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LON/00AH/LSC/2007/0239

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER LANDLORD AND TENANT ACT 1985
SECTION 27A**

Address: Flat 1 Homesdale Road, South Norwood, London
SE25 6JF

Applicant: Cormorant Limited

Respondent: Mr Neil McLune

Date of Application: 2 July 2007

Date of Hearing: 22 October 2007

Date of Inspection: 8 November 2007

Date of Decision: 20 November 2007

Appearances for Applicants: Mr C Case of Hampton Wick Estates
Mr T Deal of Counsel

Appearances for the Respondent: Mr N McLune
Mr R Champion of BPP Law School
Mr C Kane of BPP law School

Members of the Tribunal: Mrs B Hindley (Chair)
Mr C Norman
Mr N Packer

1. An application was made at Croydon County Court for arrears of service charges and ground rent in the sum of £4,020 31p. in connection with the subject premises
2. On 18 June 2007 the proceedings were transferred to the Leasehold Valuation Tribunal by order of District Judge Freeborough.
3. On 24 July 2007 a pre trial review was held at which the applicants sought a determination of service charges for the years 2004/05, 05/06 and 06/07.
4. The respondent had been granted his lease of the subject ground floor flat on 30 April 2001 by the former freeholder, Mr Peter Doyle, who had converted the terraced house into two flats.
5. In March 2004, having given notice to the respondent and to the leaseholder of the first floor flat, Mr Doyle sold the freehold to the applicants.
6. On 11 March 2004, following the sale, the management of the property was transferred from Avrasons to Hampton Wick Estates Ltd.

THE HEARING

7. At the hearing on 22 October 2007 the applicants sought £4,609.30p in respect of unpaid service charges and ground rent for the years ending 24 March 2005, 2006 and 2007. This sum was made up of alleged arrears of service charges of £562.66p, and unpaid service charges for the years ending 24 March 2005, 2006 and 2007 of, respectively, £1,688.77p, £1,218.88p and £1,038.99p, together with ground rent of £400.
8. Questioned by the Tribunal Mr Deal acknowledged that the lease contained no specific date for the end of the service charge year. He said that the landlords had adopted 24 March as a prudent quarter day.

Insurance Premium

9. Mr Case, a member of the National Association of Estate Agents and the managing director of Hampton Wick Estates, said that the landlords chose to insure most of their properties (approximately 150 and mainly in south London) through Princess Insurance Agencies. This meant that as agent he had little to do with the decision although he said that he would comment if the premium seemed excessive. He admitted that he had not carried out an insurance valuation of the property but said that the current sum insured (£280,219) had been provided by his firm on the basis of other similar properties.
10. He defended the use of Princess Insurance Agencies on the basis that they had good claims procedures – for claims up to £3000 they did not require a loss adjuster, the excess was generally £100 and there was no loading as a result of claims. The cover included buildings, terrorism and public liability.
11. He said that premium levels were based on post codes and that the subject property was in an area at high risk of subsidence. He pointed out that the premium for the building (two flats) had been £1,797.11p for the period 20/11/04 – 20/11/05, £1,957.76p for 20/11/05 – 20/11/06 and £1,383.23p for 20/11/06 – 20/11/07, thus demonstrating that the brokers sought competitive prices.

12. Mr Champion, on behalf of the respondent said that the issue was one of reasonableness. At the time that the present agents had taken over the premium for the subject ground floor flat had been £319.73p for the period 8/10/03 – 8/10/04 as had been disclosed to the new managing agents in a letter from Avrasons dated 23/3/04. It had soared to £898.56p for the period 20/11/04 – 20/11/05.
13. He questioned the need for terrorism cover in SE25 and produced quotations from Direct Line (£327.60p which also included contents), Nationwide (£339.91p), Zurich (£614.25p to include both flats) Groupama (£670.79p to include both flats), Acumus (£440.84p to include both flats) and Norwich Union (£1,620.62p to include both flats) based on a sum insured of £250,000 except for Direct line where the sum insured was £1,000,000 and Nationwide where it was £82,000. (The fact that certain of the quotations include cover for both flats is inferred from the respective sums insured of £250,000).
14. Mr Deal responded asserting that the issue was not one of reasonableness but whether the costs were reasonably incurred. In support of his submissions he handed in an extract from Woodfall and copies of *Berry Croft Management v. Sinclair Gardens Investments Ltd* and *Forcelux v. Sweetnam*. He said that a reason for the increased cost was the change to a commercial landlord and that it was legitimate for this additional cost to be passed on to the tenant. He maintained that it was reasonable for the landlords to insure all their properties through one insurer because it ensured simplicity and accuracy and that, in any event, the landlords were not required to choose the cheapest. He maintained that the premiums were competitive and that no sufficient evidence of alternative cover had been provided. He asserted that internet quotations were not always confirmed on formal application.

