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**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON/00AY/LSC/2012/0117

**Property:** 16 Connaught Mansions, 390 Coldharbour Lane, London SW9 8LE

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**Applicant:** Thornmead Securities Limited

**Respondent:** Mr D Parmar

**Date of hearing:** 17<sup>th</sup> July and 6<sup>th</sup> August 2012

**Appearances for Applicant:** Mr T Darwall-Smith, Head of Management at Sandrove Brahams, managing agents

**Appearance for Respondent:** Mr A Singh, the Respondent's property agent

**Also in attendance:** Mr C Thomas, Property Manager at Sandrove Brahams, and Mr Parmar (the Respondent)

**Leasehold Valuation Tribunal:** Mr P Korn (chairman)  
Mr S Mason BSc FRICS  
Mrs S Justice BSc

**Date of decision:** 28<sup>th</sup> August 2012

## Decisions of the Tribunal

- (1) The Tribunal makes the following determinations:-
- The Applicant's service charge demands do not comply with section 47 of the Landlord and Tenant Act 1987, in that they do not specify the correct company as landlord. Therefore, the service charge amounts claimed by the Applicant in its County Court Particulars of Claim will not fall due until the name and address of the landlord has been furnished to the Respondent by written notice.
  - None of the Respondent's other challenges to the service charge are accepted. Therefore, once the name and address of the landlord has been furnished to the Respondent by written notice the whole of the service charges in the Applicant's County Court Particulars of Claim will become due and payable in full.
- (2) The Tribunal makes no order under section 20C of the 1985 Act.

## The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the liability to pay and reasonableness of certain service charge items.
2. The Applicant initially issued proceedings in the County Court and the claim was subsequently transferred to the Tribunal for determination. The claim is for unpaid service charges (plus ground rent, over which the Tribunal has no jurisdiction, and County Court interest and costs).
3. The relevant legal provisions are set out in the Appendix to this decision.

## The background

4. The Respondent holds a long lease ("**the Lease**") of the Property pursuant to a lease dated 5<sup>th</sup> August 1983 between Harpreet Enterprises Limited (1) and Fiona Montgomery (2).
5. The Tribunal did not inspect the Property, nor the building of which it forms part. Neither party requested an inspection and, having consulted the parties on the point, the Tribunal did not consider that one was necessary.

## The issues

6. Based on the Respondent's initial summary of his position in written submissions and through his property agent, Mr Singh, at the hearing, the Tribunal

identified the relevant issues for determination as follows (any other issues which were initially raised having subsequently been dropped):-

- whether the Applicant had made valid service charge demands pursuant to section 47 of the Landlord and Tenant Act 1987;
- whether the service charges generally represented value for money;
- whether various invoices were duplicates or represented a duplication of work or were insufficiently clear for it to be possible to establish what the money had been spent on;
- whether the building insurance premiums were excessive;
- whether there was a proper consultation pursuant to section 20 in relation to the planned internal decoration of the block;
- whether the agreement to engage a cleaner was a long term qualifying agreement on which the Applicant should have consulted leaseholders; and
- whether the proportion of the service charge payable by the Respondent had been miscalculated.

### **Respondent's position**

7. Mr Singh on behalf of the Respondent said that the Respondent purchased the Property in March 2007 but that no service charge demands were received prior to 2009. Thereafter, service charge demands were received but he submitted that these did not comply with section 47 of the Landlord and Tenant Act 1987 as they did not correctly identify the landlord, and Mr Singh referred the Tribunal to examples of service charge demands in the hearing bundle.
8. Mr Singh noted that the Applicant claimed not to have received a Notice of Assignment notifying the Applicant that the Respondent had become the leaseholder of the Property. In response he referred the Tribunal to a witness statement from his solicitor stating that Notice of Assignment was served on the freeholder on 16<sup>th</sup> March 2007.
9. In relation to the amount spent on general repairs in 2009, the Respondent did not know what the money had been spent on and was therefore unclear whether it represented value for money.
10. A further argument in relation to value for money was based on the Respondent's belief that the building was looking very shabby, and Mr Singh referred the Tribunal to a series of photographs in this regard.
11. Generally in relation to the invoices seen by the Respondent, he felt that some of them indicated a duplication of work carried out and/or were actual duplicate invoices and that some did not contain sufficient details for it to be clear what they related to.

12. In relation to the building insurance premiums, the Respondent had obtained alternative quotations, copies of which were in the hearing bundle, and these were much lower than the cost of building insurance taken out on behalf of the Applicant.
13. Regarding the consultation process in relation to the internal decoration works, Mr Singh questioned whether a section 20 notice was ever served on the previous leaseholder, although he was unable to explain the basis for the Respondent's belief that it had not been served. Mr Singh did not advance any other specific reasons for questioning whether the consultation process had been carried out properly.
14. In relation to the common parts cleaning, Mr Singh's argument was that the cleaner was taken on pursuant to a qualifying long term agreement and that no consultation took place in relation to that agreement.
15. As regards the calculation of the service charge percentage payable by the Respondent, Mr Singh noted that the Lease required the percentage to be calculated by reference to rateable values but said that the Respondent believed that a similar flat was paying a lower percentage and therefore the rateable values must have been miscalculated.

