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**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of an Application under Sections 27A (and 19)  
of the Landlord & Tenant Act 1985 (Service Charges)

**Case No.** CHI/29UC/LSC/2012/0060

**Property:** Greencroft, Dene and Broome House  
Oxenden Square  
Herne Bay  
Kent  
CT6 8TN

**Between:** Mr. J. Purdy ("the Applicant")

And

Ms W. Hickman ("the Respondent")

**Date of Hearing:** 26<sup>th</sup> June 2012

**Members of the  
Tribunal:** Mr. R. Norman  
Mr. R. Athow FRICS MIRPM

**Date Decision  
Issued:** 3<sup>rd</sup> July 2012

**GFREENCROFT, DENE AND BROOME HOUSE, OXENDEN SQUARE,  
HEARNE BAY, KENT CT6 8TN**

**Decision**

1. The Tribunal made the following determinations:

(a) If costs were incurred for the external decoration of Greencroft, Dene and Broome House, Oxenden Square, Herne Bay, Kent CT6 8TN ("the subject property") and carried out to a reasonable standard, a service charge would be payable by Ms W. Hickman ("the Respondent") to Mr. J. Purdy ("the Applicant") c/o Circle Residential Management Limited ("Circle") in the sum of £1,779 being one fifth of the total of £8,895.

(b) No order for reimbursement of fees is made.

## **Background**

2. The Applicant is the freeholder of the subject property and the Respondent is the lessee of Greencroft which is part of the subject property. Circle is the Applicant's managing agent and on behalf of the Applicant is intending to carry out external decoration of the subject property. Notices under Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") have been served. The Respondent, and apparently the lessees of Flat 1 Broome House, objected to paying £1,779 as their contributions to the works and therefore this application was made to clarify the position.

3. Written submissions were made by Circle on behalf of the Applicant and by the Respondent and these were considered by the Tribunal.

## **Inspection**

4. On 26<sup>th</sup> June 2012, in the presence of Mr. Paine of Circle and the Respondent, the Tribunal inspected the exterior of the building, and parts of the interior of Greencroft.

5. The subject property has been converted into five self contained flats or maisonettes. Greencroft has its own entrance.

6. Mr. Paine and the Respondent drew the attention of the Tribunal to various parts of the subject property which required attention.

7. It could be seen that decoration of the parts of the walls which had previously been painted and the external woodwork was required. There was an area of render which appeared to have been damaged by water penetration, probably from an overflowing hopper head and fall pipe and inside Greencroft there were signs of water penetration which appeared to be related to that damaged render. There were also cracks to some of the render. There was water in the courtyard.

## **Hearing**

8. The hearing was attended by Mr. Paine and the Respondent and they confirmed that they had received copies of the documents supplied by each other to the Tribunal.

9. Just before the hearing commenced Mr. Paine gave to the Respondent copies of letters signed by Mr. Gillis, Mrs. Ball, Mr. Sitwell (referred to in the application as Mr. Stilwell) and Ms Martin and the Applicant admitting that the exterior decoration of the subject property and the cost thereof was reasonable and that they wished the works to proceed. Copies of those letters were also supplied to the Tribunal.

10. The Respondent provided to Mr. Paine and to the Tribunal a list of cases which she stated contained references to the Sweetman case referred to in the documents provided by Circle in advance of the hearing.

11. Mr. Paine confirmed that the application was made under Section 27A (3) (a) (b) and (c) of the 1985 Act which provides:

“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.”

12. The Tribunal made it clear that the matter for consideration was the proposed external decoration and that a number of matters which were not relevant to these proceedings had been raised in the documents supplied by the Respondent.

13. Mr. Paine was asked to present the case for the Applicant. This he did and during the course of that presentation the Respondent made comments and asked questions.

14. Mr. Paine stated that the Applicant was the freeholder of the subject property which was subject to five long leases, one of which was held by the Applicant and that flat was let on an assured tenancy.

