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IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT – SECTIONS 27(A)(1) & 20C

LON/OOBA/LSC/2010/0409

Premises: Flats 32,33,36,41,44 & 49 Bushey Court, Bushey Road,
London SW20 0JE

Applicants: Ms. G Low & others

Represented by: Ms. Low

Respondent: Keene Investments Limited

Represented by: Property Partners Management Limited
Mr. S Gallagher, counsel

Tribunal: Ms. LM Tagliavini, Barrister & Attorney-at-Law, (NY)
Mr. S Mason FRICS FCI Arb
Mr. J Francis QPM

Hearing Date: 20 September 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985 seeking the Tribunal's determination of the service charge year 1/4/09 – 31/3/10. The subject premises comprise 36 flats located in two blocks, (Nos 14-25 and Nos 26-37) seven of which are retained by the landlord and held on long leases, copies of which were provided to the Tribunal. The Applicants specifically challenged the reasonableness and payability of the following:
 - (i) The annual contracts for the provision of cleaning, pest control, landscaping, fire and health and safety. These were said to be qualifying long term agreements and subject to a section 20 consultation procedure which had not been carried out.
 - (ii) Major works including works to security entry systems, replacement of communal windows, interior redecorations and new communal lighting.
 - (iii) The reasonableness of management fees as these were said to be too high at 17.5% (plus VAT) having been charged at 15% previously.
 - (iv) Insurance premiums changed from £8,379.97 & £1,827.32 (terrorism cover) to £733.30 and £152.28.

The Applicants' Case:

2. It was asserted that the Respondent had failed to serve the requisite section 20 consultation notices for the long-term qualifying agreements in respect of the gardening, cleaning and pest control contracts and therefore costs should be limited. Further, major work had commenced without prior notice to the lessees and therefore the payable costs were limited to £250

per flat. Insurance costs were not clear and there appeared to be discrepancies between what appeared on the service charge invoices and the insurance cover certificate. The Applicants also queried the reasonableness of some of the costs of redecoration on the grounds that it was not clear what repair or replastering needed to be carried out. Other costs should be charged to individual lessees.

3. It was said on behalf of the Applicant that the works had been carried out without notice and there had been no opportunity to have any input into the cost, extent or choice of contractor. It was accepted that the works carried out were necessary but it was said they were not urgent. A number of individual invoices were queried as to whether they were properly included in the service charge account, namely an invoice for a property retained by the landlord and works to a leaking water pipe and a check on a boiler – when there was no communal boiler.

4. It was said the charges for the insurance premium were not clear, as they appeared to have dramatically decreased from some £8,000 - £9,000 to £733.30. Finally, an invoice for carpeting had been received but this had not been part of the major work. Mrs. Nicanovich, a block resident stated that she had been present when the same contractor throughout carried out the works. She had been given no opportunity to comment on these works or put forward a contractor of her choice.

The Respondent's Case:

5. At the outset the Respondent conceded that reference to legal charges in the 2009/10 invoices would be omitted. The Respondent admitted that no formal consultation section 20 notices had been served on the lessees in respect of the major works pertaining to the redecoration only, which were invoiced in October 2009 in the total amount of £11,385. The Respondent then sought dispensation from the Tribunal pursuant to section 20ZA of the Act in respect of those works if such dispensation was considered necessary.
6. The Respondent submitted that the works carried out at Bushey Court between August 2009 and December 2009 were part of a consolidated program of works spread out over a discrete series of contracts for (i) double glazing (ii) interior redecoration (iii) new lighting to communal areas (iv) installation of a new inter-com system. Of these, only those works relating to interior redecoration required section 20 notices and consultation the remaining falling below the £250 per flat threshold.
7. Alternatively, the costs of these works should be aggregated for the purposes of the statutory consultation scheme, in particular for the application and allowance of the "triviality threshold". A draft service charge budget estimated total expenditure for 09/10 to be in the region of £56,000. Actual expenditure for that period amounted to approximately £48,000.
8. Mr. Franklin-Jones gave evidence for the Respondents and stated that the major works had been carried out to the

satisfaction of the lessees, and no complaints had been received about the quality of the works. The new managing agents, Residential Partners had taken over in January 2009 with the stated aim of improving the block's appearance and amenities. It was stated that it was intended to use a series of discreet contracts, rather than carry out a major work contract in order to spread the costs. He stated that he "Knew it was a risk" not to undertake the section 20 consultation but dismissed the need to follow these, as he was confident that the lessees would "Come through for me." He accepted that he had not asked for alternative quotations in respect of the double-glazing and had received only a verbal quote for the intended new carpeting. No surveyor had been appointed to oversee the work, which had for the most part been carried out by Gold Hands contractors. The lessees had been alerted to the works in a letter dated 26th February 2009 in which it was stated:

"Any major works which can not be included in the service charge will be issued via section 20 and carried out at a later stage."

A further letter dated 20th April 2009 addressed to the lessees also wrote of the need to carry out works and state:

"We will be doing as much as we can to the refurbishment works, but due to the cost we decided to span it over a few years. This year will include the internal and front door refurbishment."

