

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MS/LIS/2007/0031

Applications under Section 20ZA, 20C and 27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Re: Flat 2 Dean Court, West End Road, Southampton, SO18 6TW

Applicants	John Grist
Respondent	Jamison Properties (G.H.) Ltd

Date of Applications	Section 20ZA Section 20C Section 27A Schedule 11	12 th October 2007 18 th October 2007 24 th August 2007 18 th October 2007
Date of Inspection	17 th January 2008	
Date of Hearing	17 th January 2008	
Venue	Independent Tribunal Service, The Barrack Block, Southampton	
Appearances for the Applicant	The Applicant in person	
Appearances for the Respondent	Mr Judd, Director of the Respondent	
Also present	Miss Chapple (RTM company), Mr P Chapple (Flats 1 and 7), Miss Dix (Flat 5), Mr R Firth (Flat 3), Mr G Tutte MRICS Chartered Building Surveyor.	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves P D Turner-Powell FRICS Mr J Mills	Lawyer Chairman Valuer Member Lay Member
Date of Tribunal's Decision:	31 st January 2008	

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that the following items of service charge ("the disputed service charge"), are reasonable and payable by the Applicant in respect of Dean Court, West End Road,, Southampton (the Flat) as follows;

Year	Item	Claimed £	Amount payable £
Undisputed items			
2005	Insurance	1,003.62	1,003.62
2005	Electricity	74.35	74.35
2005	Electrician	40.00 29.00	69.00
Determined by the Tribunal			
2005	G Tutte	218.00 846.84	218.00 Nil
2005	Drew Smith	7,813.75	2,000.00
2005	Hampshire Garden Service	12x 99.88 = 1,198.56 496.87 135.13 496.87 2,000.00 2,000.00	12 x 58.75 = 705.00 Nil 135.13 Nil 2,000.00 2,000.00
2005	Sub-total	16,353.89	8205.10
2005	Administration charge	2,453.08 (at 15% of 16,353.89)	820.51 (@ 10% only (calculated on determined items and undisputed items)
2005	Total	18,806.97	9025.61
2005	Amount payable by each flat	2210.96	753.20

Year	Item	Claimed £	Amount payable £
Undisputed items			
2006	Insurance	1,121.00	1,121.00
2006	Electricity	67.92	67.92
2006	Electrician	37.00	37.00
Determined items			
2006	G Tutte	899.21	Nil
		300.78	117.25
2006	Drew Smith	4,000.00	2,000.00
2006	Hampshire Garden Service	10 x 99.88 998.80	12 x 58.75 = 705.00
2006	Less decoration adjustment	- 5,813.75	Nil
2006	Sub-total	1,610.96	4,048.17
2006	Administration charge Sub-total	241.64 (at 15% of 1610.96)	404.82 (@ 10% only (calculated on determined items and undisputed items)
2006	Total	1,852.60	4,452.99
2006	Amount payable by each flat	254.73	556.62

2. The administration charge of £96.17 charged to the Applicant by invoice dated 25th January 2006 in respect of debt service recovery costs is not payable
3. The Tribunal makes no Order under Section 20C of the Landlord and Tenant Act 1985.

Reasons

Introduction

4. The application made by the Applicant under Section 27A of the Landlord and Tenant Act 1985 (the Act) is to determine, in respect of Dean Court (the property), whether certain service charges relating to the service charge years 2005 and 2006 are reasonable. The items in dispute are set out in the decision
5. The Applicant made two further applications:
 - a. To determine whether an administration charge levied against him of £96.17 is payable
 - b. For an Order limiting the amount that the Respondent could charge to service charge in respect of the Respondent's costs of the Tribunal proceedings.
6. The Respondent applied under Section 20ZA of the Act for dispensation of consultation requirements in respect of charges incurred by the Respondent for G Tutte Associates and Drew Smith for work done in 2005 and 2006.

Inspection

7. On 17th January 2008 the Tribunal inspected the Property in the presence of all the persons named in the heading to this decision.
8. The Property occupies a corner site fronting on to West End Road with a return frontage on to Dean Road in a residential area. It was built of brick about 40 years ago and comprises 6 flats in the main block and 2 flats in the attached block. The internal common parts comprise only the entrance hall and the brick/concrete stairways. To the rear is an unmade parking area with 9 garages and a bin area. On the corner is a grassed area and also a low fence largely fronting on to Dean Road.
9. The property is in fair condition for its age and character and appears to be in need of further works.

