

CHI/29UC/LSC/2009/003

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

Address: 124A Sea Street, Herne Bay, Kent, CT6 8JY
Applicant: Southern Land Securities Ltd
Respondent: Mr D. J. Quirke
Application: 24 February 2009
Inspection: 23 June 2009
Determination: 23 June 2009

Appearances:

Landlord
Not applicable

For the Applicant

Tenant
Not applicable

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr C. Harbridge FRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UC/LSC/2009/0030

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

**AND IN THE MATTER OF 124A SEA STREET, HERNE BAY, KENT, CT6
8JY**

BETWEEN:

SOUTHERN LAND SECURITIES LIMITED

Applicant

-and-

MR D. J. QUIRKE

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of the cost of major works for external repairs and redecorations carried out to the subject property. The Respondent liability to pay those costs arises in the 2008 service charge year.
2. By a letter dated 4 September 2006, the Applicant's managing agent, Hamilton King Management Ltd ("Hamilton"), wrote to all of the lessees of the subject property informing them that it intended to carry out external repairs and redecorations in 2007 and served a Notice of Intention as part of the statutory consultation process required by section 20 of the Act.

3. On 19 February 2007, Hamilton then served a Notice of Estimates on all of the lessees in relation to the proposed works. The notice contained to estimates that had been obtained from contractors to carry out the work. The estimates were based on a specification of works prepared by Mr Bernard Smith, a Chartered Architect and Town Planner. The first estimate was from RDI Builders in the sum of £21,752 (no VAT). The second estimate was from John Green Decor in the sum of £42,740.87 plus VAT. Both of the estimates were exclusive of any professional and/or supervision fees. The lessees were invited to make written representations regarding the estimates.
4. On 13 March 2007, Mr and Mrs Sanderson, the lessees of two flats in the property, wrote to Hamilton generally disagreeing with the estimated cost of the proposed work. On 14 March 2007, Hamilton wrote to all of the lessees in response to the letter from Mr and Mrs Sanderson.
5. On 20 March 2007, the Respondent also wrote to Hamilton requesting an extension of time in which to consult with the other leaseholders regarding the perceived high cost of the work. On 21 March 2007, Mr Sanderson again wrote to Hamilton requesting that it reduced its supervision fees to 5% of the total cost. By a letter dated 22 March 2007, Hamilton agreed to this request. On 24 March 2007, the Respondent wrote to Hamilton informing them that he was going to obtain an alternative estimate from a reputable local builder, DVC Construction, based on the same specification of works.
6. The Respondent obtained an estimate from DVC Construction dated 9 May 2007 in the sum of £10,600. On 16 May 2007, Hamilton wrote to all of the lessees regarding this estimate stating that it was not based on the specification of works. By a letter of the same date, Hamilton wrote to DVC Construction asking it to do so. In a further letter to the lessees dated 25 May 2007, Hamilton stated that it had no objection to a contractor proposed by another lessee carrying out the proposed works on condition that all of the lessees signed a disclaimer that either the Applicant or Hamilton could not subsequently be held liable for breach of one or more covenants in the leases.

7. It seems that Hamilton did not receive the requested disclaimer by November 2007 and wrote to the lessees informing them that if they did not undertake the proposed works by 19 December 2007, then the Applicant will do so in 2008.
8. On 10 March 2008, Hamilton wrote to the lessees informing them that they had received an estimate from their nominated contractor which was in excess of £15,000. It seems that the contractor was South East Refurbishments Ltd who was nominated by Mr Sanderson. Hamilton also insisted that a surveyor be appointed to prepare a specification of work and to supervise the works. The lessees were also informed that the supervision fees would be 10% of the contractors tendered some and a further 10% will be added for Hamilton's management fee.
9. On 12 March 2008, Mr Sanderson sent written confirmation to Hamilton that he was prepared to agree a cost of £13,000 for the proposed works and was content for a surveyor to be instructed for a fee of 10% and a 5% management charge. By a letter of the same date, Hamilton agreed to this proposal. It should be noted that the original estimate in excess of £15,000 included additional work directly attributable to the two flats owned by Mr Sanderson for which he paid. The remaining balance of approximately £13,000 was the cost of the proposed works rechargeable to the service charge account.
10. Hamilton then undertook a further section 20 consultation process, which included the estimate provided by South East Refurbishments Ltd and ultimately this contractor was instructed to carry out the proposed works because it was the cheapest estimate in the sum of £13,005 plus VAT. The overall estimated cost including VAT and an administration fee of 5% was placed at £16,574.30.
11. Further lengthy correspondence then ensued between Hamilton and ES Law, a firm of solicitors instructed by the Respondent. Part of that correspondence related to his continued unhappiness about the estimated cost of the works. On 20 May 2008, the Respondent obtained his own estimate for £8,000 plus a contingency figure of £800.

