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HM Courts & Tribunals Service

LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AB/LSC/2012/0181

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Applicant:	Mr A Marcel
Respondent:	Fairhold Apollo Ltd
Property:	32 Payne Close, Barking, Essex, IG11 9PL
Date of Hearing	26 September2012
Reconvene:	16 October 2012

Appearances
Applicant
Mr Marcel — Leaseholder

Respondent
Mr A Rankohi)
Ms S Belsham) — OM Property Management
Ms A Taylor)

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
Mr M C Taylor FRICS MAPM
Mr L G Packer

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of the reasonableness of each of the heads of service charge expenditure for the years 2010 and 2011 set out in the Tribunal's directions dated 28 March 2012. These are considered in turn below.

2. The Applicant is the leasehold owner of the subject property pursuant to a lease dated 29 June 2001 and made between (1) Wilcon Homes Eastern Ltd (2) Wilcon Homes Ltd (3) Maysbrook Grove Number Two Residents Association Ltd and (4) Desiree Fraser for a term until 2125 ("the lease"). The Applicant took an assignment of the lease in or around January 2010. The Respondent is the present freeholder.

3. The service charge year ends on 31 August of each year. Under clause 1.2 of the lease, the Applicant is contractually liable to pay a service charge contribution of 4.42% in respect of the expenditure incurred by the lessor in any given year and demanded by the managers. The present managing agents appointed by the Respondent with day to day responsibility for management are OM Property Management ("OM").

The Law

4. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, 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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the

reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Hearing and Decision

5. The hearing in this matter took place on 26 September 2012. The Applicant appeared in person. The Respondent was represented by Mr Rankohi of OM. It should be noted that the Tribunal's findings below were made based on the oral and documentary evidence and on a later viewing of the DVD film footage taken by the Applicant.

Buildings Insurance

6. The buildings insurance premiums claimed in respect of 2010 and 2011 are £3,493.72 and £2,813.96 respectively.

7. The Applicant submitted that these were excessive and unreasonable. He relied on an alternative current quote of £1,983.91 he had obtained from the Royal & Sun Alliance, which he argued was cheaper than the previous two years in issue.

8. Mr Rankohi relied on the witness statement of Judi Runciman dated 26 June 2012. She is the Group Head of insurance for Kingsborough Insurance Services, which is the insurance division of the Peverel Group. It arranges the buildings insurance cover to be placed through independent insurance brokers. Historically, this had been Oval Insurance Broker Ltd and is now Berkeley Insurance Group since 2011.

9. Essentially, the evidence of Ms Runciman is that the buildings insurance cover placed with Aviva had been tested in the market by Berkeley and was, therefore, reasonable. The commission paid to the broker and Kingsborough is for the provision of administrative services including claims handling.

10. As to the alternative quote obtained by the Applicant, the Respondent relied on the witness statement of Greg Spiteri dated 4 May 2012. He is the Client Director of Oval. Having considered the Applicant's quote, he concluded that

it did not provide the same level of cover as the policy for the years in issue and could not be viewed on a comparable basis.

11. The Tribunal accepted that evidence of Ms Runciman and Mr Spiteri that the buildings insurance premiums for 2010 and 2011 had been properly tested in the market by the broker. For the reasons given by Mr Spiteri, the Tribunal also accepted that the Applicant's alternative quote was not on a 'like for like' basis. The mere fact that the Applicant had obtained a cheaper quote does not mean that the premiums in issue are unreasonable. It is now settled law that a landlord is not obliged to find and accept the cheapest insurance quote[1]. A landlord has to in effect demonstrate that the buildings insurance premium was reasonably incurred and was within a reasonable range that could be obtained. Applied to the present case, the Tribunal had done so and found in those terms. Accordingly, the buildings insurance premiums for the years 2010 and 2011 were allowed as claimed by the Respondent.

Cleaning

12. The expenditure claimed in respect of 2010 and 2011 is £4,395.96 and £4,458.28 respectively.

13. The Applicant submitted that the cost was excessive because only the communal areas were cleaned and that the contractor employed by the Respondent was located some distance away. He had obtained an estimate for the cleaning of these areas taking 4 hours per week, at £14 per hour. The Applicant also submitted that part of the cost had not been reasonably incurred because the relevant contractor did not complete some of the cleaning on occasions and what was carried out was sub-standard. For example, there were scuff marks on the walls.

14. In reply, Mr Rankohi said that the cleaning costs related to the 4 blocks on the site and was based on the amount of work involved, not the time taken. On

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[1] see ***Berrycroft Management Co. Ltd v Sinclair Garden Investments (Kensington) Ltd*** [1996] EWHC Admin 50
Forcelux v Sweetman [2001] EGLR 173

this issue, he relied on the evidence of Karen Mitchell set out in her witness statement dated 28 June 2012. She is employed by OM as a Senior Property Manager. She told the Tribunal that she visited the subject property on a monthly basis and prepared inspection reports that were before them. Her evidence was that she could not properly comment on the Applicant's estimate because it did not provide much detail from the contractor and made no mention of any professional indemnity cover and health and safety compliance. She asserted that the cleaning was now carried out to a good standard. The staining seen to some areas of the communal carpets simply could not be removed by cleaning alone.