15. The application had originally included Mr. J.K. Stilwell and Ms S.J. Martin, the lessees of Flat 1 Broome House, as Respondents but Mr. Paine stated that agreement had been reached with them and he asked to withdraw the application in respect of them. The Tribunal agreed to that.

16. Mr. Paine explained that proceedings had been commenced against the Respondent in the County Court in respect of the sum of £1,779 as her contribution to the cost of external decoration, which was the same sum which was the subject of this application. An Order had been made in the County Court transferring that matter to the Leasehold Valuation Tribunal but he had realised that an error had been made and on behalf of the Applicant he had written to the County Court withdrawing those proceedings. The Tribunal was concerned that it could not deal with a matter which was before the County Court. However, the Tribunal was aware that in respect of those transferred proceedings Mr. Paine had written to the Tribunal enclosing a copy of a letter which he had written to the County Court withdrawing the proceedings. The Tribunal was satisfied that the Order transferring the proceedings would be revoked in due course and to avoid delay was prepared to deal with this application. It would be a matter for the County Court, but any attempt to revive those proceedings would probably be considered to be an abuse of process and would be dealt with accordingly.

17. The Respondent was concerned that a sum of £1,779 had been credited to her account without her consent. However, Mr. Paine explained that the credit had been made to correct an accounting error and it was agreed by him and the Respondent that the sum of £1,779 had not been paid by her.

18. The Respondent was also concerned that the contractor suggested by four of the lessees, SM Decorators, had not been awarded the contract. SM Decorators is the trading name of Ms Martin the lessee of Flat 1 Broome House at the subject property. Mr. Paine explained that a quotation from Michael Nutt Decorators had been accepted as it was about £2,000 cheaper than the quotation from SM Decorators and that in that way the Respondent was saving money.

19. Submissions were made as to the Applicant's duty under the terms of the Respondent's lease to paint the exterior of the window frames and door frames. Mr. Paine considered that the lease would benefit from being rewritten but he expected that that would be difficult to achieve. He accepted that the window frames and door frames were demised to the Respondent but there was an express provision that the Respondent must not decorate any part of the exterior of the Flat. There was no clear duty placed on the Applicant to paint the window frames and door frames but if they were not painted they would simply rot. It was in the interests of the Applicant, the Respondent and the other lessees of the subject property that the frames be painted and as the lease prevented the Respondent from carrying out such work then it was only the Applicant who could do so. It was also convenient that the Applicant carried out that work to achieve uniformity. In any event, the Respondent stated that she considered it would be sensible for the Applicant to have the external parts of all the frames painted at one time and to recover the cost from the lessees.

20. Reference was made to the proportion of the costs of the external decoration which the Respondent should bear. The lease provides for "... a just and fair proportion...". One fifth had been demanded from the Respondent on behalf of the Applicant. The Tribunal was satisfied that that was a reasonable proportion and Mr. Paine confirmed that that was the proportion which the Respondent would be asked to contribute and that he was not arguing for a different figure. Mr. Paine asked the Tribunal to make a determination that one fifth would be the correct proportion in respect of all repairs but that was not within the terms of the application and the Tribunal could not make such a determination.

21. The Respondent appreciated that the subject property needed repair and decoration but was concerned that repairs to cracks, work to cure damp, treatment with a fungicide and repairs to the drains should be carried out before painting. She was also concerned that as scaffolding would be erected to carry out the painting, it would be wise and economical to make use of it while it was in place, to carry out repairs. Mr. Paine pointed out that as the Respondent was finding difficulty in paying £1,779 it seemed unlikely that she would want to contribute to additional works. However, he did state that the majority of the repairs the Respondent was concerned about would be dealt with as part of the decorating works. Cracks in the render would be dealt with and the hopper head would be replaced. It was only when the scaffolding was in place that the full extent of the work would be clear and there was a contingency sum for that purpose. For example, if putty securing the glass in the window frames was found to be cracked it would be hacked out and replaced. If anything was found which was outside the

quotation then the contractor was to contact Circle for authorisation to carry out the additional work. If it was found that a window frame needed repairing or replacing because it was rotten then the contractor would be asked to cost it and, because it would be the lessee's responsibility, Circle would contact the lessee and ask if the lessee wanted the frame repaired or replaced by the contractor. Mr. Paine was of the opinion that the drain causing a problem was not within the Applicant's ownership but was in Oxenden Square but no evidence of that was produced.

