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HM Courts & Tribunals Service

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/43UB/LIS/2012/0026

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27 OF THE LANDLORD & TENANT ACT 1985

Applicant: A2 Dominion Housing Group Ltd

Respondents: The Lessees of Flats 162-168, 272-276, 372-376 and 472-476

Premises: Core 4, The Heart, New Zealand Avenue, Walton-on-Thames, JT12 1GA

Date of hearings: 28 May 2012 & 25 July 2012

Appearances for Applicant: Ms Smith, Mr Deans, Mr Marns and Ms Nixon

Appearances for Respondent: Mr Lemon (Flat 474), Mr Courtney (Flat 475) and Mr Griffin (Flat 472)

Leasehold Valuation Tribunal: Mr I Mohabir LLB (Hons)
Mr D Lintott FRICS

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondents' liability to pay and/or the reasonableness of various actual service charges claimed for the years ended 2009/10 and 2010/11 respectively. The heads of service charge expenditure challenged by the Respondents are set out below.

2. The Respondents are the lessees of Flats 162-168, 272-276, 372-376 and 472-476 at Core 4, The Heart, New Zealand Avenue, Walton-on-Thames, JT12 1GA. It is a purpose built residential block of flats, as part of a larger mixed use development occupied by tenants with shared ownership and key workers. The other residential blocks in the development are known as Cores 5, 6 and 7 and are occupied by a mixture of private tenants and key workers. In total, there are 100 residential flats in the development.

3. The Applicant is the Respondents' immediate landlord by virtue of shared ownership sub-underleases variously granted to them on the same terms ("the underleases"). The Applicant is the intermediate leaseholder by virtue of a headlease granted to it by O & H Walton Ltd dated 4 July 2007 ("the headlease"). The relevant contractual terms of each lease relied on by the Applicant have, helpfully, been set out in the Scott Schedule completed by both parties and it is, therefore, not necessary to repeat these matters here.

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 adjourned hearing in this matter took place on 25 July 2012, following an earlier hearing on 28 May 2012. The Applicant was principally represented by Ms Smith who was accompanied by a number of her colleagues. The only Respondents who appeared and participated in this matter were Mr Lemon (Flat 474), Mr Courtney (Flat 475) and Mr Griffin (Flat 472). None of the other lessees appeared nor were they represented.

Estate Communal Cleaning (Both Years)

6. The actual expenditure incurred by the Applicant in 2009/10 and 2010/11 was £12,324.89 and £12,623.02 respectively. This cost had been apportioned equally between the 100 tenants in the 4 blocks.

7. The Respondents complained that the cleaning of the common parts had not been of a reasonable standard. For example, there had been no litter picking in the stairwells and the car park and they referred the Tribunal to the correspondence they had sent to the Applicant complaining about these matters. In addition, they said that no explanation had been given by the Applicant about what this expenditure had related to until now.

8. In reply, the Ms Smith said that the expenditure did not in fact relate to the complaints made by the Respondents. It only concerned the cost of the waste and recycling bins from the bin rooms and chute areas. It also included the cost of cleaning and maintenance of these areas including the lighting and replacing the signage on the doors.

9. The Tribunal found the expenditure in relation to both years had been reasonably incurred and reasonable in amount. Materially, the Respondents had conceded that the expenditure had not in fact been incurred in relation to the areas that they had complained about. There was, therefore, no basis for any challenge to this head of expenditure and it was allowed as claimed.

Communal Cleaning to Block (2010/11 only)

10. The expenditure incurred in this year was £5,062.07. The Respondents repeated the same complaints they had made in relation to the estate cleaning above. They also said that the external windows of the block had not been cleaned and graffiti not removed. The Respondents submitted that the Applicant should only be entitled to recover 50% of the expenditure to reflect these matters.

11. Ms Smith referred the Tribunal to the window cleaning specification and said that the only requirement was to clean the internal glass in the windows and not the external glass. Apparently, this was now being done on an ad hoc basis by the Applicant following discussions with the tenants, for which no charge was being made. However, Ms Smith conceded that the standard of cleaning had not been of a good standard and it was for this reason that the complaint made by the Respondents to the Ombudsman had been upheld. She made an open offer to reduce the amount claimed by 25%, which was rejected by the Respondents.

12. On the basis that the Applicant had conceded that the standard of cleaning had not been satisfactory, the Tribunal had little difficulty in finding that the standard had not been of a reasonable standard. It was common ground that the Respondents had already received compensation following an earlier Ombudsman decision in their favour. The Tribunal, therefore, did not consider the Respondents' submission of a 50% reduction in the cost claimed by the Applicant was appropriate. To do so would provide the Respondents with an additional windfall. Accordingly, the Tribunal concluded that 30% of the expenditure should be disallowed to properly reflect the fact that the cleaning had not been of a reasonable standard.

