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Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

Reid Close, Middlesex UB5 2DD

Ref: LON/00AS/LSC/2009/0602

Mr Ramesh Sachdev (42), Manuel Dossantos (32) , Sohan Reginald (25), J.S. & N.K. Lalh (26), H & N Sidhu (27), M.N. Malik (29), K.Samarasinghe (28), A. Ehsan (30), M.Dossantos (32), Mr G and Mrs S Bissessar (4)

Applicants

The Grove (Hayes) Management Company Limited **Respondent**

Dates of hearing: 24 & 25 May 2010

Tribunal: Mr M Martynski (Solicitor)
Mr R Shaw FRICS
Mrs R Turner JP BA

Appearances for Applicant: Mr B Sachdev (Applicant's brother)
Mrs Khan (flat 39)
Mrs Sidhou
Mrs Bissessar

Appearances for Respondent: Mr Latta, Ms Yuill, Ms Lawry (RMG managing agents)

DECISION

Decision summary

1. The Applicants are strongly advised to pay particular attention to paragraphs 5 to 21 of this decision. The Tribunal has the power to decide which service charges are payable by leaseholders and to what extent they are payable[1].

2. The fees of managing agents RMG and directors' fees are not payable for the years 2008 and 2009 (totalling £12,737.00).

[1] The relevant law is set out at the end of this decision

3. The sums of £1275.00 and £734.38 in respect of an insurance assessment report and budget assessment report respectively, are not payable.

4. All other service charges are payable by the Applicants.

5. The Respondent management company's costs of these proceedings are not payable by the Applicants.

Background

The physical layout

6. Reid Close is a small estate ('the Estate') consisting of 44 properties spread over a number of small blocks. Between the blocks are roadways, parking spaces and various communal garden areas. Eleven of the properties are owned by Inquilab Housing Association. Those eleven properties are all contained within the same block and the housing association owns the freehold of that block. It contributes to the charge for maintenance of the common amenity areas.

The legal framework

7. The Estate was built by George Wimpey West London Limited in 2005. There is a lease between Wimpey (the original freehold owner of the Estate) and the Respondent (The Grove Management Company) of the Estate (not including the block belonging to the housing association). The lease provides that the Respondent has to pay rent for the Estate. The insurance on the Estate has to be placed with a company nominated by the freeholder.

8. The individual leaseholders' leases are between Wimpey, the Respondent management company and the leaseholder. The leases provide that the Management Company is responsible for the maintenance of the Estate. They also set out the leaseholders' obligations to pay service charges.

9. It is vital to note that each leaseholder is a member of the Respondent management company. The only other members that the management company has are the directors originally appointed by Wimpey (which include the managing agents, RMG). It was always intended that these original directors would resign and be replaced by volunteers from the leaseholders in the Estate. The Respondent management company's only business is running the Estate and is the only person entitled to run and maintain the Estate. The only money that it has is the payments made by the leaseholders by way of their service charges. It has no other income. The non-payment of service charges by leaseholders therefore affects the ability of the Respondent management company to maintain the Estate and provide services such as gardening, cleaning, lighting and repairs.

10. Therefore, the Respondent management company is the leaseholders. Each leaseholder is a member of the company. That means that the leaseholders are entitled to be directors of that company and to vote at meetings so as to control the company.

11. The managing agents, RMG (formerly CPM) are appointed by the Respondent management company (they were in fact appointed by Wimpey at the outset). The Respondent management company (that is to say the leaseholders acting and meeting

together as members of that company) can at any time decide to stop using RMG as managing agents[2] and appoint other managing agents.

12. Apart from RMG's fees for managing the estate and director's fees, if the Tribunal decides that any service charges are not payable by the Applicants, it is not RMG that will lose that money or have to repay that money, it is the management company itself who will lose or have to repay the money. The lost money cannot be got back from anyone other than the members of the management company who are of course the leaseholders themselves.

Management failings and financial problems

13. At the pre-trial reviews that were held prior to the final hearing, it was the case that RMG Managing agents, despite having been the managing agents from the outset in 2005, were in a position some four years on of not being certain of the identity of all the leaseholders. Four of the leases were never registered at the Land Registry, due to there having been, it is assumed, a mortgage fraud.

14. Because some leaseholders could not be identified, service charges have not been fully collected adding to the arrears of service charge that had accrued due to other leaseholders (who could be identified) not having paid their service charges. This led to a situation arising in or about the beginning of 2008 whereby the Respondent management company was not able to provide services such as cleaning, gardening and routine maintenance due to lack of funds. This in turn caused disquiet amongst leaseholders leading to more of them refusing to pay their service charges which of course only made matters worse as the Respondent management company had less and less income. It was stated by Mr Latta, technical Director for RMG, that the Respondent management company was having to "scrape around" for funds to keep it going

15. Further, it was said by RMG that, for the same reason (i.e. the missing four leaseholders), the Respondent company could not call company meetings because it could not know who all its members were. The Respondent company was therefore left with nominee directors rather than leaseholder directors and accordingly had no effective control.

16. There appears to have been a meeting of leaseholders and RMG in December 2008 where the above issues were discussed. No progress seems to have been made since that time.