22. As to the consultation process carried out under Section 20 of the 1985 Act, the Respondent had requested further details of the work and had not received them. However, the time for raising questions is 30 days and from the copy correspondence produced, the evidence was that the request was made outside the time limit of 30 days. At the hearing the Respondent did not challenge the Section 20 process.

23. The Respondent stated that a Section 20 notice had been received recently informing her that £10,000 was going to be required for repairs. Mr. Paine had no knowledge of that. He said that following a health and safety survey, lessees had been sent a letter about fire doors but that that would not affect the Respondent because she does not have a door leading onto a hallway. The Respondent produced the document which she understood to be a Section 20 notice but it was in fact a budget for the administrative and reactive work for the current year and the £10,000 included the sum of £8,895 for external decoration, of which the Respondent's share (£1,779) is the subject of this application.

24. Mr. Paine stated that the only reason the external decoration had not gone ahead was because the Respondent had not paid her share. He suggested that it would be sensible to have the painting done and then get the drains repaired. The Respondent had not paid service charges; even those she did not dispute. He considered that she should have paid the service charges she did not dispute and then when the Leasehold Valuation Tribunal made its decision she could pay whatever balance the Tribunal determined.

25. The Applicant's written submission included an application for costs but Mr. Paine stated that that was included by mistake. No such application was being made because he believed that the Respondent had not acted unreasonably or in any of the other ways which would give rise to such an application being made. However, at the hearing he made an application for an order that the Respondent reimburse the Applicant's fees (application fee £200 plus hearing fee £150, total £350) on the basis that the Respondent should have sought independent advice before contesting this matter.

26. The Respondent was asked if she wished to make an application for an order under Section 20C of the 1985 Act but after giving the matter some thought she decided not to do so.

## Reasons

27. The Tribunal considered all the documents which had been provided by Mr. Paine and by the Respondent, all that had been said at the hearing and all that had been seen at the inspection and made determinations on a balance of probabilities.

28. The scope of this application was very narrow and during the course of the hearing Mr. Paine gave explanations and assurances which assisted the Respondent in agreeing a number of matters which could have been disputed. The result was that there was little upon which the Tribunal had to make a decision.

29. The Tribunal was satisfied from the evidence received and from the inspection of the subject property that if costs were incurred for the external decoration of the subject property and were carried out to a reasonable standard, a service charge would be payable by the Respondent to the Applicant c/o Circle in the sum of £1,779 being one fifth of the total of £8,895.

30. As to the application for reimbursement of fees, a Leasehold Valuation Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings. The Tribunal found that the Applicant, or Mr. Paine on his behalf, confused the issue by commencing proceedings in the County Court, correcting an error in the accounts and then making the present application. Mr. Paine accepted that the application for costs contained in the Applicant's written submission was not justified. The original application included the lessees of Flat 1 Broome House and at the time the application was made it was not just the Respondent's opposition to the works which necessitated these proceedings. The Applicant as lessee, unsurprisingly, supported the works being carried out and so did two other lessees. Two out of the five lessees did not support the works but at some stage agreement was reached with the lessees of Flat 1 Broome House and the application against them was withdrawn. The letter indicating agreement was dated 26<sup>th</sup> May 2012. In all the circumstances the Tribunal was not satisfied that an order for reimbursement of fees was justified.



R. Norman  
Chairman