Communal Electricity (Both Years)

13. The actual expenditure incurred by the Applicant in 2009/10 and 2010/11 was £25,000 (only half recharged) and £66,469.80 respectively. Again, this cost had been apportioned equally between the 100 tenants in the 4 blocks.

14. The Respondents submitted that the expenditure was excessive, especially when compared to the same expenditure incurred for the private lessees. In addition, although there are electric heaters in the communal areas, they did not require heating because they are so well insulated. They also pointed out that the budget estimate was £11,000 and submitted that an overspend of 263% was unreasonable, even if any increase in electricity prices was taken into account.

15. Ms Smith accepted that the cost was higher when compared to the other blocks and said that the Applicant had been unable to identify how the expenditure had been incurred. Apparently, the 2009/10 expenditure had been included as part of the management fees of the previous managing agent and it was for this reason that the Applicant was seeking to recharge half of the expenditure incurred. The 2010/11 figure was based entirely on the invoices received.

16. When asked by the Tribunal, Ms Smith conceded that a recharge of approximately £664 per flat was high. She expected the average cost to be about £450-500 normally. Ms Smith was unable to offer any explanation as to the increased expenditure because the meter appeared to be correct. She said, however, that the tariff had not been tested to see if it was competitive for the 2 years in issue.

17. It was common ground that the electricity expenditure for the common parts was excessive. The burden of proof was on the Applicant to prove that the expenditure had been reasonably incurred. On its own case, the Applicant did not expect the expenditure to exceed £450-500 per flat. It had been unable to prove the additional expenditure had been reasonably incurred. There was no evidence from the Respondents as to what expenditure might be considered to

be reasonable. Therefore, using its own expert knowledge and experience, the Tribunal concluded that expenditure of £350 per flat was reasonable and allowed the amounts of £25,000 and £35,000 for 2009/10 and 2010/11 respectively, as having been reasonably incurred.

Gardening (Both Years)

18. The sum of £3,500 had been incurred in 2009/10, although the Applicant was only seeking to recharge £1,750. £2,890 was incurred in 2010/11. The Applicant offered a 25% reduction for the 2010/11 expenditure and this was agreed by the Respondents. Consequently, only the 2009/10 expenditure fell to be considered by the Tribunal.

19. The Respondents complained that the gardens had not been maintained properly. The lawns had not been mowed and there had been litter in the gardens. Shrubs had been left to die. They asserted that the gardening had simply not been carried out by the contractor who had only attended once every 5-6 months and even then the gardening had been of a poor standard.

20. Ms Smith conceded that the gardening carried out in 2009/10 had not been of a reasonable standard. However, she submitted that this was reflected by the Applicant only seeking to recover one half of the actual expenditure incurred and that no further deduction should be made. It seems that, again, this expenditure had been erroneously included in the previous managing agent's fees.

21. Given that it was common ground that the gardening in 2009/10 had not been of a reasonable standard, the Tribunal was bound to find that the overall expenditure had not been reasonable. However, it accepted Ms Smith's submission that this had been already reflected by the fact that the Applicant was only seeking to recover 50% of the actual expenditure incurred. For this reason, the Tribunal found the sum of £1,750 to be reasonable and it was allowed as claimed.

Vehicle Management (2010/11 only)

22. Ms Smith conceded that the sum of £11,169.13 claimed for this head of expenditure had been incorrectly charged to the service charge account and would be removed.

Managing Agents Fees (Both Years)

23. The costs claimed by the Applicant in relation to this head of expenditure can be explained as follows.

24. The sum of £72,287.48 was paid to the previous managing agent, Campsies in 2009/10. However, the Applicant only sought to recharge the first 6 months expenditure as a consequence of various management failures on the part of Campsies. Indeed, even though the Ombudsman upheld the complaint made by the Respondents in this regard, no further award of compensation was made because it was felt that they had already been adequately compensated by the reduction applied by the Applicant.

25. In addition to the fees charged by Campsies, the freeholder's managing agent, Savills, also charged the Applicant a managing agent's fee of £26, 954.38. The Applicant sought a full indemnity for this cost by applying it to the service charge account equally between the 100 flats. Furthermore, the Applicant applied its own management fee of £175 per unit to the service charge account. It asserted that it was contractually entitled to do so under clause 7(5)(c) of the underleases and clause 2.3 and paragraph 1.1 of Schedule 4 of the headlease.

26. In 2010/11, this situation was repeated, save that Campsies were no longer employed by the Applicant as its managing agent. The managing agent's fees charged by Savills was £59,240.34. The Applicant's fee remained at £175 per unit.

