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SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/43UC/LIS/2012/0014 & CHI/43UC/LIS/2012/0019

**DIRECTIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTION 27 AND 20C OF THE LANDLORD &
TENANT ACT 1985**

Applicants: (1) Mr S Jagutpal (Flat 7)
(2) Ms E Boross (Flat 4)
(3) Mr M Ali (Flat 2)
(4) Mr M Abdul (Flat 6)
(5) Mr Y Ali (Flat 1A)

Respondent: Newservice Ltd

Premises: Temple Road, Epsom, Surrey, KT19 8EY

Date of applications: 26 and 27 January 2012

Date of hearing: 13 July 2012

Appearances for Applicants: The First to Fourth Applicants

Appearances for Respondent: Mr Stanley of Salter Rex, Managing Agents

Leasehold Valuation Tribunal: Mr I Mohabir LLB (Hons)
Mr D Lintott FRICS

Introduction

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of various actual and estimated service charges claimed by the Respondent for the years ended 23 March 2011 and 2012 respectively. The heads of service charge expenditure challenged by the Applicants are set out below.

2. The Applicants are the lessees of the various flats set out in the head note of this decision. As the Tribunal understood it, the leases presently held by them were granted on the same terms. The Applicants did not challenge their contractual liability to pay the service charges in issue. They simply contended that the charges were not reasonable. As such, it is not necessary to set out the terms of the leases, which give rise to their contractual liability. It is sufficient to note that they are obliged to pay a service charge contribution of 12.5% in relation to the heads of expenditure set out in the Eighth Schedule.

The Law

3. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

- "(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Hearing and Decision

4. The hearing in this matter took place on 13 July 2012 following an inspection of the property earlier that morning. The Applicants appeared in person. The Respondent was represented by Mr Stanley of Salter Rex, Managing Agents.

Buildings Insurance (both years)

5. The Applicants submitted that the actual and estimated premiums of £3,038.77 and £3,125 for 2011 and 2012 respectively were excessive. They said they had obtained 3 cheaper alternative quotes from insurance brokers on a like for like basis. They accepted that there is a variation in premiums that can be obtained in the market for the same level of cover. Nevertheless, they contended that a premium of approximately £2,000 was about the right figure.
6. It should be noted that the Applicants accepted that the premiums of £67.26 and £75 claimed by the Respondent was reasonable and payable. Their challenge was limited to the premiums for the buildings insurance cover.
7. Mr Stanley said that a wide variation in premiums could be obtained in the market. Often this was dependant on the level of business any particular broker introduced to the insurance company. In this instance, the broker, Adlers, insured approximately 170 properties for the Respondent on a block policy. He submitted that the premiums claimed here represented the market rate. Mr Stanley confirmed that the insurers took into account the claims history of the individual properties covered by the block policy. The subject property did not have any claims in 2010/11, but there was a claim in 2011/12 for impact damage in the sum of £3,300.
8. The Tribunal found the insurance premiums claimed by the Respondent to be reasonable. The Applicants' own evidence was that varying premiums could be obtained on the market at any given time for the same level of cover. The Applicants' case was simply based on the cheapest quote they had managed to obtain. It is now settled law that the cheapest quote that can be obtained does

not necessarily mean that the landlord's higher premium is unreasonable¹. The correct test to be applied is whether the landlord's premium falls within a reasonable range of premiums that can be obtained for the subject property. In the present case, the Tribunal was satisfied that this test had been met. There was clear evidence that the insurance had been placed at arms length by an insurance broker under a block policy. The premiums demanded appeared to be consistent year on year, albeit with a small increase, as is to be expected in the current market.

9. Accordingly, the Tribunal concluded that the buildings insurance premiums for 2011 and 2012 are reasonable with the caveat that the Respondent must continue to test the market on renewal each year and be prepared to demonstrate this to the tenants if so required.

