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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00BE/LSC/2010/0172**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER S.27A OF THE LANDLORD AND TENANT ACT 1985.**

Applicant: The Mayor and Citizens of the City of London  
Respondent: Almosa Limited  
Premises: 39 Tovy House, Avondale Square, London SE1  
Tribunal: Ms F Dickie, Barrister (Chairman)  
Mr J Avery, FRICS  
Mr D Wills  
Date of Hearing: 2<sup>nd</sup> August 2010  
Appearances for Appellant: Mr J Sandham, counsel  
Appearances for Respondent: None  
Date of Decision: 10<sup>th</sup> August 2010

**Summary of Determination**

- 1) **The Tribunal finds all of the service charges claimed in the total sum of £8831.12 for the years 2005-2009 are reasonable and payable, save for the window cleaning charge of £18.29 for the year 06/07 conceded by the Applicant. The total of £8812.83 is therefore awarded. The Tribunal further orders that the Respondent pay to the Applicant:**
  - a) **£500 in respect of costs under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.**

**b) £150 in respect of the hearing fee under Regulation 9(1) of the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003.**

**Preliminary**

- 2) The relevant law regarding the Tribunal's jurisdiction is contained in Sections 19-27 of the Landlord and Tenant Act 1985.
- 3) The Applicant is the freeholder of the subject premises, being a flat within a purpose built block of 52 residential flats on a larger estate comprising 12 separate blocks of flats. The Respondent is the current holder of the leasehold interest and is understood to let it to tenants as a rental investment. The lease is dated 21<sup>st</sup> August 1989 and is for a period of 125 years.
- 4) These proceedings commenced in the Lambeth County Court with the issue by the Mayor and Commonality and Citizens of the City of London of a claim against Almosa Limited on 20<sup>th</sup> March 2009. That claim was for recovery of £8861.12 in unpaid service charges and ground rent (£30) plus interest under the County Courts Act and costs. A Defence was eventually filed on behalf of the company by Mr Burgess, Director and principal shareholder. The Defence asserted that the charges are unreasonable and contain items not within the scope of the lease, that a detailed defence could not be provided as a full breakdown was yet to be received and that the leaseholder sought an order for transfer of the matter to the Leasehold Valuation Tribunal. On 25<sup>th</sup> February 2010 the matter was so transferred by virtue of an Order of District Judge Zimmels in the following terms:
  1. Stay proceedings
  2. Claim for service charges is transferred to the Leasehold Valuation Tribunal"
- 5) The Tribunal has no jurisdiction in relation to ground rent, interest under the County Courts Act or costs incurred in the County Court. The sole issue for its determination is the claim for service charges in the sum of £8831.21, which relates to the service charge years 2004/05, 2005/06, 2006/07, 2007/08 and 2008/09. A pre trial review was held on 31<sup>st</sup> March 2010, attended by representatives of the Applicant Landlord. The Respondent did not appear. The Tribunal issued directions for the preparation and service by the Applicant of a statement of case and of a schedule setting out the heads of charge, the

amount due under each head and any other supporting information. That schedule was served on the Respondent, who in accordance with the directions was required by 19<sup>th</sup> May 2010 to:

“Send a reply, which shall provide full details of all charges that are accepted as reasonable and payable. For those charges not accepted, (for which part payment is conceded as payable) the amount accepted as reasonable. Where sums are disputed the Respondent shall set out the full reason for the dispute in the schedule. The Respondent should include reference to any supporting documents (such as estimates or quotes, which may be provided in support of an alternative costing in an appendix to the schedule, or any other document which goes to the issues in this case).

- 6) In May 2010 Mr Burgess served on the Applicant his comments on the Applicant's schedule. Thereafter, the Respondent has played no part in these proceedings.

#### **The Hearing**

- 7) The matter was listed for an oral hearing that took place on 2<sup>nd</sup> August 2010. The Applicant was represented by Mr Sandham of counsel, instructed by Ms Cathy Lawson its in-house Senior Legal Assistant. The schedule, including the Applicant's comments upon the Respondent's, was provided to the Tribunal and referred to in detail at the hearing. Mr Iain Stanton, Home Ownership Officer, also attended, as did the Applicant's witness Ms Anne Mason, Service Charge and Revenues Manager. Her witness statement dated 9<sup>th</sup> July 2010 was within a substantial core bundle of documents supplied by the Applicant to the Tribunal running to 375 pages. The Applicant also provided copies of all invoices for service charge expenditure for each of the years in question, supplied in 5 separate bundles of documents. There was no appearance from the Respondent at the hearing.
- 8) The Respondent's participation in these proceedings has extended no further than the comments made on the Applicant's schedule, consisting mainly of a statement that a service charge item was accepted or disputed. These comments are of merely a general nature, for example: “Can't see why any of this is necessary”, “covered under other management headings”, “seems high”. Where disputed, no supporting evidence was produced. No comment, either agreed or disputed, was recorded next to several items

which Mr Sandham for the Applicant proposed the Tribunal should be considered not to be challenged.

- 9) Mr Sandham referred the Tribunal to relevant authorities in support of his contention that the Respondent in seeking to dispute service charges must raise a *prima facie* case before the Applicant is required to answer: Yorkbrook Investments v Batten (1986) P&CR 51, CA. The Court of Appeal stated that:

“the tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence – of his case”.

