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**DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD  
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: 1-58 Manor Court, York Way, London, N20 0DR

Applicants: (1) L G Lipman  
(2) S R Lipman

Respondents: The Lessees

Application: 30 July 2007

Inspection: 20 September 2007

Hearing: 20-21 September 2007

Appearances:

**Landlord**

Mr M Yun  
Mr R Engel

Trust Property Management  
Trust Property Management

For the Applicants

**Tenants**

|                                    |             |
|------------------------------------|-------------|
| (1) Mr and Mrs B J & P M Dellevoet | Leaseholder |
| (2) Mr M A Grubb                   | Leaseholder |
| (3) Ms L Lee                       | Leaseholder |
| (4) Mr J Reeve                     | Leaseholder |

For the Respondents

Members of the Tribunal:

Mr I Mohabir LLB (Hons)  
Mr I Thompson BSc FRICS

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00AC/LSC/2007/0199**

**IN THE MATTER OF 1-58 MANOR COURT, YORK WAY, LONDON, N20  
0DR**

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

**BETWEEN:**

**(1) MR L G LIPMAN  
(2) MR S R LIPMAN**

**Applicants**

**-and-**

**THE LESSEES**

**Respondent(s)**

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**THE TRIBUNAL'S DECISION**

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**Introduction**

1. This is an application made by the Applicants pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination that the extent and cost of proposed major works to be carried out to the subject property in 2007 are reasonable.
2. The proposed major works are set out in a specification prepared by Benjamin Mire, Chartered Surveyors on behalf of the Applicants<sup>1</sup>. Following a tendering process, the estimated cost of the proposed works is placed at £119,044.60 inclusive of VAT and fees. It is accepted by the Respondents that the Applicants have properly consulted in accordance with the statutory

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<sup>1</sup> see p.138 of the bundle

requirements of s.20 of the Act. It was also accepted by them that the proposed works and the extent were necessary.

3. The Tribunal was provided with a specimen lease in relation to Flat 5 in the subject property ("the lease"). It is a matter of common ground that the lessees' contractual liability to pay a service charge contribution arises in the same way. The Sixth Schedule of the lease provides that the "maintenance year" shall be a 12 month period ending on 25 March each year. It also provides that the calculation of the maintenance charge contribution ("the maintenance charge") payable by each lessee shall be the percentage proportion of the rateable value of each flat in relation to the aggregate rateable value of all of the flats in the building.
4. By clause 4 of the lease, the lessee covenanted to pay the maintenance charge by equal instalments on the rent days, being the usual quarter days. The first instalment of the maintenance charge is payable on the first rent day preceding the commencement of the maintenance year, that is 25 March in each year. It is perhaps important to note here that the maintenance charge can only be recovered by the Applicants under the terms of the lease in this way and not, for instance, by a single lump sum payment. The maintenance charge can only be recovered in relation to the expenditure permitted under Part II of the Fourth Schedule of the lease. Again, it is a matter of common ground that the proposed works fall within this provision.
5. It seems that on 26 June 2007, the Respondents were served with a demand to pay forthwith the maintenance charge for the proposed major works by way of approximately £1,900. It was accepted on behalf of the Applicants at the hearing that the demand was incorrectly dated and should have been 26 August 2007 because the consultation process had not been completed at that stage. In the event that any of the Respondents wished to avail themselves of the credit facility offered by the Applicants, this would in effect add a further £800 to their overall liability.

6. Although the Tribunal's Directions dated 6 August 2007 directed those Respondents who opposed this application to serve a statement of case, none did so. The Tribunal only had before it a bundle of *inter partes* correspondence setting out the various complaints made by the Respondents. Those complaints included the timing and cost of the works, the lack of clarity in the contract documentation and their financial inability to meet the immediate demand for the maintenance charge. Subsequently, the Applicants issued this application.

### **Inspection**

7. The Tribunal inspected the subject property on 20 September 2007. The property, circa 1930s, comprises five separate blocks of self-contained flats, each block being either 2 or 3 storeys in height and situated on either side of Manor Way. Communal gardens laid to lawn with surrounding shrubs abound the front elevations, with each block approached via communal pathways and hence to entrance doors, with porch roofs over. Access to the rear of each block was afforded through these communal entrances. Each block of flats is housed under a combination of flat and pitched, tiled roofs and constructed in brickwork, with partially painted render finish. To the rear of each block, there are a series of steel and concrete constructed balconies. The Tribunal noted the poor condition of a number of the rear balconies with rusting metalwork and spalling concrete, cracked areas of rendering and other such defects, defective coverings to the entrance porch roofs and the generally tired condition of the external paintwork.

