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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/43UD/LIS/2011/0106

Between:

Barnwood Close Limited (Applicant)

and

Crestpearl Limited (Respondent)

Premises: 1-18 Barnwood Close, Guildford, Surrey ("the Premises")

Date of Hearing (by way of paper determination: 27th March 2012

Tribunal: Mr D Agnew BA LLB LLM Chairman
Mr Peter Turner-Powell FRICS

DETERMINATION AND REASONS

DETERMINATION:

The Tribunal finds that, for the reasons stated below, it has no jurisdiction to make a determination as to the reasonableness of the insurance premium paid by the Applicant in respect of the Premises in December 2010 and 2011.

REASONS:

1. The Application

1.1. By an application dated 16th December 2011 the Applicant applied to the Tribunal for a determination under Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of the premiums for buildings insurance for the Premises levied in December 2010 and 2011. It was claimed that the premiums demanded were considerably higher than the Respondent's managing agents could arrange for the same, if not better, cover.

1.2 The Tribunal issued directions for the case to be dealt with by way of a paper determination under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 after each party had submitted their statements of case. Neither party objected to this procedure and statements of case were duly received from the parties.

2. The Inspection.

2.1 The Tribunal inspected the premises on 27th March 2012 immediately before it proceeded to consider the submissions made by the parties and determine the case. In view of the Tribunal's decision set out above, it is unnecessary for a description of the Premises to be set out in these reasons.

3. The Lease

3.1 The Applicant is headlessee of the Premises comprising three blocks of six flats per block under a lease dated 6th February 1989 made between A.E.Thorogood Limited and Barnwood Close Limited. The Respondent now has the freehold reversion. The Applicant has in turn granted underleases of the individual flats.

3,2 .By paragraph 5 of the headlease the Applicant covenants to "keep all buildings for the time being on the Demised Property insured against loss or damage by fire storm impact or aircraft and such other risks as are included in a normal comprehensive policy for a block of flats with such insurance company of repute as the Lessor may decide in an amount equal to the full replacement value thereof plus ten per cent. Of such amount for Architect's and Surveyor's fees and will effect such other insurance of or in respect of property owner's liability or other risks as the Lessor shall consider reasonable and shall affect (sic) such insurance through the agency of the Lessor and shall produce to the Lessor on demand the policy of such insurance and the receipt for the last premium and shall in the event of loss or damage apply the proceeds of such insurance in the first instance towards the reinstatement of such buildings."

4. The Law

4.1 By Section 27A of the 1985 Act it is provided that:-
(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.
(2) Subsection (1) applies whether or not any payment has been made.

4.2 By Section 19(1) of the said Act " 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

4.3 "Service charge" is defined in section 18(1) of the 1985 Act as being "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."

5. The Applicant's case.

5.1 The Applicant's managing agents said that they took over as managing agents from two of the residents in 2010, but the Tribunal thinks that they meant to say 2009. They were told on taking over that they were at liberty to arrange the buildings insurance for the Premises which indeed they did. Subsequently, however, they rightly discovered that the lease placed the responsibility for the insurance on the head lessee but that it had to be with an insurance company of the head landlord's (freeholder's) choice and through the agency of the head landlord. They therefore cancelled the insurance they had arranged and the head landlord's broker then arranged the insurance but at a considerably higher premium than the Applicant's managing agent had arranged. Towards the end of the insurance year the said managing agents obtained a quote for buildings insurance having first obtained details of the claims history in respect of the Premises and sent this to the head landlord's brokers. This was, seemingly, ignored because the renewal was effected with the same company as before and again the premium was much higher than the quotation obtained by the head lessee's managing agents. The Applicants therefore made their application to the Tribunal.

5.2 The head landlord's response to the application was to say that the landlord was not obliged to insure at the cheapest rate and that it was not obliged to "shop around" or go to more than one insurer provided that it used an insurer of repute, insure for the risks stated in the lease and obtain a "market price". The Respondent referred to a number of authorities for its propositions as set out above. The main case relied on was Havenridge Limited v Boston Dyers Limited [1994] 2 EGLR 73.

6. Determination

6.1 This is an application under section 27A of the Landlord and Tenant Act 1985. This gives the Tribunal jurisdiction to determine the reasonableness of service charges as defined in the Act. The insurance premiums in this case are not, however, "service charges."

They are incurred by the head lessee (not the head landlord) and there is no provision in the lease for the head landlord to pay the premiums and recover the same from the tenant by way of service charge. It will be noted that the premiums were charged by the broker to the head lessee's managing agent direct. As they are not service charges, the Tribunal has no jurisdiction to consider the reasonableness of the premiums under section 27A of the 1985 Act.

6.2 The only way that the Tribunal can interfere with the head landlord's choice of insurer in this case is under paragraph 8 of Schedule 1 to the Landlord and Tenant Act 1985 where the Tribunal can order the head landlord to nominate a different insurer if the Tribunal is satisfied that the premium being charged by the head landlord's nominated insurer is excessive but that would require an application on the appropriate form to be made under that statutory provision.

6.3 The Respondent failed to identify the correct problem with the Applicant's application, but for future reference the Tribunal would point out to the Respondent that the case of Havenridge Limited v Boston Dyers Limited is of no assistance to it. That case concerned a commercial letting which is not subject to the test of reasonableness as is the case for residential lettings.

Dated this 5th day of April 2012

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D. Agnew BA LLB LLM
Chairman