

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**S.27A & S.20C Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")**

Case Number:	CHI/21UG/LSC/2010/0091
Property:	58 Sackville Road Bexhill -on-Sea East Sussex TN39 3JE
Applicant:	Sellam Sathasivam
Respondents:	Clinton Sturdey and Chris Amos
Appearances for the Applicant:	George Okines of Arco Property Management
Date of Inspection / Hearing:	18 <sup>th</sup> October 2010
Tribunal:	Mr. R T A Wilson LLB (Lawyer Chairman) Ms C Barton MRICS (Surveyor Member)
Date of the Tribunal's Decision:	19 <sup>th</sup> November 2010

### THE APPLICATIONS.

- 1) This is an application made by the applicant landlord under section 27A(3) of the 1985 Act for a determination of the payability and reasonableness of the 2010 service charge budget for the property.
- 2) The respondents, who are the lessees, seek an order pursuant to section 20C of the 1985 Act that the applicant's costs incurred in these proceedings not be relevant costs to be included in the service charge for the property in future years.
- 3) The tribunal is also required to consider pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 whether the respondents should be required to reimburse the tribunal fees incurred by the applicant in these proceedings.

### THE DECISION in SUMMARY

- 4) The tribunal determines that a reasonable annual budget for 2010 is a figure not exceeding £2,600 to which the respondents are liable to contribute their share by quarterly payments in accordance with the service charge provisions set out in their leases, once a valid service charge demand is served upon them.
- 5) An order is made under section 20C of the 1985 Act.
- 6) No order is made in relation to the repayment of the tribunal fees.

### JURISDICTION.

- 7) The tribunal has power under Section 27A of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard.

#### The Statutory Provisions

The relevant statutory provisions in the 1985 Act are as follows:

"Meaning of "service charge" and "relevant costs"

18. (1) in the following provisions of this Act service charge means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) the relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose—

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Limitation of service charge: reasonableness

19. (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 of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.
- (2) where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Summary of Consultation Requirements.

As from November 2003 S.20 of the 1985 Act provides that where there are qualifying works, or a long term agreement the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

The definitions of the various terms used within S.20 are set out in that Section.

In order for the specified consultation requirements to be required, the relevant costs of the qualifying work have to exceed an appropriate amount, which is set by regulation and at the date of the application is more than £250 per lessee.

Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. The requirements include for example, the need for the landlord to state why they consider the works or the agreement to be necessary and for further statements setting out their response to observations received and their reasons for selection of the successful contractor. Consultation notices must be sent both to individual tenants and to any Recognised Tenants' Associations (RTAs); both the tenants and the RTA have a right to nominate an alternative contractor depending on the circumstances, and the landlord must try to obtain an estimate from such nominees. The procedures also provide for two separate 30-day periods for tenants to make observations.

Liability to pay service charges: jurisdiction

- 27A (1) An application may be made to a leasehold valuation tribunal for a determination of 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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.
- (5) but the tenant is not to be taken to have agreed or omitted any matter by reason only of having made any payment.

#### The Lease.

8. The hearing bundles contained copies of the leases relating to the two flats in the building both of which are dated 19<sup>th</sup> October 1988. So far as material to the issues in this case there are provisions contained within them which may be summarised as follows: -
- a. The respondents are each liable to pay a service charge calculated in accordance with the provisions of the Fourth Schedule to the extent of either one half or in the case of certain heads of expenditure one third of the total expenditure on the building incurred by the applicant in carrying out her obligations as landlord each year as set out in clause 5 of the lease.

- b. There is provision for the respondents to pay an estimated amount of service charge on account on the usual quarter days.
- c. There is provision for the applicant at the end of each accounting period to prepare service charge accounts showing the actual expenditure in that period and to send a copy of those accounts to the respondents with a statement showing the sum payable by the respondents for that accounting period having regard to the amounts paid on account during that same accounting period. In the event of the money expended by the landlord exceeding the payment made by the respondent on account, the balance is payable within 14 days of a demand being made for that balance.
- d. The leases contain provisions enabling the landlord to include in the service charge budget a reasonable contribution to provide a reserve fund to cover accruing and anticipated expenditure.

### INSPECTION

- 9) The tribunal inspected the property prior to the hearing in the presence of the parties and their representatives.
- 10) The subject property comprises a four storey mid-terraced building immediately fronting the pavement, believed built in the Victorian era and converted to a shop and two self contained flats above, which share access via a hallway with separate access from Sackville Road. The property includes a small enclosed garden to the rear and the shop premises include a basement or cellar. The property is situated in a secondary shopping area within the Town Centre amongst generally similar styles and types of property and the railway station and seafront, amongst other facilities are a few minutes walk away.
- 11) Flat 58a at first floor level, comprises a kitchenette, living room adjacent, bathroom with wc and two bedrooms. Flat 58b is at second (top) floor level and comprises a kitchenette, living room, 2 bedrooms and a shower room and wc.