### **Hearing**

8. The hearing in this matter commenced on 20 September 2007. The Applicants were represented by Mr Yun and Mr Engel, both from Trust Property Management Ltd, the managing agents employed on their behalf. Of the 58 leaseholders, only 4 appeared in person at the hearing. These were Mr and Mrs Dellevoet, Mr Grubb, Ms Lee and Me Reeve. Each appeared on their own behalf. Although none had prepared or served a statement of case, nevertheless, the Tribunal took account of the fact that they were lay people and allowed them to make oral submissions.

9. Mr Grubb said that he had 3 main submissions. Firstly, that the reserve fund had recently been used to carry out internal repairs. If the proposed works had been of such importance, the internal decorations should have been deferred. Secondly, that the contract seemed to be unnecessarily cumbersome having regard to the nature of the proposed works. They were, in effect just “jobbing” repairs and there was no particularly large item of work. In addition, the contract lacked clarity. For example, it gave no explanation as to how the cost of the scaffolding was arrived at. Thirdly, the demand was made in an overbearing way and the cost could be paid by instalments. The contract could be split into 5 separate contracts because there are 5 separate blocks and the works commenced next Spring. This would allow the reserve fund to recover. However, Mr Grubb accepted that this would not provide any significant saving, but it would allow the financial position to improve. These submissions were largely repeated, in terms, by Mrs Dellevoet, Mr Reeve and Ms Lee.
  
10. When put to Mr Yun by the Tribunal, he accepted that under the lease terms, none of the Respondents had any liability to pay the maintenance charge at the present time. He also accepted payment could not be demanded by the Applicants by a single lump sum payment, as they had purported to do. Payment, under the terms of the lease, could only be made in any given maintenance year by 4 equal instalments on the usual quarter days. The Respondents contractual liability to make the first payment for the proposed works did not arise until 25 March 2008. Nevertheless, he wanted the Tribunal to determine the reasonableness of the estimated cost of the works.
  
11. Mr Yun submitted that to have the proposed works carried in 5 separate sequential contracts would increase the overall cost of the works because of inflation, the use of more contractors and incur more surveyor and supervision fees. This would also result in a different cost being incurred for each block, as the works required and the size of each block varied. The effect of this would be that the lessees of each block would pay varying amounts and this was not in the lease terms.

12. Mr Yun further submitted that none of the Respondents had produced any evidence of alternative cost and had nominated their own contractor although invited to do so. The Applicants had relied on its surveyor throughout. He could not explain how the contingency sum had been calculated because this had been done by the surveyor (who did not attend to give evidence). He confirmed that the surveyor's fees were fixed and would not vary. The Trust Property Management Ltd administration fees of £1,450 incurred were in relation to the service of notices, the tendering process, etc. Despite the fact that he had already conceded that the notices and demands had been incorrectly served, Mr Yun submitted that the cost had reasonably been incurred.

## **Decision**

### **(a) The Estimated Cost**

13. The only issue before the Tribunal was whether the estimated cost of the proposed works was reasonable. The Applicants surveyors, Benjamin Mire, Chartered Surveyors had prepared a specification of works dated May 2007 and had carried out the tendering process. Three contractors had been invited to tender for the work, but only two contractors, KBI Prestigious UK Ltd and R & B Decorators and Refurbishment, did so<sup>2</sup>.
14. On 26 June 2007, Trust Property Management Ltd served a s.20 notice on the Respondents proposing that R & B Decorators and Refurbishment be appointed as the contractor at an estimated cost of £130,340.85 inclusive of VAT and fees. On the same date Trust Property Management Ltd also served a demand of approximately £1,900, being the maintenance charge contribution for the proposed works, payable immediately. The Tribunal was told at the hearing that this was also incorrect and that payment would be required within 60 days of the demand.

