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**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1985 – Section 27A

LON/00AW/LSC/2012/0163

Property : GFF 34 Brechin Place, London SW7 4QA

Applicant : Brechin Place Limited

Represented by : Ms Louisa Nye Counsel

Respondent : Mr Peter Vamvakas

Represented by : Mr Peter Vamvakas In Person

Date of Application: 1 March 2012

Date of Hearing : 31 May 2012

Date of Decision : 22 June 2012

Tribunal : Mr John Hewitt Chairman

Mrs Alison Flynn MA MRICS

Mrs L Walter MA (Hons)

Decision

1. The decision of the Tribunal is that:

- 1.1 The service charges payable by the Respondent to the Applicant for the year ended 31 March 2010 is the sum of £2,548.29 being 20% of the sum of £12,741.44 claimed in the accounts at [121].

- 1.2 The services charges payable by the Respondent to the Applicant for the year ended 31 March 2011 is the sum of £1,990.44 being 20% of the sum of £9,952.21, being an adjustment to the sum of £11,287.34 claimed in the accounts at [124].
- 1.3 The Tribunal was not able to determine the service charges payable by the Respondent to the Applicant for the year ended 31 March 2011 but see paragraphs 21-25 below.

NB Reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

2. The Respondent (Mr Vamvakas) is the lessee of the ground floor flat at 34 Brechin Place. 34 Brechin Place comprises five self-contained flats, all let on long leases.
3. For a number of years the freehold interest in 34 Brechin Place was vested in Mr Alexandros Veletsos who is Mr Vamvakas' brother-in-law. Evidently Mr Veletsos is now aged 88 and has been resident in Greece for some while.
4. Mr Veletsos delegated management responsibility to Mr Vamvakas who undertook the role of managing agent.
5. During 2008 three of the other four long lessees exercised the right to a collective enfranchisement and in consequence the freehold interest was transferred to the Applicant. The Applicant was registered at the Land Registry as proprietor on 25 February 2009.
6. The Applicant has thus appointed managing agents who have taken over from Mr Vamvakas. The transition has not been an overly happy one. Evidently at the time of the transfer of the freehold there were unresolved service charge issues as between Mr Veletsos (and his agent, Mr Vamvakas) on the one hand and some of the long lessees on the other hand. It appears that Mr Vamvakas (acting as agent for Mr Veletsos) has paid out some costs of management and insurance which he has been trying to recover. Any such claims as there may be are (technically) a matter for Mr Veletsos to pursue against the long lessees. It is, of course, a personal matter as between Mr Veletsos and Mr Vamvakas as to the reimbursement of sums paid out by Mr Vamvakas in his role as managing agent.

7. By virtue of a surrender and re-grant the lease now vested in Mr Vamvakas is dated 28 August 2008 and granted a term of 125 years from 25 March 1982.
8. It was not in dispute that under the terms of the lease the Applicant is obliged to insure the building, carry out certain repairs and redecorations and to provide other services as set out in the Sixth Schedule and that Mr Vamvakas is obliged to contribute 20% of the costs incurred.
However, Mr Vamvakas' flat is accessed directly and not via any common parts and so the lease provides that the contribution payable in respect of the costs mentioned in the Seventh Schedule – principally costs associated with the common parts giving access to the First, Second and Third Floor flats - is nil %.
9. It was also not in dispute that the service charge year is the period 1 April to 31 March and that interim payments on account of the service charge liability are payable by way of four instalments on the usual quarter days in such amounts as the landlord or its accountants or managing agents shall specify in their discretion to be a fair and reasonable interim payment. The lease makes provision for a year end certificate and for the treatment of any balancing debit or credit which may emerge.
10. At [56] is a copy of Mr Vamvakas' account with the Applicants. The service charges arrears (net of ground rent) amount to £5,725.30 as at 9 December 2011. Evidently Mr Vamvakas has not paid any of the demands for interim payments on account or the balancing debits, largely by reason of his dispute with some of the long lessees and historic service due to Mr Veletsos. Evidently Mr Vamvakas sought to set off sums he alleged that some long lessees owed to him against service charges payable by him to the Applicant.

The hearing

11. The application came on for hearing on 31 May 2012. The Applicant was represented by Ms Louisa Nye of counsel who was accompanied by Mr Tim Theakston who is both a director of the Applicant company and a long lessee of Flat B. Mr Vamvakas appeared in person and presented his own case.

The issues clarified

12. At the commencement of the hearing opportunity was taken to clarify the issues.

13. Following discussion Mr Vamvakas said that he appreciated that there were two quite separate issues. On the one hand there were arrears of historic service charges due by some long lessees to Mr Veletsos and on the other were service charges payable by Mr Vamvakas to the Applicant. Mr Vamvakas acknowledged that he was not entitled to set off any arrears due to Mr Veletsos against sums payable by him (Mr Vamvakas) to the Applicant.
14. Mr Vamvakas also acknowledged that when preparing his case he had misunderstood the meaning of the reference to '25%' in the demands sent to him. Mr Vamvakas was aware that his liability for service charges was only 20% and he thus thought that he was being overcharged. What happened in practice was that the Applicant's managing agents prepared an annual budget, ascertained Mr Vamvakas 20% thereof and demanded that sum by way of four equal instalments of 25% each. Once Mr Vamvakas appreciated this explanation many of his challenges made to service charges based on his misunderstanding fell away.

The year ended 31 March 2010

15. We went through the certified accounts for the year ended 31 March 2010 [121]. A number of items of expenditure were initially challenged and they were discussed and Ms Nye was able to provide further information. In the event Mr Vamvakas felt able to withdraw all of his challenges.
16. Accordingly the service charge expenditure of £12,741.44 was not in dispute and Mr Vamvakas 20% contribution is thus £2,548.29.

The year ended 31 March 2011

17. The accounts are at [124]. We repeated the exercise. There were only two items in dispute:

Legal fees	£ 232.20
Water damage repairs	£1,335.13
18. Having heard the rival arguments we have allowed the legal fees of £232.20. They relate to costs incurred in pursuing Mr Vamvakas for arrears. We find that such expenditure falls within paragraphs 4 and 6 of the Sixth Schedule to the lease. We find that collecting service charges are a key part of the administration of the building and that there is express reference to the fees of solicitors.
19. We have not allowed the water damage repairs of £1,335.13. There was no evidence presented by the Applicant that these were costs of

effecting a repair to the building within the meaning of the Sixth Schedule. Such evidence as there was suggested that due to a failure of the Applicant to clear leaves and other debris from the gutters and downpipes water was allowed to accumulate and enter into one the flats. In consequence the decoration of part of that flat was impaired. The costs were incurred to redecorate the damaged parts but did not evidently go to carrying out a repair to the building. It was not explained to us why the costs incurred were not the subject of an insurance claim and/or the responsibility of the Applicant which evidently failed to keep the gutters and downpipes clear. We concluded that the redecoration costs in issue are a private matter as between the long lessee of the flat concerned and the Applicant.

20. In consequence we find that the service charges payable for 2011 are:
- | | |
|----------|------------------------------|
| Claimed: | £11,287.34 |
| Less: | <u>£ 1,335.13</u> |
| | £ 9,952.21 x 20% = £1,990.44 |

The year ended 31 March 2012

21. The budget for 2012 was available and the accounts are in draft [33-38]. The final accounts have not yet been signed off or certified.
22. At the parties request we went through the draft accounts to identify any items in dispute that it might be appropriate for us to determine whilst everyone was at the hearing. In the event there were very few.
23. At [34] there is a claim by Quadrant for £5,648.64 for management costs. Evidently this is made up as to a fee of £2,100.00 for routine management and fees of £3,548.64 incurred in connection with a project of major works of internal repair and redecoration to the common parts, which is Seventh Schedule expenditure. It was readily accepted by Ms Nye that Mr Vamvakas is not obliged to contribute to Schedule 7 expenditure and that this item should thus be reduced to £2,100.00.
24. At [37] there is a claim to legal fees of £3,963.37. Although this was said to relate to costs incurred in pursuing Mr Vamvakas for arrears what little documents were available to support the claim were not wholly clear. No breakdown of the work carried out was available to us, still less any explanation that such a large sum was reasonably incurred in endeavouring to recover service charge arrears which, at 9 December 2011 stood at £5,725.30.

25. In these circumstances and in the absence of appropriate supporting materials we were not able to make any determination as to the reasonableness or otherwise of this alleged expenditure. It is, of course, a matter for the Applicant as to what sum, if any, it seeks to include in the 2012 accounts. If a sum is included which is unacceptable to Mr Vamvakas he is entitled to challenge it if he so wishes. Any such challenge will be the subject of a fresh application to a Tribunal and will doubtless be determined on the basis of the evidence presented to it.

The Law

26. Relevant law we have taken into account in arriving at our decision is set out in the Schedule.

John Hewitt

Chairman

22 June 2012

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and

- (b) where they are incurred on the provision of services or the carrying out of works, only if the services are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Section 27A of the Act provides that 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.

Section 27A(3) of the Act provides that an application may 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.
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.