

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MR/LSC/2010/0074

Re: 6 Shaftesbury Road, Southsea, Portsmouth, Hants, P053JR

Applicant South Sea Bubble Company Limited

Respondent Miss V Link, Mr M Salter, Mr Kombe and Ms Johnson

Date of application 17 May, 2010
Date of Inspection 9 August, 2010

Date of Hearing 9 August, 2010

Venue RPTS Hearing Room, Chichester

Representing the parties The Applicant : Mr Salter
Mr Kombe for himself and Ms Johnson

Members of the Leasehold Valuation Tribunal:
M J Greenleaves Lawyer Chairman
Miss CD Barton BSc MRICS Valuer Member

Date of Tribunal's Decision: 19 August 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) for the following items for the year 2010/11 towards which the Respondents are required by their leases to pay (in contributions as set out below) are reasonable sums as set out in columns 3 and 4 :

Column 1	2	3	4
Item	Sum claimed by the Applicant	Reasonable sums Incurred	Reasonable estimated sums to be incurred
Building insurance	£582.00		£582.00
Accountancy	£500.00		£250.00 plus VAT
Repair to valley gutter	£1,869.00	£,1869.42	
Resolving rising	£3,632.00	£3,632.45	

damp to Flat 1			
Partial repair to chimney and stack on main roof	£560.00	£560.00	
Work to rainwater goods to rear	£560.00	£560.00	
Upgrading fire protection to a communal hall	£1,700.00		Nil
Scaffolding	£118.00	Nil	
External decoration	£1,963.00		£1,963.00

2. The proportions in which the above sums are payable (and which were not disputed) are: --
 - a. Flat 1 24.45%
 - b. Flat 2 31.21%
 - c. Flat 3 44.34%
3. Payments by Respondents for or on account of service charge are payable to the Applicant.
4. Payment on account (in such amount as the Applicant shall reasonably determine) of service charge is due, on valid demand, by 2 equal half yearly payments in advance on 24 June and 25 December in each year.
5. Future adjustment. On preparation of service charge accounts in accordance with the lease for any service charge year (as defined in the lease) the amount of any excess found to be due above payments made on account are due upon the service of a valid demand by the Landlord on the Tenant.

Reasons

Introduction

6. On 17 May, 2010 the Applicant applied to the Tribunal for determination of issues relating to the items of service charge referred to in the above decision in respect of the property known as 6 Shaftesbury Road, Southsea, Portsmouth (the property), namely the reasonableness of the charges, whether they are payable under the lease, by whom and to whom they are payable and the date on which they are payable.

Inspection

7. The property is of four storeys in the centre of a Victorian terrace of 3 similar properties and is constructed of brick and stone, partially rendered, under a double pitched and tiled roof. A valley gutter divides the front and rear sections of roof along the entire length of the terrace. The subject property has been divided into 3 flats. Flat 1, at lower ground floor level, is self contained with a private entrance doorway from a small front forecourt and with its own rear garden. Flat 2 is at raised ground floor level and shares a common entrance hall with flat 3, approached by an external flight of rendered stone and brick steps. Flat 3 is at first and second floor levels and incorporates a

loft conversion. The inner entrance doors to these 2 flats are each of painted, glazed timber with clear glazed panels above set into timber frames. Flat 1 is presently unoccupied, being in the course of renovation after works to remedy extensive dampness

8. The Tribunal inspected the internal and external common parts of the property and the interiors of each of the 3 Flats in the presence of Mr Salter (for himself and as director of the Applicant), Mr Evans (representing Miss Link) and Mr Kombe representing himself and Ms Johnson. The building appears to be in fair condition for its age and type. Some repairs have been carried out and it is likely that further repairs and re decorating may be required to common parts in the near future.

Hearing, Representations and Consideration

9. A hearing was held the same day, those attending being noted above. So far as relevant to our consideration and decision we noted the case papers and the evidence and submissions which we summarise as far as necessary below.

10. The law.

11. The following statutory provisions are relevant to our consideration and are either summarised below or set out in full as necessary.
12. Section 27A of the Landlord and Tenant Act 1985 enables the Tribunal to determine what items of service charge are reasonable, payable by whom and to whom and when they are payable.

13. The Lease.

14. We received a copy of the lease of Flat 3 which is dated 13 March, 1987 and we understand that so far as material to the issues for determination, the leases of all 3 Flats are in the same terms although we apprehend that the description of the demised Flats will be different as Flat 3 gains access from the communal hallway by a staircase leading up to the Flat which is laid out on the first and second floors of the property.
15. The lease is poorly drafted so that in some respects it is difficult to ascertain its meaning. We believe that the decisions we have made as set out in paragraphs 3, 4 and 5 above constitute a reasonable interpretation of the lease in respect of those matters. The lease provides for apportionment of service charges by reference to the rateable values but we understand that the percentages set out at paragraph 2 above have been used by agreement for several years and that apportionment was not disputed before us.
16. No representations were received from any Tenant other than Mr Kombe and these were by a written submission dated 6 August, 2010 accompanied largely by photographs. He also made some further comments at the hearing which we have also taken into account.

