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LON/00BK/LIS/2005/0096

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD & TENANT ACT
1985. (AS AMENDED)**

Applicant: Ms Tara Ryan

Respondent: Cyril Freedman Ltd.

Represented by:
1. Basicland Registrars
2. Juliet Bellis & Co. Solicitors

Re: 195c Portnall Road, London W9 3BN

Inspection date: 8 March 2006

Hearing date: 8 March 2006

Appearances:
Ms T Ryan – Applicant in person
Ms Z Zorzin – Lessee of Flat 195D

For the Applicant

Mr C Lee - Solicitor, Juliet Bellis & Co.
Mr J Galliers – Director, Basicland Registrars

For the Respondents

Members of the Residential Property Tribunal Service:

Mr S E Carrott LLB
Mr M L Jacobs FRICS
Mr A D Ring

1. **Background**

This is an application under section 27A of the Landlord and Tenant Act 1985 for the determination of the liability to pay and reasonableness of service charges in respect of major works and managing agent's fees. The Applicant is Ms T. Ryan of 195C Portnall Road, London W9 (the subject property). There are two Respondents. The First Respondent is Cyril Freedman Ltd, the freehold owner of the subject property. The Second Respondent is David Glass Associates. The Second Respondent was joined to the proceedings by their own application.

2. The hearing of this application took place on 8 March 2006 preceded that morning by an inspection of the property. At the hearing the Applicant appeared in person. Mr John Galliers of Basicland Registrars, the current managing agents, represented the First Respondent. Mr Christopher Lee of Juliet Bellis and Co Solicitors represented the Second Respondent. Further documents and written representations were provided to the Tribunal following the hearing on 23 March 2006.

3. Although the present application has been made by the Applicant, there are earlier proceedings in the Central London County Court. Those proceedings include not only a dispute concerning the services charges in the present case but also a dispute between the First and Second Respondents as to whether or not the Second Respondent whilst the managing agent for First Respondent has acted in breach of contract. Some, but not all of the issues in the County Court proceedings have been raised before this Tribunal. However this determination deals only with those issues with which the Tribunal has concurrent jurisdiction with the County Court under section 27A of the Landlord and Tenant Act 1985. The question of whether or not the Second Respondent has acted in breach of contract does not concern this Tribunal. Nevertheless, what is clear is that the catalyst for the present application and indeed the County

Court proceedings is in fact the dispute between the First and Second Respondent. The Applicant to a certain extent has been caught in the middle and has thereby been left with little alternative other than to make this application to the Tribunal in order to minimise the costs to her in the County Court.

4. Facts

From the evidence of the Applicant and her witness, Ms Zorzin of Flat 195D (who has a shared ownership lease with the Notting Hill Housing Trust), the documents before the Tribunal and the submissions of the parties, the Tribunal found the following facts -

- (a) The Applicant acquired her interest in the subject property, 195C Portnall Road, London W9, in September 1998. The First Respondent was the landlord and the Second Respondent was the managing agent until 1 October 2002 when Basicland Registrars took over the management of the First Respondent's portfolio, including the subject property.
- (b) In March 1999 the First Respondent served notice pursuant to section 20 of the Landlord and Tenant Act 1985 of its intention to carry out major works to the subject property. The major works proposed at that time were roof works and external works including decorations. Payment in advance for the Applicant's share of the cost of the works was demanded in April 1999 and paid between February and May 2000. Indeed there is no dispute between the parties that the Applicant paid her proportion of the costs of the works by the time of their completion.
- (c) The works were completed by the summer of 2000 and the surveyors appointed to supervise the works and ensure compliance with the contract, who were Simmonds and Partners Chartered Surveyors, recommended the Second Respondent to make payment to the contractors.

- (d) The Applicant and Ms Zorzin were unhappy with the standard of certain aspects of the works. On 30 July 2000 the Applicant wrote to the Second Respondent making clear that the works were not carried out satisfactorily and that the lessees wanted to meet with the surveyor responsible for overseeing the works. There was no response to this letter by the Second Respondent. Instead, the Second Respondent instructed Solicitors to write to the Applicant demanding payment of the sum of £705.49 in respect of ground rent, service charge and insurance premium, which had become due since June 2000 with the threat of service of a forfeiture notice. Correspondence between the Applicant and the Solicitors ensued and on 10 October 2000, the Applicant wrote to the Second Respondent's Solicitors making it abundantly clear that she was unhappy with the standard of the works and that she required the Second Respondent arrange a meeting with the supervising surveyor. In fact no such meeting was ever arranged by the Second Respondent. The Applicant's complaints thus went unanswered. However the Second Respondent was perfectly aware of the situation because not only had their Solicitors been advised of the position but during 2001 the Second Respondent's senior property manager inspected the property. Notwithstanding that inspection, the difficulties surrounding the standard of the works were not resolved and on 16 January 2002, the Applicant was forced again to write to Mr Clarke, the Second Respondent's senior property manager. In that letter she reminded him that at the time of his inspection he had agreed that the work to the building had not been carried out in accordance with the specification and that he would attempt to resolve matters by contacting Mr Holton, the surveyor from Simmonds and Partners who was responsible for supervising the building works. A further letter was written on 31 January 2002 signed by four lessees and threatening to make an application to

the Leasehold Valuation Tribunal. There was no response to the letters dated 16 January 2002 and 31 January 2002.

- (e) The Applicant was forced to instruct Mr A D B Banyard MRICS of March and Parsons. He inspected the subject property and determined that the contested works had not been carried out properly. His report was dated 9 August 2002 and attached to the report was a number of photographs, which showed rotten timber window sills and sashes, defective putties, spalling paintwork and other defects to the exterior of the property. Mr Banyard concluded amongst other things that the works carried out under the decorating contract had no value whatsoever.
- (f) Although Basicland Registrars took over the management of the subject property on 1 October 2002, they became aware of the dispute concerning the external works shortly thereafter. They wrote to the Applicant on 13 March 2003 requiring her to pay any sums that were not in dispute. They informed the Applicant that if they could not resolve matters with the Second Respondent that they would have to issue proceedings against the Second Respondent 'but out of necessity such proceedings would have to be served on yourself as leaseholder'. Thus they realised that so far as the First Respondent was concerned, the true dispute was with the Second Respondent.
- (g) Despite the fact that Simmonds and Partners operated from the same address as the Basicland Registrars and the Second Respondent, it was not until 2003 that Mr Holton inspected the subject property again and as the Applicant commented some three years to the day of his last visit. Mr Holton did not give evidence in the proceedings before the Tribunal but both the First and Second Respondents acknowledge that there were shortcomings in the service that he provided.

(f) In 2005 the First Respondent issued proceedings in the County Court against the Applicant as First Defendant and the Second Respondent as Second Defendant. Following the commencement of those proceedings, the Applicant issued the present application on 11 October 2005.

5. **Submission of the Parties**

Ms Ryan submitted that although she had paid for the building works part of those works were not carried to a reasonable standard and that she should be responsible for paying all of the managing agents fees for the period when the Second Respondent was the managing agent. She had no complaint against the present managing agents. She submitted that the disputed works would have to be carried out again and that would inevitably involve her in additional cost.

6. The First Respondent did not comply with the directions of the Tribunal despite being represented at the pre-trial review by its managing agents Basicland Registrars. There was no disclosure of documents until after the hearing on 8 March 2006 and there was no written Statement of Case. No evidence, written or oral was tendered on behalf of the First Respondent. Nevertheless despite this irregularity, the Tribunal allowed Mr Galliers to make oral submissions and to produce copies of the accounts and invoices following the hearing. Mr Galliers conceded that the property had been poorly managed by the Second Respondent but nevertheless submitted that there was not sufficient evidence before the Tribunal to suggest that the major works had not been carried out properly. He argued that the Tribunal when inspecting the property were looking at it some five years after the event and therefore could not draw any conclusions as to the standard of the works when carried out. He further submitted that the First Respondent had been forced to take action against the Applicant in the County Court because it would otherwise have

been out of pocket and could not have proceeded solely against the Second Respondent. He made clear during his submissions however that the real dispute appeared to be between the First Respondent and the Second Respondent. In dealing with the individual service charge items he argued that a charge in respect of an asbestos survey fell within the terms of the lease and was properly chargeable to the lessees.

7. At the hearing, Mr Lee on behalf of the Second Respondent conceded that he was not in a position to call evidence because the person responsible for the subject property had since left the employment of the Second Respondent. He submitted that the Applicant was in fact only challenging the service charge costs for the year 2000, being in respect of the major works and by implication that the Tribunal should restrict its inquiry to this period only. He submitted that Simmonds and Partners were supervising surveyors and assumed they had followed the procedures recommended by the Royal Institution of Chartered Surveyors.
8. He urged the Tribunal to infer that the cost of the works was reasonable because they had appointed Simmonds and Partners to supervise the works and that they had only paid the contractors' invoice when the supervising surveyor had recommended that payment should be made. He stated that from the perspective of the Second Respondent, the Second Respondent had done all that it reasonably could do by instructing a chartered surveyor. If there was any fault then it should rest not with the Second Respondent but with Simmonds and Partners who had failed in their role as supervising surveyors.
9. Following the hearing further written submissions and documents were received from the Second Respondent which were copied to the parties. The Second Respondent further submitted that the works relating to the roof were £5,197.18.

10. **Determination**

The Tribunal found that although the roof works were carried out satisfactorily, the external redecoration was not carried out to a reasonable standard. The Tribunal based its finding upon the oral evidence of the Applicant and her witness Ms Zorzin, the contemporaneous correspondence and photographs, and the Tribunal's inspection of the premises on the day of the hearing. In particular the Tribunal accepted both the Applicant and Ms Zorzin to be witnesses of truth whose evidence was given with a view to assisting the Tribunal rather than simply supporting the Applicant's case. Indeed some two years after the works had been carried out, it was clear from the report of Mr Banyard that the external decorations were of no value to the lessees. The starting point therefore was how much the Applicant was liable to pay in relation to the major works.

11. From the accounts, which were provided to the Tribunal by the First Respondent, the total amount paid in respect of the works amounted to £9,828.87. The Tribunal determined that £5,228.87 of that sum related to the works to the roof leaving a balance of £4,600 in relation to the external redecoration. Accepting the evidence of the Applicant, the Tribunal concluded that it would disallow £3,000. Thus the reasonable amount for the works carried out would be £6,828.87 of which the Applicant's contribution under the terms of the lease at 30% would be £2,049.
12. In addition to this amount the Applicant was liable to pay a contribution with regard to the surveyors' fee. That fee amounted in total to £1,317.62. Mr Galliers on behalf of the Respondent agreed that the Applicant should not be liable to pay her contribution of £395.28.

13. It follows from what the Tribunal has said in paragraph 12 above that the Applicant had overpaid her contribution when she made her advance payment.

14. In addition to major works, the Applicant challenged the Second Respondent's fees as managing agents. The managing agents fees for the years in issue were as follows -

2000	£582.80
2001	£505.24
2002	£141

The Tribunal determined that in view of the failure of the Second Respondent to deal properly with the all of major works and the complaints, which were made thereafter by the Applicant that 50% of the fees were reasonable and payable. There was no reasonable excuse for the Second Respondent's failure to deal with what the Tribunal considered to be the manifest failure of the external redecorations. The Tribunal accepted that that Basicland Registrars did make attempts to rectify matters but were hindered by Simmons and Partners lack of cooperation. There was no evidence that the Second Respondent made any such attempts. Hence the Tribunal determined that the Applicant was liable to pay 30% of the reduced managing agents fees.

15. The final item in dispute was a fee for an asbestos survey of £434.75. This was incurred so that the First Respondent could comply with its statutory duty. This was a one off charge, which could, the Tribunal found, be justified under the terms of the lease. Although the Tribunal was concerned that the work was contracted to an associated firm of surveyors and then subcontracted out to a specialist firm, the Tribunal considered that this sum was reasonable and payable.

16. The Tribunal could not comment on the Applicant's counterclaim. This was outside of its jurisdiction. It noted however that once remedial works were proposed or carried out to the subject property, it would be open to the Applicant to raise the issue of liability and/or reasonableness of the cost of the same before the Leasehold Valuation Tribunal. The outcome of any such proceedings however could not be pre-judged.

17. **Costs**

The Applicant had paid an application fee of £100 and a hearing fee of £150. She had succeeded in her application and the Tribunal determined that the First Respondent should reimburse her for these sums. The Applicant's application had been prompted by the First Respondent's County Court action. The real dispute was between the First and Second Respondent and not with the Applicant. In truth the Applicant was never indebted to the First Respondent because she had overpaid for the major works from the outset and in respect of the costs of the supervising surveyors, In addition she was not indebted to the First Respondent for the services of the Second Respondent in the amounts that had been suggested because of the reductions that the Tribunal has made above.

18. Similarly the Applicant had made an application under section 20C of the Landlord and Tenant Act 1985 for the limitation of costs. That application would be allowed for the same reason.

19. During the course of the hearing the First Respondent conceded that the Applicant should be reimbursed in the sum of £250 in respect of the fee for the surveyor she had been forced to instruct. In those circumstances it was unnecessary for the Tribunal to consider a further application for costs.

20. **Decision**

Accordingly the decision of the Tribunal is as follows -

- (1) The reasonable sum payable in respect of the major works was £2049, the Applicant having paid in excess of this amount to the First Respondent in any event.
- (2) The reasonable amount payable in respect of the fees of the supervising surveyor is nil, this amount being conceded on behalf of the First Respondent.
- (3) The sum payable by the Applicant with regard to the Second Respondent's fees as managing agents for 2000, 2001 and 2002 is reduced to £184.35 and this sum is reasonable.
- (4) The Applicant is not indebted to the First Respondent in the sum of £1235.09.
- (5) The First Respondent shall reimburse the Applicant in the sum of £250 in respect of the application and hearing fees.
- (6) The cost of this application shall not be added to the service charge account.

Chairman:

Date:

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