

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AP/LSC/2005/0335

IN THE MATTER OF FLAT 19 STAPLETON HALL, 5 STAPLETON HALL ROAD, LONDON, N4 3QQ

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

BETWEEN:

STAPLETON HALL LIMITED

Applicant

-and-

**(1) AHMET MUSTAF MEHMET
(2) GULSEN MEHMET**

Respondents

THE TRIBUNAL'S DECISION

Background

1. Unless stated otherwise, the page references herein are to the pages within the Applicant's bundle of documents.
2. This is a claim that was initially brought by the Applicant in the Clerkenwell County Court to recover various service charge arrears accrued from September 1996 to September 2005 in the sum of £10,482.22. At the hearing this sum had been amended to £7,303.87. By an Order of District Judge Stary dated 23 September 2005, the matter was transferred to the Tribunal for a

determination to be made pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of the Respondents liability to pay and/or the reasonableness of various service charges claimed by the Applicant.

3. The Respondents are the lessees of the subject property by virtue of a lease granted to them by Lovell Homes Limited dated 20 September 1990 for a term of 125 years from 1 October 1988 ("the lease"). By clause 4(iii) of the lease, the Respondents covenanted to pay to the Lessor one twenty-sixth of the costs, expenses and outgoings and matters mentioned in Part One of the Fourth Schedule. It is not disputed by the Respondents that the service charges claimed by the Applicant properly fall within Part One of the Fourth Schedule of the lease. Clause 4(iii)(a) of the lease provides that each service charge year shall commence on the 1 October of each year and that the Lessee shall pay an estimated contribution by half yearly payments in advance on demand.
4. Directions were issued by the Tribunal on 4 January 2006 and on 20 March 2006. The Respondents have failed to comply with any or all of those Directions. Accordingly, no evidence had been adduced on behalf of the Respondents.

Hearing

5. The hearing in this matter took place on 8 June 2006. The Tribunal did not inspect the subject property. Mr Bhose of Counsel appeared for the Applicant. The Second Respondent, Mrs Mehmet, appeared in person on behalf of both of the Respondents.

6. At the commencement of the hearing, Mrs Mehmet informed the Tribunal that the only service charge costs being challenged by the Respondents were those costs relating to gardening and repairs and maintenance/external redecoration of the property. The latter formed part of the overall repair and maintenance expenditure. Mrs Mehmet confirmed to the Tribunal that all of the other outstanding service charges were now agreed. Each of the disputed service charge heads of expenditure was considered in turn by the Tribunal.

(a) Gardening

7. The sums claimed in relation to this head of service charge expenditure for each of the relevant years and challenged by the Respondents were as follows:

<u>Year</u>	<u>Total Expenditure</u>
1997/98	£1,550
1998/99	£3,206
1999/00	£2,214
2000/01	£3,872
2001/02	£3,208
2002/03	£4,414
2003/04	£3,933

Of the total expenditure incurred, the Respondents service charge contribution under the terms of their lease was one twenty-sixth.

8. The witness called by the Applicant was Mr Fairs, a Director of the Applicant company and a Building Engineering Consultant by training. His evidence

had been set out in a witness statement dated 18 May 2006 (p. 167), to which a statement of truth was attached. Mr Fairs is also the occupier and lessee of Flat 14 in the subject property. His evidence in chief was that the Applicant company did not make a profit from the overall service charge expenditure. It seems that since 1997, unsuccessful attempts had been made to employ a contractor to undertake the gardening. The reason given, at paragraph 20 of his witness statement, is that the garden and grounds are approximately 3000 square metres, of which two thirds is comprised of shrubberies and the remaining one third is paths and lawns. There are also a number of trees, which require specialist maintenance from time to time. This layout has proved unattractive to gardening contractors because it is not easy to maintain. As a consequence, the gardening had been carried out on an ad hoc basis by various residents.

9. It was not until on or about 20 March 2000 that further attempts were made to employ a gardening contractor. Mr Fairs said that an estimate provided by 'Alfie Bines Gardens' at a cost of £3,271.20 per annum inclusive of VAT was initially accepted (p.236). However, he was not happy with this firm and shortly thereafter another contractor by the name of 'Green Earth Gardening Services' was employed to do the gardening at a cost of £250 per month for a term of 3 years (p.239). Mr Fairs said that no complaints had subsequently been received from the Respondents or any other lessees about either the standard or cost of the gardening.

10. In cross-examination, Mr Fairs said that competitive tendering for the gardening work had taken place, but the cheapest quote had not been accepted. The Respondents had only offered to obtain alternative quotes for the building insurance not the gardening. He had not invited them to nominate a gardening contractor because he considered that was part of the duty to manage the block of flats. Nevertheless, Mr Fairs submitted that the contribution required from each lessees for the cost of the gardening was approximately £10 per month and that did not appear to be unreasonable.

(b) Repairs & Maintenance/External Redecoration

11. The sums claimed in relation to this head of service charge expenditure for each of the relevant years and challenged by the Respondents were as follows:

<u>Year</u>	<u>Repairs & Maintenance</u>	<u>External Redecoration</u>
1997/98	£4,267	N/A
1998/99	N/A	N/A
1999/00	£1,582	N/A
2000/01	N/A	£5,875
2001/02	£10,500	N/A
2002/03	N/A	£11,311
2003/04	£2,651	N/A

Again, the Respondents service charge contribution under the terms of their lease was one twenty-sixth of the total costs incurred.

12. In evidence, Mr Fairs explained that the expenditure for repairs and maintenance in 1997/98, 1999/00 and 2003/04 was in relation to cyclical

maintenance of the property. The large expenditure of £10,500 in 2001/02 was for the complete re-carpeting of the common parts, new lead works at dormer windows costing approximately £2,000 and other sundry expenses. The expenditure of £5,875 in 2000/01 was to externally redecorate the window surrounds because they had deteriorated. The work was limited to the window cills and frames. He went on to explain that the expenditure of £11,311 was to externally redecorate the front of the courtyard block and did not duplicate the redecoration costs incurred in 2000/01.