9. Discrepancies in the budget were due to a typographical error and the finalised account for the relevant year was less than the budgeted amount. Contracts for gardening and cleaning were on an oral basis and paid monthly as indicated by the invoices.

Insurance premiums were now being collected on an accruals basis in advance and the figure of £770.30, which the lessees queried, covered the period 1/3/09 - 31/3/09 only. Originally there had been an annual contract for pest control but this had now expired and was on a "rolling basis". Plumbing repairs to Flat 37 were connected to work to a communal tank, and checks were made to ensure this individual flat had not been compromised by these leaks. It was submitted the invoices of £120 and £505.25 respectively were therefore properly incurred and recoverable through the service charge.

The Tribunal's Decision:

Individual Invoices:

10. The Tribunal accepts the Respondent's explanation for the invoices apparently relating to an individual flat (No. 37) as concerning works that should properly be charged to all lessees through the service charges. The Tribunal considers these sums reasonable and payable by the Applicants.

11. The Tribunal finds that the major works comprised one program of qualifying works and not a series of discreet contracts as the Respondent contends. The Tribunal finds that it was always intended to carry out a number of works to the blocks as evidenced in the correspondence sent to the lessees and referred to as "major works". However, despite a stated intention to spread the cost out over a few years this has not been done and the Tribunal finds that the works carried out constitute a single agreement with Gold Hands with works being carried out simultaneously to both blocks. Further, the Tribunal notes that the Respondent failed to provide as single written contract to support its contention that this was a series of

individual contracts. The fact that the cost of the interior redecoration works for the two different blocks were identical, served only to reinforce the Tribunal's view that the invoices had been purposely submitted in such a way as to support the Respondent's claim that the cost of these works fell below the "triviality threshold" despite the managing agent's admission he knew section 20 notices were needed.

12. As it was conceded by the Respondent that no section 20 consultation procedures were followed, the Tribunal is asked to consider whether it should exercise its discretion and grant the Respondent dispensation pursuant to section 20ZA. Although the Respondent submitted only that this was relevant to the works of internal redecoration, the Tribunal did consider whether dispensation should, in the light of its decision as stated above, whether this should apply to the whole of the works agreement. In support of the Respondent's case on this point, Mr. Gallagher relied on a number of cases to which he referred the Tribunal and included *London Borough of Camden v The Leaseholders of 37 Flats at 30-40 Grafton Way* LRX/185/2006; cf *Eltham Properties Limited v Kenny* LRX/161/2006(LT) He submitted that the use of the discretion was not to be wielded as a punishment and that the most important factor was the degree of prejudice caused to the lessees. He stated that there had been some informal consultation in this case and the works carried out were relatively straightforward and of modest value.

13. The Tribunal dismisses the Respondent's application to dispense with service of the section 20 consultation notices in respect of these works as required by the Service Charges (Consultation Requirements) (England) Regulations 2003. The Tribunal finds that there has been intentional and obvious

disregard for the need to consult with lessees before carrying out the works, thereby depriving them of the opportunity to know the nature and extent of the works to be carried out and at what cost. The Tribunal finds that the lessees have been prejudiced in not being able to nominate their own contractor or to obtain an alternative quote for the work or even know what more precisely the nature and extent of the work that were to be carried in a particular period.

14. The Tribunal finds that this is not a case here a minor or technical error has resulted from an oversight of the Respondent but a deliberate and calculated decision on the part of the managing agents to ignore statutory requirement. The Tribunal finds on Mr. Franklin-Jones own admission that he “took a risk” that was both unnecessary and unwarranted. Had the works been of an urgent nature, the Tribunal may have formed a different view, but no submissions to that effect were put forward. The Tribunal is not satisfied that these works were competitively priced although it does accept that the standard of works on the whole appears to have been reasonable, with few complaints being voiced by the Applicants in this respect. The Tribunal finds that a significant degree of prejudice has been caused to the Applicants by the manner in which the Respondents chose to go about these major works. Therefore the costs of these works are limited to £250 per flat for each of the Applicants.

Long-term qualifying agreements & insurance:

15. The Tribunal accepts the Respondent’s evidence and submissions on this point and finds that the oral contracts for cleaning and gardening are not long-term agreements having

been entered into on a month by month basis, rather than for a period of over 12 months, with termination by either side available at any time. Therefore, the Tribunal finds that no consultation process was required for the provision of these services. Similarly, the Tribunal accepts the Respondent's explanations for the discrepancies appearing in the service charge invoice in respect of the insurance and the change in the way payments are to be made.

Management Fees:

16. The Tribunal finds that the management fee of 17.5% is excessive; in light of the serious inadequacies found in the carrying out of major works and the lack of involvement the managing agents have had in their implementation. The Tribunal finds that a more reasonable sum is 10% plus VAT for the management fees for the relevant year. The Tribunal could find nothing particularly complicated about the management of these two modest blocks of 36 flats that would demand or justify a higher fee.

Section 20C

17. In light of the above findings, the Tribunal considers that in all the circumstances that it would not be reasonable for the costs of this litigation to be added to the service charges.


Chairman: LM Tagliavini

Dated: 7 November 2010