

2840

LON/00AG/LIS/2006/0100

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**ON APPLICATIONS UNDER SECTION 27A & 20C**  
**OF THE LANDLORD AND TENANT ACT 1985**

Applicant: Mr Stephen Cole

Respondent: RFYC Limited

Re: 21 Frogal Court, Finchley Road NW3 5HG

Application received: 25 July 2006

Hearing date: 14 November 2006

Appearances: Mr Stephen Cole (Applicant)

Mr N Freed (Respondent )

Members of the Leasehold Valuation Tribunal:

Mrs T I Rabin JP

Mr C White

Mr L Packer

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985  
(as amended) SECTIONS 27A and 20C**

**PROPERTY: FLAT 43 FROGNAL COURT FINCHLEY ROAD  
LONDON NW3 5HG**

**APPLICANT: Mr S COLE**

**RESPONDENT: RFYC LIMITED**

**Represented by: Mr N Freed**

**TRIBUNAL**

Mrs T I Rabin            Chairman  
Mr C White  
Mr L Packer

Date of Tribunal's decision:    30<sup>th</sup> November 2006

**FLAT 21 FROGNAL COURT FINCHLEY ROAD LONDON NW3 5HG**

**FACTS**

1. The Tribunal was dealing with an application by the Applicant Tenant, Mr Stephen Cole, for a determination whether the service charges levied by the Respondent Landlord, RFYC Limited, in respect of service charges levied in the service charge years ending 31<sup>st</sup> December 2004 and 2005 were payable. The application related to Flat 21 Frogнал Court Finchley Road London NW3 5HGB ("the Flat") and has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicant is the long leaseholder of the Flat which was located in Frogнал Court aforesaid ("the Building").
2. A copy of the lease of the Flat ("the Lease") had been produced to the Tribunal. The Applicant's obligations in relation to the payment of the service charge are set out in Clause 4(2) of the Lease and the Respondent's obligations in relation to the provision of services are set out in Clause 5. The provisions regarding the service charge accounts are set out in Clause 4(B) of the lease.

**HEARING**

3. The hearing took place on 14<sup>th</sup> November 2006 at 10 Alfred Place London WC1E 7LR. The Applicant was present and the Respondent was represented by Mr N Freed, a director of the Respondent company. The parties agreed that the matters at issue for service charge year 2004 were an invoice for £1,600, management fees of £9517 and insurance at £17,954. The matters at issue for service charge year 2005 were two invoices for £987 and £513 respectively, management fees of £19,742.53, accountancy fees of £2467.50 and bank charges demanded for the period that the Respondent has been managing the Building. The Applicant also queried the validity of the ground rent demand but the Tribunal has no jurisdiction to determine matters relating to ground rents. The Tribunal considered that an inspection of the Building would not assist and was not necessary.

**THE LAW**

4. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-
  - (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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 payment has been made

## **EVIDENCE AND DECISION**

5. Mr Cole had purchased the Flat some years ago and the Respondent had purchased the freehold of the Building on 18<sup>th</sup> July 2005. The Building was previously managed by Granvilles who ceased managing in July 2005. There had been a history of poor relations between some tenants and the landlord at the Building and the Respondent informed the Tribunal that there were 55 flats in the Building with ten different forms of lease all of which had differing service charge obligations and that the sum of the contributions made by the various flats did not add up to 100% so that there was a shortfall. There had been proceedings in relation to a number of the flats in the Building (not including the Flat) when an attempt was made to clarify the differing service charge contributions in the various leases. Incomplete extracts of the court proceedings were produced which the Tribunal did not find were helpful in determining this application. The parties were agreed that the contributions to service charges as defined in the Lease were correct and had been applied to the payments under the Lease.

### **Disputed invoices**

6. The invoice for £1,600 queried by Mr Cole is at page 67 of the Bundle and is dated 17<sup>th</sup> April 2004 and addressed to his company CCS Estates. This related to redecoration of a flat managed by Mr Cole's company at the time which was necessary following water ingress from the gutters and leakages from the flat above. Mr Cole was unable to get the then managing agents, Granvilles, to deal with the damage and instructed builders himself through his own company. The managing agents reimbursed Mr Cole on the basis that it was the landlord's responsibility but did not make an insurance claim and the cost was subsequently added to the service charges. Mr Freed stated that there was adequate insurance cover but stated that he had not been involved at the time and could not comment as to why a claim had not been made. He accepted that the Building was dilapidated but that he was arranging for a programme of work to be undertaken.
7. The Tribunal noted that Mr Cole, through his company, had arranged for the work to be undertaken without contacting the insurers and allowing them an opportunity to inspect and assess the damage. Redecoration of the Flat where it was necessary owing to damage from the Building was a cost which properly fell upon the landlord. In the absence of any further information the Tribunal cannot assess why an insurance claim was not made but the cost is justified and payable as a service charge item and

allowed and the proportion attributable to the Flat is payable by Mr Cole immediately.