Hearing

10. The hearing of the matter took place on 17th January 2008
11. The Tribunal heard evidence from Mr Grist, Mr Judd, Mr Tutte and Mr Chapple, their submissions and considered the case papers so far as relevant to the issues.
12. The Tribunal had a copy of the Applicant's lease dated 2nd April 1963 granted by predecessors to the Respondent for a term of 999 years. It is understood that all the flat leases are in equivalent terms.
13. So far as material to the issues before the Tribunal, the lease provides for each flat to pay one-eighth part of the costs expenses and outgoings of the Respondent set out in paragraphs 1 to 7 of the Fourth Schedule to the lease.
14. The Fourth Schedule contains in paragraphs 1 to 4 provisions sufficient to cover all the service charge issues in dispute save those relating to administration charges and management charges. Paragraph 7 provides "An addition of 10% shall be added to the costs and expenses outgoings and matters referred to in the preceding paragraphs of this Schedule for administration expenses. When any repairs redecorations or renewals are carried out by the Lessor he shall be entitled to charge as the expenses or cost thereof his normal and reasonable charges (including profit) in respect of such work".
15. For the purposes of the following reasons the Tribunal defines expressions as follows:
 - a. "Main contract" means the works carried out in 2005 by Drew Smith as a result of the tender procedure carried out by Tutte as summarised in their letter to the Respondent dated 17th August 2005. In respect of this work Tutte had prepared a brief report dated 1st July 2005 concerning the condition of the property and a specification in July 2005. Tutte had charged "218.00 for the brief report and a further £846.84 for the subsequent specification, tendering and supervision work.
 - b. "Subsequent work" means the works carried out in 2006 by Drew Smith as set out in their two invoices dated 30th June 2006 for the sums of £2,267.75 and £2,232.50 respectively and for which Tutte had charged £899.21 (the balance of the invoice dated 13th July 2006.
16. Evidence and Submissions
17. The Applicant had submitted a written amended statement of his case dated 12th November 2007 on which he substantially relied but he also gave some oral evidence. Mr Judd largely relied on his oral evidence and submissions with some evidence from Mr Tutte as well. The respective cases of the parties are set out together as set out below.
 - a. Consultation for main contract and subsequent work.

Mr Grist:

 - i. There had been no proper consultation under Section 20 of the Act in respect of any work done in either years by G Tutte and Drew Smith. He submitted that either the three parts of the work carried out by Drew Smith

should properly be regarded as one contract so that in the absence of any Section 20 consultation all their costs should be limited to an overall total of £2,000. Alternatively, he submitted that the two invoices dated 3^{0th} June 2006 from Drew Smith actually reflected one contract of works so that in the absence of Section 20 consultation, a limit of £2,000 overall should apply to those invoices and Tutte's related fees and another £2,000 limit to the main contract works.

- ii. They had not been consulted about any of the work. The first he knew that the main contract work was to take place was the letter of 14th September 2005. Work then commenced within a few days. He did not take any action; he didn't ask the contractors what work they were going to do and didn't give any feedback – he took that reference in Mr Judd's letter to relate to the car park work. He just waited for the expected service charge account in January 2006; Mr Judd was difficult to get hold of.
- iii. He considered the main contract and subsequent work all to be one ongoing contract.

Mr Chapple supported Mr Grist's case. He submitted the work on the bin store was not urgent.