15. The cleaning specification provided made express reference to the removal of scuff marks from the walls of the communal areas. The DVD evidence showed the presence of some scuff marks and the Tribunal concluded that this item of cleaning did not appear to be carried out. The Tribunal also saw a few items of litter, which did not appear to be remarkable for this type of development with a high attendant level of occupation. The Tribunal accepted the evidence of Ms Mitchell that the staining to the carpet could not be removed. Mr Rankohi accepted that cleaning had recently improved, subsequent to the years in question. Having regard to all of these matters, the Tribunal found that a proportion of the cleaning costs had not been reasonably incurred and made an overall reduction of 20% of the cost for each year. Accordingly, £3,516.77 and £3,566.62 was allowed for 2010 and 2011 respectively.

Landscaping Charges

16. Expenditure of £2,786.04 and £2,845.72 is claimed by the Respondent for 2010 and 2011 respectively.

17. The Applicant submitted that the gardening was carried out to a poor standard and the cost was excessive. He contended that when the grass was cut, the clippings were not collected. No pruning was done and no lawn feed applied leading to a patchy appearance. In addition, the contractor did not attend the site in accordance with the specification.

18. Mr Rankohi submitted that the cost and standard of the gardening was reasonable. There was no reason to believe that the contractor did not attend the site or carry out the specified work. Ms Mitchell confirmed that she did "pull the contractor up" on 2-3 occasions in 2011 when they failed to remove cuttings and to strim some areas. She maintained that the removal of graffiti, being one of the Applicant's complaints, was not within the specification. However, when it was brought to her attention, it was removed.

19. The evidence seen by the Tribunal in the DVD footage did appear to show patch areas of lawn and some shrubs and trees that were overgrown. It found that these amounted to breaches of the specification and, consequently, that a proportion of the landscape charges were not reasonable. A deduction of 20% was made to reflect this finding. Accordingly, £2,228,83 and £2,276.58 was allowed for 2010 and 2011 respectively.

Electricity Charges

20. Expenditure of £934.38 and £913 is claimed for 2010 and 2011 respectively.

21. The Applicant submitted that a proportion of the expenditure had not been reasonably incurred because the communal lights at the time were left on all of the time due to defective sensors. The Respondent simply did not accept the Applicant's factual assertion to be correct.

22. The challenge made by the Applicant in relation to this item of expenditure was based on no more than an assertion. This did not discharge the evidential burden placed on him to prove that part of the expenditure was unreasonable. Even if the Tribunal accepted his assertion, there was no evidence of what additional expenditure had not been reasonably incurred. Therefore, the Tribunal found this expenditure had been reasonably incurred and was reasonable in amount.

Fire Equipment

23. Expenditure of £863.08 and £821.53 is claimed by the Respondent for 2010 and 2011 respectively.

24. The Applicant submitted that the entire expenditure had not been reasonably incurred because the Respondent could only prove expenditure of £686, by reference to the copy invoices disclosed. He contended that the additional invoices provided were not genuine because the "LUR stamp was missing". Mr Rankohi took the Tribunal through the relevant invoices for each year.

25. Having carefully considered the invoices, the Tribunal concluded that the expenditure actually related to the cost of checking the smoke detectors and fire alarm in the communal areas. There was no evidence that any of the invoices were not genuine. Accordingly, the Tribunal found that the Respondent had proved the expenditure and, from the narrative on the invoices, that the expenditure had been reasonably incurred.

General Repairs

26. Expenditure of £4,624.49 and £9,004.65 is claimed by the Respondent for 2010 and 2011 respectively.

27. The Applicant specifically challenged two items of expenditure. Firstly, he argued that the main communal entrance door had been subject to numerous call outs at £120 per visit from a contractor in Croydon. There had been about 15 visits in total over 2 years that consisted of no more than realigning the door lock. The inference to be drawn was that some of the works could not have been carried out properly.

28. Secondly, in 2011, a gate to the car park had been installed. He submitted that the cost was excessive because the firm engaged to carry out the work is located in Wigan. He had obtained a quote from a company in Upminster at a cost of £750 to supply and fit the same gate.

29. Mr Rankohi argued that the visits to deal with the lock on the main door related to 203 different faults. The evidence of Ashley Larman set out in his witness statement dated 30 May 2012 confirms that the problems encountered with the main door were largely caused by misuse by the occupants of the block. Mr Larman is the Office Manager of the contractor employed to carry out the work.

