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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/00BG/LSC/2012/0473

Premises: 128 Balfron Tower, St Leonards Road, Poplar,
London, E14 0QT

Applicant(s): Poplar Housing & Regeneration Community
Association Limited

Attendances for Applicant: Mr A Redpath Stevens, Counsel
Mr C Lushey, Head of Income with the Applicant

Respondent(s): Mr Hugh Thompson

Attendances for Respondent: Mr Gregory and Mr McCarthy both of Charles-
Henry, Solicitors for the Respondent

Date of Hearing: 21st November 2012

Leasehold Valuation Tribunal: Mr A A Dutton – chair
Mr P S Roberts Dip Arch RIBA
Mr J E Francis

Date of Determination: 5th December 2012

Decision of the Tribunal

The Tribunal determines that the Respondent is indebted to the Applicant in the sum of £5,700.21 for the reasons set out below. The said sum is to be paid within 28 days unless an alternative period for payment is agreed between the parties. The matter is remitted back to the Willesden County Court under Claim No 2IR63833 for any outstanding issues to be determined.

Reasons

1. This matter came before us for hearing on 21st November 2012 as a result of a court referral by the Willesden County Court dated 11th July 2012. In the court proceedings the Part 20 claim which had been stayed until 11th October 2012 to be struck out if there was no request to lift the stay by that date.
2. In the defence filed in the County Court, the only document produced by the Respondent to indicate there is a dispute, he alleged there had been non-compliance with Section 20 of the Act with regard to a number of long term qualifying agreements, although no specific failure was stated. Further he alleged at paragraph 4 of the defence as follows "*Amongst other things [1] the service charges are not fair and reasonable; [2] the costs were not reasonably incurred; [3] the work done were not of a reasonable standard.*"
3. On 9th August 2012 directions were issued by the Tribunal, which required, amongst other things, for the Respondent to send to the Applicant his statement covering some ten bullet points by 27th September 2012. He did not do so and had not filed any such document at the time the matter came before us for hearing. Instead Mr Gregory and Mr McCarthy attended seeking an adjournment due to health concerns for the Respondent. They had written to the Tribunal on 20th November 2012 setting out the grounds for such an adjournment. We had read the letter before the hearing commenced on 21st November.
4. At the Hearing Mr Gregory supported by Mr McCarthy told us that he did not have any evidence of the Respondent's incapacity save for a rambling telephone conversation that he had had with the Respondent on the previous day. The letter of 20th November 2012 suggested that the Respondent may have some sleep condition which prevented him from dealing with matters before noon in any day. As to the failure to comply with the directions it was suggested that there had been some confusion between Charles-Henry the Respondent's solicitors and Counsel they had retained to act for the Respondent. It appears that this confusion may have caused the non-compliance with the directions. It was unclear who may have had the conduct of the case at Charles-Henry at this time. Certainly Mr Gregory denied he had

any working knowledge of the case and Mr McCarthy told us that he'd only taken over the matter in the last week or so.

5. Mr Redpath-Stevens objected to the adjournment request. He referred to a letter from Charles-Henry dated 16th November 2012 which asked for an adjournment to enable the Respondent "to reconsider his position" making no comment on health issues. He made critical comments of the behaviour of Charles-Henry in failing to comply with the directions.

Decision on Request for Adjournment.

6. We refused the application to adjourn. Our grounds for so doing are as follows:

- No evidence was produced to show to us any illness on the part of the Respondent. The letter of 20th November refers to the provision of a doctor's certificate but none was available to us on the morning of the Hearing. The only evidence we had was that from Mr Gregory who referred only to a rambling telephone conversation with the Respondent.
- It was noted that when Charles-Henry wrote seeking an adjournment, but four days before their letter of 20th November, this appeared solely to be for the purpose of enabling the Respondent to re-consider his position. No mention was made of any health problems.
- The Respondent has failed to comply with the Directions. He appears not to have participated in these proceedings at all. To blame this on the confusion between solicitors and Counsel is unconvincing. It is the responsibility of the solicitors instructed to ensure that deadlines are adhered to. It appears that no fee earner had responsibility for the case.
- We are not satisfied that if an adjournment were granted we would not be in the same position again when the matter came round for hearing.
- We remind ourselves that this is a court referral which should be progressed and that the Applicant has incurred costs in attending the hearing with Counsel on 21st November.

We therefore conclude that in fairness to both parties given the failures of the Respondent and his legal representatives an adjournment should be refused.

Hearing

7. At the commencement of the Hearing both Mr Gregory and Mr McCarthy excused themselves as they said neither had sufficient knowledge of the case to represent the Respondent.
8. The matter therefore proceeded in their absence and in the absence of Mr Thompson. Given the nature of the defence filed we required the Applicants to satisfy us that the allegations that there had been non-consultation under provisions of section 20 were not made out.
9. To deal with this matter Mr Redpath-Stevens called Mr Christopher Lushey who had prepared a witness statement which was in the bundle before us. Mr Lushey is the Head of Income for the Housing Directorate of the Applicant Company. His witness statement contained a statement of truth. We noted all that was said in the statement and also had reference to the Applicant's statement of case which was in the bundle including a number of exhibits to which reference was made in the Hearing. These exhibits shown as appendices included notices of intention and/or proposals for works in respect of the qualifying long term agreements which it is said by the Respondent had not been properly consulted upon under provisions of Section 20 and the provisions contained in the Service Charges (Consultation Requirements) (England) Regulations in 2003 and in particular Schedule 2 thereof.
10. It appears from the Applicants' statement of case that there was consultation in respect of the following matters:
 - Electrical maintenance contract where it is said a notice of intention was served in around December 2008 and a proposal sent to the Respondent on 20th November 2009.
 - General building maintenance of the Poplar Riverside area in which again a notice of intention was purportedly sent in December 2008 and a proposal on 20th November 2009.
 - An insurance contract for which a notice of intention was sent to the Respondent dated 12th October 2009 and a proposal contained in a letter dated 9th April 2010.
 - Maintenance of television aerials, security of empty properties and plumbing and mechanical works for which notice of intention was sent on 20th November 2009 and a proposal sent to the Respondent under cover of a letter it is said dated 20th November 2009.
 - Repairs and external decorations for which notice of intention was sent to the Respondent dated 20th November 2009 although no proposal was included within the papers.