Mr Judd:

- iv. He said that he did not consider that any of the charges of Tutte and Drew Smith had required compliance with Section 20 procedure. He had written to the Lessees on 14th September 2005 to the effect that work on the main contract would commence in the week 19th September onward or thereabouts, the cost would be about £2,000 per flat, referring to further work on the car park (on which he requested feedback), asking for stage payments if necessary and requesting a prompt response to his letter. He said he had heard nothing in reply either immediately or in the course of the main contract or as to the standard of work until receiving the Applicant's application. He said that Drew Smith's tender was by far the cheapest as he understood they were short of work at the time. The work actually commenced on 26th September 2005.
- v. Mr Judd was not aware of the consultation provisions at the time, but in relation to the subsequent work did not consider the consultation provisions applied. He was unaware until Mr Grist's solicitors wrote to him on 22nd May 2006 – Mr Judd produced that letter.
- vi. He said that Tutte's fees for the brief report and specification and tendering process would have been necessary even if Section 20 did not apply; that the subsequent work was identified after the main contract work and anyway fell within the £2,000 limit for each invoice.
- vii. He also said that the fact that the 2005 accounts showed a "payment on a/c" did not reflect any linkage with the subsequent work.
- viii. Mr Judd had made the application for dispensation as all the items could come within the Section 20 requirements. The work done was urgent and necessary – being urgent partly because of the availability of the very low tender of Drew Smith for the main contract and partly because some of the work was itself urgent. The work was closely inspected by Mr Tutte and signed off by him as completed correctly. He had asked Tutte to look after the building in April/June 2005 – he wanted to ensure he complied with health and safety requirements.
- ix. He submitted that Tutte's fees did not form part of the sums to be taken into account for the purposes of Section 20 limits.

- x. In relation to the subsequent work he said that Drew Smith had not been instructed to send in two separate accounts which the tribunal had noted were dated on the same day.
- xi. He said that the bin store work was urgent because it attracted a lot of rubbish and he had decided to take it down and get bins from the Council. He had decided not to erect another fenced bin store as it would attract further refuse.
- xii. Mr Judd said that all the subsequent work had been identified after the main contract work was finished. Mr Tutte further said that he had no precise dates but the fencing had been identified separately. He had given instructions to the contractors on site and there was nothing in writing.

b. Reasonableness of charges for the main contract and subsequent work.

Mr Grist

- i. Some work had not been carried out to a satisfactory standard (as set out in his amended statement of case). He also said that if the property had been properly maintained his flat would be worth more than it is now.
- ii. Mr Chapple said the quality of the work was poor; surfaces had not been rubbed down before painting; fascias and soffits were put over the existing timbers. He felt that little preparatory work had been carried out.

Mr Judd

- iii. He submitted that the work had all been carried out to a reasonable standard and had been approved by Mr Tutte. **He was not aware whether Drew Smith were instructed to send in two accounts.**

c. Hampshire Garden Services charges

Mr Grist

- i. In his statement of case he referred to the actual gardening work as being for a small area of grass and weeding the car park; that it was charged through the year; it took about 45 minutes each time. The present RTM company was obtaining gardening services for £35 per month. He submitted that the HGS gardening contract constituted a long term agreement for consultation requirements purposes because of how long it had been going on.
- ii. He considered that the replacement of the front and rear windows were really one contract even though they had been done about a month apart.

Mr Judd

- iii. He said that the gardening charges were averaged over a year and included rubbish clearance work. There was no written agreement – he had employed them at the same rate for 3 to 4 years having enquired about cost from several people. HGS had seemed the most reasonable – their charge was based on an hourly rate. He had taken on HGS to try them: there was no arrangement for them to be permanent; if he had found them to be unsatisfactory he would have been able to stop them.
- iv. In respect of windows he said that HGS had been instructed to do only one double-glazed unit and subsequently instructed to do the other.

d. Administration charge & management charge

Mr Grist

- i. He submitted that the lease allowed only for an administration charge of 10% and not for an additional management charge at all. He also noted the management charge had been calculated partly on the administration charge which could not be correct.

Mr Judd

- ii. He accepted that the administration charge should only be 10%. He submitted that he should also be entitled to a management charge to cover all his costs and funding the work and that this charge should be 15% of the other service charges.

e. The Schedule 11 Administration Charge – debt recovery

Mr Grist

- i. He initially submitted that this was not recoverable as the service charges in question were in dispute. He subsequently accepted in reply to Mr Judd that the relevant service charge related to financial years prior to those before this Tribunal and so was not actually in dispute. So the charge was payable

Mr Judd

- ii. In reply to the Tribunal Mr Judd explained that this charge was for letters from his solicitor to lessees for debts. He accepted that he had not supplied the statutory information with the invoice for the administration charge.
- f. Section 20C costs. Mr Judd said he had been put to considerable expense by the proceedings and had been waiting for payment of service charges for years which he therefore had to fund. He submitted they were provided for by Paragraph 7 of the Fourth Schedule to the lease.

