



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AP/LSC/2013/0715

Property : 284B Archway Road,
London, N6 5AU

Applicant : Paul Richards and
Julie Angelique Hannon

Unrepresented

Respondent : Richard Cannell

Represented by Mr. Kelly

Date of Application : 17 October 2013

Type of Application : Section 27A Landlord and Tenant Act
1985 ("the 1985 Act") reasonableness
and payability of service charges

Tribunal : J Oxlade Judge
C. Gowman BSc MCIEH
Professional Member
C. Piarroux JP Lay Member

**Date and venue of
Hearing** : 28 March 2014
10 Alfred Place, London

DECISION

For the following reasons the Tribunal finds that:

- (i) the Respondent failed to comply with the requirements of section 20 of the 1985 Act, and so in respect of major works to the property, the Applicants' liability to pay service charges in respect of them is limited to £250,
- (ii) the service charges of incurred in 2010, 2011, and 2012 in respect of insurance is reasonable and payable,
- (iii) the Respondent shall reimburse to the Applicants the sum of £440, paid by them to issue the application and list the oral hearing.

REASONS

Background

1. On 12th November 2013 the application was listed for pre-hearing review, as a result of which Directions were made by Judge Adrian Jack.
2. In the preamble to Directions, Judge Jack set out in considerable detail the background to the dispute and the evolution of the legal relationships.
3. In essence, prior to the Applicants' purchase of their lease, and prior to the Respondent's interest as a head lessor, in 2006 the (then) freeholder CH Chesterford Limited notified the (then) lessees that they considered that major works needed to be done to the premises, and the consultation process started, but the works did not proceed.
4. In 2008, the lease of the property was sold to the Applicants, and as the freeholder's managing agents went into liquidation, a Right to Manage ("RTM Co") was formed by the lessees of 284 Archway Road, which included the Applicants.
5. The RTM Co. sought payment from the Applicants, as follows:
 - (i) £4250 for major works and £800 for service charges in 2010
 - (ii) £3610 for major works and £800 for service charges in 2011
 - (iii) £600 for service charges in 2012.
6. The Applicants paid the sums demanded, but made application pursuant to section 27 A because:
 - (i) they did not consider that the Respondent had complied with the section 20 consultation requirements, as set out in Part 2 to Schedule 4 of the Service Charges (Consultation)(England) Regulations 2003 ("the 2003 Regulations"), and so considered that their contribution to the major works should be limited to £250, and
 - (ii) the Respondent appeared to have arranged buildings insurance which was inadequate: the insurance policy was said to have been invalidated by the Applicants' sub-letting, but as the Respondent had sub-let to his mother, the insurance policy cannot have been fit for purpose.
7. The application was listed for hearing on 28th March 2014, and Directions were made for the filing of evidence by both parties. There was considerable slippage in the timetable.

Hearing

8. Both parties attended the hearing and at the commencement of the hearing the Tribunal set out the issues for consideration.
9. In light of the changes of legal relationship, the Tribunal was concerned to establish that the Respondent was the correct legal person to be cited as a Respondent. Having heard (i) the parties acceptance that he was the proper

person to the action and (ii) an explanation as to why this was so (he being the head lessor with maintenance obligations under the head lease to the lessees, and who accepted the Applicants' section 42 notice to extend the lease) the Tribunal was satisfied that the parties named in the application were the proper parties.

Consultation Requirements

10. The Tribunal first considered the issue of compliance whether there had been compliance with section 20 of the 1985 Act and the 2003 Regulations, a copy of which was provided to the parties, in anticipation of working through them.

11. Mr. Kelly was invited to take the Tribunal to the specific documents in the bundles, which would establish compliance; indicating that we would give Mr. Kelly some latitude as the late submission of some of the Respondent's document had not found their way into Mr. Kelly's bundle, so that whilst he was familiar with the documents, he was unfamiliar with the bundles.

12. In answering the Tribunal's invitation to address the consultation point, the Tribunal heard considerable background about the (a) how the process was started by another company (b) the changes in legal ownership and (c) the Applicant's participation as a Director of the RTM Co, which eventually did the works. After the third time of asking, and further background and issues being raised, the Tribunal adjourned the application for 10 minutes for Mr. Kelly to focus on the question whether or not the Respondent could show that there had been compliance with the consultation requirements.

13. After a short adjournment, the hearing resumed and Mr. Kelly said that the Respondent conceded that he could not establish compliance with the consultation requirements. Accordingly, an application would be issued, pursuant to section 20ZA for dispensation from consultation.