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<sup>2</sup> see p.152 of the bundle

15. The s.20 notice resulted in numerous letters from the Respondents complaining about numerous matters. Given the level of dissatisfaction, on 30 July 2007, the Applicants made this application to the Tribunal. Following this, the Respondents made further numerous objections set out in the extensive *inter partes* correspondence<sup>3</sup>.
16. Mr Yun, whilst accepting that the cost of works was not recoverable as demanded, nevertheless required the Tribunal to make a determination in relation to the overall cost of the work. Although, the Respondents, either individually or collectively, had failed to properly articulate their arguments, the tenor of the main complaint made by them was that the cost was too high generally. To a large extent, the Respondents were reliant upon the Tribunal, as an expert body, to carry out that scrutiny on their behalf.
17. The estimated net cost of the proposed works, excluding VAT and fees, is £98,603. This is based on the tender submitted by R & B Decorators and Refurbishment by reference to the specification prepared by Benjamin Mire & Co. Of that sum, the Tribunal allows the sum of £48,249 as being reasonable. The Tribunal's determination is set out in the schedule annexed to this Decision. The Schedule sets out the sums allowed and disallowed followed by an explanation. The number references in the schedule also refer to the same number references in the specification.
18. The Tribunal should make it clear that, under the terms of the lease, the maintenance charge for the estimated costs cannot be collected by way of quarterly instalments in the current maintenance year because it has not been demanded in accordance with the lease. The maintenance charge for the proposed works can only now be recovered in the 2008/09 maintenance year by 4 equal instalments payable on the usual quarter days. The Tribunal also makes it clear that its determination is only in relation to the *estimated* costs that are the subject matter of this application. In the event that the Respondents remain unhappy with the final cost of the proposed works when

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<sup>3</sup> see p. 185 onwards

known they, or indeed the Applicant, are not prevented from making a fresh s.27A application in relation to the actual cost.

**(b) Surveyor's Fees**

19. The Tribunal determined that the rate of 12.5% applied to the estimated cost to calculate the surveyor's fees was within industry norms. When applied to the estimated costs allowed by the Tribunal above, it produced a figure of £6,031.13 plus VAT and this was the sum allowed by the Tribunal as being reasonable. If the final cost of the proposed works are prove to be greater then it follows that the surveyor's fees will be greater when calculated at a rate of 12.5% to the increased cost, if appropriate.

**(c) Trust Property Management Ltd Administration Fees**

20. The sum of £1,450 was claimed for past and future work carried out by Trust Property Management Ltd. The Tribunal accepted in principle that additional work is required on the part of this company in relation to the proposed major works. This includes the serving of appropriate notices, fielding responses from tenants and liaising with contractors, clients and other third parties. However, the Tribunal noted the arithmetical error on the s.20 notice and mistakes made by Trust Property Management Ltd in its misunderstanding of the lease terms and how the management charge could be collected from the Respondents. Having regard to these material failures, the Tribunal determined that the sum of £1,000 plus VAT was a reasonable administrative charge. The Tribunal was told that this was in fact a fixed fee charged by the company and would not increase in the event that the final cost of the work proved to be greater.

**Fees & Section 20C – Costs**

21. An oral application was made by the Respondents under s.20C of the Act that the Tribunal should give consideration to making an order disentitling the Applicant from being able to recover the costs it had incurred in these proceedings through the service charge account. The Tribunal was also invited to apply the same consideration in relation to the fees paid by the Applicant in bringing this application. The Tribunal determined both matters



together because the exercise of its discretion on both matters was largely the same.

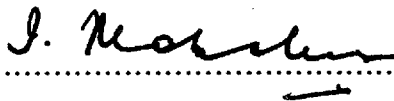
22. Mr Yun told the Tribunal that it had incurred costs in making this application and wanted to recover these through the service charge account. The Tribunal accepted his submission that paragraph 7 of the Fourth Schedule of the lease gave the Applicants the contractual right to do so.

23. However, the Tribunal determined that it should make an order under s.20C that the Applicants be prevented from recovering the costs it had incurred in these proceedings through the service charge account. The Tribunal also determined that the Respondent should not reimburse the Applicants the total fees paid to the Tribunal. In making these determinations the Tribunal had regard to:

- (a) the failure by Trust Property Management Ltd to meaningfully engage or deal with the substantive complaints made by the lessees. No meeting was offered by the Applicants and this was accepted by Mr Yun. It was assumed, perhaps wrongly, that any such meeting would not be constructive or well attended by the lessees.
- (b) that had the Applicants attempted to mediate with the lessees, both the application and the hearing may have been avoided.
- (c) it was clear that the application was prompted by the Applicants misconception that the managements charge contribution could be collected in one payment and, to that extent, the application was misconceived.

Dated the 7 day of November 2007

CHAIRMAN.....



Mr I Mohabir LLB (Hons)