Consideration

18. The Tribunal considered all of the case papers to which it had been referred, the evidence and submissions received, its inspection and also took into account its own expert knowledge and experience in coming to its conclusions in this case.

Consultation

19. The Tribunal found that there had been no compliance at any time on any contract with the Section 20 consultation requirements. It accepted that there had been some communication in September 2005 regarding the main contract but that was too late and did not comply with statutory requirements.
20. The Tribunal found that the consultation requirements would apply so far as follows:
 - a. Main contract. Plainly the statutory requirements applied to the main contract. However, not only did they apply to Drew Smith's costs for the main contract work but the charges of Tutte for preparation of the specification and also further work on this contract, being an integral cost of the main contract work, are to be added to Drew Smith's costs in determining the sum payable under service charge for the main contract work. As there was no consultation, unless the Tribunal decided to dispense with the requirements under the Section 20ZA application, the costs of Drew Smith and Tutte relating to the main contract are all to be limited to payment of not more than £2,000
 - b. Tutte's fees for initial report. These are excluded from the consultation provisions. The work done was at most preparatory to carrying out of work and it would be reasonable to incur these as a matter of prudent property management each year.
 - c. Subsequent work. The Tribunal noted that there are some indications that this work might be linked in some way to the main contract but was not satisfied on the evidence that the subsequent work was actually part of the main contract such that these charges would be subject to the overall "cap" in paragraph 20a above. The Tribunal considered whether, as Mr Judd submitted, the two invoices from Drew

Smith of 30th June 2006 reflected different contracts such that any cap would apply to each of them separately. Taking into account all the evidence, the Tribunal found that the balance was that all the work covered by these two invoices constituted work under one contract. It took into account particularly:

- i. Want of any other documentary evidence from the Respondent or Mr Tutte
 - ii. That the invoices bear the same date
 - iii. That one invoice includes reference to "excavate fence posts" and the other to "supply & fix metal post and timber rail fence to boundary". It seems to the Tribunal to be very unlikely that the first work would have been done without any expectation at the same time that a new fence would be erected.
 - iv. It appears to the Tribunal that these two invoices, for £2,267.75 and £2,232.50, which were issued not long after Mr Judd became aware of the consultation requirements in May 2006, were probably prepared with a view to mitigating the consequences to the Respondent of one cap of £2,000 possibly being applied to the total of the two sums.
- d. Hampshire Garden Services
- i. Gardening. The Tribunal accepted that their work had continued for several years which might give the impression that it was a long term contract. However, the Tribunal accepted Mr Judd's evidence and found that it was simply a monthly contract which could be determined in any month. Accordingly those charges are not subject to consultation requirements.
 - ii. Double glazing. The Tribunal accepted Mr Judd's evidence that these two separate items of work were not instructed together and that there is no real evidence that they constitute one contract such that the cap might apply to the two together.

Application to dispense with consultation requirements.

- iii. Section 20ZA provides that the Tribunal "*may*"... dispense" if it is satisfied that it is reasonable" to do so.
- iv. On his own admission, Mr Judd was not aware of the law and apart from his letter on 14th September 2005 there is no evidence of efforts to inform the Lessees of work or cost and he fell very short of his obligations under Section 20. He pleaded that the main contract was urgent partly because of urgency of some work, which he didn't specify, and partly because of the low tender received. He may well have felt that accepting that tender would have assisted the Lessees but the Tribunal does not find that to be a good reason now to dispense with the consultation requirements.
- v. In respect of the subsequent work, the Tribunal took the same view and also took into account its finding that there was an attempt to avoid the consequences of non-consultation by trying to split the cost.
- vi. Section 20ZA gives the Tribunal discretion to dispense if satisfied it is reasonable to do so. The Tribunal was unable to find any sufficient reason to dispense with the Lessees rights to be consulted such that the Respondent should not suffer the consequence.
- vii. The result of failure to consult and the Tribunal's determination not to dispense is set out in the decision above
 1. Reducing Drew Smith's and Tutte's costs for the main contract work to a maximum of £2,000.
 2. Reducing Drew Smith's costs in 2006 to a maximum of £2,000¹.

e. Reasonableness of service charges.

