RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UC/LSC/2007/0083

Re: Flats 1 & 2 Lansdowne House, The Esplanade, Bognor Regis, PO21 1TR

Applicants: **Mr S.A.Nichol & Ms M.J.Abbott (Flat 1) & Mr R. Imrie (Flat 2)**

Respondents: **Mr D.J.Poole & Mrs A.J.Poole**

Tribunal

Mr D.R.Hebblethwaite BA (Chairman)

Mr J.N.Cleverton FRICS

Ms J.Morris

DECISION

1. On 11 September 2007 Mr Nichol & Ms Abbott applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges in each of the years 2005, 2006 and 2007. Subsequently Mr Imrie applied to be joined as an Applicant and he was so joined by an order dated 26 October 2007. In the meantime a Pre Trial Hearing was held on 24 October 2007 when Directions were given for the conduct of the application. All three parties filed written statements of case with supporting witness statements and documentation.

2. On 17 December 2007 the Tribunal inspected the premises in the presence of the Applicants and Mrs Imrie, and the Respondents' solicitor and members of their managing agents' team. The flats of the Applicants are in a building with other flats and a restaurant on the ground floor, overlooking the sea front in Bognor Regis. The common parts on the ground floor were untidy and poorly maintained. The front entrance was scruffy and the rear yard was dominated by drainage from the restaurant including waste food in the open drain. Internally a light switch was not working. The decoration was more recent on the upper staircase.

3. There followed a Hearing at the Panel offices at 1 Market Avenue, Chichester, where the Applicants represented themselves (Mr Imrie joined by his wife) and the Respondents were represented by a solicitor, Miss Knowles. In essence the Applicants spoke to their written statements/submissions, commenting on the Respondents' statements/submissions and dealing with questions from Miss Knowles and the Tribunal. Miss Knowles called Mr Surman, the Property Manager of Parsons Son & Basley ("PSB"), the firm appointed as managing agents in June 2005 (having been appointed to neighbouring Little London a year earlier), and who had made a written statement. He explained how he had quoted Mr Poole (the co-Respondent) at the rate of £150.00 per unit and got the contract from him. He was asked a number of questions by the Applicants about how his fee was justified and a number of allegations of poor service were put to him, including lack of regular inspection and failure to reply to correspondence. Miss Knowles then called Ms Vines, PSB accountant, who said that she had discovered errors in various service charge accounts and redrafted them. She then produced in the Hearing what purported to be certified accounts for the years ending 31 December 2005 and 31 December 2006. They were signed by someone using the initials "PSB". Finally, Mr Poole was called to explain why he had found doing the management himself too much and had, therefore appointed agents. He had previously charged what he thought was reasonable for his time, bearing in mind he worked full time. Then he contacted three agents who gave similar quotes (verbal) and he chose PSB. He was advised he did not need to consult the tenants as the agreement was not for more than twelve months. As to this Mr Surman amended the RICS standard agreement as to duration and termination, but Mr Poole accepted that he would have to give three months notice to terminate.

4. It is not intended to record the details of the parties' cases in this Decision. Each party filed (and served on the other parties) a full bundle, clearly stating its case with supporting documentation. The main points put to the Tribunal in summing up were as follows:

   Miss Knowles

   - Interim service charge demands were in order and in accordance with the lease and should be paid. Final figures were similar to interim.

- Work carried out by Respondents was done properly. Sums demanded were not unreasonable and were expended.
- PSB had carried out the work for which they charged.
- The lease provides for a reserve fund

Mr Nichol & Ms Abbott

- If asked to pay for something, we expect to receive it.
- Work is urgently required in 2008.
- Bad attitude of PSB.

Mr & Mrs Imrie

- Number of errors in accounts unbelievable.
- PSB's charges on the high side. Not value for money.
- Level of management very poor.

5. The Applicants also applied for an order under section 20C of the Landlord & Tenant Act 1985 preventing the Respondents from recovering their costs of dealing with this application in the service charges. It was agreed that this would not be dealt with today but by written submissions to be made after the Decision on the principal application is known to the parties.

6. The Chairman thanked the parties and their representatives for their assistance and invited them to withdraw. The Tribunal went on to consider the application. Leaving aside the management fees for the moment there are no serious challenges to the amounts expended in the years in question. The bills referred to on pages 2 to 4 of the Nichols' submission all predated 2005 and cannot be considered. They say at the top of page 5 "..no work has been done since 2003.." The Imries simply joined in the Nichols' application; they did not make a separate one. Their submissions were largely of poor service , accounting errors, and lack of audited accounts. In scrutinizing the accounts for 2005 and 2006 (those handed in at the hearing) the Tribunal was able to trace in the Respondents' bundle the invoices which made up the items of "electricity", "maintenance and repairs" and "insurance". These were not challenged by the Applicants, but in any event seem reasonable to the Tribunal.