17. The Tribunal considers that on the evidence before it, had there been more effective and active management on the part of RMG, the Respondent Company would not be in its current malaise and may not be a position where it cannot provide basic services.

Other problems facing the leaseholders

18. Something must be said about the original legal set up of the Estate and the behaviour of the current leaseholder. Wimpey has now sold the freehold of the Estate to a company called Regisport.

19. As has been stated above, under the terms of its lease, the Respondent management company has to pay rent to the freeholder. That rent amounts to just over £4,000 per year. The insurance for the Estate has to be placed through a company nominated by the freeholder. There appears to be no reason for the way in which the rent payments and the

[2] But see the Tribunal's full comments on RMG later in this decision

insurance arrangements are set up other than to provide a profit for originally Wimpey and now Regisport. Regisport is not obliged to anything under the terms of any lease other than collect rent and, quite possibly, to obtain commission on the placement of insurance.

20. To add to the Respondent management company's problems, Regisport has taken proceedings against it concerning the timing of the payments of the rent due to it under the lease between it and the management company and the non-payment of premiums due. The costs of these proceedings may ultimately have to be paid by the leaseholders.

21. There are further concerns as to the reasonableness of the insurance premiums (which are of course payable by the leaseholders) pursuant to the insurance on the estate obtained by Regisport (see more on this later in this decision).

The Tribunal's general concerns

22. The Tribunal has throughout these proceedings been concerned that, although applications from leaseholders as to the payability of service charges are understandable, such applications may not be the best way to ultimately resolve the problems at the Estate (especially for those leaseholders who are actually living in their flats as opposed to renting them out). What is desperately needed at the Estate is a Respondent management company that is taken over and given direction by the leaseholders on the Estate.

The Applicants

23. The original application was made by Mr Sachdev alone. The other applicants have been added at various stages in the proceedings.

Mr & Mrs Khan (flat 39)

24. Mr Khan, another leaseholder at the estate and who was present at the pre-trial reviews told the Tribunal that there were proceedings (for unpaid service charges) between the Respondent management company and himself under claim number 8CM01834 in the Uxbridge County Court. The Court was requested to transfer the proceedings to the Tribunal so that they could be dealt with within this application. Unfortunately, despite being given a very long time to do so, the court has failed to make an order for that transfer. It is hoped that those proceedings can be settled following this decision.

Progress prior to the final hearing

25. Following on from the Tribunal's stated concerns about the management of the Estate in the pre-trial review hearings, the managing agents RMG and in particular Mr Latta, their technical director, have taken steps to improve and resolve matters at the Estate. The most important steps taken have been as follows;

(a) A plan has been formulated to deal with the four unregistered leases by way of forfeiture proceedings so that the mortgage companies involved in the lending for the purchase of these flats can step forward, pay arrears of service charge and sell the flats to genuine purchasers

(b) RMG acknowledged its failures in managing the Estate and agreed to waive its management fees and the directors fees for the years 2008 and 2009 (amounting to £12,737.00)

(c) RMG has made an interest free loan to the Respondent management company of £16,000 to help it with its cash flow, that loan is to be repaid as and when the company has sufficient funds

(d) RMG has obtained quotes for alternative insurance for the Estate. Those quotes are substantially lower than the premiums being paid for the insurance arranged by Regisport. Consideration can now be given to challenging the premiums on the current and future insurance for the Estate.

The parties' respective cases prior to the final hearing

26. As per the directions given by the Tribunal, the Respondent management company sent to the Tribunal and the applicants a statement regarding the issues to be dealt with by the Tribunal. That statement, prepared by Mr Latta, was comprehensive and very useful to all concerned. The applicants did not produce any statement in response to Mr Latta's statement. Accordingly, at the final hearing, so far as the applicants were concerned, their case was confined to a general complaint about lack of gardening, cleaning and general maintenance since 2006, a complaint about inadequate management and an issue concerning the company secretary fees.

The Tribunal's decisions

The fees of RMG managing agents and directors' fees

27. At the outset of the hearing, Mr Latta, on behalf of the managing agents, RMG, offered to waive RMG's charges for the years 2008 and 2009 and also the directors' fees for those years. This offer amounts to a total of £12,737.00 for that two year period.

28. The Tribunal finds that this was an entirely appropriate offer. The Tribunal had many concerns about the quality of the management of the development since it was built (during which time RMG has been the managing agent, albeit with a change of name). The Tribunal repeats the criticisms of RMG made above, in addition, the Tribunal needs to record some further concerns about the management between the last pre-trial review in January 2010 and the final hearing. Those concerns are;

(a) The fact that gardening was carried out at the development on the Friday and Saturday before the final hearing (which started on the following Monday). This, entirely understandably, enraged the residents. No gardening had been done for approximately two years, then just prior to the Tribunal's inspection of the development, the gardening is carried out. This was viewed, quite rightly, as cynical behaviour on the part of RMG and only contributed to the lack of trust that already exists between residents and RMG.

(b) The Tribunal was told by Mrs Bissessar that some promises had been made by RMG that some work would be carried out in the months prior to the final hearing. She argued, quite rightly, that despite the lack of funds, if the residents could see that work was being done around the development, they would be encouraged by this and possibly persuaded or be more amenable to paying their service charges. Unfortunately, the promises were not honoured (apart from the gardening mentioned above) leading to a further breakdown of trust.

(c) The Tribunal was also concerned about the continued failure of RMG to call effective official, or unofficial, meetings of the leaseholders or to effectively communicate with them. One of the clear problems at the development had been the lack of information given to the residents and the lack of participation on their behalf. It would have been a fairly easy step to have called a meeting or to have leafleted residents with updates as to events and plans for the future.

29. Overall, the Tribunal considers that the deduction from the service charges of two year's worth of management fees and directors' fees properly compensates the residents for the failings in management and represents the proper amount to be deducted for the lack of any reasonable service provided to a reasonable standard.

Gardening and cleaning

30. The Tribunal heard evidence from Mrs Khan, Mrs Sidhou and Mrs Bissessar. Mesdames Khan and Sidhou thought (from memory) that there had been no gardening or cleaning prior to the beginning of 2008. This did not accord with the records produced by RMG or the accounts which clearly showed that payments had been made for gardening and cleaning. The records and accounts then went on to show that apart from a small amount of gardening and cleaning carried out in January 2008, no more such services were provided after that time.

31. Mrs Bissessar's evidence was backed up with notes made from the periods in question. She had noted when she started to complain about the lack of services. She and her husband had moved into their flat in May 2007 and she gave clear evidence to indicate that both gardening and cleaning services were being provided at that time. Further, it was clear from Mrs Bissessar's evidence that those services were being provided to a reasonable standard. The Tribunal has no doubt that if they were not being provided to a reasonable standard, Mrs Bissessar would have made a note of that and would have complained. She may also not have purchased her flat given that one of the attractions of the flat was the view over a part of the communal garden. Her records also supported a view that the cleaning, gardening and general maintenance stopped in or about January 2008.

32. The Tribunal found Mrs Bissessar to be a very impressive witness (and believes that she would make an excellent director of the Respondent management company). She is clearly highly organised and efficient. The Tribunal makes no criticism of Mesdames Khan and Sidhou, they were trying to recall to the best of their ability events that occurred some considerable time ago. They, unlike Mrs Bissessar, did not have the benefit of contemporaneous notes.

33. Accordingly therefore, the Tribunal finds that the records produced by RMG are accurate in that they show that the gardening and cleaning stopped after January 2008. The Tribunal is satisfied that these services were being provided prior to this time and that they were being done to a reasonable standard. As to the lack of services in 2008 and 2009, given that no charge has been made for these, it is not possible to make any deduction from the service charge.

Maintenance and company secretarial fees

34. The Applicants did not make any response to the Respondent company's statement of case and, despite being given receipts and records, did not make any challenge to any maintenance item in the accounts nor to the secretarial fees.

35. Therefore, insofar as there was a lack of maintenance, the Tribunal cannot make any deduction from the service charge given that there was no charge, or that, whatever charge there was, was not challenged.

Other items – insurance assessment report

36. Other items were raised during the course of the hearing and the applicants who were present adopted them as part of their case.

37. There was an invoice in the papers presented to the Tribunal for a buildings insurance assessment report from Morgan Sloane dated 26 October 2009 in the sum of £1725.00. The Tribunal could see no reason for this report given that the buildings in question were only constructed in 2005. It may well be in any event that this work has not been carried out.

38. The Tribunal finds that this work was not (if it has been) carried out reasonably and is not payable by the Applicants.

Other items – Budget assessment report

39. There was an invoice in the papers presented to the Tribunal for budget assessment report from LBB Chartered Surveyors dated 13 October 2008 in the sum of £734.00. The description on the invoice for this item is:-

> Receiving instructions, inspecting the subject property and preparing Building Condition and Budget Assessment report

Given the state of the Respondent company's finances at this time and the fact that the development had only been recently built, a report of this kind at such a significant cost appears to be both unnecessary and unreasonable. This may be the kind of report that is required for the good long term management of the estate, however the immediate finances and future of the management company need to be sorted out before such a report is appropriate. The cost of this report is therefore not payable by the Applicants.

Costs

40. Mr Latta, on behalf of RMG, conceded, quite properly, that RMG would not make any charge in respect of its costs incurred in these proceedings. Accordingly the Tribunal makes an order pursuant to section 20C Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent management company in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicants.

Other comments

41. It is hoped that the residents at the estate can take control of the Respondent management company and elect resident directors. The management company faces significant challenges. Whilst the Tribunal has made serious criticisms of the managing agents, RMG, the Tribunal was impressed with Mr Latta's approach and knowledge. He has formulated a plan of action to try and resolve matters and has now a considerable working knowledge of the issues and problems facing the residents.

Mark Martynski
Mark Martynski – Tribunal Chairman
14 June 2010

The relevant law referred to above is as follows

Housing Act 1985

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

(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, improvements 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.

19 Limitation of service charges: reasonableness

(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.

[(2A) . . .

(2B) . . .

(2C) . . .]

(3) . . .

(4) . . .

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination 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 admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.