- i. Save as set out below, the Tribunal considered that all the costs were reasonable for the work done and are accordingly payable.
- ii. Main contract. This work had been completed little more than 2 years before the Tribunal's inspection. The Tribunal was unimpressed with the state of the premises and agreed generally with the evidence for the Applicant that it was of indifferent quality. Had the Tribunal not in effect capped the amount recoverable for this work to £2,000, it might have reduced the amount charged by Drew Smith. However, it would not have done so below the figure of £2,000 as the quality of workmanship would justify at least that figure. Accordingly the Tribunal found that a charge of at least £2,000 for the standard of work done is reasonable.
- iii. Subsequent work. The Tribunal considered that the work done and the cost incurred was reasonable and would have been chargeable in full had the cap not applied.
- iv. Tutte's fees. The Tribunal considered the charges of Tutte for the preliminary report before the main contract, in connection with the main contract and the subsequent work were all reasonable. In 2006 they also charged £300.78 for a further brief report on the premises unconnected with all the previous work. For the same reason as mentioned above, the Tribunal found that it was reasonable to incur the fee for an annual report. However the Tribunal noted the invoice refers to time spent of 5½ hours. The Tribunal does not accept that such a report, including inspection, would involve that period of time. The sum charged is therefore not reasonable. The Tribunal considered £100 plus VAT to be a reasonable charge for the work done
- v. Gardening. The Tribunal noted that the RTM company is now paying £35 per month. The Tribunal, taking into account also its own knowledge and experience, considered that the charge made for a small area such as exists, even to include rubbish clearance, was unreasonable. For that work the Tribunal considered £50 plus VAT per month for every month was reasonable.
- vi. Double-glazing. The Tribunal was satisfied that the value of work done and the charge made was reasonable, but the sums are capped at £2000 per item because of the failure to consult under Section 20.
- vii. Administration and management charges.
 1. There is no dispute that the Respondent is entitled under the lease to charge a 10% administration fee. The question is whether it is entitled to levy an additional management fee. The Respondent says it is payable under paragraph 7 of the Fourth Schedule to the lease and in any event is only right that he should be able to charge to cover costs etc.
 2. The law is that for a Lessor to be able to recover charges, they must be provided for by the lease. This lease is not what the Tribunal would regard as a "modern" lease. The question is to be determined according to paragraph 7 of that Schedule. The second sentence is relevant. The Tribunal found it can be taken as to enable the Lessor to charge in the usual way for the cost to him of he himself doing the work and that he is not confined to the cost to him but would also be entitled to profit. Or it could cover the situation where the Lessor himself supervises works of repair redecoration or renewal.
 3. The Tribunal found that plainly the Respondent did not do any of the actual work and also did not supervise. To make any provision for

management charges on the basis of this sentence would be to duplicate all or part of the costs paid to Tutte and Drew Smith. Accordingly the Tribunal found that no management charge is payable simply because of the manner in which the lease is drafted.

f. Administration charge for debt recovery.

- i. Despite the Applicant's acceptance that the sum is payable, the Tribunal had to decide whether it is recoverable by the Respondent. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 requires that the sums shall be reasonable, that it is provided for in the lease and that Paragraph 4(1) of Schedule 11 to that Act is complied with. That paragraph requires that "a demand for payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges".
- ii. Mr Judd accepted that no such summary had been supplied with the demand. The Tribunal also finds no provision in the lease under which such a demand might be made. Accordingly the Tribunal, for both reasons, found the charge not to be payable.

21. Limitation of Costs

22. The Applicant sought an Order preventing the Respondent's costs of this application being recovered from the Applicant by way of service charge.
23. The Tribunal found that there was no provision in the Applicant's lease which was sufficiently widely drawn to enable the Respondent to recover their costs in connection with the proceedings from the Applicants. Accordingly, although the Tribunal would not necessarily have done so otherwise, no Order would be made
24. The Tribunal made its decisions accordingly.



A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor