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LON/00AG/LSC/2005/0106

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

Applicant: Dr A Wiggins and Mr Q Tyler

Respondent: West End & District Properties

Re: Queen Court 24-28 Queen Square

Application received: 29 April 2005

Hearing date: 12 January 2006

Appearances: Dr A Wiggins (Applicant)
Mr Q Tyler

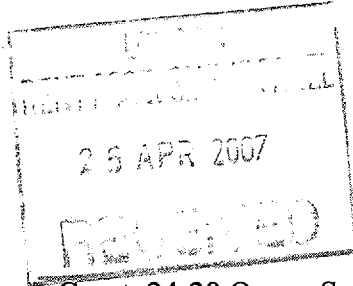
Mr J Salter (Respondent)

Members of the Leasehold Valuation Tribunal:

Ms L Tagliavini BA (Hons) Dip Law LLM

Mr B Collins

Mr D Wilson JP



LON/00AG/LSG/2005/0106

Queen Court, 24-28 Queen Square, London WC1n 3BB

1. This is an application made pursuant to sections 27A(1) and 20C Landlord and Tenant Act 1985 (as amended). The Applicants are Dr A. Wiggins of Flat 40 and Mr. Tyler of Flat 32 who purport to act on behalf of the as yet, unrecognised Queen Court Leaseholders Association. The Respondent is West End & District Properties Limited represented by Mr. J Slater of Moncton & Co Chartered Surveyors and managing agents on behalf of the Freeholder. Initially, the application concerned the reasonableness of the service charges for the years 2004-2005 and 2005-2006 and specifically the major works proposed to be carried out in those years. A separate application for the appointment of a manager was withdrawn with the appointment of Moncton & Co. as new managing agents. Consequently, new consultation procedures were entered into and fresh section 20 notices were served on the lessees in 2006. At the outset of the hearing Mr. Slater made clear that the works to the boiler, water tanks and phone entry system had now been omitted from the proposed works and the Tribunal is now asked to determine only the following questions arising out of the new (2006) consultation notices:

- (i) Whether the lift should be replaced or repaired?
- (ii) Whether the costs of replacing the lift are reasonable?

- (iii) Whether the section 20 notices served in 2006 in respect of the electrical rewiring comply with the statutory requirements?
 - (iv) Whether the costs of the electrical works are reasonable.
2. The premises concerned are a 1930's mansion block of 35 flats including the recent addition of three flats on the penthouse (seventh) floor. Floors one to six are served by one lift, which does not presently extend to the penthouse floor. Currently, there are two residents groups, which purport to represent the lessees' interests. Firstly the Queen Court Residents Association, a recognised group and secondly, the Applicants' group, which is not a recognised association. Documentation in the papers before the Tribunal established that the Queen Court Resident's Association were aware of this application and of the hearing date but had expressed their unwillingness to be joined as a party or to attend the hearing.
3. Additionally, the Tribunal was asked to direct that any payment for major works carried out should be "staged" to ensure a fair, installment system of payment. That however, is not a matter within the jurisdiction of this Tribunal and is not an issue that can be decided upon in this application although the terms of the lease should be consulted for any provision made for the method of collection of service charges.
4. At the hearing the Tribunal had before it two bundles of documents, one from each party. However, the bundle of documents produced by the Applicant was not numbered and of limited use although the Respondent had also produced its own

numbered bundle of documents, which helpfully included the relevant documentation, referred to and relied upon by the Applicant.

