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## LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

5 King Edwards Road, E9 7SG

Ref: LON/00AM/LSC/2011/0229

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|                                                    |                                   |
|----------------------------------------------------|-----------------------------------|
| <b>Lemon Land Limited</b>                          | <b>Applicant</b>                  |
| <b>Spokane Trading Limited</b>                     | <b>1<sup>st</sup> Respondent</b>  |
| <b>Various leaseholders of 5 King Edwards Road</b> | <b>2<sup>nd</sup> Respondents</b> |

Tribunal: Mr M Martynski (Solicitor)  
Ms S Coughlin MCIEH  
Mrs R Turner JP BA

Representatives: Mr J Thornton (Managing Agent for Applicant)  
Mr S Ahmed (Managing Agent – SEM Limited)  
Mr R Southam (Managing Agent for the 2<sup>nd</sup> Respondents)

Date of hearing: 12 December 2011

### **Decision summary**

1. Insurance premiums incurred from 2007 to 2009 were unreasonable in amount insofar as they exceeded the sum of £15,000 and accordingly any costs incurred above this amount are not payable.
2. If any costs in respect of rubbish collection have been incurred or paid over and above the proper cost of six bins, those costs have been unreasonably incurred or paid and are not payable.

3. Costs incurred in respect of the City Lift maintenance contract were unreasonably incurred and are not payable to the extent that those costs exceeded £3,000 per year.
4. Fees paid to Technical Lift Consultancy for the years 2009 and 2010 were unreasonably incurred and are not payable.
5. The sum of £2839.62 was unreasonably incurred in payment of surveyor's fees and is not payable.
6. The Tribunal rejects the contentions that there were defects in the consultation process carried out by the Applicant in respect of major works of internal decorations and carpeting.
7. None of the costs incurred by the Applicant in these proceedings are payable by leaseholders.

### **Background**

8. 5 King Edwards Road ('the Building') is a block of purpose built flats. There are five floors, basement to penthouse. There is a car park at basement level. The penthouse level was built on to the existing four floors in or about 2001.
9. Spokane Trading, the First Respondent, was granted a long lease of the airspace at the top of the then existing building by a lease dated 9 February 2001. It then built a number of flats in that airspace resting upon that structure. The terms of Spokane's lease made it responsible for the maintenance and repair of the new floor built by it.
10. The Building was then later, at all material times until October 2009, managed by a single managing agent, Hurford Salvi Carr ('HSC') (who also acted for Spokane). Then, as from 1 October 2009, Spokane appointed Sterling Estates Management ('SEM') to act as agents for the penthouse floor. Various leaseholders in the Building then exercised the Right to Manage and appointed Chainbow Managing Agents in July 2010.
11. The original application before the Tribunal was made by the Applicant with Spokane as the only Respondent and the Application sought a declaration as to the payability of service charges for the year ending March 2010. Later in the proceedings, various leaseholders were added as Second Respondents and the service charge years in question were extended to 2007/8 and 2008/9.
12. A hearing took place on 27 September 2011. At that hearing the Tribunal dealt with some preliminary issues (upon which it published a decision) and gave directions for other issues to be heard at a hearing set for 12 December 2011. By the date of this second hearing, the parties had decided between themselves the areas in dispute upon which they required a decision.

### **The issues and the Tribunal's decisions**

#### *Insurance*

13. The insurance premiums obtained for the Building for previous years were:-

|      |         |
|------|---------|
| 2007 | £25,459 |
| 2008 | £26,431 |
| 2009 | £22,041 |
| 2010 | £14,950 |
| 2011 | £13,706 |

14. Mr Southam of Chainbow managing agents for the leaseholders, said that he had gone to the market in July 2011 and had obtained a policy commensurate with the one previously in existence for a premium far below the levels in the years 2007 to 2009. Mr Southam dealt with the Applicant's objection that the trace and access cover on his policy was only £25,000 as opposed to the previous policy's £50,000 by arranging for that cover to be increased to £50,000 at no extra cost.