27. The Respondents contended that Savills did not provide any management services to their block. Moreover, the charges made by Savills included an additional charge for electricity, cleaning and environment. This in effect meant that they were paying twice for these matters and that the Applicant was

failing to properly scrutinise the charges made by Savills. Ms Smith said that the electricity charges made by Savills in fact related to different areas, for example, plant machinery, which the freeholder was obliged to maintain. However, she accepted that minimal scrutiny of Savills' costs was exercised.

28. The Respondents submitted that the management fees, when taken together, were excessive, especially when compared to the fees paid by the private lessees. In contrast, they paid £139.11 and had the added benefit of a 24-hour concierge service. They contended that the Applicant should not be allowed to claim any management fees at all.

29. In relation to 2009/10, the Tribunal was satisfied that the reduction of 50% of the management fees of Campsies already applied by the Applicant to this expenditure adequately reflected the acknowledged management failures on the part of that firm.

30. In relation to both years, the Tribunal was satisfied that both the headlease and underleases contractually required the Applicant to indemnify the freeholder for the management fees of Savills. The Tribunal accepted the evidence of Ms Smith and was also satisfied that there was no duplication of costs in the charges made by Savills.

31. As to the Applicant's management fees in relation to both years, it was beyond doubt that there had been a number of management failures on its part. The Ombudsman had made a finding in these terms and, indeed, the Applicant's own internal complaints procedure had upheld the various complaints by the Respondents and other tenants. Accordingly, the Tribunal concluded that a reasonable management fee that could be recovered by the Applicant was £75 per flat for each year.

Security

32. The cost of security in 2009/10 and 2010/11 was £11,008.50 and £5,701 respectively.

33. The Respondents submitted that none of these costs had been reasonable because no security services had been provided by the Applicant.

34. In reply, Ms Smith said that the Applicant had taken over responsibility for the security staff from 2009/10. This had involved daily patrols at a discounted rate of £20 per patrol and that the cost had not increased year on year. She conceded that an erroneous charge of £414 had been made in the 2009/10 accounts and this would be removed. Save for this, she submitted that the expenditure had been incurred and was reasonable in amount.

35. The Tribunal accepted the evidence given by Ms Smith on this matter. The invoices provided were *prima facie* evidence that the expenditure had been incurred. The Tribunal placed no reliance on the assertion made by the Respondents that no security services had been provided. It was clear from the extensive correspondence before the Tribunal that the Respondents were very proactive in making their views known to the Applicant on any matter concerning the property that they were unhappy with. Historically, no complaint had been made about the absence of security services.

36. The Tribunal found that the expenditure in relation to the provision of security services had been incurred, was reasonably incurred and reasonable in amount. Accordingly, it was allowed as claimed by the Applicant.

Separation of Core 4

37. Expenditure of £4,538 had been incurred for the cost of installing a swipe card reader to ensure that non-residents could not enter Core 4. Of this cost, the Applicant agreed that £1,768.25 was not rechargeable to the service charge account and would be credited. The Respondents agreed that the remaining balance of the cost was reasonable and payable.

Invoices

38. The Respondents challenged a number of specific invoices set out at pages 10-11 of the Scott Schedule on the basis that the Applicant had not been able to prove the expenditure by producing copies of the invoices. They asserted that

all of this expenditure related to estate charges. Furthermore, the Respondents submitted that the Applicant had not been able to prove that the expenditure had been incurred solely in relation to Core 4. Consequently, they had not been reasonably incurred and irrecoverable.

39. Ms Smith submitted that all of the estate charges in issue were rechargeable because there was no restriction on the Respondents' access to the other blocks and there was no contractual obligation on the part of the Applicant to apportion the costs in the way suggested by them.

40. The Tribunal found that the invoices provided was *prima facie* evidence that the estate charges in issue had been incurred by the Applicant. The Tribunal also included that a proper reading of the underleases revealed that the Respondents contractual liability was not limited to the estate charges incurred solely in respect of Core 4 nor is it contingent upon some benefit or use derived or the absence thereof. In other words, the fact that the Respondents may not physically access the other blocks or may not want to do so is wholly irrelevant to their liability to pay the estate charges. Accordingly, they were allowed as claimed by the Applicant.

Section 20C & Fees

41. Ms Smith confirmed that the Applicant would not be seeking to recover through the service charge account any costs or fees it had incurred in making this application. It was, therefore, not necessary for the Tribunal to consider making any order under section 20C of the Act or for the reimbursement of fees by the Respondents.

Dated the 11 day of September 2012

CHAIRMAN..... I. Mohabir

Mr I Mohabir LLB (Hons)