8. The disputed invoice for £987 is at page 73 of the Bundle. It is undated and relates to the repair of a manhole within the curtilage of the Building apparently undertaken in early 2005. Mr Cole stated that the damage was caused to the manhole as a result of heavy machinery being parked on the area around the Building at the time when construction of a hotel adjoining the Building was being undertaken. He stated that the then managing agents had ignored complaints by tenants to prevent unlawful parking of heavy machines and had not recovered the cost of repair of the manhole from the hotel contractors. Mr Freed stated that, although the damage had occurred before the Respondent had purchased the freehold, he had been approached by a representative of the tenants' association who asked him to recover the cost from the contractors and he had offered to take the matter up if he was provided with concrete evidence that the damage was caused by one of their machines. Mr Cole produced by way of evidence photographs which were undated, showing a damaged manhole. There was also a photograph of a piece of heavy machinery parked close to the Building. No evidence was produced to show that the machinery was on the manhole or that the damage caused was caused by the machine.
9. It is clear from the photograph produced that the manhole was damaged but the cause of the damage has not been established. The Tribunal finds that the repair of the manhole was properly undertaken by the landlord and falls within the service charge. This sum is properly due and the proportion due from Mr Cole is payable immediately.
10. The final disputed invoice is at page 74 of the Bundle and is dated 20<sup>th</sup> February 2005. This related to the repair of an internal water pipe which passed through the hallway cupboard of Flat 17. The tenant of Flat 17 instructed a builder to undertake the repair as it was urgent and she was reimbursed by the managing agents. Mr Cole said that the pipe repairs should have been undertaken by the landlord when the pro rata cost to each of the tenants would be considerably less and was of the opinion that this was another example of a lack of proper management of the Building. Mr Freed had no comment as the damage had occurred prior to his involvement with the Building.
11. The Tribunal finds that the repair of an old water pipe was a repair falling within the landlord's repairing obligations in the Lease. The pipe clearly needed repair and the managing agents reimbursed the owner of Flat 17 and included the cost within the service charge. This sum is properly chargeable and the proportion due from Mr Cole should be paid immediately.

**Insurance premium.**

12. Mr Cole pointed out that the insurance premium for service charge year 2004 was £17,954.67 which he considered to be excessive. He also complained that the insurance premium was charged as a separate item from the service charge but there was no right to do this as, under the terms of the Lease, the insurance forms part of the services to be paid for through the service charge and should be charged as such. In support of his view that the insurance was too high, he pointed out that since the Respondent had taken over the insurance, the premium had reduced to £10,920 and would increase to £12,000 for service charge year ending 31<sup>st</sup> December 2006. He took the view that the Respondent had no right to charge the long leaseholders when the premium was due. The previous landlord had arranged insurance through their own brokers and the previous managing agents had told Mr Cole that they were not involved in arranging insurance. The previous insurers were AXA. Mr Freed agreed that the insurance was lower since he had taken over management and had no comment to make on the previous insurers. He agreed that he did demand the insurance premium from the long leaseholders when he received the demand from the insurers.
13. The Tribunal agreed that the insurance premiums formed part of the service charges and the premiums should be collected as part of the service charges and not billed as a separate item. The Respondent should calculate the amount of basic maintenance charge to include the contribution to insurance and ensure that there are sufficient sums demanded in advance to discharge the insurance premium when it falls due. The Respondent is entitled to review the basic maintenance charge under the provisions of Clause 4(B) (2) (ii).
14. The Tribunal is aware that AXA Insurance is a leading insurer. A landlord is entitled to select the insurer it wishes, provided that it acts reasonably. This was decided in the case of **Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd EGCS 143 CA** Mr Cole has complained about the level of premium in 2004 but has not provided like for like alternative quotes where the company quoting is fully aware of the condition of the Building and the claims history. In the absence of any evidence to the contrary, the Tribunal determines that the insurance premiums charged in 2004 are reasonable although at the higher end of the scale. The proportion due from Mr Cole is properly payable and due immediately.

#### **Managing agents' charges.**

15. Mr Cole said that there had been a history of poor management of the Building. He had complained in writing to Granvilles in April 2004 about the lack of services and management. Granvilles were appointed by the previous landlords without consultation with the long leaseholders and charged £9517 against the charges of £3071 per annum made by Marcus King, the agents who preceded Granvilles. The complaints that he had made about the management of the building had not been addressed and the Building was not maintained properly and cleaning contractors were

not paid by the managing agents, resulting in payment being made by the residents association who were subsequently reimbursed by the managing agents. The Respondent undertook the management from July 2005 and Mr Cole took the view that the Respondent was not entitled to charge for the management of the Building as there was no provision in the Lease for the landlord to make a charge for management.

