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**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 SECTION 27A

REF: LON/00AT/LSC/2009/0822

PROPERTY: **FLAT 2, BOLTON LODGE,
BOLTON ROAD,
LONDON W4 3TG**

Applicant **LONG BOLT LIMITED**

Respondent **MR PHILLIP ECCOTT**

Date of Receipt of Application: 17th December 2009

Appearances **MR ALEX KING (Flat 6)
MR ASHKAN PARSA (Flat 1)**
For the Applicant

**No appearance by or on behalf of the
Respondent**
For the Respondent

Date of Pre-Trial Review and Directions: 26th January 2010

Date of Dismissal Hearing and further Directions: 10th June 2010

Date of Hearing: 26th August 2010

Date of Decision: 1st September 2010

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr D Banfield FRICS
Mr O Miller BSc

DECISION

Introduction

1. This case involves an application made by Longbolt Limited in respect of Flat 2, Bolton Lodge, Bolton Road, W4 3TG (“the Property”). The property comprises 8 flats; the Applicant is a company owned by the leasehold owners of the 8 flats. The leaseholders are also the directors of the Applicant. The Application is brought against Mr Phillip Eccott (“the Respondent”) who is the leasehold owner of the property.
2. The Application is made pursuant to Section 27A of the Landlord & Tenant Act 1985 (“the Act”) and in the Application a determination is sought in respect of the reasonableness and liability to pay service charges for the years 2004–2009. By virtue of an earlier Determination made by the Tribunal in 2007, and by virtue of Directions given at an oral Pre-Trial Review on 26th January 2010 it has been determined that this Application made proceed only in respect of the years 2008 and 2009. Subsequently, a Dismissal Notice was served on the parties by reason of failure to comply with the Tribunal’s Directions. At the hearing in relation to that Dismissal Notice, which occurred on 10th June 2010, it was determined that the matter could proceed and further Directions were given as a result of which the matter came before the Tribunal for a hearing on 26th August 2010.
3. At the hearing the Applicant was represented by Mr Alex King, the owner and occupier of Flat 6, and Mr Ashkan Parsa, the owner and occupier of Flat 1. The Respondent did not attend. Indeed the Respondent attended at neither of the two earlier hearings referred to above and did not comply with any of the Directions and in particular did not supply the Tribunal with any documents upon which he proposed to rely. Furthermore he supplied no statement of his case for the benefit of the Tribunal, other than a one page manuscript letter

faxed to the Tribunal after office hours on 24th August (thus one working day before the hearing). That letter makes some generalised allegations but does not condescend to specifics in relation to any of the actual charges claimed.

The Hearing

4. The Applicant had prepared a substantial bundle of documents dealing with some of the background to this matter, and these documents were supplemented by some further documents obtained during the course of the hearing. The Applicant sought a determination not only in respect of the two service charges referred to above but also in respect of 2010. The Tribunal declined to deal with the service charge year 2010, given that there were no proper documents in relation to this year, and in any event this year had not yet been completed, was not referred to in the Application, and was not the subject matter of the Directions given.
5. The hearing proceeded on the basis of the Applicant explaining to the Tribunal the service charge charges claimed for each of the respective years (that is to say 2008 and 2009) and an examination of the relevant documents for those two years. It is proposed to deal with the evidence in relation to those two service charge years below.

Service Charge Year 2008

6. The sum claimed in respect of this year was £798.80p. This sum was calculated (as appears a spreadsheet contained within the bundle headed "Contributions 2008") on the basis of ten monthly interim contributions of £70 and a further monthly contribution of £100, thus totalling £800. Of this sum claimed, the Respondent had paid £1.20p. Thus the balance of £798.80p was claimed.
7. In order to substantiate the sum claimed, the Applicant referred to an internal computerised printout, the certified company accounts for the year ending

31st December 2008, the company's bank statements, and finally the invoices and cheque stubs documenting the particular expenditure for that year.

8. Having considered the documents referred to above, and having cross-referenced the expenditure in the company bank statements with the computerised printout and the specific invoices and cheque book counterfoils (and in addition the certified accounts) the Tribunal was satisfied that the actual expenditure for this service charge year was £4,061.40p. The Tribunal was told that each of the other leaseholders in the building had made the necessary contributions (as they had done for many years) and that the Respondent was the sole defaulting leaseholder in the block. It was not clear as to why he had only made a token contribution of 10p per month for the services in the block; the Applicant speculated that there had been some historic dispute concerning some building work in 2004. However there was no material from the Respondent himself in respect of this speculation. Indeed as indicated, the Respondent neither attended the hearing nor supplied any documentation or substantive case for the Tribunal.

9. By virtue of the provisions of the respective leases governing the building, each leaseholder is required to pay 12.5% of the annual expenditure on serviced charge items. The figure of £4,061.40p has been taken from the outgoings as recorded in the bank statements for that calendar year and in large part authenticated by invoices and the company accounts. 12.5% of that figure would be £507.67p. The Tribunal was informed that the company (effectively all the leaseholders with the possible exception of the Respondent) had resolved that reasonable provision for services for that year would be ten payments of £70 and one payment of £100, totalling £800. The surplus was held on account and used effectively as a reserve fund to deal with any periodic expenditure, and to provide for further expenditure as may be necessary.

