, for a determination as to whether a service charge is reasonable and, if it is, as to the amount which is payable.

28. Section 27A also states that a Tribunal has no jurisdiction where service charges have been agreed or admitted or they have been determined by a court or Tribunal. If a service charge has been paid, this does not necessarily mean that it is agreed or admitted but is merely a circumstance to be taken into account.

29. Section 21B of the 1985 Act says that any demand for service charges must be accompanied by a statement of the rights and obligations of a lessee. If it is not, then such charge is not payable.

30. Section 20B of the 1985 Act says that if service charges being demanded were incurred more than 18 months before such demand without any details having been given beforehand, then such service charges cease to be payable.

31. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") ("the Schedule") defines an administration charge as being:-

> *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."*

32. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is

payable which includes, by definition, a determination as to whether it is reasonable.

33. The question of insurance premiums claimed by landlords under long leases has vexed Leasehold Valuation Tribunals for some time. This is a fairly typical application where a tenant is charged an insurance premium and, when asking for alternative quotations from other insurers, he finds that the alternatives are much lower.

34. This landlord has insured under a block policy with one insurer. This type of policy is well known to this Tribunal. It is always said by landlords that such policies have benefits for both parties in cutting down administration and ensuring that the insurance is actually renewed. With individual policies for each property, there is obviously a greater chance of renewal being overlooked. Unless the subject property or other properties covered have bad claims records or are otherwise bad risks, one would normally expect economies of scale.

35. Regrettably, in this Tribunal's experience, this rarely happens and tenants are not happy when the premium claimed is substantially more than quotes they can obtain. The issue has been before the court on a number of occasions. In the case of **Berrycroft Management Co. Ltd. and others v Sinclair Gardens Investments (Kensington) Ltd. [1997] 22 EG 141**, the court said that provided the insurance was arranged by the landlord in the normal course of business with an insurance company of repute, such landlord was entitled to insist on insurance through its nominated company if that is what the lease said.

36. On the question of the discrepancy between premiums claimed and alternative quotations obtained by tenants, a well established line of cases has developed a rule which successive Tribunals have found themselves obliged to follow. As Evans LJ said in **Havenridge Ltd. v Boston Dyers Ltd [1994] 49 EG 111**:-

> *"....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"*

37. In the years since these cases were decided, the problem seems to have worsened with premiums claimed seeming to be much higher than normal

market rates. This has become such a common circumstance that one is driven to conclude that either (a) landlords are not negotiating strongly enough in the market place or (b) there are properties in the portfolio which are a very high risk which is placing an unfair burden in increased premiums on the low risk tenants or (c) the premiums claimed are so burdened with commissions that they are simply too high.

38. On the issue of whether a service charge is payable if the terms of the lease have not been complied with in respect of the preparation of accounts is concerned, the case of **Akorita v Marina Heights** [2011] UKUT 255 (LC); LRX/134/2009 is relevant. In that case, the lease required the certificate of a surveyor each year. The landlord had asked the surveyor to prepare a service charge account which was then passed to an accountant who provided the certificate. The Upper Tribunal decided that the wording of the lease was clear. The certificate had not been provided by the surveyor and the service charges were not payable. That case also decided that insurance commission paid to a managing agent was not recoverable as part of a service charge because it was a charge incurred not in providing insurance but in paying a commission to the agent.

**Conclusions**

39. The first question to decide is whether the Tribunal has any jurisdiction to deal with at least some of the earlier charges claimed which have been paid by the lessees. If they were agreed or admitted at the time, the Tribunal has no jurisdiction. It appears from the evidence that the first sign of discontent came in 2009 when some of the lessees started withholding moneys demanded. Since then, most have been withheld but some have been paid.

40. Only 2 of the lessees attended the hearing. As to the reasons given by Mr. Plant for payment before 2008, the Tribunal had some sympathy, but the fact remains that payments were made without protest. The Tribunal concluded that on the balance of probabilities, the lessees as a whole had just accepted the position until 2008/9. Technically this amounted to an 'admission'. It will be remembered that the amendment to the legislation effected by Section 27A of the 1985 Act was to overturn a principle established in a decided case which was perceived to be an injustice. It had been decided that service charges paid under protest could not be assessed by an LVT simply because they had been paid. Thus Section 27A was introduced to provide that mere payment does not amount to an admission or agreement. However, it is still a circumstance to be taken into account.

41. Thus, the Tribunal does not consider that it has any jurisdiction to consider the issue of reasonableness in respect of the claims for 2007 or 2008.