15. Mr Thornton of HSC for the Applicant argued that when looking at the higher premiums charged in previous years, it had to be taken into account that there were lots of problems with the fire alarms in the Building and that the insurance company was concerned at the number of call outs. Unfortunately, Mr Thornton was unable to give any details of these problems; what they were or for how long they continued. Mr Southam countered that the usual response of an insurance company to such a problem, rather than to increase the premium, would be to place a caveat on liability in respect of damage by fire or other related loss. The further point was made that, if the problem was sorted out by 2008, there was no effect on the premium which had in fact increased for that year.

16. Mr Thornton was unable to give any details as to how the market had been tested to obtain the best deals. He told the Tribunal that the Building was insured as part of a block policy taken out by the Applicant covering a number of different buildings and that he had made enquiries and was told that the Applicant did not take any commission from the insurers or the brokers.

17. As to the claims history for the Building, there was no dispute that there was nothing unusual in it. Mr Southam had shown this claims history to the insurance company before obtaining his policy.

18. Given the facts that Mr Southam had been able to obtain a much cheaper premium for a similar policy and that Mr Thornton was unable to explain why the previous years' premiums were so much higher, the Tribunal is driven to the conclusion that the premiums for the years 2007 to 2009 inclusive were unreasonable in amount. Allowing for the fact that a landlord is not obliged to obtain the cheapest premium on the market, the Tribunal has taken the premium paid for 2010 as being of a reasonable amount. Rounding this premium up to £15,000 the Tribunal concludes that the premiums incurred from 2007 to 2009 were unreasonable in amount insofar as they exceed the sum of £15,000 and accordingly any sums payable above this amount are not payable.

*Refuse collection*

19. The amounts payable for this service were as follows:-

|      |          |
|------|----------|
| 2008 | £3910.59 |
| 2009 | £4779.22 |
| 2010 | £2654.86 |

20. It was said on behalf of the leaseholders that an unidentified leaseholder had alleged that although payment had been made over the years for eight bins, there had in fact only ever been six.

21. The chain of correspondence seen by the Tribunal on this issue between named individuals from HSC and Hackney Council suggests that the position at the Building was that up until November 2009 there were eight bins. From that time, two bins went missing.

22. The Tribunal prefers the evidence in the chain of correspondence referred to above over a statement made by an unidentified leaseholder and concludes that it is more likely than not that there were eight bins up until November 2009.

23. The payments that were made and the credits due after that time are not entirely clear. However the Tribunal can say that after November 2009, if any costs have been incurred or paid over and above the proper cost of six bins by the Applicant, those costs have been unreasonably incurred or paid and are not payable.

*Lift*

24. The relevant costs for the lift are as follows:-

|       |                                                                             |
|-------|-----------------------------------------------------------------------------|
| 2008: | £4168.50 plus £893 for further expert fees and £1145 for an expert's report |
| 2009  | £4208.22 plus £894 for further expert fees                                  |
| 2010  | £4163.22 plus £673 for further expert fees                                  |

25. The Applicant had a maintenance contract for the lift with a company called City Lifts. That contract was terminated upon the Right to Manage Company taking over the management. An alternative maintenance contract was entered into with a different company at a cost of £2,100 per year. That contract appeared to be on similar, if not better terms than the previous contract which was costing over £4,100 per year. The new contract included more regular maintenance and included call out charges over and above the maintenance visits.

26. As well as having a maintenance contract, the Applicant instructed separate lift engineering consultants, Technical Lift Consultancy, to look at the lift and the way in which it was being maintained. Those consultants made charges for each of the years in question and produced a report for the year 2008.

27. Mr Thornton argued that it was reasonable to use City Lifts as they were the company that originally installed the lift in question in or about 2002/3 and that therefore they were best qualified to maintain the lift.

28. Mr Ahmed, representing Spokane at the hearing, conceded that, in his view, it was not unreasonable to instruct independent lift engineers to report upon a lift maintenance contract being carried out by another company and to report on the overall wellbeing of the lift beyond routine maintenance issues. He considered however that such a report would be a 'one-off'.