Management Charges

15. Management charges of £230, £240 and £247.50p were sought for the years ending 24 March 2005, 06 and 07 respectively. Mr Case said that no VAT was charged since the fees received were below the VAT threshold. He said that his firm managed some 250 units, mainly in turn of the century conversions, where the work essentially comprised the collection of ground rents and insurance premiums. He said that the charge was made on the accepted per unit basis and was the minimum charged by his firm. Up to £325 per unit was charged when there was more requirement for management input.
16. Questioned by the Tribunal about a reduction in fees which a previous Tribunal had determined in respect of his firm's fees in connection with the first floor flat at the subject property (LON/OOAH/45C/2007/0240) he responded that that fee would be raised again the following year.
17. He admitted that there was no contract in writing with the landlords or invoices showing payment of the fees, nor was there any communication with the leaseholders to inform them what services they could expect. He said that the charges covered everything that the landlords might require to be done and included insuring the building, keeping books of account and issuing demands for the payment of service charges and ground rent. He said he visited the property on a six monthly basis and kept a record of the visit in his diary. The

last visit to the subject property had been in May 2007. He offered no evidence in writing in support of these statements.

18. Mr Deal submitted that the fees were not out of line with those charged by other agents and no evidence had been provided to suggest otherwise.

Surveyor's Fee

19. In the year ending 24 March 2007 the service charge account had included a fee of £199.75p paid to Messrs Collier Stevens for a survey which they carried out on receipt of a letter from the managing agents dated 14 August 2006.
20. Mr Case explained that he had written to both lessees asking them to provide access on 7 September 2006, or an alternative date, but the respondent had not replied. The survey had been requested because of alleged dampness in the front elevation. The surveyor had found a leak in the waste pipe under the bath in the first floor flat but had been unable to gain access to the subject flat.
21. The respondent gave evidence that sometime in 2002 he had noticed fungal growth in the rear bedroom of his flat. The previous freeholder had promised to have it remedied. Whilst carrying out remedial works the appointed contractor had fractured a pipe in the bathroom and a flood had ensued. As a consequence the respondent had terminated the works and, with the change of freeholder, nothing further had been done. By September 2004 the new managing agents were aware of the problem but did nothing.
22. In 2005 there had been a flood from the first floor flat which had caused further damage to his flat. On 22 August 2006 an enforcement notice had been issued. However, at the same time the leaseholder of the first floor flat had sold and, again no action had been taken. The condition of the flat was such that he had moved out and went there only several times a week to collect his post.
23. Questioned by the Tribunal as to why he had not responded to the letter from the managing agents he denied receiving it and added that he had not been otherwise contacted.
24. At the conclusion of the hearing the Tribunal arranged with the parties to inspect the property on 9 November 2007

THE INSPECTION

25. The Tribunal inspected the subject property in the company of the respondent and Mr Way MRICS of Collier Stevens, who had been asked to attend in the place of the managing agents.
26. The Tribunal found the property to be a pre first world war, mid terrace, house of brick construction under a pitched tiled roof, set back only feet from the pavement and in very close proximity to a railway line at the end of the road. Some evidence of subsidence was visible. The original roof has been replaced with concrete tiling. The windows on the front elevation are sliding sash, single glazed and timber framed and at the rear there are timber

casements. The front elevation is partly rendered. To the rear of the property there is a single storey addition and small yard area.