30. As to the gate, Mr Rankohi said that this had been done to prevent vehicular access on the advice of the police to reduce criminal activity on the site. He submitted that the Applicant's quote had not been obtained on a comparable basis and was, therefore, not relevant.

31. In relation to the main communal front door, it appeared to the Tribunal that the repeat visits by the contractor to carry out repairs occurred in 2011. Given the number of call outs (18), there was clearly a fundamental problem with the door that the repeated visits did not address. In contrast, only 4 such visits were required in 2007/08. The inference to be drawn was that a proportion of the costs incurred by the repeated call outs in 2011 had not been reasonably incurred. Using its own expert knowledge and experience, the Tribunal concluded that a reduction of 50% of the costs incurred in 2011 appropriately reflected this finding and, consequently, the sum of £1,339.70 was allowed as being reasonable for this year. The Tribunal found that the expenditure for 2010 had been reasonably incurred and was allowed as claimed.

32. Turning to the matter of the gate installed in 2011, which the Tribunal saw in the DVD footage, it was satisfied that the alternative quote obtained by the Applicant was on a comparable basis and, therefore, found the expenditure incurred by the Respondent was not reasonable. On the basis of this evidence and its expert knowledge, the Tribunal allowed the sum of £750 plus VAT for this item of expenditure.

Redecorations

33. The expenditure of £15,306.50 relates solely to 2011. The Applicant submitted that it had not been reasonably incurred because it had not been

necessary. In the alternative, he submitted that the overall cost, including the supervision fees of £2,000, was excessive because it was "just painting Magnolia" paint.

34. Mr Rankohi argued that the redecorations were carried out because the lease requires the Respondent to do so and it was overdue. . He submitted that the cost of approximately £3,000 per block was reasonable and that the supervision fees of 10% charged was in accordance with industry norms.

35. There was no evidence before the Tribunal to support the Applicant's case on this issue. There was no evidence that the decorative condition of the communal areas was inadequate. There was no evidence that the cost incurred was excessive, save for the Applicant's assertion in these terms. The costs themselves did not strike the Tribunal as being unreasonable. Therefore, the Tribunal found this expenditure had been reasonably incurred and reasonable in amount.

Management Fees

36. Fees of £4,159.40 and £4,377.23 are claimed for 2010 and 2011 respectively. These figures represent the management fees of OM at a unit rate of £150 and £155 plus VAT for each year.

37. The Applicant submitted that the cost was unreasonable because of the numerous management failures on the part of OM. These included being unable to contact the Property Managers historically, the failure to provide information requested, the failure to deal with an insurance claim in respect of a broken window and a general failure to respond to any straightforward request from tenants. In support, the Applicant referred the Tribunal to the complaints made by other tenants. He contended for a management fee of £1,500 plus VAT for each year.

38. In reply, Mr Rankohi denied that any of the previous Property Managers had been incompetent. However, he accepted that a previous incumbent, Mr Foster, had provided the Applicant with incorrect information regarding the

insurance claim for his window. As to the Applicant's inability to speak to the Operations Manager, Mr Elmore, Mr Rankohi relied on the evidence of Sarah Belsham, the Regional Manager, contained in her witness statement dated 28 June 2012. She stated that Mr Elmore's responsibility is one of overall charge and he simply does not have the time to deal with individual tenants regarding the day-to-day management of any particular site. Mr Rankohi confirmed that OM did not in fact have a written management agreement with the Respondent, despite having been the managing agent since 2001.

39. OM accepted that there had been a number of management failures on its part. On the basis of that admission, the Tribunal was bound to find that a significant proportion of the management fees had not been reasonable. Therefore, it concluded that a unit rate of £75 and £100 plus VAT was appropriate for 2010 and 2011 respectively.

Health & Safety

40. This item of expenditure was agreed by the Applicant.

Balancing Charge (2011)

41. It follows from the findings made by the Tribunal above, the balancing charge, if any, in relation to 2011 becomes a mathematical exercise to be carried out by OM and does not require a determination to be made by the Tribunal.

Section 20C & Fees

42. The Tribunal then considered the application made by the Applicant under section 20C of the Act. He had achieved success on a number of the issues raised in the substantive application. It was satisfied that the number of issues on which a finding was made against the Respondent would not have come to light unless this application had been brought. The attempts made the Applicant to resolve some of those issues in correspondence with OM had proved to be unsuccessful. Consequently, he had been obliged to make this application in relation to those matters.

43. For the reasons above, the Tribunal considered that it was just and equitable to make an order preventing the Respondent from recovering 50% of the costs it may have incurred in these proceedings through the service charge account.

44. For the same reasons also, it orders the Respondent to reimburse the Applicant half of the fees paid by him to have this application issued and heard.

Dated the 28 day of November 2012

CHAIRMAN.....

Mr I Mohabir LLB (Hons)