#### **Applicant's response**

16. Mr Darwall-Smith said that the Respondent had made no contributions whatsoever towards the service charge.
17. In relation to the transfer of the Lease to the Respondent, Mr Darwall-Smith said that the Applicant did not receive a Notice of Assignment until November 2009 and that the Applicant had no record of the Respondent trying to contact its managing agents prior to then.
18. Regarding the Respondent's point about section 47 of the Landlord and Tenant Act 1987, all service charge demands have stated Thornmead Securities Limited to be the landlord. Mr Darwall-Smith said that the reason was that although Capital Investments and Securities Corporation is the registered proprietor of the freehold interest it holds that interest on trust for Thornmead Securities Limited pursuant to a Deed of Trust, a copy of which was provided to the Tribunal.
19. Mr Darwall-Smith went through the various invoices challenged by Mr Singh on behalf of the Respondent, including those relating to general repairs in 2009, and explained what each one related to.
20. Specifically as regards the photographs provided by Mr Singh, Mr Darwall-Smith provided copies of more recent photographs, commenting that the Respondent's photographs were dated February 2010 and that this was about

6 years after the previous full refurbishment and therefore it was not surprising that at that point the building was looking shabby.

21. In relation to the building insurance premium, Mr Darwall-Smith said that this was tendered through a broker on a regular basis and he was satisfied that the premiums were reasonable. In his view, all of the alternative quotations provided by the Respondent were on materially different terms with different conditions attached and therefore they were not genuinely comparable. They did not take into account the building's claims history and were on different terms as regards excess, employer's liability, sum insured and/or other matters. The claims history in particular was a significant factor. Mr Darwall-Smith also said that the Respondent had not at any stage complained about the level of insurance premium prior to this case.
22. As regards consultation on the internal decoration work, a part 1 section 20 notice was served on the previous leaseholder in April 2009, and Mr Darwall-Smith referred the Tribunal to a copy of this notice in the hearing bundle. A part 2 notice was served on the Respondent in May 2010, and again he referred the Tribunal to a copy of this notice in the hearing bundle. The Applicant's position was that the part 1 notice was served on the previous leaseholder because the Applicant had not been notified that the Respondent had become the leaseholder. Mr Darwall-Smith added that the Respondent did later go to the managing agents' office at one point to discuss the proposed works and to obtain more information.
23. In relation to the cleaning, the Applicant's position was that the caretaker used to do both the caretaking and the cleaning together, with some help from his wife. The caretaker then died and his widow carried on in the role, doing the caretaking/cleaning and/or supervising others. It is therefore not a separate contract. In addition, if the cleaning were to be split out as a separate contract it would not be above the threshold for consultation in any event.
24. As for the calculation of the service charge percentages, this was indeed done by reference to rateable values. The Respondent had not provided any substantive evidence that the calculation of the rateable values was wrong and these percentages had been used for a long time without complaint.

#### **Conceded points**

25. In the light of the Applicant's explanation of the various invoices initially challenged by Mr Singh, Mr Singh said on behalf of the Respondent that he was satisfied with these explanations and was therefore withdrawing his challenge to those invoices.

#### **Tribunal's analysis**

26. On the issue of whether the Applicant received notice of assignment prior to November 2009, the Tribunal has considered the evidence given on behalf of

each of the parties. The Tribunal notes that the Respondent accepts that he did not receive back a receipted notice, and the Tribunal also notes that he has not provided evidence of his having made any attempt to contact the managing agents for 2 years after the date on which he claims to have given notice of assignment. Whilst it is possible that a notice of assignment was sent to the Applicant, it was not sent by (for example) special or recorded delivery and on the balance of probabilities the Tribunal is of the view that it was not received by the Applicant (prior to notification being received in November 2009).

27. The Respondent's case that the service charge does not represent value for money is extremely thin. His photographs arguably do show that parts of the building were in need of refurbishment back in May 2010, but that is not disputed by the Applicant, and those photographs do not demonstrate that the amounts charged for services actually provided were themselves unreasonable.
28. The Tribunal notes that the initial challenge to individual invoices has now been withdrawn.
29. In relation to the building insurance premium, whilst the Tribunal notes that the Respondent did try to obtain comparable quotations, the Tribunal agrees with the Applicant that they are not in fact comparable. They do not take into account the claims history for the building nor various other key terms and conditions. Having considered the level of premium charged for each year in dispute, the Tribunal as an expert tribunal with knowledge of the general market is of the view that the level of premium is reasonable.
30. As regards the internal decoration, the Tribunal has found on the balance of probabilities that notice of assignment was not received by the Applicant prior to November 2009. It was therefore not a breach of the consultation requirements to serve the part 1 notice in April 2009 to the person whom the Applicant had reason to believe was the then current leaseholder. No other objections to the consultation process seem to have been made by the Respondent (following clarification of his position during the hearing).
31. In relation to the cleaning, the factual position is a little unclear. However, as it is the Respondent who has raised the issue the onus is on him at least to make a 'prima facie' (i.e. an initial) case for the Applicant to answer. In the Tribunal's view he has failed to do this in that he has not provided any proper evidence to demonstrate that the cleaning arrangements have been the subject of a 'long term qualifying agreement' nor that – even if it is a long term qualifying agreement – it is above the threshold for consultation, especially given that the Applicant maintains that it is not above that threshold. In the circumstances, on the balance of probabilities the Tribunal considers that the Applicant was not obliged to consult in relation to the cleaning arrangements pursuant to section 20.