29. There is no question that the Management Company appears to have obtained an equivalent, if not better, maintenance contract for the lift at a much cheaper cost. The justification given for continuing to use City Lifts by Mr Thornton does not stand up against this. Whilst it may be a good idea to use the company which installed a lift to thereafter maintain that lift, there must come a time when the contract for such maintenance has to be tested against the market. There was no evidence that this had been done. There was no evidence to suggest that the use of an alternative contractor would result in the loss of any benefit or expertise gained from City Lifts. Given that the contract obtained by the Management Company is not only significantly cheaper but appears to include a better level of service, the Tribunal is driven to conclude that the costs incurred in respect of the City Lift contract were unreasonably incurred to the extent that those costs exceeded £3,000 per year. This sum takes into account the VAT that would be payable on the new contract and allows for a margin of estimation (in favour of the Respondent) inherent in the Tribunal's conclusion.

30. As to the consultant's fees, the Tribunal accepts that it would have been reasonable for independent experts to be consulted given that the lift was over five years old and that the same contractors had been maintaining that lift since its installation. In the Tribunal's view it would have been a good idea to have asked the independent expert to comment upon the performance of City Lifts with a view to going to the market to obtain alternative quotes. No justification was given for the continued use of independent consultants and it is difficult to see what extra benefit was being gained from their continued use beyond 2008 especially in the light of the high fees being paid to City Lifts. Accordingly again, the Tribunal is driven to the conclusion that the fees paid to Technical Lift Consultancy for the years 2009 and 2010 were unreasonably incurred.

#### *Surveyor's fees*

31. When managing the Building, HSC made very regular use of its in-house surveying department. Mr Thornton stated that the property manager would look at an issue at the building and deal with it if he or she considered that it was appropriate to do so. If that property manager decided that he or she did not have sufficient expertise, that person passed the matter to a member of the surveying department who would then carry out the task in question. A charge would then be made for that work by the surveying department, that charge was charged to the leaseholders in addition to the management charges levied by HSC. According to Mr Thornton, this was of benefit to the leaseholders in that they were able to gain for the services of surveyors at a reduced cost and that only the appropriate level of surveyor was charged for (for example if the matter were suitable for a trainee, leaseholders would only be charged at the rate for a trainee).

32. The costs in question were significant over the years being examined and amounted to £21,519.82.

33. Mr Southam for the 2<sup>nd</sup> Respondents challenged the charges on two main grounds. He referred to a breakdown of individual charges and said that in many cases, the work being carried out was work that should have been within the expertise of a managing agent and that should have been included within the managing agent's charges. Mr Southam further stated that there was no evidence that any objective exercise had been carried out to test the competitiveness of the charges being made for work carried out by the surveyors.

34. The Tribunal was concerned that the relationship between managing agents and surveyors was so close and was concerned at the lack of any objective evidence as to value for money. Those concerns in themselves would not be grounds for finding that any costs were unreasonably incurred but they did prompt the Tribunal to examine each individual charge challenged by Mr Southam. After such consideration, the Tribunal found that there were many items of work recorded and charged for by the Surveyors that appeared to be work that could and should have been carried out by the managing agents within their standard fees. The Tribunal concludes therefore that the sum of £2839.62 was unreasonably incurred in payment of surveyor's fees.

35. The works and amounts in question are set out below. The references to page numbers are to the page numbers of the bundle provided by the Applicant for the hearing in question. Mr Southam referred the Tribunal to a considerable number of pages in the bundle, each containing a separate surveying charge. In the table below, the Tribunal only sets out those invoices that it considered to be unreasonably separately charged as surveying work. Any page numbers and invoices not referred to were considered to be reasonably incurred.

