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HM COURTS AND TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
CASE NO CHI/00HN/LSC/2012/0035**

Application: Section 27A of the Landlord & Tenant Act 1985 as amended ('the 1985 Act')

Applicant/Lessor: Miami Court Management Company Limited

Respondent/Lessees: Mr J Fournier and Others

Building: Miami Court, 27a Surrey Road, Bournemouth, BH4 9HW

Date of Application: 17 February 2012

Date of Directions: 5 March 2012

Date of Substantive Hearing: 23 May 2012

Venue: Bournemouth County Court, Deansleigh Road, Bournemouth, BH7 7DS

Appearances for Applicant/Lessor: Miss Gemma Brown and Mrs Kim Head both of Napier Management Services Ltd

Appearances for Respondent/Lessees: Mr and Mrs T Ghweddar (Flat 2), Mrs M Peake (Flat 3)

Observing: Mrs Carla Custers on behalf of Mrs P Wiedermann (Flat 5)

Members of Tribunal: Mr N P Jutton BSc (Chairman)

Mr D Lintott FRICS

Date of Tribunal's Reasons: 24 May 2012

1. **Introduction**
2. The Applicant applies under Section 27A of the 1985 Act to determine the liability of the Respondents to pay and the reasonableness of service charges in relation to the Building, for the service charge year 29 September 2011 to 28 September 2012.
3. **Documents**
4. The documents before the Tribunal were:
 - a. The Applicants' Statement of Case dated 29 March 2012 and the Applicant's Bundle of documents pages 1-58.
 - b. The Respondents' Statement of Case prepared by Mrs T Ghweddar (Flat 2) together with a Bundle of documents pages 1-137.
5. **The Inspection**
6. The Tribunal inspected the exterior of the building on the morning of 23 May 2012. Present were Miss Gemma Brown and Mrs Kim Head from the Managing Agents Napier Management Services Ltd. The Tribunal also inspected the interior entrance of the Garden Flat which is below the walkway serving the Building. The Building is a purpose built block of 7 flats which was constructed during the 1970s. It is built of cavity brick with exposed concrete structural floor slabs under a flat felted roof. The Tribunal noticed the apparent poor condition of the walkway. There was clear evidence of the ingress of water and damp from the edges of the walkway into the Garden Flat below. This has caused saturation of some of the structural beams resulting, over time, with the rusting of steel reinforcement and spalling of the surrounding concrete. Miss Brown and Mrs Head explained that there were concerns in relation to the balustrade on top of the walkway and warning tape and cones had been put up as a precaution. Generally the Building did not appear well maintained.

7. **The Law**

8. The statutory provisions primarily relevant to applications of this nature are to be found in Sections 18, 19 and 27A of the 1985 Act. They provide as follows:

18 (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 (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.*

27A (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.*

9. In response to a question raised by the Tribunal, Miss Brown and Mr Ghweddar confirmed that they understood that the leases to all 7 flats in the building were in the same form. A copy of the lease to the Garden Flat was contained in the Applicant's bundle at pages 34-58 and a copy of the lease to Flat 2 in the Respondent's bundle at pages 32-59.

10. **The Lease**

11. The lease contained in the Applicant's bundle is the lease of the Garden Flat which is dated 1 December 1986. The obligation upon the lessee to pay service charges is set out in clause 2(2)(a).

"2(2)(a) To pay and contribute to the lessor 17.62% per annum (hereinafter referred to as 'the lessee's maintenance contribution' of the following works in relation to the Building ...

(ii) the cost of maintaining, repairing, decorating and renewing:-

(a) *The exterior and structure of the Building including (but without prejudice to the generality of the foregoing the walls, roofs, gutters and rainwater pipes, foundations and boundary walls and fences and the garden shown coloured green on the said plan*".

12. The amount of the maintenance contribution to be paid by the lessee is set out in clause 2(2)(b).

"2(2)(b) The amount of the Lessee's maintenance contribution shall be ascertained and certified by the Lessor or its managing agents whose certificate (hereinafter referred to as 'the Certificate') supported by accounts shall be final and binding on the parties hereto once a year in respect of the year to the Twenty-ninth day of September in each year (hereinafter referred to as 'the maintenance year') the Certificate to be prepared and served on the Lessee as soon as practicable at any time after the Twenty-ninth day of September in each year and during each maintenance year the Lessee shall pay to the Lessor by half yearly payments on the Twenty-ninth day of September and on the Twenty-fifth day of March on account of the Lessee's contribution one half of the estimated amount thereof notified to the Lessee by the Lessor or their managing agents prior to the commencement of each maintenance year for the ensuing maintenance year ..."

13. The Tribunal referred Miss Brown to page 98 of the Respondent's bundle. That is a document headed '*Estimated Expenditure for the year to 28 September 2012*'. It is an estimate of anticipated expenditure including the expense of repairs to the walkway. It totals £31,013.94. On enquiry from the Tribunal, Miss

Brown confirmed that this had been served on the lessees either in late January 2012 or early February 2012.

