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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAM/LSC/2010/0214

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A of the Landlord and Tenant Act 1985.**

Applicant: Sinclair Gardens Investments (Kensington) Limited

**Respondents Avon Estates (London) Limited
Nationworth Limited**

Premises: 7A & 7C Castlewood Road, London N16 6DU

Date of Oral Pre-Trial Review: 5 May 2010

Date of Hearing 26 August 2010

**Appearances for Applicant: Mr Wijewaratne of counsel
Mr Kelly – Hurst Management**

**Appearances for Respondents Mr Smith of counsel
(for Nationworth only)**

**Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr M. A. Mathews FRICS
Mrs G. V. Barrett JP**

Date of Tribunal's Determination

18/11

1. This is an application under Section 27A of the Landlord and Tenant Act for a determination of the reasonableness of service charges for the years ending March 2007, 2008, 2009 and 2010.
2. Prior to the hearing a request for a postponement made on behalf of the second respondents had been refused after consideration by two Procedural Chairmen.
3. At the commencement of the hearing a further application for a postponement was made by Mr Smith.
4. He explained that although the Directions had correctly identified the representatives of both respondents, by some error the solicitors for the applicants had failed to send information specified in the Directions to the solicitors – Bude Nathan Inwanier - for the second respondents and had sent it only to Y and Y Management who acted only for the first respondents. As a result the Scott Schedule, the second respondents had been directed to produce, had been produced late and might not be complete. Moreover, he had not seen the response of the applicants to the Scott Schedule until that morning.
5. In response to the Tribunal Mr Smith admitted that when the required information had not been received his solicitors had not chased it up.
6. Mr Wijeyaratne opposed the application although the previous application for postponement had not been opposed by the solicitors for the applicants – P. Chevalier and Co. Mr Wijeyaratne expressed the view that the second applicants were not prejudiced as a result of the error since their solicitors had been involved for a long period of time in the dispute. He produced a bundle of correspondence dating back to April 2008 and referring to even earlier correspondence.
7. The Tribunal was not persuaded that the second respondents were prejudiced as a result of the error since it did not impact on their ability to challenge individual items of cost. They determined that the hearing should proceed and that if, at any time, it became apparent that the second respondent was prejudiced, consideration would be given, at that stage, to a possible adjournment. They added that they were willing to delay the start of the hearing to allow Mr Smith to familiarise himself with the documentation received only that morning.
8. Mr Smith said that his instructions extended only to seeking a postponement and that he needed to clarify with his solicitors whether he could continue, in the circumstances, to represent the second respondents.
9. Following a short adjournment Mr Smith returned to say that he had instructions to continue and he thought that any further consideration of the papers by him was not necessary at this stage.
10. Accordingly, the Tribunal commenced to consider each item of cost put in issue by the second respondents in their Scott Schedule for all of the years in question.
11. The Tribunal noted that the first respondents were not present or represented and had not complied with any of the Directions.

YEAR ENDING MARCH 2007

Rubbish Removal £485.25p

12. Mr Smith queried this item on the basis that no receipt or invoice had been produced and exactly what had been removed had not been specified.
13. Mr Wijewaratne said that between April 2006 and December 2007 a number of items had been dumped as was made clear from the various inspection reports of the managing agents. However, because the query had been raised only on 20 August 2010 it had not been possible to obtain the invoice from the contractors.
14. Despite the non production of the invoice the Tribunal determined the cost to be reasonable, reasonably incurred and, therefore, payable.

Hall Redecoration £1321.88p

15. Mr Smith withdrew the challenge to this item which had been made on the basis that alternative quotations had not been obtained, but he continued to argue that the works could have been executed at a cheaper cost as evidenced by the two quotations which had been obtained by the second respondents in June and July this year.
16. Mr Wijewaratne responded that the two quotations had been obtained after the event when the precise nature of the works was no longer discernable and that, further, they had been obtained from firms which had no prospect of doing the work.
17. The Tribunal was satisfied that the cost of £1321.88p was reasonable, reasonably incurred and, therefore, payable.