| Page number and date | Description of work                                         | Tribunal's comments                                                 | Cost   |
|----------------------|-------------------------------------------------------------|---------------------------------------------------------------------|--------|
| 262-30.4.07          | Letter regarding roof leaks                                 | No apparent reason why Managing Agent could not carry out this work | 23.50  |
| 264-31.5.07          | Telephone call to arrange access                            | " "                                                                 | 23.50  |
| 266-31.5.07          | Finalised arrangements for recycling area                   | " "                                                                 | 23.50  |
| 268-31.5.07          | Memo woodlands for work to make good following water damage | " "                                                                 | 11.75  |
| 269-31.5.07          | Memo woodlands for recycling area                           | " "                                                                 | 11.75  |
| 270-31.5.07          | Invitation to tender for work                               | " "                                                                 | 11.75  |
| 273-4.6.07           | Email regarding recycling area                              | " "                                                                 | 44.06  |
| 274-5.6.07           | Inspection of snagging works to recycling area and          | " "                                                                 | 54.06  |
| 276-                 | Checking contractor' returns for                            | " "                                                                 | 242.34 |

|              |                                                                                                           |                                                                                                                                                                                                                                                              |        |
|--------------|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 29.6.07      | quotes for internal decorations. Chase contractors for quotes for flooring and work on section 20 notices | "also it appears that this work was never proceeded with.                                                                                                                                                                                                    |        |
| 277-29.6.07  | Liaison with tenants and contractors                                                                      | " "                                                                                                                                                                                                                                                          | 44.06  |
| 279-30.6.07  | Work regarding possible litigation in an action against developer                                         | This appears to be a repeat of the work charged for in the invoice at page 267.                                                                                                                                                                              | 23.50  |
| 280-31.7.07  | Sending copy of letter                                                                                    | There is no apparent reason why there should be a charge for this work or why such a high charge should be made for just sending a copy letter. Assuming that this charge was for a six minute unit, the hourly charge would be wholly excessive at £235.00. | 23.50  |
| 285-31.10.07 | Putting together spreadsheet to show when decorations are due as per lease etc...                         | " "                                                                                                                                                                                                                                                          | 164.50 |
| 286-26.11.07 | Various emails and arrangements                                                                           | " "                                                                                                                                                                                                                                                          | 221.50 |
| 287-30.11.07 | Works order/email                                                                                         | " "                                                                                                                                                                                                                                                          | 88.13  |
| 289-31.12.07 | Letter to freeholder re permission                                                                        | " "                                                                                                                                                                                                                                                          | 44.06  |
| 291-25.1.08  | Processed payment (part only of invoice disallowed)                                                       | " "                                                                                                                                                                                                                                                          | 23.50  |
| 294-28.1.08  | Arranging for repair (part only of invoice disallowed)                                                    | " "                                                                                                                                                                                                                                                          | 47.00  |
| 295-3.3.08   | Receiving quotes and arranging access                                                                     | " "                                                                                                                                                                                                                                                          | 47.00  |
| 298-25.3.08  | Processing of invoice and reporting to lessee (part only of invoice disallowed)                           | " "                                                                                                                                                                                                                                                          | 117.50 |
| 300-1.4.08   | Works order                                                                                               | " "                                                                                                                                                                                                                                                          | 47.00  |
| 307-31.5.08  | Inspecting puddling in recycling area & 'Building inspector's travel expenses'                            | " " Also there is no explanation for why Building Inspector's travel expenses should be charged to leaseholders.                                                                                                                                             | 76.09  |
| 315-31.8.08  | Emails and telephone calls                                                                                | " "                                                                                                                                                                                                                                                          | 44.06  |
| 319-31.8.08  | Check and prepare payment memo                                                                            | " "                                                                                                                                                                                                                                                          | 11.75  |
| 320-30.9.08  | Check details of invoice and work undertaken                                                              | " "                                                                                                                                                                                                                                                          | 22.03  |
| 321-30.9.08  | Cert MCW invoice                                                                                          | " "                                                                                                                                                                                                                                                          | 22.03  |
| 326-30.11.08 | Arrange access, emails with residents and others (part only of invoice disallowed)                        | " "                                                                                                                                                                                                                                                          | 129.25 |
| 327-30.11.08 | Sourced drawings                                                                                          | " "                                                                                                                                                                                                                                                          | 23.50  |
| 334-27.2.09  | Email                                                                                                     | " "                                                                                                                                                                                                                                                          | 23.00  |

|              |                                                                                            |                                                                                          |        |
|--------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|--------|
| 338-31.3.09  | Telephone call regarding re-allocation of spaces                                           | “ ”                                                                                      | 43.13  |
| 341-30.4.09  | Email                                                                                      | “ ”                                                                                      | 11.50  |
| 343-31.5.09  | Update to leaseholder                                                                      | “ ”                                                                                      | 23.00  |
| 344-30.6.09  | Emails regarding works carried out to flat 117 and emails regarding terrace investigations | “ ”<br>Plus the work regarding number 117 should be charged directly to that leaseholder | 126.50 |
| 349-30.6.09  | Review damp report and comment back to leaseholder                                         | This should be charged direct to the leaseholder                                         | 86.25  |
| 353-31.7.09  | Letter and email regarding alterations                                                     | This should be charged direct to the leaseholder                                         | 115.00 |
| 359-31.8.09  | Issue tender document                                                                      | “ ”                                                                                      | 43.13  |
| 364-30.9.09  | Email to flat 218 re water ingress (part only of invoice disallowed)                       | “ ”                                                                                      | 44.06  |
| 365-30.9.09  | Advise of tender progress                                                                  | “ ”                                                                                      | 21.56  |
| 367-30.10.09 | Email regarding front door                                                                 | “ ”                                                                                      | 43.13  |
| 368-30.10.09 | Review of funds etc                                                                        | “ ”                                                                                      | 301.88 |
| 369-30.10.09 | Organise plumber to attend flat 316 for kitchen waste pipe                                 | “ ”<br>”Plus this should have been charged direct to leaseholder                         | 86.25  |
| 372-30.10.09 | Alterations to flat 207                                                                    | “ ”<br>”Plus this should have been charged direct to leaseholder                         | 46.00  |
| 375-14.12.09 | Information sheet to leaseholders                                                          | “ ”                                                                                      | 92.00  |
| 379-31.12.09 | Reading lease                                                                              | “ ”                                                                                      | 23.00  |
| 386-25.3.10  | Checking with accounts regarding funds                                                     | “ ”                                                                                      | 44.06  |

*Major works – section 20 Landlord and Tenant Act 1985 consultation*

36. The major works in question concerned internal decorations and carpeting in 2009/10. The total cost of those works was not known as at the date of the hearing. There was no dispute that the consultation regulations applied to the works.

37. On this point, Mr Ahmed for Spokane confirmed to the Tribunal that Spokane was no longer pursuing an objection (which was an allegation that Spokane had not been consulted regarding major works) regarding the consultation. Mr Southam, for the leaseholders, confirmed that he did not wish to rely on this point either.

38. Mr Southam did however allege that there had been a failing in the consultation process and that accordingly costs payable in respect of those works were limited to £250.00 per leaseholder. He drew the Tribunal’s attention to the second consultation notice for the works



dated 1 September 2009. In that notice, HSC set out that they had obtained three quotes for the works from different contractors (Ashby, Kirby and JJUK) and set out the amounts of those quotes. The letter goes on to set out a further two figures for just the flooring element of the works. One quote was from JJUK one was from a specialist flooring contractor, this second contractor was a sub-contractor for Ashby.

39. Following the splitting of the quotes in this way, the Applicant was able to achieve a saving overall by using different contractors for the different parts of the work.

40. Mr Southam, objected to the splitting of quotes and argued that either all or none of the quotes should have been split or that there should have been separate quotes for each of the two elements of the works. He said that the way in which the quotes had been split did not allow leaseholders to make a proper comparison between the three main contractors or the estimates in general and that they were therefore prejudiced.

41. Mr Southam further argued that no notice to leaseholders had been given by the Applicant after it had entered into contracts with the chosen contractors.

42. The Tribunal rejects Mr Southam's arguments. In relation to consultation, there had been full compliance with the requirements of section 20 of the Landlord and Tenant Act and the regulations<sup>1</sup> made under that section. Quotes had been obtained and the leaseholders had been given the details of those quotes and had been invited to comment on them. The splitting of the quotes in the notice was entirely clear and there was no evidence that anyone was confused or misled by that. As to Mr Southam's argument regarding the lack of notification to leaseholders once contracts had been entered into, that fails given that the cheapest quotes were selected and therefore there was no duty on the part of the Applicant to further notify the leaseholders.