12. Apparently the proposed works commenced on about 18 August 2008 and a certificate of practical completion dated 10 March 2009 was issued by a Mr Noad, the surveyor who inspected the work.
13. On 24 February 2009, Hamilton issued this application, on behalf of the Applicant, seeking a determination as to the reasonableness of the cost of the major works, being £16,574.30, of which the Respondent's service charge contribution is £4,143.57. It seems that the Respondent has paid a contribution of £2000 and disputes the remaining balance of £2,143.57.
14. As the Tribunal understand it, the Respondent does not contend that Hamilton did not carry out the appropriate statutory consultation required by section 20 of the Act nor does he appear to challenge the standard of the major works. In addition, the Respondent does not contend that he does not have a contractual liability *per se* under the terms of his lease to pay a service charge contribution.
15. The Respondent's case appears to be put in the following way. He puts the Applicant to proof that the scope of the works fell within the service charge liability. In the alternative, the Respondent appears to contend that some of the works may not have been reasonably incurred. In the alternative, the Respondent contends that the overall cost of the works was not reasonable. Each of these arguments is considered in turn below.

The Relevant Law

16. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,

*(d) the date at or by which it is payable, and
(e) the manner in which it is payable.*

(2) Subsection (1) applies whether or not any payment has been made."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

17. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly."

Inspection

18. The Tribunal externally inspected the subject property on 23 June 2009. The Tribunal externally inspected the subject property on 23 June 2009. No access to the interior of the subject property, or the perimeter of the building was facilitated. The subject property is an upper floor self-contained flat, being one of four similar units in a two storey detached building. The building was in the opinion of the Tribunal, built about 1900, and was understood to have been converted into its present configuration in about 1989. The construction is traditional with colourwashed rendered and brick walls, beneath pitched roof slopes clad in interlocking concrete tiles. Windows are framed in both uPVC and timber.

Decision

19. The Tribunal's determination took place on the 23 June 2008. There was no oral hearing and the parties did not attend. The Tribunal's determination is based solely on the documentary evidence before it. The statement of case filed on behalf of the Applicant does no more than provide a chronology of events. The statement of case filed by the Respondent advances no positive case and effectively puts the Applicant to proof as set out in paragraph 15

above. For the avoidance of doubt, the issues of financial irregularity raised in paragraph 5 concerning the Respondent's service charge account are not relevant to this application and the Tribunal had no regard to those matters. This application is limited to the Respondent's liability to pay and/or the reasonableness of the cost of the major works.

Scope of Works

20. The Respondent contends that some of the works carried out may have formed part of the individual tenant's repairing obligations. At paragraph 3 of this statement of case, the Respondent states that it may be that the works were properly carried out that only the amount charged is unreasonable, but he is unable to further particularise this argument because he asserts that he has been provided with insufficient information by Hamilton. In correspondence, the Respondent appears to express some concern about damp proofing works carried out to individual flats.

21. The original specification of works was prepared by Mr Bernard Smith, a Chartered Architect. The works proposed in the specification was largely abandoned at the behest of the Respondent and Mr Sanderson. Both complained that the scope of the works was excessive and which had resulted in the estimated cost being higher than was necessary. Paragraph 3.3 of the specification envisaged carrying out damp proofing works to Flats 124 and 126. The narrative estimate provided by the contractor who ultimately carried out the work, South East Refurbishments Limited, dated for March 2008 sets out the scope of the works undertaken. From that estimate, it is clear that the works were largely comprised of two major elements. Firstly, damp proofing and remedial repairs were carried out to Flats 124 and 126 Sea Street and 1a Clarendon Street. It should be noted here that the flat in Clarendon Street forms part of the subject property and is only referred to by a different address because of the corner plot it occupies. The second major element of the works concerned the external redecoration. The Respondent does not contend that this element of the works does not fall within his service charge liability. His argument appears to be limited to the reasonableness of the cost.

22. It follows, therefore, that the only element of the scope of the works that may fall outside the Respondent's service charge liability is the damp proofing works carried out to the various flats. On balance, the Tribunal was satisfied that the damp that was treated in these flats may be caused by either penetrating and/or rising damp. Possible causes are either the "blown external rendering" or a failure or absence of any damp proofing course. It is clear from the specimen lease provided to the Tribunal that these areas of the building are not specifically devised under any of the leases. The obligation to repair and maintain them, therefore, falls to the Applicant under paragraph 1 of Schedule 8 and the lessees, including the Respondent, have a contractual liability under paragraph 1 of Schedule 7 to meet the cost of any such works. As a matter of causation, if any of the remedial works required to individual flats as a result of the damp arising in this way, then the Applicant is also entitled to recover this cost under paragraph 2 of Schedule 8.
23. Having regard to all of these matters, the Tribunal found that the entire scope of the works that were carried out fell within the Respondent's service charge liability under the terms of his lease. Indeed, the estimate provided by South East Refurbishments Ltd expressly apports those costs in relation to Flat 126 which fall outside the tenants' service charge liability and accrue directly to Mr Sanderson.

Works Reasonably Incurred

24. At paragraph 3 of the Respondent's statement of case, he appears to put the Applicant to proof as to whether some elements of the major works had been carried out shortly before the disputed charges were raised. The Respondent seeks clarification regarding whether there has been any duplication of works and/or whether earlier works were not carried out to a reasonable standard thereby leading to increased costs for the tenants. At paragraph 7 of his statement of case, the Respondent develops this argument further.
25. As stated earlier, the two major elements of the major works were the damp proofing to various flats and the external redecoration of the property. Those works also form part of the original specification prepared by Mr Smith, a

Chartered Architect. It is clear that, having inspected the property, both he and South East Refurbishments Ltd considered that it was necessary to have these works carried out. Although the Respondent raises the issue of possible duplication of earlier works carried out and/or the standard of any such works, he had adduced no evidence of this even though he was able to sufficiently particularise those works at paragraph 7 of his statement of case. Having raised this issue, the evidential burden shifted to the Respondent to prove those matters and he failed to do so. His involvement regarding the major works commenced when they were proposed by Hamilton and he had sufficient opportunity to have, for example, a survey report prepared regarding the scope and cost of the proposed works. Moreover, it is clear from the estimate obtained by the Respondent's own contractor, Mr Sebastiani, that he considered the repair and redecoration of the external of the building was also necessary. His estimate was limited to the cost of carrying out this work because he was unable to enter any of the flats to assess whether any work was required internally.

26. Having regard to these matters, the Tribunal found that the works carried out were necessary and the costs reasonably incurred. There was no evidence before the Tribunal of any duplication of earlier works carried out to the property and the standard of any such works thereby leading to increased costs for the lessees.

Reasonableness of Costs

27. The Respondent essentially relies on the estimate he obtained from you his own contractor, Mr Sebastiani, dated 20 May 2008 in the sum of £8,000. He submits that this is a reasonable amount for the cost of the proposed works unless and until he is provided with full particulars of the works. It is not necessary for the Applicant do so. The Tribunal has already found that the scope of the works carried out was sufficiently particularised in the estimate provided by South East Refurbishments Ltd. They were the contractor nominated by Mr Sanderson who was a lessee. Furthermore, Hamilton had carried out the required statutory consultation under section 20 of the Act and, in so doing, had tested the costs in the market. Ultimately, the cheapest

estimate provided by tenant's contractor was adopted. The conduct of Hamilton in this regard is above criticism.

28. As to the estimate obtained by the Respondent, the Tribunal was of the view that it had little or no evidential value because it had not been prepared on a like-for-like basis because, for example, it did not comment at all on the necessity or cost of the damp proof works and was highly qualified. Even if the comparison is made between the respective estimates regarding the cost of carrying out the external decorations only, it appears that the estimate obtained by the Respondent is significantly higher.
29. Having regard to the evidence and using its own expert knowledge and experience, the Tribunal was satisfied that the cost of the works was within a reasonable range in relation to the work that was carried out. Accordingly, the Tribunal determined that the total cost of £16,574.30 including fees and VAT was reasonable.

Fees

30. Given the stance taken by the Respondent, the Applicant was obliged to bring this application to resolve this matter. The Applicant has entirely succeeded on all of the issues. Therefore, it is directed that the Respondent reimburse the Applicant the total amount of the fees paid by it to the Tribunal in making this application within 28 days of this Decision being served on him. That direction is made pursuant to Regulation 9 of the Leaseholders Valuation Tribunals (Fees) (England) Regulations 2003.

Dated the 20 day of July 2009

CHAIRMAN.....J. Mohabir.....
Mr I Mohabir LLB (Hons)