- 10) Mr Sandham argued that it is insufficient for Almosa simply to declare a particular cost *too high* or *unnecessary*, and that it must produce evidence. He relied also on Arrowdell Limited and Coniston Court (North) Hove Limited [2007] RVR 39 in which it was held:

“It is entirely appropriate that, as an expert tribunal, an LVT should use its knowledge and experience to test, and if necessary to reject, evidence that is before it. But there are three inescapable requirements. Firstly, as a tribunal deciding issues between the parties, it must reach its decision on the basis of evidence that is before it. Secondly, it must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. Thirdly, it must give reasons for its decision”

- 11) The Tribunal does not consider it necessary to set out in detail the contents of Ms Masons’ detailed witness statement. It was not contradicted by any evidence put forward by the Respondent. No dispute was raised as to the calculation and apportionment of service charge contributions, to the method of accounting or form of demands.

#### **Tribunal’s Determination**

- 12) The Tribunal is of the view that the Respondent failed to comply with the spirit and the letter of the Tribunals’ directions. In respect of disputed items the Respondent did not specify a figure accepted to be reasonable, or give full reasons for the dispute, and did not provide any supporting evidence.

- 13) The Tribunal broadly accepts the primary contention put by Mr Sandham that, as Mr Burgess has not adduced evidence of his own, it should prefer the evidence of Ms Mason.

Where the Respondent has made no comment next to an item on the schedule, the Tribunal considers this item has not been effectively disputed in any way, and allows it in full. The Respondent has not participated meaningfully in these proceedings simply by making broad and unsubstantiated statements about the service charges. Having failed to produce evidence in support, the Tribunal accepts the detailed and fully evidenced submissions of the Applicant to which it considers the Respondent has made no valid challenge. The Applicant has amply proved its case. The Tribunal did however question Ms Mason on her evidence on items disputed by Mr Burgess by more than a vague assertion:

a) Mr Burgess had observed a sharp increase in the cost of communal electricity. However, the Tribunal was satisfied as to the evidence given by Ms Mason regarding the Applicant's attempts, in the face of steeply rising energy prices, to negotiate contracts with providers offering value for money for tenants.

b) The Tribunal is satisfied that each of the disputed service charge items is recoverable under the terms of the Fifth Schedule to the lease, which sets out the items recoverable as service charges under Clause 4(3)(a). In spite of the general assertion made in the County Court defence, the only dispute raised by Mr Burgess as to recoverability under the terms of the lease was with regard to the costs of maintaining a community centre charged in each of the years in question. The only part of the lease which it is therefore material to set out in this decision is part IV of the Fifth Schedule:

7. *The salary emoluments and wages together with any expenses connected therewith of*
  - (a) *the porters*
  - (b) *the estate cleaners*
  - (c) *the resident caretakers and maintenance staff*
  - (d) *any other staff which the Corporation shall in its reasonable discretion employ from time to time*
8. *All such other matters whatsoever in relation to which the Corporation may reasonably incur or decide to incur any costs liabilities or outgoings in relation to the estate*

14) In conclusion the Tribunal finds in favour of the Applicant in respect of all items of service charge expenditure it maintained were payable and reasonable, finding its evidence to be reliable, thorough and unchallenged. It is therefore unnecessary for the Tribunal to set out a breakdown of the service charge items allowed in respect of this application, or to complete the column remaining on the Applicant's schedule for the Tribunal's comments and observations, which are instead made generally in this decision.

### **Costs and Fees**

15) The Applicant sought an order for costs against the Respondent under Paragraph 10, Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which empowers the Tribunal to determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings where a party "has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings." The amount which a party to proceedings may be ordered to pay shall not exceed £500. The Tribunal has considered carefully this power and determines to make an order for costs payable by the Respondent to the Applicant in the sum of £500 since it finds that the Respondent has acted frivolously and unreasonably in that:

- a) There was no attendance at the pre trial review or the hearing.
- b) The Respondent failed properly to comply with the requirements of the Tribunal's directions, issued in order to assist the fair and proportionate resolution of this case.
- c) The transfer to the Leasehold Valuation Tribunal was at the express request of the Respondent, who has singularly failed to make a meaningful attempt to challenge the service charges claimed with evidence and argument. The general and unsupported disputes raised have put the Applicant to proof of its case at considerable unnecessary cost and inconvenience. The Respondent's approach to this litigation has caused unnecessary time and resources to be expended by the Applicant. Whilst the Tribunal is satisfied that the Applicant's case could have been prepared less extensively, for example with the schedules of expenditure but without copies of all invoices, even

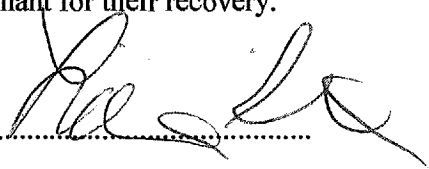
modest preparation for the wide ranging disputes raised by the Respondent would certainly have occasioned significant costs.

d) The Respondent has paid nothing towards the service charges for any of the years in dispute, in spite of the fact that a number of items have been admitted. The Tribunal concludes that the Respondent has gone through the motions of challenging these service charges through litigation whilst benefiting from having substantial additional time for payment.

16) The Tribunal furthermore grants the Applicant's application (under Regulation 9(1) of the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003 for an order that the Respondent reimburse its fees of £150.

17) Since the Respondent has made no application under s.20C of the Landlord and Tenant Act 1985, the Tribunal has no jurisdiction to make an order limiting any entitlement the Applicant may have to recover the costs of these proceedings as service charges. The Tribunal understands that it is in any event the Applicant's intention to seek its costs from the Respondent in the County Court under what it considers is a directly enforceable covenant for their recovery.

Signed.....

  
(Chairman)

Dated 10<sup>th</sup> August 2010