Cleaning (both years)

10. The Applicants submitted that the cleaning costs of £3,406.38 and £2,600 respectively were excessive. They said that, historically, the cleaning had not been carried out weekly. Sometimes it was done fortnightly and every 3 weeks. This was confirmed in a schedule of visits that had been compiled by Miss Boross. Furthermore, the standard of cleaning was unsatisfactory. They further submitted that, even if the cleaning had been carried out on a weekly basis and to a reasonable standard, the cost was unreasonable. In support of this, they relied on 3 alternative quotes they had obtained and, in particular, the quote supplied by "GCS".
11. In reply, Mr Stanley said the cleaning specification did not include washing the internal woodwork in the common parts. Similarly, the cleaner was not responsible for removing weeds on the paths around the property. When asked by the Tribunal, he said that the Property Manager visited the property every 2 months to carry out a visual inspection. In the interim it was taken on trust the contractor, Online Property Maintenance, was carrying out the cleaning on a weekly basis.

¹ see *Berrycroft Management Ltd v Sinclair Gardens Investments (Kensington) Ltd* (1996) 29 HLR 444, CA.

12. Mr Stanley confirmed that the weekly cleaning charge of £57.50 in the year ended 23 March 2011 was an error. The correct charge was in fact £25 per week and, therefore, a credit of £2,400 would be applied to the 2011/12 accounts leaving an overall expenditure of £612.36 in this year. The Applicants, nevertheless, submitted that the figure of £25 per week was unreasonable for the same reasons they had advanced.
13. In evidence, the Applicants had accepted that they could not get a cleaning contractor to carry out the same cleaning specification for less than £25 per week. Whilst there was *prima facie* evidence before the Tribunal to cast doubt on the frequency and standard of cleaning, even if it made a finding in those terms, it was not sufficient to reduce the cost of cleaning below the figure of £25 per week. Accordingly, the Tribunal found the amended cleaning costs for both years to be reasonable. The complaint made by the Applicants about the failure by Salter Rex to supervise the cleaning contract goes to the adequacy of the management, which is dealt with below.

Management Fees (2012 only)

14. Estimated management fees of £2,448 are claimed by Salter Rex. The Applicants complained that the management failures they had encountered with Salter Rex included the following:
 - not resolving the issues raised about the cleaning contract.
 - not undertaking competitive tendering of contracts.
 - not substantively answering various issues raised in correspondence by the Applicants.
 - not scrutinising items of expenditure and the accounts properly.
15. Mr Stanley did not accept that any of the criticisms made by the Applicants were valid. He said that his firm's management charge was based on a figure of £255 per unit, which he said was the going rate.
16. On balance, the Tribunal accepted that some of the management failures complained of by the Applicants had been borne out by the evidence. It was

clear that the error in charging for the cleaning contract and the wholly erroneous charge for a health and safety check (see below) were only discovered as a consequence of this application having been brought by the Applicants. This revealed a failure on the part of Salter Rex to keep a proper account in relation to these matters and should be reflected in a reduction in its management fees. It was not the case the Salter Rex had wholly failed to provide and management duties. Accordingly, the Tribunal found the fees claimed to be unreasonable and awarded the lower figure of £200 plus VAT per unit as being appropriate.

Health & Safety (2011 only)

17. It was conceded by Mr Stanley that a charge of £838.50 for a health and safety inspection was incorrect and a credit for this amount would be applied to the 2011/12 accounts.

Section 20C & Fees

18. The Tribunal then considered the application made by the Applicants under section 20C of the Act. It was satisfied that the number of issues on which a finding was made against the Respondent would not have come to light unless this application had been brought. The attempts made the Applicants to resolve some of those issues in correspondence with Salter Rex had proved to be unsuccessful. Consequently, they had been obliged to make this application in relation to those matters and had been ultimately successful, especially the failure on the part of Salter Rex to monitor expenditure properly.
19. For the reasons above, the Tribunal considered that it was just and equitable to make an order preventing the Respondent from recovering all of the costs it may have incurred in these proceedings through the service charge account.
20. For the same reasons also, it orders the Respondent to reimburse the Applicants the sum of £250, being the fees paid by them to have this application issued and heard.

Dated the 29 day of August 2012

CHAIRMAN..... *J. Mohabir*
Mr I Mohabir LLB (Hons)