42. The Tribunal is satisfied, again on the balance of probabilities, that the lessees were not given details of any service charges except for insurance until at least December 2010. Thus it concludes that the Respondent is unable to recover any unpaid service charges from before 30th June 2009 i.e. 18 months beforehand.

43. Further, the Tribunal is also satisfied that none the service charge accounts have been audited and certified by an accountant which is a condition precedent to payment in the leases and no service charge demands have been made which comply with the statutory requirement to provide information to lessees. Thus no service charges are technically payable at the moment. Of those which could be payable if these defects were corrected, the Tribunal determines that the claims for gardening, management and the other unchallenged claims as set out in the decision are reasonable.

44. As far as insurance is concerned, the Tribunal has found this to be an extremely difficult matter. Axa Insurance is known to the Tribunal and is clearly an insurance office of repute. It is, of course, trite law to say that landlords do not have to seek out the cheapest quote. However, they do have to establish that they or their brokers have tested the market place on a regular basis as any sensible and reasonable commercial body would do if it were paying insurance premiums out of its own pocket without any ability to recoup from someone else.

45. They also have to establish that the insurance premiums are reasonable. The established case law does not entitle to Respondent to ignore the basic rule of reasonableness.

46. The landlord Respondent could not tell the Tribunal what proportion of his block policy premium is attributable to this property. For the 2 years where the Tribunal finds that it has jurisdiction to make a determination of reasonableness, the claims for premiums from the lessees seem to be £455.15 each for 2009 and £505.15 each for 2010. This equates to a total of £3,641.20 for 2009 and £4,041.20 for 2010. As has been seen the block policy premiums were £6,331.35 and £5,542.91 for those 2 years respectively. When Mr. Sandhu was explaining the reason for the fluctuation in premiums, he said that this was because properties were being removed and added to the policy over the relevant period. The Tribunal considers that premiums of £455.15 and £505.15 for flats in this area are grossly excessive.

47. It is interesting to note that in 2010, the block policy premium was £5,542.91 and in the following year, when this property had presumably been removed from the block policy because the right to manage company had assumed responsibility for insurance, it was £3,639.02. This is a difference of £1,903.89.

48. Doing the best it can from its knowledge and experience assisted by the little information available to it, the Tribunal determines that a reasonable premium for 2009 is £1,800 and for 2010 is £1,900.

49. The Tribunal can only conclude that the Respondent, as was said by Mr. Sandhu, has little, if any, experience of managing residential properties. He frankly admitted the lack of some basic requirements of property management and compliance with the law and the leases. He said that he had to subsidise the service charge account of this property. Despite the failure to comply with directions and the contradictory way in which he gave his evidence, the Tribunal concluded that he had not received commissions out of the insurance, that he was basically honest but just did not know how to manage a block of flats.

50. As far as costs are concerned, the Tribunal has no hesitation in finding that it is just and equitable for an order to be made under Section 20C of the 1985 Act preventing the landlord from recovering its costs of representation through services charges.

**The Future**

51. It is appreciated that this decision does no resolve all of the issues between the parties. The Tribunal can only resolve what is within its jurisdiction which does not involve, for example, ordering landlords to repay overpaid service charges, which is one of the questions raised in the application form.

52. The Applicants will appreciate that although there are technical reasons why the service charges are not payable, it is always open to lessees to agree to waive legal technicalities for the sake of bringing finality to a dispute and, more importantly, to avoid further litigation.

53. If the Respondent had had the service charge accounts audited and it had employed a managing agent, then the cost to the lessees over the years could have been substantial. These Applicants and their predecessors have been saved that expense although it is still possible that the Respondent will have to incur the cost of an auditor if the above mentioned 'reasonable' service charges are not paid. In view of the amounts involved, the Applicants may think that auditing the service charge account would be a disproportionate expense because they would have to pay this expense.

54. The Tribunal therefore suggests, for that is all it can do, that an agreement is reached whereby a line is drawn under the pre-2009 service charges as 'water under the bridge' and the 2009 and 2010 service charges are then agreed as above. This will involve some calculations being made to give credit for those lessees who have already paid the 2009 and 2010 claims. It would be necessary to conclude the agreement in writing which would

have to be signed by everyone. It is recommended that both sides deal with this through their respective solicitors.

55. The Applicants will also be aware that it will be necessary for the right to manage company to comply with the legal formalities set out in the leases and in the relevant Statutes and regulations. If they want to change the service charge regime by, for example, removing the need for a formal audit of the service charge account, then there will either have to be deeds of amendment or an application to this Tribunal under Part 4 of the **Landlord and Tenant Act 1987** to vary the leases.

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**Bruce Edgington**
**Chair**
**28th September 2012**