### THE ISSUES IN DISPUTE AND PRELIMINARY MATTERS

- 12) At the hearing the respondents both indicated that their main concern was that they considered that the consultation process conducted by the applicant in relation to the proposed roofing works was flawed with the result that the service charge demand based on the 2010 budget, which included a substantial figure for the roofing works, was not reasonable. The amount claimed in the budget for the roofing works came to over £17,600. They also challenged a number of other smaller sums contained in the budget.
- 13) All parties had set out their respective positions in their statements of case which they expanded upon at the hearing.

### THE HEARING

- 14) The hearing took place on the 18<sup>th</sup> October 2010. Mr. Okines represented the applicant, and both respondents attended the hearing and gave evidence.

#### THE APPLICANT'S CASE.

- 15) Mr Okines began by referring the tribunal to the documents contained in the applicant's bundle which related to the consultation procedure. He prefaced his evidence by placing on record that his firm had not been instructed by the applicant at the time the consultation had taken place and therefore he had not been involved in either the preparation or the service of the consultation documents. His firm had only received management instructions in August 2010 by which time the consultation procedure had been completed and the applicant's nominated contractor chosen.
- 16) He had briefly looked at the consultation pack, copies of which were in the applicants bundle. It was clear that there had been a two stage process with the applicant describing the works to be carried out in the form of a notice of intent and thereafter she had served a paragraph b statement giving details of the estimates obtained, summarising the observations received and giving the respondents a further period in which to make observations. In the circumstances he invited the tribunal to make a determination that the consultation procedure had been complied with in relation to the works that urgently needed to be carried out to the roof of the building.
- 17) As to the 2010 budget he confirmed that he had prepared this soon after he had received management instructions from the applicant in August 2010. He had been provided with very little historical cost information on the building so that the figures had been prepared on a best estimate basis having regard to his many years experience in managing similar property. He contended that the total budget of just over £20,000 was reasonable and he invited the tribunal to uphold it.

#### THE RESPONDENTS' CASE.

- 18) The case put by both respondents is essentially the same and can be very briefly summarised in the following way. They do not accept that the consultation process in relation to works referred to in the contested budget has been correctly followed, and they maintain that as a result the contractors nominated by them were not able to properly tender for the work. They contend that the specification for the work was confusing right from the start. They further contend that the initial notice contained the wrong property address and had then been sent to them by the applicant with insufficient postage with the result that the documents had been retained by the post office at their depot for at least two weeks. They contend that a second revised notice was received by them but bearing the same consultation period as the defective notice. This meant that they had not been given adequate time to respond and in effect had not been properly consulted. For these reasons they ask the tribunal to reject the 2010 budget.
- 19) They also object to the quotations obtained by the applicant from her preferred contractors insofar as they both contained pc sums of £5,000. A pc sum is in effect a sum of money added to the tender to provide a reserve for unforeseen expenditure which comes to light during the course of the contract. They believe this figure is too high bearing in mind the total contract price and they further contend that as the scope of the work is obvious, a pc sum is not required at all.
- 20) As to the other figures contained in the 2010 budget they contend a number of them are unreasonable. For example £50 is included for communal electricity but no communal electricity is supplied to the property.
- 21) They also challenge the high estimate for insurance (£826), the high level of management fees (£644) the figure for fire alarms (£376) the figure for repairs (£450), bank charges (£20) and accountancy fees (£150).

## THE TRIBUNAL'S DELIBERATIONS

- 22) The tribunal first considered the repairing obligations contained in the leases and noted that the obligation to repair the roof rests with the landlord with a corresponding obligation on the part of the lessees to contribute their share of the cost. The tribunal is satisfied that the exterior of the building needs attention. It is situated in an exposed position close to the seafront and there is clear evidence of water ingress to the interior of the building on all floors. It appears as if the cause of the water ingress is the disrepair of the roof to the rear section of the building. It is common ground that the cost of these works will exceed the threshold for consultation and indeed the applicant has already implemented a consultation process with the respondents, which she contends is compliant. The respondents contend otherwise.
- 23) On the central issue as to whether the applicant has correctly carried out the consultation procedure in respect of the works to be carried out to the roof, the tribunal prefers the evidence of the respondents and finds that consultation has indeed been flawed. As a result, in the absence of a dispensation order issued by the tribunal or fresh and compliant consultation, then the maximum amount recoverable by the applicant in respect of the proposed roofing works will be limited to £250 per leaseholder. In arriving at this conclusion we have had regard to the following evidence.
- 24) The hearing bundle submitted by Mr. Amos contains a copy of the first section 20 consultation notice which is dated the 21st December 2009. This notice wrongly states the property address to be *South Lodge Grove End RD and Circus Road London NW8*. It states the consultation period to end on the 1<sup>st</sup> February 2010 and appears to be signed by the applicant.
- 25) The bundle submitted by Mr. Sturdey contains a copy of an envelope addressed to him in which appears a post office endorsement stating that insufficient postage had been paid. The evidence of Mr. Sturdey is that this is a copy of the envelope which contained the defective notice of intention mentioned in the above paragraph, and that it only came to his attention in the last week of January 2010. This evidence was not challenged by Mr. Okines or in the written submissions of the applicant.
- 26) In the applicant's bundle there is a copy of what appears to be a second notice of intention drafted by the applicant. This notice is similar to the first notice but it cites the correct property address and in manuscript contains the word "amended." The date of this notice is unchanged at the 21<sup>st</sup> December 2009 and also, crucially, the closing date of the consultation period also remains unchanged at the 1<sup>st</sup> February 2010. This notice is stated to *supersede all other notices, which have been served*. Having regard to these words it is clear that the applicant withdrew the first notice and she relies upon the second notice.
- 27) The evidence of both respondents is that whilst they accept that this second notice was served on them by the applicant, service was not effected until at least the 15<sup>th</sup> January 2010 if not later still. Again Mr. Okines did not challenge this evidence and the tribunal could find nothing in the applicant's written submissions to substantiate an earlier service date of the second notice.
- 28) On this factual matrix the consultation period afforded to the respondents was at best a little over 14 days which is considerably less than the minimum period provided by the regulations of at least 28 days. On this point alone we are bound to find that the consultation procedure carried out by the applicant was defective. In enacting the new consultation legislation in 2002, Parliament increased the leaseholders' rights to be consulted over works to a building to which they will ultimately be responsible for the cost. On the evidence before us the documentation unfairly provided the respondents