17. His submissions can be summarised as follows. He complains of:

- a. the resulting monthly service charges of about £420 which is excessive and unreasonable;
- b. Mr Salter was able, by professional knowledge and otherwise, to convince the Tribunal as to his case; he has been intimidating and harassing;
- c. Mr Salter has connections with trades people and otherwise whom he has asked to carry out work;
- d. from recent past experience of the Leasehold Valuation Tribunal process he has little confidence in it and has in the past been told by the Tribunal that some of his concerns were "outside the remit of the Tribunal";

- e. he was not consulted when Mr Salter obtain advice from a Mr Pope from the local council as to fire doors;
 - f. because of the works being carried out he has suffered considerable noise and interruption and other problems;
 - g. the use of bicycles has damaged the communal external steps;
 - h. reference to a metal bar surrounding the Bay window of Flat 2;
 - i. works to Flat 1 have caused damage to the front of the property and they should not be required to contribute to remedy damage caused ;
 - j. that it is stated in the "legal documents" that the property only requires the usual maintenance and upkeep charges within the next 5 years (seemingly relating to when he and Ms Johnson purchased their Flat 4 years ago;
 - k. that some of the work should be covered by the buildings insurance;
 - l. their personal cost of preparing for this case and other expenses which were not the subject of this present application;
 - m. poor communication by Mr Salter concerning proposed works.
18. Mr Kombe did not have further comment to make concerning Mr Salter's evidence.
 19. The Applicant company. Mr Salter is the sole director and secretary. He and Ms Johnson each hold 50% of the shares in the company. The company is the freeholder.
 20. Mr Salter told us that he is an architect by profession; that he has incurred administrative costs and the Tribunal fee which he is not passing on to the Tenants and on some works which might have required consultation procedures to take place, he has himself absorbed that part of the costs of some work to avoid the statutory need for consultation so that works could proceed more quickly; he himself funds the cost of service charge items out of his own pocket before recouping contributions from the other Tenants.
 21. We noted from the evidence that very little expense had been incurred on the property since 2003. Indeed, other than £1,160 in 2004 and £317 in 2006, there had been no expenditure other than paying insurance premiums. Whilst we might sympathise with Mr Kombe that the service charge he may now have to pay is very significant, that is probably largely for want of proper repair and maintenance of the building in previous years, resulting in an accumulation of necessary works. This matter is not one which we can, by law, take into account: the matters within our jurisdiction are whether charges incurred, or to be incurred, are reasonable and whether the services provided, works carried out, or to be carried out are of a reasonable standard.
 22. We also appreciate that to some extent Mr Kombe may rightly feel he has been living in difficult circumstances while work has been carried out, but that is an inevitable consequence of such works and is not something that affects our decisions in this case.
 23. Further, we are satisfied that Mr Salter has acted entirely appropriately in all his dealings with service charge related work and himself taken on much unpaid work and voluntarily accepted some costs beyond that which he would be required to pay towards service charge for his own Flat.
 24. We do not consider that there is any significant evidence to support a contention that any activity at the property has resulted in additional cost to service charges.

