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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF A TRANSFER FROM DARTFORD COUNTY COURT

Case Number: CH1/29UG/LSC/2012/0071

In the matter of Flat 1, 75 Parrock Street, Gravesend, Kent, DA12 1HF

Applicant: G & O Investments Ltd, represented by Urbanpoint Property Management Ltd

Respondent: Ms. Naznin Khan

Date of Hearing: 30th August 2012 & 19th October 2012

Date of Decision: 10th November 2012

Tribunal: Mr S. Lal LLM, Barrister, and Mr.C.C Harbridge FRICS

DECISION

History

1. This matter was the subject of a pre-trial review on 19th June 2012. The Applicant attended on that occasion but the Respondent did not. The Tribunal made Directions on that occasion.
2. This matter was listed for hearing on 30th August 2012 at the Court House in Chatham. The Tribunal carried out an inspection prior to the hearing. The subject premises are the ground floor flat of a 4-storey house converted into flats located approx. 1 mile from Gravesend town centre. The Tribunal inspected the communal areas including the garden. They and the exterior of the property are in a poor condition
3. Mr Adnan and Mr Capjohn of Urbanpoint Property Management represented the Applicants. The Respondent appeared in person.
4. The matter has been transferred from Dartford County Court and relates to service charge years ending 29th September for 2007, 2008, 2009 and 2010.

The Adjourned Hearing on the 30th August 2012

5. At the outset of hearing Ms Khan tried to adduce her Respondent's bundle for the first time. The Applicant objected to its introduction.
6. The Tribunal were disappointed that such a Bundle was being adduced for the first time at the hearing. Ms Khan denied knowing about the Pre- Trial Review on the 19th June 2012 or the timetable for the service of documents set down on that occasion. She denied receiving notification of the same or any other communication because of address confusion, although she had received notice of today's hearing. She denied receipt of the Applicant's Bundle. Her account then changed slightly to informing the Tribunal that she had received some notification in July 2012 and had taken that to her solicitors and that it was their fault that bundles had not been served.
7. The Tribunal noted that the Bundle she had with her was drafted by solicitors and was dated the 29th August 2012 and it clearly referred to the Pre- Trial Review. This led the Tribunal to the view that either Ms Khan was being disingenuous with the full extent of her information or that her lawyers had been grossly incompetent in not complying with clear Directions issued some time ago. In any event Ms Khan applied for an adjournment so she could present her case.
8. Mr Adnan vigorously opposed the application and pointed out that the Applicant had complied with Directions and the expense and personal difficulty caused to him of attending the hearing.
9. The Tribunal considered the matter with some care. The Tribunal was attracted to the option of excluding the Respondent's Bundle because in many ways the explanations given by Ms Khan were bordering on the disingenuous. However the Tribunal also recognised, considering the history of the matter that it would be in the interests of justice for both parties to have the matter fully considered. In the circumstances and with some reluctance the Tribunal agreed to adjourn the matter.
10. Further Directions were made at the above hearing.

The Hearing on the 19th October 2012

11. Mr Adnan, Mr Capjohn and Mr Sardar appeared for the Applicant and the Respondent although in attendance was represented by Miss Camilla Whitehouse, Counsel.
12. The Tribunal is satisfied that both sides have broadly complied with the spirit of the Directions and the Tribunal had before it the respective Statements of Case. The Tribunal had read these and will not repeat them here again but will in summary note the oral submissions advanced at the hearing.

The Case for the Applicant

13. Mr Adnan acted as the spokesperson for the Applicants. He went through the Bundle submitted and examined each of the service charge years in dispute. He set out the various charges and how they had been incurred by reference to the invoices produced as and when appropriate. He submitted that the charges were reasonable and properly incurred. In response to a specific query raised by Miss Whitehouse with the Tribunal, Mr Adnan confirmed that the service charge demands were sent to the Respondent at the address of the subject premises via ordinary second-class post. He submitted to the Tribunal that although this was not the approved method under the lease, Miss Khan had never supplied them with a proper address from the date of purchase.
14. He described the attitude of the Respondent as highly irresponsible and submitted to the Tribunal that she had never paid anything, even ground rent. He asked the Tribunal to consider punitive costs.

The Case for the Respondent

15. Miss Whitehouse opened her submissions by reference to what she described as a fatal flaw in the whole case, namely that the service charge demands had not been served in accordance with the strict provisions of the lease. She submitted that the lease could not be ignored when it suited the Applicant and enforced when it did.
16. In the alternative she adopted the submissions raised in the Respondent Bundle dated 5th October 2012. These are divided into a consideration of the Applicants own alleged failure to comply with their obligations under the lease and a failure to take into account extra regulatory duties in respect of fire safety and electrical safety.
17. She submitted a general overall challenge to all aspects of the service charges in respect of reasonableness. She admitted she had no evidence of comparators but she said that the charges were unreasonable. She highlighted the work that her client had done to the subject premises and what she argued was the history of poor management by reference to the complaints of other lessees.
18. On behalf of her client she disputed the factual accuracy of whether Ground Rent had ever been paid. She maintained that it had and highlighted the problem of post going astray. She denied at one point her client even knowing about the existence of the Applicant Company.

The Tribunal's Decision

19. The starting point for the Tribunal's analysis is the lease itself and whether the service charge demand has been served in accordance with the lease. The relevant provision is Clause 6(b) which states as follows;

“Any demand for payment notice or other documents required or authorised to be given to the Lessee shall be well and sufficiently given if sent by the Lessor or the Lessor’s Agent through the post by registered post or recorded delivery letter addressed to the Lessee at the flat or attached to the door or doors thereto...”

20. The Tribunal has considered the above clause with some considerable care. It is satisfied that a proper construction of the phrase above can only mean that demands sent by post are sent by registered or recorded delivery post. In this case it has been admitted that they were sent by ordinary second-class post. The Tribunal is satisfied that the above clause seeks to ensure actual delivery or if it does not happen then the Post Office and the Lessor will be notified of the same. In the present circumstances the Tribunal is satisfied that the demands were not served in accordance with the lease. Furthermore it is satisfied that the lease is not a “pick and mix” document when it suits but a binding contract in its entirety.
21. In the light of the above the Tribunal is satisfied that the demands have not been served in accordance with the lease and therefore are invalid. The Tribunal does not need to go on to consider the reasonableness of the service charges. The Tribunal understands that this is an unsatisfactory outcome for the Applicant. It maybe argued that the Respondent has succeeded on a technicality and the Tribunal has already noted, albeit in a different context, that some of the explanations offered by the Respondent have been bordering on the disingenuous. Be that as it may the matter begins and ends on a true construction of Clause 6(b) above.
22. In the circumstances the Tribunal determines that no service charges are payable for service charge years ending 29th September for 2007, 2008, 2009 and 2010.
23. The Tribunal makes no other order and specifically does not make an order under Section 20C following its reasoning above. The matter will be transferred back to the County Court.

CHAIRMAN
Mr S. Lal


20/11/12