16. Mr Freed pointed out that the Building was very difficult to manage and that he had arrears of service charges of £80,000 with 75% of the long leaseholders withholding their service charges. This makes the Building difficult to manage. When the Respondent purchased the Building, Granvilles were only prepared to continue with the management if they were paid a fee of £30,000 per annum since it was not cost effective to continue at the rate they were charging. Mr Freed decided that the management would be undertaken by the Respondent and that a charge of £30,000 would be made, based upon the estimate given by Granvilles and the Respondent has been charging at that rate since July 2005.
17. The Tribunal noted that Granvilles were charging at the rate of £9517.50 per annum for service charge year 2004. This was equivalent to £173 per flat. This is at the lower end of the scale for managing agents. Mr Cole has stated that there was no management but the Building was insured and there is no evidence that there was no management whatsoever undertaken. It is common ground between the parties that at least some of the long leaseholders have been withholding payment of the service charges and it is difficult for managing agents to manage a property effectively with no funds available. The Tribunal finds that the charges made by Granvilles are reasonable and the proportion due from Mr Cole is payable immediately.
18. The Respondent has been charging management fees at the rate of £30,000 per annum since July 2005. The invoice provided at page 76 of the Bundle shows that the invoice for management fee was issued by RFYC Ltd. The relevant clause in the Lease is Clause 5 which sets out the landlord's obligations to provide services. Clause 5(B)(7) reads as follows:

To employ (a) a firm of Managing Agents to manage the Building and the Estate and discharge all proper fees and expenses payable to such agents in connection therewith including the cost of computing and collecting the rents and maintenance charges (b) a firm of accountants in connection with the auditing of the accounts relating to the Building and the Estate and to discharge all proper fees charges and expenses payable in connection therewith.
19. There is no provision in the Lease for the landlord to make a charge for managing the Building and the Respondent cannot properly charge for providing management. The Tribunal therefore disallows the management charges made by the Respondent and, having disallowed them, will make no decision on their reasonableness.

### **Accountancy fee**

20. Mr Cole considered that the accountancy fee charged by the accountants at £2,100 plus VAT was unreasonable. The invoice is at page 81 of the Bundle and is dated 1<sup>st</sup> July 2005. He considered that a fee of £750 plus VAT would be appropriate and that he could introduce a firm of accountants who would offer their services at a considerably lower level of charge. Mr Freed stated that he was an accountant himself and that there was a considerable amount of work involved to prepare accounts for the Building and the estate of which it forms part. There are differing obligations in the various leases and there is a considerable amount of checking to be undertaken before the accounts can be signed off. The Tribunal has been given no evidence to show that the fees are unreasonable and consider that the level of charges are appropriate for the Building and the proportion due from Mr Cole is payable immediately.

### **Bank Charges**

21. The bank charges are shown at pages 82-86 of the Bundle. The account is in the name of Zonesite Ltd and there is no evidence that this is a trust account as required by law. Mr Freed stated that the maintenance of the Building was funded by money he had deposited in the account in view of the substantial arrears. Any funds from the long leaseholders should be held in a trust account and funds deposited by the landlord should be clearly shown as separate from the long leaseholders' funds. Some of the bank charges relate to a charge for drawing cash at branches, for quite large sums. There is no documentary evidence of the status of Zonesite and the Tribunal does not consider that it is appropriate to pass charges for this account to the long leaseholders and the bank charges will be disallowed.

### **DECISION**

22. The Tribunal finds that the disputed invoices are all properly payable. The accountant's fees, the insurance premiums and the management fees charged by Granvilles are allowable in full. The bank charges and the management fees charges by the Respondent are disallowed in full. The parties agree that there have been serious problems regarding the management of the Building and that this has resulted in withholding of service charges and the inevitable decline in the condition of the Building. The Respondent has recently acquired the Building and it is important that a dialogue commences between the Respondent and the long leaseholders to enable the Respondent to undertake the necessary works to put the Building into the condition that all parties would like and this will, hopefully, lead to a better relationship between the Respondent and the long leaseholders. Mr Cole must appreciate that the Respondent faces problems in maintaining and managing the Building when there is a large scale refusal to pay monies due when the Respondent only receives a very modest return in grounds rents from the Building.

### **Section 20C of the Act**



23. An application was made by the Applicant for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Tribunal considers that in all the circumstances it would not be appropriate to make such an order.

CHAIRMAN.....

DATED: 30<sup>th</sup> November 2006