43. However, upon looking at the notice in question, the Tribunal noticed that the deadline for responses to that notice was stated to be 30 September. The notice itself is dated 1 September. The Tribunal initially therefore considered that the notice failed to give the leaseholders 30 days<sup>2</sup> in which to respond, and to that extent, there had been a failure to comply with the consultation regulations. This issue was put to the parties who accepted that there may have been a failure to comply. Mr Thornton for the Applicant indicated that he wished to proceed with an application for dispensation from the consultation requirements pursuant to section 20ZA of the Landlord and Tenant Act 1985.

44. Upon further reflection, although the notice is misleading, the Tribunal is not convinced on the particular facts of this case that there has been a failure to comply with the consultation regulations. Schedule 4, Part 2, paragraph 4 does not, on its literal wording, require the notice in question to inform the leaseholder that he or she has 30 days in which to respond. The 30-day period is referred to in paragraph 5 and that paragraph imposes an obligation upon the landlord to take account of any observations made within 30 days of the date of the notice.

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<sup>1</sup> Service Charges (Consultation Requirements) (England) Regulations 2003

<sup>2</sup> Regulations 2(1)(b) and Schedule 4, Part 2, paragraphs 4 & 5

45. Accordingly the Tribunal is minded to conclude that no defect in the consultation process has been made out. In the circumstances however, the parties are given permission, if they wish, to make further representations on the issue as per the directions set out below.

#### **Costs – Section 20C Landlord and Tenant Act 1985**

46. Both Respondents indicated that they wished to make applications in respect of the Applicant's costs of these proceedings pursuant to section 20C. The Tribunal did not hear representations from the parties on this point as it was anticipated that at the conclusion of the hearing that there would be a further hearing on the question of section 20ZA.

47. The Tribunal is minded to make a decision that none of the costs incurred, or to be incurred, by the Applicant in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents. The reason for this is that the Respondents have been successful in achieving very considerable reductions in the amount of charges found payable by the Tribunal and have therefore been very largely successful in the proceedings. In the circumstances, it would be entirely wrong for the Respondents to bear any of the Applicant's costs.

48. In the circumstances however, the parties are given permission to make further representations on the issue of costs as per the directions set out below.

#### **Directions**

- A. By no later than **27 January 2012:-**
- i. the Respondents may, if they wish, send to the Tribunal and to the other parties a Statement of Case setting out their views on the issue raised in paragraphs 43-45 above and their wish to pursue any challenge to the consultation process on this issue. If no such Statement(s) are filed and served within this time limit, the decision as set out in paragraph 45 above will stand as the Tribunal's final decision.
  - ii. the Applicant may, if it wishes, send to the Tribunal and to the other parties a Statement of Case setting out its views on the issue in paragraphs 46-48 above if it wishes to argue against an order under section 20C being made. If no such Statement is filed and served within this time limit, the decision as set out in paragraph 48 above will stand as the Tribunal's final decision.
- B. If any party files a Statement of Case as per paragraph A above, then by no later than **17 February 2012** the parties may send to the Tribunal and each other a Statement of Case setting out their position in response.
- C. If, following the submission of Statements of Case the Tribunal decides the issue of consultation regarding major works against the Applicant, it will give further directions

for the Applicant's application pursuant to section 20ZA Landlord and Tenant Act 1985 which in the meantime is stayed.

- D. If the issue of costs is further contested by Statements of Case, then unless any party submits a request for an oral hearing with their Statement of Case, the Tribunal will consider that issue on the papers alone and issue a final decision in due course.

**No documents or letters are to be sent to the Tribunal unless also sent to the other party(ies) and this shall be clearly marked on each document/letter.**

**Non-compliance with the Tribunal's Directions may result in prejudice to a party's case. In particular, failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence at the full hearing. In the case of the Applicant non-compliance could result in dismissal of the application in accordance with regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**

Mark Martynski

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Mark Martynski  
Tribunal Chairman  
9 January 2012