YEAR ENDING MARCH 2009

External Redecoration £7676.25p

18. On the basis of two quotations recently obtained by the second respondents for the works Mr Smith argued that the cost was excessive. He also raised the question of whether a Section 20 notice had actually been served on the second respondent in the light of the blank Section 20 notices in the bundle.
19. Mr Wijewaratne responded as at paragraph 16 above and also called Mr Kelly of Hurst Management, the managing agents of the property, who said that computerised Section 20 notices were personalised by hand.
20. In all the circumstances the Tribunal was satisfied that the costs were reasonable, reasonably incurred and, therefore, payable.

Administration Charge £959.93p

21. Mr Smith queried the right of the freeholder to make such a charge pointing out that the lease of Flat C was not in the bundle.
22. Mr Wijewaratne explained that the charge was, in fact, a charge made by the agents for overseeing the major works of external redecoration and amounted to 12.25% of those costs, which was 'within the range permitted by the Royal Institute of Chartered Surveyors'. He said that the leases of all three flats were in similar terms.
23. After the adjournment for lunch Mr Smith conceded that, having been shown the lease of Flat C, such a charge was permitted, but he maintained that the cost was high for the work involved. He speculated that there could be a

- degree of overlap between inspection of the major works and the inspections carried out by the managing agents in the normal course of their duties.
24. Mr Kelly gave evidence to the effect that although a standard specification rather than a bespoke specification had been used it required amendment from time to time. Competing estimates had been obtained and the works were inspected by a property manager employed at an hourly rate of £135.
 25. The Tribunal, whilst persuaded that the lease permitted such a charge and that the charge made was within the range to be expected for full pre and post contract surveying services, was not satisfied that the cost, in all the circumstances of straight forward works executed on the basis of simple estimates and a standard specification, justified the costs charged. In their opinion £500 adequately covered the necessary work involved.
 26. Accordingly, the Tribunal determines as reasonable, reasonably incurred and, therefore, payable costs of £500.

YEAR ENDING MARCH 2010.

Repairs and Maintenance £776.25.

27. It was explained to the Tribunal by Mr Wijewaratne that this cost had been incurred because, during the major works in 2009, a broken soil pipe had been discovered by the decorators. It had been charged as a general repair in the following year because required timber repairs had already used up the 15% contingency provided for under the contract and the invoice had been received in the following year.
28. Mr Smith maintained that the pipe was clearly visible and thus must have been broken either by the builders or the scaffolders in the course of their work. This was denied by Mr Kelly.
29. Mr Smith also argued that no Section 20 notice had been served and no competing estimates had been obtained for the work. Mr Kelly said to have done so would have held up the contract and not been in the best interests of the tenants.
30. This incident reinforced the Tribunal's unease about the use of a standard specification, the level of supervision of the works by the managing agents and the readiness of the agents to accept the conclusions of their contractors. However, the Tribunal, bearing in mind the nature of the repairs required, concluded that it was difficult to say that the cost was not reasonable or reasonably incurred and whilst the amount meant that a Section 20 notice was, strictly, applicable, the Tribunal accepted that the tenants were not, in all the circumstances, disadvantaged.
31. Accordingly, the Tribunal determined the costs of £776 25 to be reasonable, reasonably incurred and, therefore, payable.

Nets £782

32. Mr Kelly explained that this cost referred to pigeon netting which was not easy to see from ground level. Only once the contractor was on site had it become apparent that the netting would need to be removed and once removed it had not proved possible to reinstate. Accordingly new netting had been installed.

33. Mr Smith pointed out that a charge for new netting had been made in July 2006. He also said that the cost meant that a Section 20 notice should have been served
34. At the hearing no one was able to describe where the netting was positioned. Mr Kelly thought that that it was above the front door but was unable to locate it from the photographs.
35. The Tribunal was concerned that a cost of £762 was attributed to something about which so little was known. They concluded that it was impossible to say that this cost was either reasonable or reasonably incurred and, therefore, they determine it not to be payable.