32. In relation to the service charge percentages and the calculation of the rateable value, the Respondent has provided no proper evidence to substantiate his assertion that the service charge percentage has been wrongly calculated, and it is perfectly possible for similarly sized flats to have different rateable values.
33. Finally, it is necessary to deal with the issue of compliance with section 47 of the Landlord and Tenant Act 1987. Under section 47(1) all written service charge demands must contain the name and address of the landlord, and under section 47(2) if a demand does not contain this information the relevant sum is not due until the information has been provided (see Appendix of relevant legislation below). The Respondent argues that this information has not been provided on any service charge demand because all of the demands state Thornmead Securities Limited to be the landlord. The Applicant argues that although Capital Investments and Securities Corporation is the registered proprietor of the freehold interest it holds that interest on trust for Thornmead Securities Limited and therefore Thornmead Securities Limited is really the landlord.
34. The hearing was adjourned between 17<sup>th</sup> July and 6<sup>th</sup> August, and one of the reasons for adjourning the hearing was to enable the parties to consider and make legal submissions on this issue. However, aside from the Applicant producing a signed copy of the Deed of Trust, neither party advanced any specific further arguments or brought any legal authority to support its position. It seems, therefore, that the Applicant's position is simply that it is the (sole) landlord because Capital Investments and Securities Corporation holds the freehold on trust for it.
35. The Tribunal notes that section 60 of the Landlord and Tenant Act 1987 simply defines "landlord" for the purposes of the 1987 Act as "the immediate landlord", which does not help in the context of the particular issue before the Tribunal. In the Tribunal's view, in the absence of any legal authority having been brought to support the Applicant's position, the landlord is the person/company who is the legal owner of the reversionary interest, whether or not that person/company is in fact holding its interest on trust for another or for many others or for nobody. Therefore, the Tribunal considers that the plain meaning of section 47 is to require demands to contain details of the person/company owning the reversionary interest. Indeed, if the current landlord had been the **original** landlord and named as such in the Lease, then the name of the "landlord" in the Lease would surely be Capital Investments and Securities Corporation and not Thornmead Securities Limited.
36. If the Applicant wishes to refer to the trust arrangements on its service charge demands then this would seem to be unobjectionable, but only if it makes it clear that Capital Investments and Securities Corporation is the landlord.
37. It follows, therefore, that none of the service charges are currently due from the Respondent, as the service charge demands do not comply with section 47, and that they will not become due until the name and address of the landlord

is furnished to the Respondent by written notice. However, for the reasons given earlier, the Respondent has not succeeded on any of his other challenges to the service charge, and therefore once this information has been provided the whole of the service charges in the Applicant's County Court Particulars of Claim will become due and payable in full.

### Section 20C application

38. The Respondent has applied for an order that the Applicant's costs should not be put through the service charge. In the event, the Respondent has lost this case on all points save for the technical one that the service charge demands specify the wrong company as landlord. That technical error merely delays the obligation to pay, but once that error has been corrected the service charge sums set out in the County Court Particulars of Claim will be payable in full. In addition, the Tribunal notes that the Respondent has not paid any service charges at all since becoming the leaseholder of the Property despite enjoying the benefit of building insurance and other services during that time. The technical argument regarding which company to specify as the landlord has only been raised by the Respondent relatively recently, and it is considered highly unlikely that this has been the reason why the Respondent has paid no service charge since 2007. For all of the above reasons the Tribunal therefore determines not to make an order under section 20C of the 1985 Act.

### Other cost applications

39. No other cost applications were made

Chairman:

  
Mr P Korn

Date:

28<sup>th</sup> August 2012



## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### Section 18

- (1) In the following provisions of this Act "service charge" 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) 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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) 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 or subsequent charges or otherwise.

#### Section 27A

- (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.
- (3) An application may also 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.
- (4) No application under subsection (1) or (3) 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.

### **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.

### **Landlord and Tenant Act 1987**

#### **Section 47**

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely -

(a) the name and address of the landlord ...

(2) Where -

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then ... any part of the amount demanded which consists of a service charge ... shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) ...

(4) ...