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Case reference: LON/00AJ/LSC/2011/0607

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

Premises: Southall Court, Lady Margaret Road, Southall,
Middlesex

Applicant: Southall Court (Residents) Limited

Respondents: The leaseholders of the 48 Flats in Southall Court

Date heard: 27 September 2012

Appearances: Peter Ward for the applicant

Ranjit Tiwari representing the leaseholders of Flats
9 and 10
Rohit Makwana, Flat 33
Raghbinder Guraya, Flat 4
Jim Walsh representing the leaseholder of Flat 17
Mohammed Maqsood, Flat 14

Tribunal: Margaret Wilson
Hugh Geddes JP RIBA MRTPI
Naomi Hawkes

Date of the tribunal's decision: 1 October 2012

Introduction and background

1. This is the second decision on a landlord's application under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of each of the respondent leaseholders of Southall Court to pay the sum of £1373.93 towards a sinking fund to be used for the purpose of works, some of which the landlord has carried out and others which it proposes to carry out.

2. This decision is to be read with our previous decision dated 30 December 2011, made after hearings on 7 November and 13 December 2011 and an inspection. By that decision we determined that the works which the landlord then proposed to carry out were reasonably required and their proposed cost reasonable, but we were not at the date of the decision satisfied that *insufficient funds are available in the sinking fund*, which is a prerequisite for the order which the landlord sought. The main reason for that conclusion was that the landlord had not produced any service charge accounts since those for the accounting year ended 30 June 2008, notwithstanding that the leases provide that the leases provide that the landlord is to produce an account of the service charge *as soon as reasonably practicable after the end of the financial year*. At the hearing on 13 December 2011 Mr Ward, who not only represents the landlord in these proceedings but is also a director of and shareholder in the landlord company and the landlord's paid managing agent, could offer, as we recorded in the decision, no satisfactory explanation for the landlord's past failure to produce the accounts, but he assured us that the accounts for the years ended 30 June 2009 and 2010 would be produced and provided to the tribunal and to each of the leaseholders, together with the bank statement of the sinking fund showing all payments from and into it since 1 January 2009, no later than the end of December 2011.

2. In fact the accounts and statement were not provided to the tribunal by the end of December 2011, and leaseholders wrote to us to say that they too had not received the documents. Accordingly the chairman made directions dated 13 July 2012 requiring the landlord no later than 6 August 2012 to deliver to every leaseholder a copy of the service charge accounts for the years 2009, 2010 and, if available, 2011, together with a clear statement of all sums held by the landlord throughout the years 2009, 2010, 2011 and 2012 by way of reserve funds, sinking funds and service charges, the accounts to be accompanied by a statement from the landlord explaining the contents of the accounts and statements in simple terms and, if the accounts for the year ended 30 June 2011 were not available, explaining when they will be available and the reason for the delay in producing them. Directions were also made for the filing of evidence and for a further hearing on 27 September 2012.

3. Accounts dated 11 May 2012 were eventually produced for the years ended 30 June 2009 and 2010. They were extremely brief and very heavily qualified in the following terms:

To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Landlord/Agents and Tenants/Leaseholders as a body for our work or for this report. The procedures performed did not constitute an audit or review of any kind and were not designed to provide any assurance regarding whether the amounts charged are a reasonable amount for the services, whether those services were provided effectively and on the effectiveness of the governance processes (including controls to detect fraud or misrepresentation). Accordingly, had we performed additional procedures or an audit or review of the Statement in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention.

4. The accounts which were produced were not accompanied, either before or at the hearing, by a statement from the landlord explaining their contents in

simple terms as had been directed on 13 July 2012; and, although the accounts for the year ended 30 June 2011 were not available, Mr Ward failed to offer any explanation for their non-availability as he had been directed to do other than a statement at the hearing that he had been very busy. He had previously written to the tribunal complaining that we did not possess the power to make the directions dated 13 July 2012 because we had already made directions as to what the landlord was required to produce in our decision dated 30 December 2012 and the question of what it was required to produce was therefore, as he put it, *res judicata*. However, as we explained to him at the hearing, he had not complied with the requirements set out in the decision and in those circumstances we are satisfied that we were entitled to make further directions for the purpose of establishing what we, and the leaseholders, reasonably needed to know.

5. The only statement of "all sums held by the landlord throughout the years 2009, 2010, 2011 and 2012 by way of reserve funds, sinking funds and service charges" which the landlord produced was a statement of a Nationwide account for the period from 23 January 2010, showing an opening balance on that date of £22,223.58 and a balance on 6 December 2011 of £75,486.18 and showing a number of large credits and debits which could not readily be related to payments by individual leaseholders. Mr Ward said that this account contained the sinking fund. He did not produce any accounts showing where service charges were held.

6. Asked about Ayo Orubanjo, the accountant who prepared the accounts, Mr Ward said that he was a director and equal shareholder with Mr Ward and Mr de la Haye in Golden Glory Limited, a company which is actively engaged in seeking to buy the freehold of Southall Court and which has applied, we understand, for planning consent to develop parts of the block. We asked Mr Ward whether in those circumstances Mr Orubanjo and his company, Optima Business Support Services Limited, could be regarded as *independent auditors* as the lease requires, and Mr Ward said that they could be so regarded, but we think otherwise. Asked why the accounts for 2009 and 2010 had been so late, and why there was no sign of the 2011 accounts, Mr Ward

could offer no explanation other than that he had been very busy with his work as a barrister. He agreed that "things were not ideal" and he said that it was the landlord's intention to appoint a professional and independent managing agent once the freehold was sold to Golden Glory Limited or to any other entity. He said that he was not aware of the guidance as to the preparation of service charge accounts which has been recently issued by the Institute of Chartered Accountants in conjunction with the Royal Institution of Chartered Surveyors. He said that he did not accept that the accounts were heavily qualified and referred us to a decision of another leasehold valuation tribunal where accounts were qualified but were accepted.

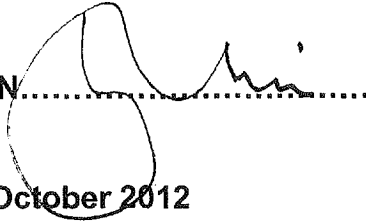
7. Mr Ward said that the re-covering of the roofs of the southern and western wings of the block, which was the major component of the works in respect of which the demand has been made, had been carried out and paid for by means of the sums in the sinking fund, together with a personal unsecured loan of £75,000 from himself.

8. The leaseholders who were present said that they, and a number of other leaseholders who were not present, were not remotely satisfied with the way the landlord accounted for their money. They said that the landlord on occasions demanded sums which they believed they had already paid and that reasonable requests for information were met with rudeness and refusals, although they agreed that none of them had made requests for summaries of relevant costs or to inspect supporting documents in accordance with sections 21 and 22 of the Act.

9. Unfortunately the landlord's methods of accounting for the leaseholders' money remain shrouded in mystery, and we remain to be satisfied that the landlord has demonstrated that insufficient funds are available in the sinking fund to meet the cost of the works. We should not be taken as having concluded that the landlord or Mr Ward have acted dishonestly, and we accept as a fact that there is only a very small sum in the Nationwide account of which the statements were produced, but whether the account contains all

satisfied that it is appropriate to make an order under section 20C of the Act to prevent the landlord from placing its costs incurred in connection with the proceedings on the service charge of any leaseholder.

CHAIRMAN.....

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by several smaller, connected loops and a final flourish.

DATE: 1 October 2012