27. Access to the subject flat is via a very small shared hallway. Internally the subject flat comprises a front and a rear room with a narrow passageway leading to a kitchen which gives access to an internal bathroom, a further rear room and the rear yard.
28. Internally the flat is in very poor condition with evidence of significant dampness and movement in several areas. In addition part of the ceiling in the rear room has collapsed with the ceiling joists now exposed and it is evident that water is continuing to permeate. In the rear addition new plaster work to waist height was apparent throughout but dampness was still evident. Additionally, from the rear yard a series of holes in the wall of the rear addition, consistent with the possible installation of a damp proof course, are visible.

DECISION

29. The Tribunal accepts that the landlords are not required to obtain the cheapest insurance and that the test to be applied is whether the cost has been reasonably incurred. In the Tribunal's opinion this must mean that the premium cannot be significantly out of line with the market norm. Prior to the sale to the applicants the premium charged was £319.73p and on the sale it soared to almost £900.
30. Mr Deal argued that there were advantages in the landlords insuring all their properties with the same company and that the particular company offered particularly advantageous claims procedures. The Tribunal accepts that such benefits may exist but they are not persuaded that it is reasonable to obtain them at such a considerable cost to the leaseholder. Further, they do not accept Mr Deal's contention that no sufficient evidence of alternative quotations was produced. In their opinion with five of the six recent quotations offered suggesting premiums similar to that which was being paid at the time of the sale there was compelling evidence that the premiums subsequently charged were not reasonably incurred. In addition, no evidence was given to the effect that a commercial landlord under a block policy would have to pay more for insurance than an individual landlord, in support of Mr Deal's assertion to that effect. From the Tribunal's own knowledge and experience that is not correct.
31. In analysing the quotations received the Tribunal disregarded the highest and lowest quotations (Norwich Union and Acumus) and also that from Nationwide because the sum insured was too low. The resultant average was £323.37p. However, the Tribunal does not consider that this can be an absolute ceiling to insurance costs reasonably incurred and that an allowance of around 10% would be reasonable. Arithmetically, this would give £355.70p, say £350.
32. Accordingly, the Tribunal determines insurance premiums of £350 for each of the years in question which can be expected to include cover for terrorism.
33. The Tribunal accepts that a fee of £250 is a reasonable unit charge for a professional management service. However, at the hearing Mr Case offered no compelling evidence that his firm had managed the subject property to a satisfactory standard and the Tribunal's findings on their inspection reinforced

this opinion. Further, the Tribunal noted that Mr Case, although having considerable notice of the inspection, did not attend. In the circumstances the attendance of Mr Way, at an additional cost to the leaseholders, was understandable but the absence of Mr Case, without any explanation, reinforced the Tribunal's opinion that the leaseholders were not being provided with an acceptable service.

34. Accordingly the Tribunal determines that a reasonable management fee for the years in question is £125.
35. In the absence of any real challenge to the cost of the surveyor charged in the service charge year ending 2007, the Tribunal determines as reasonable and reasonably incurred his fee of £199.75p.
36. The result of all of the above is that the Tribunal determines as reasonable, reasonably incurred and, therefore, payable service charge costs of £475, £475, and £574.88p for the service charge years 2004/05, 2005/06 and 2006/7 respectively.
37. The Tribunal makes no determination in respect of the alleged arrears of £562.66p since no evidence in support of this amount was provided by the applicants at the hearing and the matter was not pursued.

APPLICATION UNDER SECTION 20C

38. On the basis that there might well not be a clause in the lease allowing the applicants to add the costs of the application to the service charge, Mr Deal sought to persuade the Tribunal that there was no need for such an order. However, he further argued that if that suggestion did not find favour no order should be made since the application had been properly brought and the respondent had not complied with the Directions.
39. The Tribunal considered that for the avoidance of doubt they should make an order under Section 20C. In coming to this conclusion they were mindful that the criteria to be applied was whether it would be just and equitable in all the circumstances. In their opinion it was because, whilst the proceedings were properly brought, much of the service charge costs had been determined as not reasonable and, in particular, the overall standard of service provided by the managing agents had been found to fall below an acceptable standard. Had the property been managed to a professional standard the need for the application may not have arisen. In this connection the Tribunal noted that the attitude of Mr Case to Tribunal proceedings bordered on the contemptuous – see paragraph 16 above.
40. The Tribunal, therefore, determines that no part of the landlord's litigation costs in these proceedings are to be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholder.

CHAIRMAN. R. D. [Signature]

DATE 20/11/07.