14. The Tribunal indicated to the parties that unless and until such an application was made, directions could not be made; however, the parties should be aware that at a hearing in respect of section 20ZA the Tribunal would apply the principles in the case of Daejan Investments v Benson [2013] UKSC 14 and consider the extent of non-compliance with a view to establishing what prejudice (if any) was suffered by the Applicants by that non-compliance. If it was right that the lessees were engaged in the process, as Director(s) or participants, then it could affect the extent of knowledge and so whether or not there was prejudice. The parties were encouraged to seek legal advice, and the existence of LEASE (who provide free legal advice) was mentioned. The Respondent was told that if such application was made the Tribunal would be likely to be materially assisted by a chronology of what happened and when (as to consultation), and was likely to make directions in respect of that.

15. The Tribunal pointed out that if dispensation was allowed, it may still leave open the question of whether the costs were reasonable and so there may need to be a hearing in respect of that. The Applicants said that the works were not

finished, despite the passage of time, at which point the Respondent produced photographs of almost finished communal parts and a finished refurbished front door; the Respondent said that it was the Applicants refusal to allow the new water pipes to be connected in their flat which was holding matters up. The Tribunal sought to mediate, and made some progress by establishing (a) what rough specification of works a plumber needed to be given to be able to provide a quote, so that (b) the Applicants could elect three suitable contractors from which (c) the Respondent could chose one; the Respondent could then commission a plumber with whom both sides were happy, to complete the works, and pay the costs from service charge funds.

16. At the end of this part of the hearing the Tribunal confirmed that in light of the Respondent's concession that he had not complied with the consultation requirements, the amount recoverable from the Applicants as service charges for the major works was limited to £250. The parties were told that the Tribunal has no enforcement powers to direct a refund of the sums paid in respect of major works. No doubt if the Respondent's issue of the section 20ZA application is dilatory, this may be met by the Applicant's demand for repayment of the sums paid for the major works (less £250), which can be reinforced with an action in the County Court.

Service Charges - insurance

17. The Applicants indicated that the only issue arising in respect of service charges in 2010, 2011, and 2012 of respectively £800, £800, and £600 related to insurance costs. The Applicants contribute 1/3 to the costs of insurance.

18. The Applicants had one point: the Respondent had notified their mortgage company (wrongly) that their flat had been illegally sub-let, that it invalidated the insurance policy, and so the terms of the lease had been broken. However, the Respondent had sub-let a flat to his mother it was negligent of the Respondent to secure insurance which was not fit for purpose, and for the Respondent to do so knowingly. The Respondent said that the letter to the mortgage company was necessary, as he had asked questions of the Applicants without a response.

19. The Tribunal considered the terms of the lease which by 3(7)(b) prohibit the lessees from assigning or sub-letting for a period exceeding twelve months. Further, at 3.15 of the bundle was a copy of the insurance policy for the period 22nd June 2012 to 21st June 2013, which at 3.20 said that indemnity may be lost in circumstances of a failure to "(e) advise your tenant where sub-letting is allowed by the tenancy agreement that they must follow the measures laid out in items (b)(c) an (d) above for all the letting they arrange" where (b) relates to obtaining formal identification of the tenant, (c) relates to obtaining a written reference from the tenant's employer and (d) obtain a verify a tenant's bank details".

20. Irrespective of the correspondence seen and the other issues raised, the sole point taken against payment of the service charge on the grounds that it was an insurance policy which was not fit for purpose, was not established. Accordingly,

the Tribunal finds that the service charges incurred in 2010, 2011, and 2012 for insurance were reasonable and payable.

21. The Tribunal indicated that it would expect that the Respondent would in each year supply to the Applicants a copy of the insurance policy, so that the terms or conditions of it would be known, and which would ensure compliance. The Respondent confirmed that he would do so.

22. It follows that the point against the service charges for 2010, 2011, and 2012 falls away and the Tribunal finds that the service charges for those years (save in respect of major works) in respect of insurance are reasonable and payable.

Reimbursement of the Applicant's Costs

23. At the end of the hearing, the Applicant's sought a finding that the fees paid to the Tribunal of £250 (application fee) and £190 (hearing fee) be reimbursed by the Respondent. Their position was that the Respondent should have known from the outset that there had not been compliance with section 20; that he should have sought dispensation, when the point was raised at the pre-trial hearing. No submissions were made in reply by Mr. Kelly on behalf of the Respondent.

24. Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides by 13 (2) that "The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor". The Regulations provide – by use of the word "may"- that this is a discretionary power, and the Rules provide no guidance or limitations on the circumstances in which the application could succeed.

25. The Tribunal is satisfied that the Respondent should reimburse the fees totalling £440, paid by the Applicants to bring this application and to list for a hearing, for the following reasons: the Applicants have succeeded on the section 20 point, which had featured large in correspondence before the application; the Respondent (being represented by Mr. Kelly, a Surveyor) should have recognised that he could not succeed in showing that there had been consultation in compliance with the 2003 Regulations, and focussed on the real point which he wanted to make, which involved an application for dispensation.

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Judge Oxlade

14th April 2014