

**CHI/21UG/LSC/2009/0143**

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

Address: Flat 4, 43 Eversley Road, Bexhill-on-Sea, East  
Sussex, TN40 1HA

Applicant: Mr M Cooper

Respondent: Southern Land Securities Ltd

Application: 30 September 2009

Inspection: 17 December 2009

Hearing: 17 December 2009

Appearances:

**Tenant**

Mr Wagstaff  
Miss Coward  
Mr Cooper

Counsel  
Solicitor, Meneer Shuttleworth  
Leaseholder

For the Applicant

**Landlord**

Mrs Toson  
Mrs Evans  
Mr Taylor

}  
} Hamilton King, Managing Agent  
}

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)  
Mr R Athow FRICS MIRPM  
Mr J N Cleverton FRICS

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**CHI/21UG/LSC/2009/0143**

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

**AND IN THE MATTER OF FLAT 4, 43 EVERSLEY ROAD, BEXHILL-ON-  
SEA, EAST SUSSEX, TN40 1HA**

**BETWEEN:**

**MATTHEW CHARLES COOPER**

**Applicant**

**-and-**

**SOUTHERN LAND SECURITIES LIMITED**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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***Introduction***

1. This is an application made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness of various service charges in each of the service charge years from 2003 to 2009.
2. The Applicant is the present lessee of the subject property by virtue of a lease dated 30 august 1991 between (1) R A Lakin & Bros Limited and (2) Richard Paul Over and Sarah Elizabeth Tamar Over ("the lease").
3. It is not the Applicant's case that the service charge costs in issue are not recoverable as relevant service charge expenditure under the terms of his

lease. It is, therefore, sufficient to note that clause 4.2 of the lease sets the Applicant's covenant to pay a service charge contribution. Clauses 5.2 to 5.8 set out the landlord's covenants relating to insurance and its repairing obligations. The Fifth Schedule of the lease sets out the service charge expenditure incurred by the landlord and in respect of which the Applicant is required to pay a service charge contribution.

4. The issues that fall to be considered in this application are:
  - (a) The Summary of Tenant's Rights and Obligations accompanying a demand for the payment of service charge ('the Summary').
  - (b) Major works undertaken by J I Tiley Builders completed in 2003.
  - (c) Buildings insurance premiums paid for 2003-2009.
  - (d) Management fees of Hamilton King Management Ltd for 2003-2009.
  - (e) The cost of works carried out to the rainwater goods, drains, gullies, and downpipes for the years 2003-2009.
  - (f) The cost of external repairs and damp works carried out in 2004, 2006 and 2007.
  - (g) Major works carried out by Cawley Curtis in 2009.

Each of these issues is considered in turn below.

### ***Inspection***

5. The Tribunal inspected the subject property on 17 December 2009. Eversley House ('the building') is situated in the centre of Bexhill-on-Sea, about 200 metres back from the seafront. It comprises a substantial detached property, built in excess of 100 years ago, over four floors and at some time more recently it was converted into residential flats. Construction is typically Victorian, brick and rendered elevations under a tiled roof.

### ***Decision***

6. The hearing in this matter also took place on 17 December 2009. The Applicant was represented by Mr Wagstaff of Counsel. The Respondent was represented variously by Mrs Toson, Mrs Evans and Mr Taylor, all of Hamilton King Management Ltd ("Hamilton King"), the managing agent.

### *The Summary*

7. It was contended by the Applicant, that although the summary of the tenant's rights and obligations ("the summary") appearing at page 264 of the Respondent's bundle, was printed on the reverse side of the Service Charge Accounts and Estimate of Expenditure, he did not receive a separate document containing the summary attached to any of the demands served for the years 2007 to 2009.
8. In the alternative, it was contended that the summary did not comply with Regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 ("the Regulations") because it was not legible and printed in at least a 10 point font. It was submitted, therefore, that the breach of the Act and the Regulations entitled the Applicant to withhold payment for 2007 to 2009.
9. It was simply asserted on behalf of the Respondent that each of the demands served on the Applicant in respect of 2007 to 2009 contained, on the reverse, a printed summary of the tenant's rights and obligations and was in a 10 point font. It was submitted, therefore, that the Respondent had not breached either the Act or the Regulations.
10. Section 21B(1) of the Act provides that any demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Subsection (2) stipulates that the Regulations shall apply as to the form and content of the summary. Regulation 3 provides, *inter alia*, that the summary shall be legible in a typewritten or printed form or at least 10 point.
11. The Tribunal accepted the Respondent's assertion that the summary served on the Applicant was 10 point in the font used to print the summary and complied with Regulation 3 of the Regulations. From the documentary evidence<sup>1</sup>, the Tribunal also accepted the assertion that a summary had been printed on the

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<sup>1</sup> see page 1 of the Respondent's bundle

reverse side of each demand served on the Applicant for 2007 to 2009. It seems that the summary was also printed in the same way on the subsequent statements sent to the Applicant or his solicitors. The Tribunal was also satisfied that by printing the summary on the reverse side of each demand, this was sufficient to meet the requirement of s.21B(1) in that it “accompanied” the demands. There is no express requirement in the section that the summary should be contained in a separate document, as was submitted by the Applicant. Accordingly, the Applicant is not entitled to withhold payment of the service charges demanded from 2007 to 2009.