with a substantially reduced consultation period and we consider that as a result, the consultation process cannot be said to have been conducted in a compliant fashion.

- 29) Further, we accept the respondents' evidence that there was confusion over the specification of roofing work as a result of which the respondents' contractors were put at a disadvantage. The tribunal heard that the applicant had not sent the correct schedule to one of the respondents contractors as a result of which that contractor felt unable to tender.
- 30) Having found that the consultation procedure was not correctly followed, the tribunal determines that the amount in the annual budget for the roofing work of just over £17,600 should be removed as being unreasonable bearing in mind the maximum amount recoverable for these works would be only £500 if they were carried out without fresh consultation as opposed to the budget figure of £17,600.
- 31) In respect of the other estimated items, the tribunal upholds £150 for accountancy fees and also the insurance premium of £827. It also upholds management fees of £644, £376 for the fire alarm, £450 for repairs and maintenance and £117.50 for cleaning. There is provision in the leases for these categories of expenditure and the budgeted amounts appear reasonable to the tribunal based on its collective knowledge and experience of the amounts commonly charged for these items. However it should be borne in mind that these budget figures were compiled half way through the service charge year and accordingly some adjustments are now necessary. For instance the management fee relates to a whole year whereas outside management was only put in place in July 2010.
- 32) The tribunal was provided with insufficient evidence as to the reason for bank charges of £20 and therefore disallows this small sum and also disallows the budget of £50 for communal electricity on the basis that none is supplied to the property.
- 33) Accordingly the estimated annual sums allowed by the tribunal for 2010 are as follows:-

Accountancy fees	£150
Insurance premium	£827
Management fee	£644
Fire alarm	£376
Repairs and maintenance	£450
Cleaning	<u>£118</u>
Total	£2565

- 34) It is clear that work does need to be carried out to the exterior of the building to prevent the continued ingress of water. The tribunal is satisfied that it is the applicant's responsibility to carry out this work and that provided fresh compliant consultation is carried out the respondents will have to pay their share of the reasonable cost of this work. The tribunal notes that the applicant has now instructed outside management who intend to follow the service charge provisions contained in the lease rather than the applicant's previous policy of billing on an ad-hoc basis only when expenditure has been incurred. Bearing in mind that significant sums of money need to be spent on the building, the tribunal considers it right that the service charge provisions contained in the lease should be adhered to. This means that a budget for 2011 should be prepared and served on the respondents together with appropriate quarterly demands for their on account contribution as shown by the budget. Provided a specification of work is in place and that consultation, in correct format, is under way, the lease does enable the



applicant to include in the 2011 budget a reasonable estimation of the cost of the works to be carried out. However the tribunal considers that the leaseholders should not have to pay large on account sums towards the external works unless and until the nature and extent of works are clear, and the applicant has costings upon which to base the estimated demands.

SECTION 20C APPLICATION AND REIMBURSEMENT OF FEES.

- 35) Both of these matters can be taken together as the tribunal's considerations in relation to both are largely the same. The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant costs to be taken into account when determining the amount of service charge payable. The tribunal has a wide discretion to make an order that is, just and equitable, in all the circumstances.
- 36) The tribunal is of the view that the applicant was not justified in bringing this application as the consultation process carried out by her in respect of the works to be carried out to the building was clearly flawed. As a result the estimated annual expenditure set out in the 2010 budget (which was only compiled half way through the service charge year) is too high. In the light of this and bearing in mind the correspondence that has passed between the applicant and respondents over the last year, it is understandable that the respondents have contested the application and they have been, to a large extent, successful in their challenge. For these reasons the tribunal is satisfied that it is just and reasonable to make an order under section 20C of the 1985 Act.
- 37) Having regard to the outcome of the substantive application it would not be just and equitable for the respondents to have to repay the applicant's tribunal fees in this matter and therefore no such order is made.

Chairman [Signed]

R.T.A.Wilson

Date 19<sup>th</sup> November 2010