5. As a preliminary matter Mr. Salter expressly stated that he withdrew the section 20 notices served in 2004 and 2005 and sought only to rely on the section 20 notice served in 2006. The application was amended by consent of the parties to include an application for the Tribunal to consider the validity or otherwise of the section 20 notice served in 2006 and the reasonableness of the proposed works. It was said the accounts for the service charge year 2005/06 were currently with the auditor to produce a final account the hearing. No final document had yet been produced in respect of the service charge year 2004/ 2005 and therefore the Tribunal adjourned these issues for further directions as appropriate.
6. In evidence Mr. Salter told the Tribunal that the works intended included works to the electrical wiring in the common parts; the replacement of the boiler and water tanks; the installation of a fire alarm system in the common parts; the installation of an entry phone system and the replacement of the lift but that the redecoration of the common parts and exterior were now intended for 2008.
7. Mr. Salter told the Tribunal that the developer of the penthouse flats had not wanted to run the lift up to the seventh floor but had put in new water tanks above the lift motor room although these had not been a charge to the leaseholders. Mr. Slater stated that the company maintaining the entry phone system would replace the panel in the front door. On being questioned about how service charges are calculated Mr.

Slater stated that any reductions arising from the addition of three flats were pro-rated benefiting the other flats equally in reducing the service charges.

8. On the subject of the lifts, Mr. Slater stated that a number of tenders had been sought although EDLS were not re-invited to tender. Their previous tender had been unacceptable as not being of comparable quality to the others and the intention was now to contract with Langham Lifts to replace the current existing lift as this was the cheapest quote and in fact cheaper than refurbishment of the lift; i.e. £69,265 and £75,987.00 respectively. Of particular concern were the old style slam doors, which had the potential to cause serious injury to lift users and were subject to recommendations made by the lift insurers Allianz Cornhill in 2006. Mr. Slater stated that the replacement of the lift doors would necessitate a replacement of the lift motor and gears to accommodate the new doors, although he conceded that no specification on the recommendations issued by the lift insurers had been drawn up and sent out for tender on that alternative works basis. Mr. Slater stated that there had been no reported incidents with the lifts although some work was required to ensure it stopped properly on all floors.

9. Mr. Slater told the Tribunal that it was intended to contract with Lingfield Electrical to carry out the proposed works to the common parts with the intention that the building would be rewired up to each lessees' front door. Every flat would be checked to ensure that wiring is safe and where not safe, that lessee would be given the option of having a quotation produced for any extra works required. If not made safe, the new electrical wire would not be reconnected to the flat electrical wiring.

Mr. Slater told the Tribunal that currently there was no fire alarm system at all in the building and it was intended one would be installed as a stand-alone system not connected to the local fire brigade.

10. Dr. Wiggins on behalf of the Applicants stated that the appointment of Dunwoodys was not satisfactory as it was felt that they had been previously hired by the Freeholder to deflect the cost of the roof development/penthouse flats onto the leaseholders. Dr. Wiggins accepted that there was a need for someone to oversee the contract but stated that she and other lessees felt that Dunwoodys were not best suited for the role.

11. Dr. Wiggins stated the nominated contractors EDLS, preferred by herself and Mr. Tyler were not contacted to re-tender for the electrical works and felt they should have been. Dr. Wiggins stated that she had assumed that once the re-tendering process was started they EDLS would automatically be contacted and so had not specifically requested that they be so contacted.

12. Dr. Wiggins referred the Tribunal to the lift insurance document from Allianz Cornhill dated 30th November 2006 which had made a number of recommendations in respect of the lift but nothing as extensive as proposed now by the Freeholder. Dr. Wiggins stated that the lift was not dangerous and did not need to be replaced but she was more than happy to have a number of minor items carried out as well as the recommendations made by the insurance company. Dr. Wiggins stated that in principle she did not have an objection to the lift going up to the seventh floor so long

as the developer paid for this extension and the burden did not fall on the lessees. Dr. Wiggins stated that she accepted the Schedule of Works recommended by the lift insurers and the recommendations made as being reasonable in extent.

13. Dr. Wiggins stated she did not object to the extent of the proposed electrical works but did object to their cost. She felt that some warning should be given to the lessees to warn them of the intentions of the Freeholder in the manner the works were to be carried out and that some sort of inspection of each flat should be carried out in advance of any works starting. Dr. Wiggins accepted the need for fire alarm installation works and the cost of these works as reasonable.