***Major Works Undertaken by J I Tiley in 2002/2003***

12. The Applicant contended that the works were not carried out to a reasonable standard. Additionally, the works were not completed by Tiley and had to be completed by another contractor in 2003 with some works being dealt with twice. The Applicant was concerned that, as two contractors were used, it meant that the overall cost of the works was in excess of the sum contained in the Consultation Notices issued.
  
13. Mrs Toson, for the Respondent, stated that Tiley commenced the work but did not complete the contract due to the onset of winter. The Managing Agents decided to call a halt to the works until the next spring. Mr Dowse, the Supervising Surveyor, issued Certificates of Completeness for the work that had been carried out and Tiley was paid for the work that he had done. In the spring, Mr Tiley was not available to complete the contract and Mr Dowse was instructed to find another contractor to complete the works. It was agreed that this should be done on a day-works basis up to the limit of funds that were available specifically in no more than the total amount included within the Consultation Notices. At the end of the works, the overall cost came in at £2,230 under budget. Therefore, there was no overspend at all on this contract. Mrs Toson confirmed that, since that contract was completed, there were no communications from any lessee stating that the works had not been undertaken to a full and reasonable standard.

14. The Tribunal found it difficult to agree with the Applicant's claim. Firstly, because no complaints were received by the Managing Agent after the works were completed and, secondly, because of the passage of time and subsequent external redecoration and repair works in 2009. This makes it impossible for the Tribunal to find in favour of the Applicant. The Tribunal found, therefore, that these costs were reasonably incurred and were to a reasonable standard.

***Buildings Insurance Premiums (2003 to 2009)***

15. The Applicant claimed that the landlord had failed to obtain the most competitive quote for insurance premiums during all of those years. He cited a premium he had obtained from Premier Line Direct in the sum of £1285.62, which was about 50% of the current premium. The policy was for standard blocks of flats and of a similar style giving comprehensive cover. It was accepted, however, that it was difficult for a tenant to obtain like for like quotes but he had tried to obtain a policy as similar as the current one in place with the landlord. He had contacted three different insurance companies asking for quotes but had not received quotes from the other two, in spite of promises to send information to him.
16. Mr Taylor, on behalf of Hamilton King, explained that the landlord dealt with the insurance of the buildings through their brokers, Reich, who invited three different companies to tender. The landlord always went with the most competitive quote. The policy is required to be fully-comprehensive because there are regularly vacant flats in the property and several of them are tenanted rather than owner-occupied. Hamilton King received the competitive quote supplied by the Applicant and sent this to Reich whose response to this was that the quote was incomplete as the perils were not listed, it was stated on the paperwork that there had been no claims in the last three years, whereas there had been a water damage claim early in 2009 in the sum of £2,315. There had also been a further substantial claim in 2004. It was unclear whether flooding was included, especially bearing in mind the close proximity to the sea and the fact that the building had basement flats. The quote did not include cover for unoccupied flats, and the quotation form said that all flats were fully occupied. The quote made no comment about sub-let units. There

is a question in the quote about the property being multi-tenanted which had been answered 'no'. This seemed unclear but the property obviously had more than one occupant and therefore this may need clarification.

17. Save for the current year, the Applicant had adduced no evidence of what would amount to a reasonable premium. Therefore, in the absence of such evidence, the Tribunal was bound to conclude the premiums charged by the Respondent were reasonable.
  
18. Turning to 2009 premium, the Tribunal considered that the insurance renewal process appeared to be entirely proper. In *Berrycroft Management Company Limited -v- Sinclair Gardens Investments (Kensington) Limited* [1996] 20HLR 444 CA the Court of Appeal considered that the premium paid should be regarded as having been reasonably-incurred so long as the insurance was procured in the normal course of dealing, even though the premium was higher than other insurers might charge. Accordingly, the Tribunal found that the premium charged for 2009 was reasonable.