14. Mr Ghwedar stated that the estimate had been received on 13 February 2012.
15. The Tribunal referred Miss Brown to page 97 of the Respondent's bundle. Miss Brown confirmed that this was an invoice dated 10 February 2012 in the form of a service charge demand and that it was based upon the estimate at page 98. Miss Brown confirmed that it had been served on the lessees. Mr Ghwedar stated that it had been received on 13 February 2012.
16. The Tribunal referred Miss Brown to page 111 in the Respondent's bundle. Miss Brown confirmed that this was an invoice dated 16 March 2012 due to be paid on 25 March 2012 in the form of a service charge demand also based on the estimate at page 98. That it had been served on the lessees.
17. Mr Ghwedar stated that it had been received on or about 27 or 28 March 2012.
18. The Tribunal referred the parties to clause 2(2)(b) of the lease at pages 38 and 39 of the Applicant's bundle. The Tribunal suggested to the parties that the first part of section 2(2)(b) provided for the provision of a certificate at the conclusion of the maintenance year which would determine the amount of service charge contribution to be made by the lessee for that preceding year. Both Miss Brown and Mr Ghwedar accepted that was the case.
19. The Tribunal referred the parties to the second part of clause 2(2)(b) which provided for payments on account of the maintenance charge contribution.
20. The Tribunal suggested to the parties that the second part of clause 2(2)(b) appeared to provide that firstly, in order for the lessor to recover payments in advance it had to notify the lessees of the estimated amount for the

maintenance year. Both Miss Brown and Mr Ghwedar agreed. Secondly, that it appeared that clause 2(2)(b) required that such notification of the estimated amount should be notified to the lessees prior to the commencement of the maintenance year for the ensuing maintenance year.

21. The Tribunal asked Miss Brown to consider whether or not the effect of clause 2(2)(b) was that it was a condition precedent of a demand for service charge contributions in advance for the lessor first to serve on the lessees in advance of the maintenance year an estimate of anticipated service charges. That in the circumstances, to consider by reason of clause 2(2)(b) whether or not the service charge demands which appeared at pages 97 and 111 of the Respondent's bundle being based upon the estimate at page 98 of the same bundle and which had been served during the current maintenance year were payable.
22. The Tribunal offered both parties the opportunity to have a short adjournment to consider the point.
23. Miss Brown politely declined the offer of the adjournment. She said that she accepted that the provisions of clause 2(2)(b) of the lease were such that demands for service charge contributions made in advance were not valid if based upon an estimate which had not been served prior to the commencement of the maintenance year in question. That as such, by reason of clause 2(2)(b) the sums demanded in the service charge demands which appeared at pages 97 and 111 of the Respondent's bundle were not payable.
24. Mr Ghwedar confirmed that he agreed.

25. **The Decision**

26. The meaning of clause 2(2)(b) of the lease is clear. That if the lessor wishes to obtain service charge contributions in advance from lessees, it is required firstly to notify the lessees of the estimated amount of the service charge for the maintenance year and secondly, that such estimate must be notified to the lessees prior to the commencement of the maintenance year to which it relates. That it is a condition precedent that the liability of the lessees to pay advance service charge payments, for the estimate be served on the lessees prior to the commencement of the maintenance year in question.
27. That in this case, the estimate at page 98 of the Respondent's bundle had been served in either late January or early February 2012 and that it related to estimated service charges for the year 29 September 2011 to 28 September 2012. That accordingly the service charge demands for payment in advance at pages 97 and 111 of the Respondent's bundle and which were based upon the said estimate, were not payable by the Respondents.

28. **Other Matters**

29. Miss Brown fairly and reasonably explained that Napier Management Services Ltd had only been appointed after the commencement of the current maintenance year. That is after 29 September 2011. That Napier only wished to act in the best interests of the lessees and of the Building. It was clear that significant works were required to the Building, in particular to the walkway. That the purpose of serving the estimate and subsequent demands had been simply to seek funds from the lessees so that the necessary works could be carried out sooner rather than later.

30. Miss Brown confirmed that there was a small reserve in place of approximately £6000. Mrs Head explained however that there would be other calls upon the reserve which would significantly eat into it.
31. It was clear to the Tribunal that all parties wished to move forward. That all parties present were concerned that the Building be properly maintained and repaired.
32. To assist the parties, the Tribunal suggested that all parties may be helped by an improvement in communications between them. The Tribunal was concerned not to criticise any of the parties for their conduct to date. It expressed the hope that the parties would use this opportunity to address the best way forward to achieve the jointly desired objective that the Building be properly repaired and maintained.

Dated the 24th day of May 2012



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N P Jutton BSc (Chairman)

A Member of the Tribunal appointed by the Lord Chancellor