External Redecorations £1092.50

36. Mr Kelly explained that this cost related to the replacement of three windows which he identified from the photographs provided, together with other window repairs. A separate quotation (included in the applicant's bundle) had been obtained for this work in the sum of £2788.25. However, because the builders obtained so much work from the applicants they were prevailed on to do the work for £1092.50 and this cost had been passed on to the leaseholders using the 15% contingency provided for in the contract.
37. Mr Smith pointed out that the standard specification used specifically stated on its front page that a quotation was required for any woodwork repairs required either to the windows of individual flats or those in the common parts. However, in every quotation that item had been left blank.
38. The Tribunal was uncomfortable about this item. It certainly should have been included in the original specification and the fact that the contractor was willing to do the work for the contingency figure supported Mr Kelly's explanation that there was a continuing relationship between the applicant and the contractors they used. Whilst the Tribunal could accept that such relationships could result in benefits to leaseholders in the form of lower costs, they considered that the perception that deals were being done risked damaging the proper business relationship that needs to exist between freeholders and leaseholders.
39. Notwithstanding the above and because the overall costs of the major works was not increased, the Tribunal accepts that this cost was reasonable, reasonably incurred and, therefore, payable. However, both this item, the soil pipe and the nets mentioned above item reinforces the Tribunal in their opinion that the standard of supervision provided in respect of the major works was poor as reflected by their determination at paragraph 26.

Administration £109.25

40. This charge relates to the supervision of the window works above. Both parties made submissions similar to those relating to the administration charge above in respect of the main bulk of the major works.
41. The Tribunal having already expressed their disquiet at the supervision of the major works determines this cost not to be reasonable or to have been reasonably incurred and, therefore, not to be payable.

INSURANCE £3742.35 + £220.51(2007), £3262.22 + £221.01 (£2008), £3915.18 + £235.38 (2009), £3915.18 + £239.07 (2010).

42. Mr Wijiwaratne explained that insurance cover was effected on a block policy which insured the whole of the applicant's large portfolio. Mr Kelly said that the subject property had the worst claims history of any of the applicant's properties.
43. Mr Smith complained that the claims history had arrived too late, and in a format which was difficult to understand, to allow alternative quotations to be obtained.
44. Mr Kelly said that the claims history provided was made up from the property diary entries and he explained the various heading listed on the document produced so that Mr Smith understood how it was made up.
45. Recognising that the second respondents were prejudiced in being unable to obtain alternative quotations without being in possession of a complete claims history, the Tribunal offered Mr Smith an adjournment which he accepted.
46. The Tribunal, therefore, adjourned issuing the Directions attached at Annex 1.
47. The Tribunal subsequently received an e.mail from Courtney Smith seeking to extend the times set out above on the basis that further information was required before competing quotations could be obtained.
48. Although the Tribunal had understood that at the hearing sufficient information had been made available they permitted an extension of time to 21 October and 4 November respectively.
49. In accordance with the Directions and under cover of a letter dated 4 November 2010 the solicitors for the applicants sent the competing quotations and Mr Kelly's comments on them to the Tribunal.
50. The second respondents had submitted quotations from Zurich and Aviva and Mr Kelly claimed that, for a number of reasons, neither were on a like for like basis with the insurance actually effected and both were based on inaccurate proposal forms which could invalidate any policy effected.
51. With regard to the quotations obtained from various internet sites Mr Kelly claimed that they were all subject to telephone approval.
52. The Tribunal was not satisfied that the very scrappy information concerning quotations, submitted on behalf of the second respondents, came anywhere near establishing that the costs charged by the applicants were not fair and reasonable.
53. Accordingly, with no firm evidence being provided to show that the premiums were excessive and in the light of the applicants' full response to the very limited information relating to the alternative quotations made available to them on behalf of the second respondents, the Tribunal determines the cost of the premiums for each of the years in question to be reasonable and reasonably incurred.

CONCLUSION

54. Therefore, with the exception of the costs at paragraphs 26, 35 and 41 above found not to be reasonable or reasonably incurred, the Tribunal determines the costs claimed to be payable by the first and second respondents.

Chairman B. M. Hindley

Date 18/11/10