***Hamilton King's Management Fees (2003 to 2009)***

19. The Applicant contended that the management fees were too high. It was not clear how these were calculated even though in Hamilton King's correspondence it was stated that there was a minimum fee of 15%. The Managing Agent's charges had to be reasonable for doing competent work. There were several defects to the property and too many of these incidents were repetitious, several different builders being called in to carry out, what appears to be, similar jobs. However, the Applicant has been unable to say what a reasonable charge might be and left this to the Tribunal to make a finding on this.
  
20. The Respondent explained their fee structure on a year by year basis, informing the Tribunal in each case where their minimum fee had applied and explained that this building was high on administration time because of its age, construction and style of occupants. They expressed concern that, over the past few years, there had been an occupant mix comprising very many

tenanted flats, whose lifestyles meant that food stuff that should have been packaged and put into waste bins, was flushed into the drainage system. Consequently, this was regularly blocked. The Managing Agents had written several times to all lessees within the block as they were unable to ascertain which occupants had actually caused the blockages. Additionally, there is an unusually large amount of outgoing correspondence in this block, which is over and above their normal management role. They therefore felt that they had carried out their work to a professional standard and that their fees were not excessive. They confirmed that if there were any ongoing problems on site, a visit would take place to meet the residents concerned and contractors. No complaints have been received from any other lessee regarding the level of their fees.

21. Part of the Applicant's dissatisfaction with the Managing Agent related to a potential buyer for his flat withdrawing because of the cost of arrears. He claimed that it made his flat unsaleable.
22. Hamilton King stated that they had not received any questions regarding the formation of the HIP package or any pre-contract enquiries in respect of this flat. Therefore, any information provided was done so by the lessee himself. Had they been asked to verify information, the claim of large arrears could have been clarified as there was no large volume of arrears at this block.
23. In view of the Applicant's inability to prove lack of professionalism or bad management on the part of Hamilton King, the Tribunal was unable to conclude anything other than the management fees were reasonable.

***Cost of Works to the Rainwater Goods, Drains, Gulleys and Downpipes (2003-2009)***

24. The Applicant contended that there has been a historical on the part of the Managing Agent to ensure that the system was to a proper working standard, with many repeated visits being necessary during the claimed period. If tenants were causing blockages, then they should be responsible individually for the cost of unblocking the drains.



25. The Managing Agents confirmed that when the cause of the blockages could be pinpointed, the owner of that flat was required to pay the cost of the remedial works but in most cases, they had been unable to ascertain the source of the problem. Therefore, this has to be paid for through the general service charge account.
26. In view of the foregoing lack of proof that these had been unnecessarily incurred, the Tribunal find that these items of cost were reasonably incurred.

***External Repairs and Damp Works (2004, 2006 and 2007)***

27. The Applicant reported that part of the major works specification of 2002 was to replace some perished bricks on the right hand chimney breast (3.01) and to repoint three square metres of brickwork at various locations. Additionally, there was damp in Flat 7 that was mentioned in Mr Dowse's report at 2.09. In the Applicant's bundle at page 37a, a photograph shows the flank wall as having an unrendered chimney. The remedial work failed as Bernard Smith carried out some further repairs to this with his invoice of 10 September 2005 in the sum of £260 at page 145 of the Applicant's bundle. The Applicant contended that the Managing Agents should have gone back to the previous contractors who had failed to repair this defect on their original attempt. There was also the incident when the London Damp Proofing Company were required to carry out remedial work to Flat 1a at a cost of £1250 in 2007.
28. Mrs Toson, for Hamilton King, stated that she had gone through the file and had found that over the years concerned, there had been various reports of damp in a variety of places throughout the site. Regarding the other earlier works, Mr Dowse, in his initial report, felt that it was not necessary to re-render the chimney stack but rather that by repairing the obvious areas of defects on site, the problem could be eliminated. Mrs Toson referred to Page 375 of the Respondent's bundle which was Mr Dowse's letter of 19 September 2002, setting out his thoughts quite clearly, but that was prior to the erection of scaffolding. The works were completed but, during the winter of 2003-2004, damp became evident again and Bernard Smith was asked to inspect. His report was at Page 376 of the Respondent's bundle. In this, he highlighted the

fact that the property was exposed to the prevailing south-west coastal winds and driving rain and that it was his thought that this was driving moisture through the brickwork joints and that rendering may solve the problem. All of these works were part of an ongoing process of maintaining an old building in an exposed marine environment. Mrs Toson confirmed that nobody had reported damp in their flat since the last remedial works had been undertaken and stated that she wished that owners would contact them as soon as damp problems arise rather than leave them to develop further. In particular, she reported that at the inspection prior to the hearing, the damp seen in Flat 6 had not been reported to them. It was her view that this was probably caused by the flat being empty for some considerable period of time with no heating.