14. Mr. Tyler stated in his evidence that he felt that the choice of Dunwoody was not appropriate to manage the proposed project. When asked by the Tribunal to substantiate this opinion, Mr. Tyler was unable to do so with any concrete assertions or evidence to support them other than to say that there seemed to be an over familiarity between the Freeholder, the Queen Court Residents Association and Dunwoody. He accepted that he did not write again to the Respondent to nominate EDLS as contractor on receipt of the new section 20 notice, as he had assumed they (EDLS) would automatically be contacted. He accepted that the lessees' wishes to seek a tender from Swallow Lifts had been carried out who had quoted £84,923.00 to replace the lift but had refused to quote for its refurbishment.

The Tribunal's Inspection

15. On inspection of the subject premises the Tribunal noted the rather worn common parts and the old style slam door lift. The Tribunal noted the original electrical boxes seen in the basement and the cupboard on each floor housing the riser going through the building. No smoke or other fire alarms were apparent. The Tribunal noted the rather the stiff and heavy lift doors referred to by Mr. Slater although did not experience the lift missing or not aligning with the floors spoken about in evidence by Mr. Slater.

The Tribunal's Decision

16. The Tribunal finds that the section 20 consultation procedures in respect of the lift and electrical works have been carried out in compliance with the statutory requirements by the Respondent on behalf of the Freeholder. Although, the Applicants complained of their preferred contractor for the electrical works not having been contacted on the new round of consultation, it was accepted by them, that in fact they had not re-nominated EDLS but had assumed (wrongly) that their contractor would automatically be asked to re-tender without anything more from them. In the absence of any re-nomination it was not unreasonable for the Respondent not to have contacted EDLS again to submit a re-tender for the electrical works.

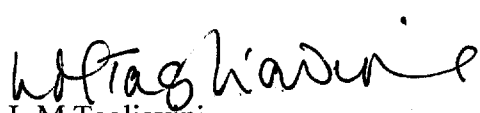
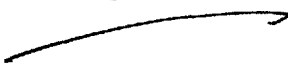
17. The Tribunal finds, and the Applicants accept that works to the wiring and the installation of a smoke/fire alarm system are required giving the antiquity of the

former and the absence of the latter. The Tribunal finds that four proper contractors were asked to tender and that the preferred contractor, (Lingfield) has been properly chosen as providing the lowest quote for the identified works. The Tribunal hope however, that the works will be implemented in such a way as to give every lessee a reasonable opportunity to ensure that their electrical wiring inside each individual flat will be properly reconnected to the new wiring once installed and that no lessee will be left without essential services.

18. The Tribunal finds that the works proposed for the wholesale replacement of the lift are not reasonable. The Tribunal would have expected the Respondent to have produced an (i) independent lift engineer's report on the condition of the lift before putting it out to tender; (ii) a comprehensive breakdown of the works required with costings and (iii) an alternative quote for in respect of the schedule produced Allianz Cornhill in order to have been able to make a clear and comprehensive argument as to why replacement works are more cost effective than the limited works recommended by the insurers. The Tribunal also notes that of the four lift contractors contacted only two tendered for the works. In this case, the Tribunal find it would have been reasonable for the Respondent to have sought alternatives in view of the large sums of money involved. Lastly, in the absence of any specific and identified complaint with some evidential basis in support, the Tribunal does not find that the appointment of Dunwoodys to oversee the major works project to be unreasonable in the circumstances.

19. The Tribunal finds that the lease does not provide for the cost of this litigation to be added to the service charges and that a section 20C application does not arise. In any event, had such an application need to have been considered, the Tribunal would determine that in all the circumstances of this application it is not reasonable that the costs of this litigation to be so added in view of the limited success of the Respondent's case.

20. Lastly, the Tribunal directs in respect of any outstanding issues and applications that the Applicant do, on or before by 18th July 2007 write to the Tribunal with a request for a pre-trial review of any outstanding applications, or indicating the withdrawal of any such applications. In default of such a letter/request the applications will be dismissed.


Chairman: L M Tagliavini


Dated: 18th April 2007.