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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/33UF/LSC/2007/0028

Property : **Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk**

Application 1 For determination of liability to pay service charges in respect of
a. Contributions to phase 2 of the major repair works, to include major internal works
b. The Receiver & Manager's recoverable fees in respect of phase 1 and phase 2 of such works [LTA 1985, s.27A]

2 To dispense with consultation requirements for qualifying works other than works under qualifying long term agreements [LTA 1985, s.20ZA]

Applicant : Robert Wells, of 2 Duke Street, Norwich NR3 3AJ, as Receiver & Manager

Respondents : The freeholder, London Land Securities Ltd, of 70 Tudor Road, Hampton, Middlesex TW12 2NF

All registered leaseholders, and their mortgagees

DECISION

Handed down : 20th August 2007

Tribunal : G K Sinclair, J R Humphrys FRICS, R Marshall FRICS FAAV

Hearing : Friday 17th August 2007 at the Sea Marge Hotel, Overstrand, Norfolk

Attending : Robert Wells, Receiver & Manager
Sarah-Jane Inglis, his solicitor, of Cozens-Hardy & Jewson LLP

Mr & Mrs Sharma, for London Land Securities Ltd (freeholder)
Mr Sidney Lobo, leaseholder
Mr Sonal Sharma, leaseholder
Mr & Mrs Roper, leaseholders

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Introduction : the issues

1. As a result of discussions taking place at the PTR on Wednesday 27th June 2007, and in particular the desire of the contract administrator, Mr Dale, that funds be in place before he commits to preparing a detailed specification for the Phase 2 works and tendering process, it was agreed that there was no need to depart from the statutory consultation framework and timetable. The only issues requiring determination by the tribunal at the hearing of the Receiver & Manager's application would therefore be :
 - a. The size of the Phase 2 budget which the tribunal should approve as an interim service charge item. The parties' observations on the future of the swimming pool, standard of finish, etc would thus be pertinent
 - b. The appropriate level of the Receiver & Manager's fees in respect of both Phases 1 and 2 of the major works (the 6% rate in the Management Order dated 30th May 2003 having been based on the assumption that the manager would deal with specification, tendering and contract administration for the pending major works himself).

2. Since the date of the PTR, however, a problem with the Phase 1 contractor, GRS, failing to progress the works had deteriorated. A promise to roof the conservatory and raise the ballroom to plate level by 29th June 2007 had not been met. On the recommendation of the contract administrator the contract with GRS was terminated, at which date most of the windows for the ground floor had yet to be ordered from the supplier, Trade Frames, and the brick pillars to support the ballroom roof were incomplete. As a result the rear of the building had been left insecure and the wooden ballroom floor exposed to the elements for many months. Further, the employer had two other outstanding issues with GRS :
 - a. Days before the PTR burglars had stolen the lead cladding from two high-level dormer windows. GRS needed to explain what progress had been made, if any, with its insurance claim in respect of this under the contract works policy
 - b. When replacing windows on the upper floors the contractor, rather than wait for the employer or leaseholders to provide access to individual flats, had broken down doors and, in some cases, caused damage to the doorframes and internal fittings within the flats as well. A claim against GRS had yet to be quantified.

3. Both the Receiver & Manager and the contract administrator were anxious that fresh contractual arrangements might be approved by the tribunal so as to ensure that Phase 1 be completed as soon as possible in order that Phase 2 need not be delayed. The view of the tribunal was that this sudden collapse of the Phase 1 contract, leaving vital works incomplete and the building insecure and not weather-tight when the parties were trying to focus on Phase 2 of the works, amounted to exceptional circumstances justifying the giving of less than 21 days notice of the hearing of an application under section 20ZA so that it could be combined with the hearing of the other applications.¹

4. The issues to be determined at the hearing were therefore, in logical order :
 - a. Phase 1 (completion) – which statutory consultation requirements, if any, should be dispensed with so that the works may be finished to a reasonable standard and as soon as possible

- b. Phase 2 (dry rot and internal works) – the reasonableness of the budget figure proposed by the Receiver & Manager to be collected from the leaseholders as an advance service charge payment
- c. The reasonableness of the Receiver & Manager's proposed fee for the major works (both Phases 1 & 2) of 4% of the contract price.

Applicable law

5. The overall amount payable for works of repair and management costs by way of service charge is governed by section 19 of the Landlord and Tenant Act 1925, which limits relevant costs :
 - a. only to the extent that they are reasonably incurred, and
 - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.The amount payable may be determined by the tribunal under section 27A.
6. Section 20 of the Act, as amended, requires the freeholder to consult with those liable to pay prior to the carrying out of any qualifying works. The consultation requirements and definition of "qualifying works" are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003.² Section 20ZA enables a leasehold valuation tribunal, on application, to dispense with some or all of these requirements.