10. It is arguable whether, under the terms of the lease, there is an entitlement to build up a reserve fund in this way. At paragraph 3(e) of the lease provision is

made for contributions by the lessor towards service charge expenditure.

At Clause 3(vii) it is provided that:

“The expenditure incurred by the lessor in carrying out her obligations hereunder shall be deemed to include not only the actual expenditure incurred during the lessor’s financial year, but also such reasonable anticipated expenditure which is of a periodic or recurring nature as the lessor or her managing agents may in their sole discretion allocate to the financial year in question as being fair and reasonable in the circumstances.”

11. No point was taken by the Respondent as to the holding of a reasonable sum on account to deal with periodic or recurring expenditure, and it is of course prudent for the Applicant to keep such a sum on reserve. The clause in the lease referred to above provides a possible basis upon which to accumulate such a sum, subject to reasonableness under the terms of the Act. For present purposes and on the basis of the material before the Tribunal the surplus over and above the actual expenditure does not seem to the Tribunal unreasonable, especially given that the amount appearing from the documentation held on account is in the order of £3,000. This figure, for a block containing 8 flats is not an excessive sum in the view of the Tribunal, and could be easily dissipated by ordinary expenditure on the building.

12. For the reasons indicated the Tribunal is satisfied on the basis of the material before it that the sum of £798.80p claimed in relation to the year 2008 by the Applicant is a reasonable sum, and the Tribunal so determines.

Service Charge Year 2009

13. The company accounts for the year ending 31st December 2009 have not yet been prepared. However, once again, the Tribunal had before it the internal printout relevant for this year as referred to above, the original invoices and the cheque stubs and bank statements pertinent for this period. Having examined all that primary documentation during the course of the hearing with the Applicant, the Tribunal was satisfied that the expenditure was both objectively reasonable and authenticated by the documents. The overall actual expenditure

for that year was £4,898.30p. 12.5% of this figure would produce £612.28p. The sum claimed by the Applicant was £839 and this was calculated on the basis of twelve monthly payments of £70 (£840). Once again for reasons unexplained, the Respondent had paid a mere 10p per month totalling £1 for the year. Thus the balance of £839 remain due.

14. Once again therefore the sum claimed was somewhat more than the actual expenditure (a difference of £227) but in the absence of any specific opposition and for the reasons already indicated above, the Tribunal was satisfied that the surplus figure was a reasonable sum to keep on account to cover periodic and recurring expenditure as provided for in the terms of the lease already set out above. Accordingly, the Tribunal determines that the sum of £839 by way of service charge for the calendar year ending 31st December 2009 is reasonable in all the circumstances and in accordance with the provisions of the Act.

Liability

15. Section 27A of the Act also makes provision for the Tribunal to make a determination as to whether a particular service charge is payable. In this case, the Applicant took over the management of the building from previous professional managing agents during 2008. No criticism is made of this decision and, no doubt, in a relatively small block of this kind, there are good economic reasons for saving the expense of professional management. However, since the reforms brought in by the Commonhold and Leasehold Reform Act 2002, the relevant provisions of which were effective in respect of the two service charge years under consideration, certain statutory requirements had to be complied with. In particular, for service charges to be payable, a demand for such charges is required to have been made in a form complying with the Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007. Those Regulations require a demand for service charges to be accompanied by a summary of rights and obligations containing information as set out in the Regulations. In this case the Applicant was unable to demonstrate to the Tribunal that any such demand has been made

of the Respondent. Further, the lease at paragraph G of Part 1 of the Schedule to the lease, provides for an initial annual contribution (effectively an interim service charge) in the sum of £75 annually. It is perfectly possible for a greater sum to be charged and recovered as provided for in the lease, but the particular provision (see Clause 3(viii) of the lease makes provision for the service of a notice upon the lessee at the end of each financial year specifying the revised and adjusted sum. Again, there was no evidence before the Tribunal of a notice served specifically in accordance with this provision.

16. In all the circumstances, although the Tribunal is satisfied for the reasons indicated above that the service charge expenditure is reasonable, the Tribunal is not satisfied that the Applicant has demonstrated that the sum determined is at this stage payable. As indicated to the Applicant at the hearing, it is important that the Applicant should take some advice on how to manage this building so as to comply with the Regulations referred to above, and indeed other statutory provisions. It is possible that the omission referred to is capable of being cured, but the Applicant should take its own legal advice upon this aspect of the case. For the reasons indicated the Tribunal was not satisfied on the evidence before it that the sums determined as reasonable are at this stage payable.

Conclusion

17. The sums determined as reasonable for the two service charge years before the Tribunal are as referred to above. These sums are not at this stage payable; they may become payable, but as indicated the Applicant should take further advice in this respect and in respect of management matters generally.

Legal Chairman: S. Shaw



Dated: 1st September 2010