7. The Tribunal determined that the agreement between the Respondents and PSB is a *qualifying long term agreement* as defined in section 20ZA of the 1985 Act. The alterations made by Mr Surman to the RICS form do not have the effect he wanted. It is the Tribunal's view that the agreement is automatically renewed every twelve months and must be determined by three months' written notice. Accordingly it is for more than twelve months. Thus the consultation requirements of section 20 of the Act applied as the proposed fee was over £1,000.00 so that is the limit of what can be charged in the service charge unless the Tribunal waives the consultation requirement. In this instance the Tribunal is prepared to waive the consultation requirement. It accepts Mr Poole's evidence that he rang round and got what he regarded as a reasonable quote from PSB. The argument advanced by the Applicants concerning the big increase from what the Respondents charged when Mr Poole did the management himself to what PSB charge is in the opinion of the Tribunal fallacious. It was reasonable for the Respondents to employ an agent and the sum of £150.00 per unit is a going rate within the knowledge of the Tribunal.

8. The Tribunal then applied section 19 of the Act to the management fees in the years in question. Costs can only be taken into account in the service charge:

   (a) only to the extent that they are reasonably incurred, and

   (b) only if the services.....are of a reasonable standard

   and the amount payable shall be limited accordingly

   It is the view of the Tribunal that the management services provided in the years in question were not of a reasonable standard. The Tribunal found that this was an overall failing with the following specific points:

   - Lack of regular inspection of premises
   - Lack of repair to front entrance
   - Failure to repair/replace light switch
   - Failure to repair lock
   - Failure to deal with rear drain/restaurant waste

- Failure to reply to correspondence
- Incorrect accounts
- Failure to serve audited accounts

Accordingly, the Tribunal limits the amount payable for management fees in each year to one half of the amount claimed, i.e. £528.75 inclusive of VAT. The accounts for 2005 and 2006 which were handed in at the hearing must be amended to show this. The accounts for 2007 must show this when prepared. Interim service charge demands, insofar as they included an element for the management fees, should be amended, and the necessary adjustments made as to what the Applicants owe or should be credited, as the case may be, the Tribunal being aware that the Nichols have withheld payments whereas the Imries have not.

9. The Tribunal wishes to add to its decision by way of comment on the accounts produced by the Respondents' agents. It has already made a finding of incorrect accounts and failure to serve audited accounts (see para. 8 above). Unless this is rectified it will simply invite the Applicants to make further applications in future years. The Respondents are also referred to the provisions of sections 21, 21A, 21B, 22 and 25 of the 1985 Act. The accounts produced at the hearing would certainly not comply with these provisions.

10. As the heart of the application is bad management, the Applicants are reminded of the rights of tenants to apply to take over the management themselves or even to purchase the freehold. The Applicants may wish to obtain further advice about this.

11. The parties should make their written submissions on the application under section 20C within 14 days of the receipt by them of this Decision.

Decision dated 15 January 2008

David Hollingsworth

Chairman

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

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DECISION ON SECTION 20C COSTS APPLICATION

1. In their application dated 11 September 2007 the Applicants indicated that they wished to make an application under section 20C of the Landlord & Tenant Act 1985. At the hearing on 17 December 2007 it was agreed that this would be dealt with by written submissions to be made after the Decision on the principal application was known to the parties. That Decision was dated 15 January 2008. Subsequently the Tribunal has received a written submission from the first Applicants and the Respondents (in each case undated). There are no separate representations from the second Applicant. Copies of each submission will be attached to this Decision.

2. What the section permits is an application that all or any of the costs incurred by the landlord in connection with this case are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The section states that the Tribunal may make such order as it considers just and equitable in the circumstances. The correct approach for the Tribunal is to consider the conduct of the Respondents in order to decide whether it is fair for the Applicants, through their share of the service charge in due course, to contribute to the costs incurred by the Respondents in opposing the Applicants' application.

3. In a brief submission the Applicants rely on the Tribunal's findings against the Respondents. These are set out in paragraph 8 of the Decision. In a much longer submission the Respondents contend that this application should be dismissed on the grounds that many of the issues could have been dealt with had they been raised prior to the application to the Tribunal (and the County Court claim that preceded it). Clause 13 of the submission sets out over two pages a list of bullet points seeking to cast blame on the Applicants for various aspects of the case.

4. It is the Tribunal's view that the Respondent's submission in essence tries to go behind the Tribunal's decision on the principal application, and ignores the findings made by the Tribunal. The Respondent should be reminded that the Tribunal found that the management services provided were not of a reasonable standard, and that there was an overall failing; some specific points were listed. The Tribunal is of the view that in those circumstances it would be unfair for the Applicants to bear any of the Respondent's costs of the case.

5. Accordingly, the Tribunal grants the section 20C application of the Applicants; all of the costs incurred by the Respondents in connection with this case shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

David Hebblethwaite, Chairman; 25 April 2008