Discussion and findings

- a. *Phase 1 (completion)*
7. In his letter dated 3rd August 2007 [bundle pages 48–49] the contract administrator, Mr Dale, proposed that instead of putting the balance of the Phase 1 works out to tender the contract be awarded to the former foreman used by GRS on the site, Mr Collingwood, at a price of £88,960 plus a further £46,000 (the cost of the remaining windows from the existing supplier) but less :
 - a. £10,200, expected to be recoverable from insurers for the stolen lead
 - b. £6,900, by altering the specification from Activ self-cleaning glass to a cheaper alternative.
8. After general discussion and inviting the views of all parties present the pros and cons of adopting this course of action were considered by the tribunal to be as follows.
9. Pros — As the ex-foreman on the site, Mr Collingwood (apparently trading as Stag in Holly Ltd) was familiar with the site and the nature of the task, and his price was unlikely to be beaten by any rival tender. Reducing the glass specification could bring the job in at the original contract price.
10. Cons — While Mr Wells was uncertain when Mr Collingwood appeared on the scene Mr Sharma believed that all his dealings on site had been with him since the works began. If Mr Collingwood was site foreman when the flat doors were broken down and damage caused internally this did not inspire confidence amongst freeholder and leaseholders. Mr Dale had not suggested any difficulty in obtaining competitive tenders (which might

² SI 2003/1987

have been the case, given the history and reputation of this building), and it was possible that others (perhaps including Mr Pooley – who owned one of the flats) might be willing to quote for the work, perhaps with a view to influencing any decision on Phase 2. So far as the glass was concerned, it would be better if the entire building enjoyed the same specification – especially if the alternative resulted in a continuing need to pay for window cleaning for part only of the building as an annual service charge item.

11. Adopting the mood of the meeting, the tribunal determines that it would be wrong to alter the glass specification. Leaseholders had an understandable lack of confidence in the ability of Mr Collingwood to manage the works properly, if he had been in charge when damage was done to the flat doors. Evidence on this point was insufficient. However, it is right that others be given the opportunity to tender for the work.
 12. Upon Mr Wells' belief that a specification for the balance of the work could be prepared within a week and tenders received within 4 weeks, the tribunal directs that within that period of one week any leaseholder may propose the name of a person from whom the Receiver & Manager should try to obtain an estimate for the carrying out of the proposed works. As both tribunal and parties consider it appropriate that the remaining windows should match in style and quality those already supplied, and as the existing supplier should already have the required measurements, Trade Frames (South East) Ltd shall be nominated in the specification as window supplier.
 13. If the parties can agree on a contractor within two weeks after receipt of tenders the Receiver & Manager should thereafter inform the tribunal office by fax or e-mail of the tenders and proposal and apply for dispensation. The tribunal will attempt to deal with the application in writing, and by return if possible.
- b. Phase 2 budget*
14. Those having made written submissions to the Receiver & Manager on the matters listed in paragraph B of the Directions issued following the PTR in June 2007 were largely of one mind, viz that the specification should provide for good quality carpeting, but paint rather than wallpaper in the common parts. With only one exception they also agreed that the cost of reinstating and thereafter maintaining the swimming pool was likely to be excessive, and the facility both under-used and expensive to insure. There are other indoor pools in the area, and the premises are but a short walk down the cliff path from the beach. Mr Wells estimated the cost of permanently filling in the pool as £8,000 to £10,000, which the tribunal considers to be, if anything, on the pessimistic side.
 15. Discussion at the hearing concentrated on Mr Dale's original budget figure [page 7] and the revised one prepared in conjunction with Mr Wells [page 9]. The latter totalled just under £505,000, including a contingency sum of £25,000. As the work required to treat dry rot infestation is extremely difficult to estimate in advance the tribunal agrees with Mr Wells that the £60,000 figure in the budget is likely to make significant inroads into the contingency fund. Although the amounts of £500,000 and £510,000 were discussed, it is right to observe that neither budget figure included any element for the swimming pool and that, overlooked by everyone at the time, the last paragraph of Mr Dale's letter to Mr Wells dated 3rd August [at page 49] states :

With regard to Phase 2 there has been discussion in the past about the need for

CCTV and floodlighting as well as the door entry system that is obviously required. There are also drainage problems that we had hoped to rectify in Phase 1. We recommend that these works are now undertaken in Phase 2 and recommend a further allowance of £20,000 is included to the budget estimate in that regard.

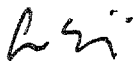
16. Managing access to the building has been a problem affecting the security of this building for many years. Electronic systems are not cheap; nor are they infallible in the absence of co-operation from residents. The tribunal considers that drainage problems cannot be ignored, so this item (which presumably arose during Phase 1) also must be added to the budget.
17. The tribunal therefore determines that a reasonable budget sum for the Phase 2 works is in the order of £530,000. The Receiver & Manager has the tribunal's authority to levy one thirty-second share of that amount from each leaseholder (and, in the case of the eight unbuilt ground floor flats, from the freeholder) by way of interim service charge.
 - c. *The Receiver & Manager's fee in respect of the major works*
18. Asked to justify the 4% which he proposed, the Receiver & Manager accepted that under the major works Phase 1 and Phase 2 contracts he did not have any obligation to prepare the specification or invite tenders; neither had he to supervise or administer the contract works and certify stage payments. Those tasks had passed to Mr Robert Dale, a qualified quantity surveyor.
19. However, Mr Wells listed his remaining tasks as liaising with leaseholders, getting money in, ensuring that it is in the joint account, and the responsibility of "theoretically" being the employer. He also had ongoing responsibility for the as-yet-unfinished project, liaising with Mr Dale and the contractors, and attending site on numerous occasions. As he was reminded by the tribunal, he remains responsible for the consultation process. This project had been more complex and time-consuming than might normally be expected, with the tensions between the parties concerned and the number of tribunal applications and court hearings required in order to recover the Phase 1 interim payments. Court proceedings were required in respect of some non-paying leaseholders – one of whom was dead, with an insolvent intestate estate, and another against whom a possession order had been obtained but the assistance of a County Court bailiff was likely to be necessary. Fees for this work were not being charged separately. According to Mr Wells, some 12 lever arch files have been filled since he took over management in 2003, and a lot of management time spent (although as it was expected that his work on the major works would earn a percentage fee he had not kept time sheets).
20. Mr Sharma and some leaseholders on whose behalf he spoke considered that a fee level of 4%, or just over £20,000, was not justified. Non-paying leaseholders should pay for the work in recovering payment from them. However, the tribunal considers that what Mr Sharma overlooks is that Mr Wells had incurred considerable management time in attending tribunals over the years, in repeated attempts to agree the specification of works and payment of sufficient funds up front so that Mr Dale could be paid and that he, as employer, could safely commit himself to a construction contract valued at more than £½ million.

21. As the tribunal pointed out, £20,000 over the 3 years since the first application to it about the major works amounts to less than £7,000 per year, or £140 per week. The first Receiver & Manager appointed had resigned within a year due to problems in obtaining co-operation from the parties. Who else would willingly take on this poisoned chalice?
22. Mr Wells' management is not beyond criticism. The tribunal would note in particular :
- a. Past failures to maintain adequate banking arrangements
 - b. Poor accounting
 - c. The non-repayment of sums specifically loaned by the freeholder pending receipt of funds from three defaulting leaseholders (due to a counterclaim for unpaid service charges which have yet to be agreed or placed before a tribunal)
 - d. A slow response (so far) to Mr Sharma's and leaseholders' lawful and proper requests for disclosure of the accounts, receipts and other documents supporting the service charge demands.

Despite this, he must be commended for his tenacity so far. This has been a difficult and thankless task, and the tribunal has seen no evidence that anyone else would be willing to take over the management of this building. The 6% fee mentioned in the original management order would be appropriate for a straightforward major works contract, where the manager's tasks can be concluded within a year or so.

23. Despite the various tasks listed above having passed to Mr Dale as contract administrator, the tribunal is of the view that Mr Wells' efforts (and insofar as Phase 1 is concerned they have not finished) deserve a fee level in the order of that proposed. However, in the tribunal's view much of the difficulty has now been overcome and the work required of Phase 2 should be less. The tribunal accepts that this may prove optimistic, and does not wish any extraordinary effort to go unrewarded. It therefore determines as follows :
- a. For the Phase 1 works (including those yet to be undertaken), although high, in the circumstances of this case a reasonable fee is 4% of the contract price(s)
 - b. For Phase 2, the tribunal's provisional view is that 3% is appropriate, as the job should be quicker and less onerous. However, if Mr Wells has difficulty in getting the money in and can produce, from documentation and time sheets, evidence that his task was much more onerous then additional payment shall be considered by the tribunal.

Dated 20th August 2007



Graham Sinclair – Chairman
for the Leasehold Valuation Tribunal