- Poplar Riverside responsive repairs and maintenance contract for which a notice of intention was sent on 20th November 2009 although there appeared to be confusion whether in fact this was a duplication or the same as the general building maintenance contract referred to above.
 - Finally the electricity contract for which a notice of intention was sent to the Respondent dated 18th February 2011 and dispensation sought from the Tribunal and granted under case reference LON/00BG/LDC/2011/0021 on the 28th March 2011.
11. Mr Redpath-Stevens took Mr Lushey through these various documents and we heard all that was said in regard to the paperwork. It is appropriate to record Mr Lushey's oral evidence to us. Having confirmed that the statement was to the best of his information and belief true and that the statement of truth was correct, he firstly confirmed with us that there had been an adjustment in respect of the service charge year 2011/2012 following a final account being issued which reduced the Respondent's liability to £5,700.21 from the amount that was claimed in the County Court proceedings which was £5,810.44. He told us that there some 2,400 long leaseholders managed under the Poplar housing banner and that he had not received one challenge to the consultation process which was before us. He told us that there was a governance arrangement whereby residents were appointed to the estate boards and then it seems to the main board to ensure that there was proper representation for the residents. At Balfron Tower it appears that there were two members who were on the estate board, one of whom was certainly a long leaseholder.
12. He reiterated that there had been no complaint from other leaseholders about the qualifying long term agreements which were referred to in this case and confirmed that the lessees were in the main quite vocal about issues and certainly would seek to challenge any error on the part of the Applicant if there was a possibility that the liability to the Applicant could be reduced. He was taken through the various appendices and the documents contained therein and told us that the Section 20 notices were based upon a standard template which had been updated but had not been challenged as being inaccurate. He told us also that the member of staff charged with issuing the Section 20 documentation was meticulous and competent and very rigorous in her method. Unfortunately she was no longer with the local authority and as their parting of ways had not been wholly amicable it was not possible to seek her further assistance. He did, however, confirm that her departure was as a result of voluntary redundancy and not competency. Reference was made to a letter contained at Appendix 13 of the bundle which was undated but signed by a Mr Dave Tull who is still with the local authority. Mr Lushey had spoken with him and it appears that Mr Tull as best he could was satisfied that the documents sent out in the numbered paragraphs had been included with this letter which was dated 20th November 2009 and dealt with notices of intention for the television aerials etc and external decorations and notices of proposal for electrical maintenance and general repairs. He accepted some documentation could not be found and such was the computer arrangements

that it appeared unlikely that they could be regenerated. Accordingly an adjournment in an attempt to find the missing paperwork was unlikely to assist. However, he said that he was satisfied from his own enquiries talking to his colleagues and coupled with the lack of complaint by the residents that the appropriate consultation process had been fully complied with.

13. Asked by Counsel about the other matters contained in Mr Thompson's defence he confirmed that save for those contracts referred to above there was no consultation. The heating fuel is provided by a preferred supplier but there is no specific contract. Further a security patrol charge was a pilot only on a rolling arrangement and could be terminated in short time and in fact had been so terminated. This concluded the Applicant's case. We confirm that we had read the Applicant's statement of case and the appendices attached, the defence and counter claim filed in the court together with the other court papers and some emails and correspondence passing between the Applicant and the Respondent.

The Law

14. The law relevant to this case is as attached.

Findings

15. The Respondent's defence in the County Court does not contain particulars. There is a general assertion that the claimants could only recover £100 maximum in respect of any one item of service charge for which the sum sought by the Claimant exceeded £100. It was suggested that this was as a result of the claimant's failure to consult but the list of contracts cited in the defence included block caretaker, block repairs, boiler fuels, concierge, CCTV, security, communal electricity, insurance, lift maintenance, maintenance and administration and management fees. A good number of those did not require, on the evidence put to us, any form of consultation. Those that did were set out in the Applicant's statement of case and were spoken to by Mr Lushey both in his witness statement and in his attendance before us. Insofar as service charges generally were concerned, the Respondent's allegations in this regard are set out above and merely contained general challenges that the service charges are not fair and reasonable, not reasonably incurred and the works were not of a reasonably standard. As the Respondent has not participated in these proceedings it is not possible to determine what specific complaints he makes.
16. We were satisfied with the evidence given to us by the Applicant and in particular the evidence of Mr Lushey, who struck us as an honest and forthright witness. It is fair to say that there are some missing documents but we were satisfied on the balance of probability, given the evidence we received from Mr Lushey, that the proper procedures under Section 20 of the Act and the regulations relating to qualifying long term agreements had been complied with. As that appeared to be the only challenge raised by Mr

- (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.

S20 Limitation of service charges: consultation requirements

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.