

LEASEHOLD VALUATION TRIBUNAL

In the Matter of Flat 3, 6 Shaftsebury Road, Southsea PO5 3JR

BETWEEN:-

Southsea Bubble Company

Applicant

And

Mr K Kombe

Mrs A Johnson

Respondents

Case Number: CHI/OOMR/LIS/2010/0/0014

Hearing : 11th May 2010

Tribunal: T A Clark (Chairman)

Mr D Lintott FRICS

Mrs M Phillips

Application:-

This is an application which commenced in the County Court by way of an action in respect of outstanding service charges. The claim was issued in the County Court on the 12th August 2009. An acknowledgment of Service was filed on the 26th August 2009 and a part payment made of £200 towards the claim. A response/Defence was filed on the 10th September 2009. A counterclaim was filed on the 20th October 2009 for £260 for "works undertaken by us for Southsea Bubble Company" and the matter was transferred to the Tribunal on the 15th February 2010.

The Tribunal noted that prior to this application on the 8th March 2010 a differently constituted Tribunal dispensed with the consultation requirements required by virtue of section 20 of the Landlord and Tenant Act 1985 [as amended] pursuant to section 20ZA of that Act in relation to the roof leaking and associated repairs .

The Law:

Section 27A of the Landlord and Tenant Act 1985 provides for applications to the Tribunal to be heard for a determination by that Tribunal as to whether a service charge is payable and if so -

- 1) the person by whom it is payable.
- 2) To whom it is payable.
- 3) The amount payable.
- 4) The date by which it is payable.
- 5) The manner in which it is payable.

In addition the Tribunal has the power to decide about the costs incurred for services, repairs, maintenance, improvements, insurance or management of any specified description and likewise as to -

- 1) Whom payable
- 2) By whom payable
- 3) Date payable
- 4) Manner in which payable.

Section 18 of the Act defines service charges and “relevant costs” and section 19 provides as follows;

“Relevant costs shall be taken into account in determining the amount of service charge payable for a period –

- (a) Only to the extent that they are reasonably incurred, and
- (b) (b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard.

The 1985 Act imposes consultation requirements upon a landlord/managing agent in respect of works to be undertaken.

Section 20 provides that where relevant costs incurred exceed the amount specified a limit shall be imposed upon the service charge which is recoverable unless the consultation requirements have been complied with or been dispensed with by the Tribunal.

This Tribunal noted the dispensation granted by the earlier Tribunal in respect of such consultation relating to works to be undertaken to works to the roof of the property.

The qualifying amount after which the consultation requirement comes into effect is £500 in respect of a particular item or works.

The lease:-

The lease in this case refers to the property comprising of 3 flats.

Clause 1 refers to the ground rent as being " from the twenty fourth day of June One thousand nine hundred and eighty six for the first forty years thereof the yearly rent of £50"

Clause 2 requires the Lessee "to pay the reserved rent and insurance at the time and in the manner aforesaid without any deductions" and further

"to pay all costs charges and expenses (including solicitors costs and surveyors fees and value added tax thereon) incurred by the Lessor"

Clause 2 (8)(b) (vi) provides that the service charge shall be payable by the Tenant ..." by dividing the total service charge by the aggregate of the rateable values (in force at the end of the year to which the account relates) of all the premises comprised in the Building and then multiplying the resultant amount by the rateable value (in force at the same date) of the Flat. "

Inspection:

An inspection took place at the property prior to the Tribunal hearing. Mr Salter for the Applicant was present as was Mr Kombe. Mrs Johnson was present for part of the inspection and met the Tribunal but did not participate in the inspection.

The Tribunal noted that the property was a four storey mid terraced property. There was a central entrance to Flat 2 (Ground floor) and Flat 3 (first and Second Floor).

The Tribunal noted scaffolding up to the rear of the property and significant works to the Lower ground flat. The actual cost of such works did not form any part of the Tribunal's determinations .

The hearing:-

The Applicant was represented by the sole Director Mr Salter and the Respondents acted in person. Both Respondents were present at the hearing.

All the parties agreed that the property comprised the Lower ground floor as being Flat 1, the Ground floor being flat 2 (occupied by Mr Salter) and the first and second floor as being flat 3 occupied by the Respondents.

The Applicant had prepared a Statement of Case which commenced at page 1 of the bundle prepared by the Applicant.

The Applicant requested confirmation from the Respondents as to which items of the charges levied were in dispute and the Tribunal agreed with this approach.

The Respondents confirmed that in relation to Paragraph 6 headed up Actual costs for the service year ending 25 March 2010 their position was as follows;

A – Building Insurance. This was not disputed.

B – Hearing fees to LVT regarding dispensation. The Respondents disputed that they should have to pay the entire cost of this.

C – Preliminary roof investigations. This item was considered reasonable.

D – Erecting Scaffolding. This was in issue.

E – Fire Risk Assessment. This was in issue.

F - Installing Fire Alarm. Reasonable to install but cost excessive and therefore an issue.

G – i) Advising on reinstatement. In issue.

ii) Advising on leak to flat 3. In issue.

iii) Producing Schedule of Works. In issue.

iv) Advising on extent of repair to roof. In issue.

H – Accountants Fees. Excessive therefore in issue.

The evidence: -

1. The Tribunal heard evidence from Mr Salter on each of the above items raised by the Respondents as being in issue on the day of the hearing.
2. Mr Salter told the Tribunal that no formal service charge had been collected since he purchased his flat in 2006. He referred the Tribunal to page 33 of the bundle for the years 2007 and 2008. He also drew the Tribunal's attention to the proportionate split of costs between the three flats. Historically this had been split as set out in the letter at page 33 of the bundle, this document having been prepared by the Respondents themselves when they were Directors of the Applicant Company.
3. Mr Salter took the Tribunal through each item in dispute and cross referenced to supporting estimates where available and gave accounts of how work had been commissioned by him on behalf of the Applicant.
4. In particular Mr Salter pointed out that there had been a period of time when the building insurance had lapsed due to non payment of service charges by the Respondents hence he paid and sought reimbursement. He also pointed out that the Applicant Company had failed historically to comply with the lease as, by way of example only, the outside of the building had clearly not been painted every 4 years as the lease required.
5. Mr Salter gave evidence about the leaking roof which had directly impacted upon the Respondents flat (and indeed only upon their flat) and the steps that had been undertaken to discover the precise nature of the problem and then rectify it. The Tribunal heard that one of the problems was the situation of the building which was mid terrace and with a high roof.
6. Mr Salter provided detailed evidence of having attempted to obtain estimates from more than one contractor, that he had on more than one occasion managed to negotiate reductions in price and as to how he had chosen which contractor.
7. Mr Salter also gave evidence about his attempted to engage the Respondents in the task of choosing contractors and referred the Tribunal to correspondence to this effect.

8. Mr Salter was cross examined by Mrs Johnson on behalf of both the Respondents. It was suggested that he had used contacts known to him and that this had adversely effected the estimates against the interests of the Respondents.
9. It was suggested that Mr Salter had been aggressive and overbearing in his dealings with the Respondents.
10. There was also an allegation that Mr Salter perpetrating a fraud in that flat 1 had been purchased at an undervalue and that work was now being undertaken and the cost would in due course be passed on by way of service charge. As Mr Salter was an architect it was suggested that he knew the developer/owner of flat 3 or the owners boyfriend (Mr Moffat).
11. The Respondent gave evidence through Mrs Johnson.
12. Mrs Johnson questioned the basis of apportionment between the three flats. The Tribunal referred her to page 33 of the bundle and that the % apportionment had used been historically at a time when she was a Director of the Applicant Company and reference was made to the lease.
13. Mrs Johnson commented on the various estimates provided by Mr Salter and challenged their authenticity in that she believed that many of the estimates were from people known to and connected with Mr Salter.
14. Mrs Johnson went through the various items which were disputed. She gave evidence of the strength of her feeling that the building insurance should not have been paid by Mr Salter despite the fact that it had lapsed. Mrs Johnson stated that by denying the Respondents the opportunity to pay when they could afford to this had breached their human rights, the Tribunals understanding being that the implication was that he had thus humiliated the Respondents.
15. Mrs Johnsons evidence concluded that the main issue of this case was that "life is not five star", that Mr Salter was dealing with the property with his "professional.hat on" and that this not real life. She further stated that Mr Salter wanted everything to be "gold standard" and that everything was being done in one go.
16. When asked by the Tribunal about the counterclaim which had been raised in the County Court Mrs Johnson said that she did not have any invoices available for work she had done for and on behalf of the Applicant Company nor did she had any time sheets available.

Decision of the Tribunal:

The Tribunal concluded that the consultation requirements had been dispensed with by a differently constituted Tribunal pursuant to Section 20ZA of the Act in relation to the works required to be undertaken to the roof and the obtaining of estimates and Schedule of works in relation thereto.

In relation to the other matters which made up the overall service charge the Tribunal was satisfied that the consultation requirements came outside the scope of the requirement to consult due to the individual amounts in each case.

The Tribunal decided that in relation to each and every item apart from those referred to below and over which it had jurisdiction that they were reasonably incurred and reasonable in amount and that Mr Salter had acted properly.

The Tribunal notes that it has no jurisdiction in relation to ground rent.

The Tribunal concluded that in relation to the costs of the application for dispensation made to the earlier Tribunal this Tribunal had available to it the written decision of the earlier Tribunal from which it was noted that no application had been made by the Respondents pursuant to Section 20C of the Landlord and Tenant Act 1985 that the costs of that application should not be regarded as relevant costs to be included in the service charge. In light of that earlier decision this Tribunal has decided that it cannot re-determine an earlier Tribunal's decision, this Tribunal not being an Appellate Tribunal and thus the Applicant can include those costs by way of service charge.

The Tribunal therefore concludes that all sums claimed, save the ground rent, are payable by the Respondents. In relation to the costs of the earlier application to the Tribunal this must be dealt with by apportionment between the tenants pursuant to the lease. Such sums are payable forthwith.

In relation to the issue of apportionment the Tribunal concluded that in the absence of rateable values being provided by either party on the face of it the historical method of

apportionment should prevail. In the event of rateable values giving a different conclusion then the parties should be able to agree the % apportionment as a matter of mathematics rather than determination by the Tribunal.

The Tribunal therefore transfers the matter back to the County Court for issues relating to ground rent, legal costs relating to the action in the County Court, for judgment and enforcement.

T A CLARK

CHAIRMAN

Dated 3rd June 2010