13. The Tribunal was entirely clear as to the challenge being made by the Respondents in relation to the overall expenditure. Mrs Mehmet appeared, in terms, to submit that the costs had not been reasonably incurred because similar expenditure seemed to be incurred each year. In cross-examination, Mr Fairs said that all of the work had been competitively tendered and the lowest estimate or quote had been accepted. Indeed, prior to any of the work being undertaken, it was discussed at Directors meetings, which had been publicised to all of the lessees. The Respondents had not attended the meetings nor raised any objection at the time.

14. By way of example, in support of the Respondents general submission that some of the expenditure had not been reasonably incurred, Mrs Mehmet claimed that internal door closers fitted in 1989 had to be replaced again in 2001. Mr Fairs accepted that some of the door closers installed in 1989 had not been adequate. At paragraph 27 of his witness statement, he explained that this had led to some instances of burglary and vandalism as a result of

some of the doors not closing properly. It was on the recommendation of a crime prevention officer that eight new robust door closers were fitted to all external doors. The total cost of doing so was approximately £1,600.

15. Mrs Mehmet also claimed that routine maintenance did not prevent a leak occurring in the Respondents flat in the spring of 2001. Mr Fairs explained that the routine maintenance carried out in 2001 involved the replacement of some roof tiles and lead work. The leak to the Respondents flat had been caused by a defect in the box gutter located immediately above it behind the roof parapet. Apparently, the lead was defective and this could not have been known until the leak had occurred. Save for £1,000 for the lead repairs, the remaining cost of effecting the necessary repairs was met by the buildings insurance policy. The cost of the lead repairs was not covered by the policy because the insurers said that it was an inherent defect in the original construction of the building.

Decision

16. It was suggested by Mrs Mehmet, on behalf of the Respondents, that the absence of all or any invoices in relation to the disputed service charge expenditure claimed by the Applicant was evidence that it had not in fact been incurred. However, the Tribunal did not accept that suggestion. The disputed service charge expenditure claimed is supported by audited accounts for each relevant year until 2003/04. The Tribunal was satisfied that those accounts would have been prepared by reference to the relevant invoices. It was, therefore, not necessary for the Tribunal to look behind the audited accounts

and consider each and every invoice relating to the disputed amounts. In any event, the Tribunal was of the view that this level of disclosure by the Applicant would have been disproportionate having regard to the contested issues in this matter. The Tribunal was also of the view that this was not a point the Respondents could properly take having regard to their complete disregard and no-compliance with the Tribunal's Directions.

17. It should also be mentioned here that the Tribunal raised with Mr Bhose the issue of whether the Limitation Act 1980 applied to the service charge years exceeding 6 years prior to the issue of the claim in the County Court. Mr Bhose submitted because the service charge costs had not been reserved as rent under the terms of the lease, a 12 year limitation applied in this instance. The Tribunal agreed with that submission and found that the Limitation Act 1980 had no application in this matter.

(a) Gardening

18. Mrs Mehmet accepted at the hearing that gardening was necessary. However, she simply submitted that the cost was too high, that the Applicant had not properly tendered for the work and had not accepted the cheapest quote. No evidence had been adduced by the Respondents in support of their case. Having regard to the evidence given by Mr Fairs in rebuttal on this point, the Tribunal saw no merit in this submission. The Tribunal found Mr Fairs to be a credible and honest witness. He is an experienced Building Engineering Consultant and, therefore, has some relevant professional experience in the matters before the Tribunal. Materially, he is also a resident in the subject

property and had a vested financial interest in having any work to the property carried out properly, which also provided value for money. This was evidenced by his dissatisfaction with the original gardening contractor, Alfie Bines Gardens, and the appointment of Green Earth Gardening Services instead. Even if that was not the case, in any event, it is now settled law that a landlord is not obliged or under any duty to accept the cheapest quote in relation to any service expenditure provided that it was reasonable in the circumstances: see *Berrycroft Management Co. Ltd. v Sinclair Garden Investments (Kensington) Ltd* [1997] 1 EGLR 47, CA. The Tribunal did not consider that a cost of approximately £10 per month for each lessee in relation to the disputed gardening expenditure to be unreasonable having regard to the duties performed. Accordingly, the Tribunal allowed all of the gardening costs claimed against the Respondents as being reasonable.

(b) Repairs & Maintenance/External Redecoration

19. The Respondents submitted generally that it was not reasonable to incur this expenditure annually, especially if the same work had been carried out in the preceding service charge year. However, this submission lacked any particularity and was not supported by any evidence by the Respondents. The example relied on by the Respondents of the door closer costs incurred in 1989 having to be repeated in 2001 did not assist their case. On balance, the Tribunal was of the view that it could not have been reasonably foreseeable in 1989 that the door closers would fail by 2001. For the same reason, it could not have been foreseen that the lead to the gutter immediately above the Respondent's flat would prove to be defective in 2001 despite the cyclical

maintenance. This could not have been discovered until the leak had occurred. No other specific items of expenditure were challenged by the Respondents. The Tribunal accepted Mr Fairs evidence generally that the cyclical maintenance and repair work had been carried out when necessary and had not been repeated in any subsequent year as alleged by the Respondents. Accordingly, for the reasons stated, the Tribunal found all of the amounts claimed by the Applicant under this head of expenditure in relation to all of the relevant service charge years to be reasonable.

Dated the 14 day of July 2006

CHAIRMAN..... I. Mohabir.....
Mr I Mohabir LLB (Hons)