29. The Committee, being an expert Tribunal with two Chartered Surveyor panel members who have extensive knowledge of managing buildings in extreme marine environments, are aware that buildings of this age will always require an extensive, ongoing maintenance programme. This, by its very nature, will incur high maintenance costs for the lessees and it is for this reason that many instances of buildings of this age and character are deemed to have come to the end of their economic life and have been demolished. The Tribunal does not find in favour of the Applicant in this instance and allowed these costs as being reasonable.

***Major Works by Cawley Curtis in 2009***

30. The Applicant contended that most of these works were unnecessary and that the specification provided by Paul Noad was not precise enough for the purposes of forming a tender document. The Applicant contended that this contract should have been limited to external decoration only. He referred to the letter from Keith Fox, Applicant's bundle Page 242, which stated that, in his opinion, the specification was in insufficient detail either for him to assess what works should be done or to enable a builder to provide a proper and detailed quotation. Within the specification, the Applicant noted that items 2.8, 2.9 and 2.10 were for render repairs, brickwork repairs and general repairs respectively and that these were repetitions of the work undertaken in

2002/2003 therefore these should not be classed as being 'reasonably incurred' because they should have been undertaken effectively at the earlier time.

31. Mrs Toson, on behalf of Hamilton King, confirmed that all consultation documents were issued in accordance with Section 20 procedures. They had not been made aware of Mr Fox's report until they received the bundle from the Applicant's solicitor in October 2008. She confirmed that Hamilton King's policy was to send a copy of the specification to all lessees prior to sending this out to tender. No observations were made on this nor did any lessee nominate a contractor as they are permitted to do so under current legislation. The landlord is obliged to paint the outside of the property regularly and to be able to do this professionally must carry out repairs to areas about to be painted. Additionally, the landlord has an obligation to maintain the structural integrity of the whole building. It is not unnatural for defects to continue to occur during the life of a building and the repairs contained within Mr Noad's specification were part of the ongoing maintenance of this Victorian building. Under those circumstances, it was contended that the specification was for works that fell within the landlord's liability under the terms of the lease. When the work was completed, Hamilton King wrote to every lessee asking them to respond with any items of work that were seen to be outstanding. No responses were received from any lessee at all. Under those circumstances, the contractor's invoice was paid.
32. The landlord's obligations to maintain the building are set out in the Fifth Schedule of the Lease and, additionally, under Clause 5.4 of the Lease, there is an obligation the part of the lessor to paint the outside parts of the building at least once every four years. As the Tribunal had not received the Applicant's main bundle prior to the hearing, reliance was placed upon the parties referring the Tribunal to various sections that they felt appropriate during the hearing. After the hearing, when each Tribunal Member had been furnished with a copy and had the opportunity to look in particular at the specification prepared by Mr Noad, the Tribunal finds that the specification is typical of an 'External Decoration' specification and takes advantage of the provision of a full scaffold package to the property by undertaking other maintenance works

deemed appropriate at that time. It was noted that, in addition to the external decoration, there were the normal allocations for repairs to rendering, brickwork and other general work as shown in Items 2.8, 2.9 and 3. Furthermore, part of the general repairs included the removal of all soffits with replacement in uPVC cladding. Item 3.2 is a detailed alteration to the rendering at ground level. The provision of a bell-mouth drip is considered to be good practice as it directs water away from the building which would otherwise track into the main fabric of the building and thus cause a potential risk of damp penetration at ground level. The Tribunal noted that there had been a substantial increase in scaffolding costs between 2002 and 2009. The 2002 tenders showed estimates of £3,100 and £3,494, whereas the 2009 estimates were £8,900 and £11,436. The additional costs are likely to be due to Health & Safety legislation which requires a more comprehensive scaffolding package to be provided in 2009 than was the case in 2002. The Tribunal concludes that the cost of the works carried out under this contract were reasonably incurred.

### ***Section 20C & Fees***

33. The Applicant had also made an application under s.20C of the Act seeking an order that the Respondent be *disentitled* from being to recover all or part of the costs it had incurred in these proceedings.
  
39. Section 20C of the Act provides the Tribunal with a discretion to make an order preventing a landlord from being able to recover costs it had incurred in proceedings such as these when it is just and equitable to do so having regard to all the circumstances of the case.
  
40. In the present case, the Respondent had substantially succeeded on the issues. Having done so, in the Tribunal's view, it would be in equitable and unjust to prevent it from being able to recover any costs it had incurred in having to respond to this application. In other words, "costs should follow the event". For the same reason, the Tribunal does not direct the Respondent to reimburse the Applicant any of the fees he had paid to have his application issued and heard.

Dated the 24 day of February 2010

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