25. We note Mr Kombe's comment that he has been told by a previous Tribunal that some of his concerns were outside the remit of the tribunal. We regret to have to say that the same applies on this occasion in relation to his comments as noted above.
26. *We set out under each item of service charge, first Mr Salter's evidence in sub-paragraph a and our determinations in sub-paragraph b on that evidence and the submissions of Mr Kombe so far as material to the issues having also used our own knowledge and experience.*
27. Insurance premium £582.
- This estimate was based on the premium of £565 incurred in October 2009 to which he had added a small percentage uplift. The premium had been £607 in October 2008. He arranged insurance through a broker whom he understood tested the market regularly.
 - We were satisfied that this estimated premium for October 2010 was consistent with premiums for the previous 2 years and in our experience reflected the nature of this particular property. We were satisfied that the provision for this premium is reasonable.
28. Accountancy £500
- This provision is based on 2 invoices from accountants. One is dated 14 April 2009 for the preparation of service charge accounts, balance sheet and preparing a budget for the year 2009/10 for a fee of £250 plus VAT. The other is dated 9 February, 2010 for preparing company accounts and tax return for a fee of £150 plus VAT.
 - We were satisfied that the first of those 2 invoices could be used to estimate accountancy fees for the present accounting year relating as it does to preparation of service charge matters. The lease provides that service charges cover auditing service charges. We do not consider it covers work relating to the running of the Applicant company itself. That is a matter for the shareholders. Accordingly for accountancy fees we allowed provision of only £250 plus VAT for the present year as being reasonable.
29. Repairs to the valley gutter £1869.42.
- Mr Salter recounted all the efforts he had made to get this work done and that the consultation procedure in respect of it had been dispensed with by a previous Tribunal. He had initially obtained estimates for replacing the gutter with lead work but had taken into account Tenants' concerns about the cost and that they wanted a cheaper solution. He had done so.
 - Taking into account all the evidence and the documentation produced we were satisfied that the work done was to a reasonable standard and the cost was reasonable.
30. Resolving rising damp £3632.45
- Mr Salter recounted the history of this work, his obtaining reports and estimates, holding meetings with the Tenants and that the total costs incurred to be payable between the 3 Flats was £3632.45, Flat 1 having paid a further sum of £1080 plus VAT to make up the total cost of the work. Mr Salter had carried out the required consultation procedure.
 - We were satisfied on the evidence and documentation that the work was necessary, carried out to a reasonable standard and the cost was reasonable, especially so taking into account the additional part borne by Flat 1. We were also satisfied on the documents produced that the statutory consultation procedure had been properly carried out.
31. Partial repair to chimney and stack £560.

- a. Again Mr Salter recounted the history of the work and produced documentation to support the cost and work done
- b. We were entirely satisfied that the work was essential and the cost reasonable bearing in mind also that Mr Salter bore some additional cost himself.

32. Rainwater goods £560.

- a. Again Mr Salter recounted the history of the work and produced documentation to support the cost and work done.
- b. Once again we were entirely satisfied that the work was necessary, carried out to a reasonable standard and the cost itself was reasonable.

33. Upgrading fire protection £1700.

- a. Mr Salter had estimated the cost of the work to replace 2 doors at £500 each, fitting £500 and replacement of glass lights £200. He had started the consultation procedure.
- b. While we considered the estimated costs to be reasonable charges are only recoverable as service charge under the lease to the extent that they do not fall within the liabilities of a Tenant. We considered the terms of the lease of Flat 3.
 - i. The Flat is defined as being on the first and second floors of the building excepting main structural parts of the building including the roof roof timbers foundations external walls bounding walls internal and external means of escape in case of fire and common ways passages staircases and other parts but not the interior faces of such of the external walls as bound the Flat.
 - ii. Clause 5 of the lease is an interpretation clause which does not assist.
 - iii. The Flat has the benefit of various easements set out in the First Schedule to the lease. So far as material to this item of service charge, the easement provides for the right "to go pass and re-pass on foot only over through and along the main entrances corridors staircases passageways and landings leading to the Flat".
 - iv. The Third Schedule contains Tenant's covenants. Paragraph 13 provides "at all times when not in use to keep shut the entrance door to the demised premises ...".
- c. There is some contradiction in these terms. On the one hand the staircase from the ground floor to the first floor might be excluded from the demise of the Flat; however it is difficult to see how it could be regarded as a common part as it serves nothing but Flat 3. Reference in the Tenant's covenants to the entrance door makes little sense if the staircase to the Flat does not belong to the Flat. If the entrance door to the Flat forms part of the common parts, it would be difficult for the obligation to keep the door shut to fall on the Tenant of Flat 3 if other people were entitled to its use. We consider the only sensible construction, and how the situation has almost certainly always been treated in practice, is that the staircase and the door at the foot of the staircase to Flat 3 all belong to that Flat. It follows that it would be illogical to say that the entrance door to Flat 2 is anything but part of that Flat.
- d. Therefore we decided the doors to these 2 Flats are not communal and do not fall to be maintained, changed or altered in any way at the expense of the service charge. For that reason we find that this item is not chargeable to the service charge.

34. Scaffolding £118

- a. Mr Salter told us that he thought there might be a charge from the scaffolder for past services that he had not received any invoice for many months so he did not know whether it would become payable or not.
- b. On the basis of Mr Salter's evidence, we did not consider it reasonable to make any provision for this item.

35. External decoration £1963.

- a. Mr Salter said he had not yet commenced consultation procedures. No decoration had been carried out since he moved in in November 2006 so under the terms of the lease, which provides for external decoration at least every 4 years (contrary to Mr Kombe's information), the work was shortly due. He had obtained an initial quotation in January 2009 which suggested decoration to the front and rear elevations costing £1850. On those he had made an uplift of 3% for each of nearly 2 years since the quotation to reach the figure of £1963.
- b. We accepted Mr Salter's evidence and found the estimated costs to be reasonable and that the provision for the external decoration of £1963 was a reasonable sum.

36. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor