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MAN/00BN/LSC/2011/0084

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

DETERMINATION WITH REASONS

LANDLORD AND TENANT ACT 1985 – SECTIONS 27A & 20C

Premises:	Apartment NS205, New Sedgwick Mill, Royal Mills, 2 Cotton Street, Manchester M4 5BD
Applicant:	Mr N Hollyhead
Respondents:	ING RED UK (Royal Mills) Limited Royal Mills Management Limited
Tribunal Members:	Mr J W Holbrook LL.B (Chairman) Mr D Pritchard, FRICS Mr L Bottomley M.I.Fire.E., JP

DETERMINATION

A. **For the service charge years ending on 31 December 2006, 2007, 2008, 2009 and 2010 respectively, the amount of Applicant's liability to contribute to buildings insurance costs (as part of the Buildings Service Charge payable under his lease of the Premises to ING RED UK (Royal Mills) Limited) is as follows:**

Service charge year	Amount payable by the Applicant for buildings insurance
2006	£36.23
2007	£305.17
2008	£260.05
2009	£225.62
2010	£252.43

B. **The costs incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs (within the meaning of section 18(2) of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by any of the tenants of the Royal Mills development.**

C. **Within 14 days of the date on which this determination is sent to the parties, the Respondents shall reimburse the Applicant for the application and hearing fees which he has paid in respect of these proceedings in the sum of £200.00.**

REASONS

Background and issues

1. On 30 August 2011, the Applicant, Mr Neil Hollyhead, applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application was for a determination of the amount which the Applicant is liable to pay in respect of buildings insurance costs as part of the service charge he pays as the long leaseholder of Apartment NS205 New Sedgwick Mill, Royal Mills, 2 Cotton Street, Manchester ("the Premises"). The application was made in respect of the service charge period which ended on 31 December 2006, and also in respect of each subsequent service charge year up to, and including, that which ended on 31 December 2010.

2. In addition, application was made to the Tribunal under section 20C of the 1985 Act for an order preventing the Respondents, ING RED UK (Royal Mills) Limited and Royal Mills Management Limited, from recovering costs incurred in connection with these proceedings as part of the service charge.

3. A hearing of the applications was held at the Tribunal's offices at 5 New York Street, Manchester M1 4JB on 2 February 2012. At that hearing the Applicant appeared in person. The Respondents were represented by Mr M Pryor of counsel instructed by Russell-Cooke LLP. The Tribunal did not inspect the Premises on this occasion, but noted them to comprise a one bedroom residential apartment located within the building known as New Sedgwick at the Royal Mills development in Manchester.

4. The management of the Royal Mills development, including a wide range of issues concerning the reasonableness and payability of service charges, has been the subject of previous proceedings before the Tribunal brought by a significant number of the leaseholders. Indeed, some of those proceedings are yet to be finally determined. We refer, in particular, to the Tribunal's determination dated 1 February 2012 under case reference MAN/00BN/LAM/2010/0004 ("the Principal Determination"). Whist Mr Hollyhead is not an applicant in those proceedings, and whilst the issues raised by Mr Hollyhead are mutually exclusive from those which were the subject of the Principal Determination, some of the background thereto is relevant to Mr Hollyhead's application. In particular, the Principal Determination describes the Royal Mills development, the operation of the service charge regimes, and the relevant law. It also considers the relevant provisions of the standard form apartment leases. Consequently, it is unnecessary to set out those matters again here. Suffice it to say that Mr Hollyhead is the tenant under a 150 year lease ("the Lease") of the Premises

granted on 7 November 2006, and that the material provisions of the Lease are as described at paragraphs 28 to 40 of the Principal Determination.

5. The issues which the Tribunal has been asked to determine can be summarised as follows:

5.1 Are the Respondents entitled to include in the service charge finance costs incurred as a result of paying the annual buildings insurance premium by instalments?

5.2 In respect of each of the service charge years in dispute, how much is payable by the Applicant under the Lease as a contribution to buildings insurance costs incurred by the Respondents?

5.3 Should the Tribunal make an order under section 20C of the 1985 Act, and should it order the reimbursement of fees paid by the Applicant in these proceedings?

Are the Respondents entitled to include in the service charge finance costs incurred as a result of paying the annual buildings insurance premium by instalments?

6. In addition to the basic amount of the premium for insuring the building of which the Premises form part, the amount which the Respondents have sought to recover through the service charge includes, for each service charge year, an additional sum which represents the cost of spreading the payment of the premium over the period of insurance. In effect, it is the cost of credit obtained by the Respondents. The Applicant argued that he should not be required to contribute to this additional cost, because he was not afforded a similar facility himself – he was asked to pay his insurance contribution in advance and in full, even though the Respondents would then pay the insurance premium by instalments over a number of months.

7. The Respondents, on the other hand, maintained that this credit, or 'financing' arrangement was one which was entirely reasonable, and which was appropriate given the nature and size of the development (198 apartments plus commercial space and retail units). They pointed out that the annual premium runs to several tens of thousands of pounds, and that it is critical that continuous insurance cover is maintained. Given the large number of contributors to the service charge, the Respondents cannot be certain that they will have sufficient service charge receipts in hand when the buildings insurance premium falls due. In order to avoid the situation whereby the insurance is funded up-front by the Respondents, they utilise the option of an instalment-payment option, albeit at additional cost.

8. In terms of the legal recoverability of this additional cost, the Applicant is only liable to contribute to it if he has a contractual obligation to do so under the Lease, and then only to the extent that the cost is reasonably incurred.

9. The third schedule to the Lease itemises the expenditure which may be included in the Building Service Charge. This includes, by virtue of paragraph 1(a) the premiums for keeping the Building insured; and by virtue of paragraph 1(d), expenditure "in the payment of bank charges and of interest on the costs of procuring any loan or loans raised to meet expenditure". It is clear that paragraph 1(d) is sufficiently broad to encompass the insurance financing arrangement which is now in issue.

10. The question, therefore is whether the financing costs concerned were reasonably incurred for the purposes of section 19(1) of the 1985 Act. We find that, for the reasons stated by the Respondents, it was not unreasonable in principle for them to utilise the instalment-payment option in respect of buildings insurance premiums. The expenditure concerned must also be reasonable in amount, of course, and Mr Pryor told us that the annual cost of financing represented an addition of 5.8% to the basic insurance premium. We find that this is not unreasonable, bearing in mind prevailing interest rates, and so we conclude that the costs concerned are recoverable through the service charge.

In respect of each of the service charge years in dispute, how much is payable by the Applicant under the Lease as a contribution to buildings insurance costs incurred by the Respondents?

11. It is noteworthy that the heart of the dispute between the parties does not concern the amount of the premiums which the Respondents have incurred in insuring the Building – we were not asked to determine whether the overall level of the insurance costs were reasonable. What the dispute does concern is the manner in which the Respondents have apportioned those costs between the various constituent parts of the Royal Mills development, and thus between the various contributors to the service charge. In particular, the Applicant was dissatisfied about the split in insurance costs between Old and New Sedgwick Mills in 2006 and 2007, following practical completion of these parts of the development.

12. As it happens, it is unnecessary for us to delve into these matters in further detail. The reason for this is that, during the hearing before the Tribunal, the parties were able to reach agreement on the Applicant's liability for insurance costs for the 2006 to 2009 service charge years. That agreement was predicated on the basis that the Tribunal found that the costs of financing are recoverable (as it has indeed found), and it is reflected in the determination on page 1 hereof.

13. However, the parties were unable to reach agreement in relation to the 2010 service charge year. The Respondents contended that the Applicant's contribution to buildings insurance costs for 2010 should be £252.43 (being 0.38% of the total annual insurance costs for the residential parts of Old and New Sedgwick Mills, in the sum of £66,428.52). The Respondents say that the contribution factor of 0.38% is the proportion which the gross internal area of the Premises bears to the total gross lettable areas of Old and New Sedgwick Mills. The Applicant points to the fact that, in previous years, the

relevant contribution factor has been 0.3669% and argues that that percentage should continue to apply. If it were applied to the 2010 insurance costs, then the Applicant's contribution would be a modest £8.70 less than the amount sought by the Respondents. The Respondents explanation for the change is that alterations have been made within the Building which have diminished the overall lettable area, thus increasing slightly the service charge percentages of the individual tenants. In this particular case, the Applicant did not produce evidence which cast significant doubt on this explanation, and we are therefore willing to accept it.

14. For the sake of completeness, we note that insurance costs are recoverable as part of the Building Service Charge, as defined in the Lease. The Building Service Charge is payable to the first Respondent, ING RED UK (Royal Mills) Limited.

Should the Tribunal make an order under section 20C of the 1985 Act, and should it order the reimbursement of fees paid by the Applicant in these proceedings?

15. We consider it to be just and equitable to grant the application under section 20C of the 1985 Act. Although the parties eventually reached agreement on the majority of the issues which were initially in dispute, they only did so as a result of a change of stance by the Respondents on the key question of the apportionment of insurance costs. That change occurred at a late stage in the proceedings, after the submission of statements of case, and we are of the view that litigation costs could have been avoided if that change had occurred earlier.

16. Finally, we considered whether the Tribunal should exercise its power under regulation 9(1) of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 to require any party to the proceedings to reimburse any other party for the whole or any part of any fees paid by him under those Regulations in respect of the proceedings. In the present case the Applicant has paid an initial application fee of £50.00 and an additional hearing fee of £150.00.

17. We have decided that it is appropriate to order the reimbursement of these fees in full. Not only did the Respondents change their stance on the apportionment issue at a late stage in the proceedings, but it appears that they (or their managing agents) were unable to produce correct figures for the Applicant's insurance contributions until the day of the hearing. It is regrettable that the Applicant had to resort to tribunal proceedings to achieve this.

J W Holbrook

Jonathan Holbrook
Chairman

13 February 2012