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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL UNDER SCHEDULE 11  
TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]**

**Case Reference:** LON/00AW/LVA/2012/0006

**Premises:** Flat 1, 46 Queens Gate Gardens, SW7 5ND

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**Applicant:** Giles Richard Thomas

**Representative:** Winkworth Sherwood LLP

**Respondent(s):** Aleksander Mundziv and Dragana Mundzic

**Representative:** Myers Fletcher & Gordon Solicitors  
Peveler Property Management (Managing agents)

**Date of hearing  
Paper:** 26<sup>th</sup> September 2012

**Leasehold Valuation  
Tribunal:** Ms E Samupfonda LLB (Hons)  
Mr W R Shaw FRICS

**Date of decision:** 26<sup>th</sup> September 2012

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £250 plus VAT is payable by the Applicant in respect of the administration fee charged by the Respondent's solicitors for costs incurred in granting consent for the sale of the subject premises.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant through any service charge.

## **The application**

1. The Applicant seeks a determination pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in respect of the costs incurred by the Respondents' solicitors in preparing and granting the Licence to Assign the Lease.
2. The Applicant was the lessee of the subject property, which is held under a Lease dated 30 June 2000 for a term of 99 years from 25 March 2000 as varied regarding the extent of demise by deed of variation dated 3 April 2012 and the Respondent is the Freeholder. The application arises as a result of the Applicant's intention to assign the Lease to a Mr Thomas Luke McKenna Burton.
3. Directions for the conduct of the case were issued on 9<sup>th</sup> July 2012 when the tribunal decided that the application can be dealt with on the papers alone unless any party requested an oral hearing. Neither party has made such a request.
4. The relevant legal provisions are set out below.

## **The background**

5. In an email dated 25<sup>th</sup> April 2012, the Respondent's managing agent Peverel's stated "Please see the attached consent and statement of account....." The attachment stated that "We give consent to the sale of Mr Giles Thomas to Mr Thomas Luke McKenna Burton."
6. The Respondents' solicitors formed the view that a Licence to Assign was required and accordingly informed the Applicant's solicitors. The Respondents' solicitors prepared the Licence to Assign and now seek to recover the administration costs of £750.00 plus VAT
7. The Applicant asserts that the Respondents' solicitors seek to resile from the grant of such consent as given by Peverels on behalf of the Respondent by

insisting that the parties were required to enter into a Licence to Assign. It is argued that the landlord is not entitled to require the execution of such a licence as consent had already been given by the landlord's agent and the lease does not entitle the landlord to require anything further. Consequentially it is submitted that the administration fee charged by way of the Respondents' solicitors costs in the preparation of the Licence are unreasonable in any event. In the alternative, that the costs are unreasonable in their quantum and that the fee for issuing a standard document should have been £250 plus VAT.

8. The Respondents' solicitors assert that the costs incurred in connection with the preparation and grant of the Licence are reasonable and were incurred in accordance with Clause 22 of the Fifth Schedule to the Lease. They say that the Licence was prepared after receiving an undertaking from the Applicant's solicitors to be responsible for their fee. They then go on to outline the work carried out in preparing the Licence.

### **The issues**

9. The tribunal identified that the relevant single issue for determination as follows:
  - (i) The payability and/or reasonableness of the administration charge.
10. Having considered the submissions from the parties and considered all of the documents provided, the tribunal has determined the issue as set out below.

### **The Lease**

11. By Clause 20 (20.2) the Applicant covenanted "Not to assign underlet share or part with or share possession of the whole of the Demised Premises without the Lessor's consent in writing such consent not to be unreasonably withheld." And by Clause 22 "to pay to the Lessor's legal or surveyors' costs incurred in connection with applications for any consent under the terms of this lease whether or not such consent is granted."

### **The tribunal's decision**

12. The tribunal determines that the amount payable in respect of the administration fee is £250 plus VAT.

### **Reasons for the tribunal's decision**

13. The Respondents' managing agent Peverel, acting on behalf of the Respondents granted consent in writing by the email dated 25<sup>th</sup> April 2012 thus complying with Clause 20 (20.2)



- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

## **Landlord and Tenant Act 1985**

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.