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HM COURT AND TRIBUNAL SERVICE

File Ref No. MAN/00BM/LIS/2012/0003

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

in relation to

Flats 6 & 10 Lancaster Street, Radcliffe, M26 3TA

Applicant: Sunnywood Estates Limited

Respondent: Mr Anthony Francis Brown

Application: By transfer from Telford County Court under Orders dated 20 December 2011 (the Orders)

Inspection: 12 July 2012

Members of the Leasehold Valuation Tribunal (the Tribunal): Mr. P. W. J. Millward LLB (Chairman)
Mr. J Faulkner FRICS

The Application

1. By a claim issued in July 2011 in Shrewsbury County Court the Applicant seeks to recover unpaid service charges from the Respondent relating to the above mentioned properties (the First Property and the Second Property respectively and together called the Properties). By the Orders the County Court ordered that the issue as to the amount payable by the Respondent by way of service charge be transferred to the Leasehold Valuation Tribunal for determination under paragraph 3 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Residential Property Tribunal Service (RPTS) notified the parties that it had received the papers from the Court pursuant to that Order and having received the necessary information from the Applicant's Solicitors an Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 9 May 2012 and sent to the parties on 10 May 2012. The parties were notified on 18 May 2012 that the matter had been set down for hearing on 12 July 2012.
2. Pursuant to the Directions the Applicant provided its Statement of Case with supporting documentation and paid the appropriate fee to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of the Properties.
3. The application relates to demands for service charges in respect of the years commencing 1 January 2010 and 1 January 2011 and ending on 31 December 2010 and 31 December 2011 respectively each in the sum of £600.00 for each of the properties (a total of £2400.00) being the Applicant's share of the total estimated cost for the maintenance of the block of flats in which the Properties are located but also including additional administration charges, costs and interest.

The total claimed as at 12 July 2010 (the date of the Applicant's Particulars of Claim) is £2,143.43 in relation to each property – a total of £4,286.86.

The Lease

4. The Respondent is the lessee of the Properties under leases (the Leases) both dated 2 June 2005 and made between The Applicant (1) Milner Street Management Limited (2) and the Respondent (3) for a term of 250 years from 1 January 2004. Under the Lease management of the Properties (together with all other flats in the same development) is assigned to the said Milner Street Management Limited. The said Milner Street Management Limited was struck off the register of companies and under the terms of the Leases the Applicant has assumed responsibility for the management of the Properties.
5. By various clauses of the Leases the Respondent covenants to contribute and pay 1/30th proportion of the Apartment Service Charge such proportion of the Development Service Charge as is determined by the Lessor in advance towards the costs, expenses and outgoings as itemised in the 4th schedule of the Leases.
6. Payment of costs incurred by the Applicant as a result of any failure to pay the service charge by the Respondent are recoverable as provided for in part 1 of the 4th schedules of the Leases and interest on such unpaid sums are payable to the Applicant under a covenant given by the Respondent in clauses 3A(1)(d) of the Leases.
7. By clause 12 of the 4th schedules of the Lease the Applicant is authorised to create and maintain a reserve fund towards costs, expenses and outgoings of maintenance and repairs of a periodically recurring nature.

The Law

8. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:
 - (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 provides that

- (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 provision 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.

Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Inspection

- 9. The Leasehold Valuation Tribunal (the Tribunal) inspected the common areas of the development in which the Properties are situated and their surroundings in the presence of Mr Nigel Holt representing the Applicant on the morning of 12 July 2012. The Respondent did not attend. The Properties are first and second floor flats respectively, situated in the same 3 storey block of 6 flats. There are 5 similar blocks the development making a total of 30 flats. There is a communal parking area at the front of each block and each flat has a designated parking space. There are additional visitor spaces.
- 10. The communal areas are in well maintained condition and re-decoration is continuing in another of the blocks. The car park gate is not working.

The Submissions of the Parties

- 11. The Applicant's statement includes (inter alia) the following submissions:-
 - 11.1 It confirmed the important clauses in the Lease.
 - 11.2 It included a statement of expenditure since 1st January 2010 and copies of certified accounts prepared on its behalf.
 - 11.3 It confirmed that all sums claimed in the County Court proceeding in relation to the Properties was still outstanding.
- 12. The Respondent made no written submissions.

The Hearing

- 13. The Applicant (represented by Mr Brookes of Counsel and Mr Holt) attended the hearing.
- 14. The Respondent did not attend, nor was he represented.
- 15. The Applicant confirmed and repeated its written submissions, and rectified minor typographical errors therein, and said in evidence that
 - 15.1 The claim is for £2,400 service charges plus interest and costs in accordance with the terms of the Leases
 - 15.2 The service charge proportion for both the Apartment Service Charge and the Development Service Charge is the same. This must have been determined in the previous proceedings commenced by the Applicant against the Respondent in Manchester County Court case no. OSY00011 (the Previous Case) in which judgment was obtained against the Respondent in relation to previous unpaid service charges.
 - 15.3 Receipts were produced for all expenditure met by the Applicant which in turn confirmed the previously produced accounts.
 - 15.4 The Tribunal were also referred to the Previous Case in relation to the Respondent's defence filed in those proceedings, and in particular the Respondent's assertion that he

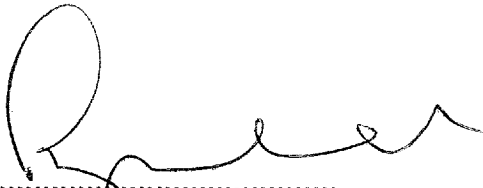
had been authorised to carry out certain works to the Properties and the development which would normally have been the responsibility of the Applicant. As the whole of the service charge claimed in those proceedings was deemed to be payable by the Court and included in the Judgment that assertion must have been dismissed by the Court as his defence was struck out. Under the doctrine of Res Judicata the Tribunal is now stopped from reconsidering this point and the proportion of the Development Service Charge determined by the Lessor.

The Tribunal's Determination

16. The Tribunal considered very carefully the written submissions of the Applicant, the documents provided and the evidence provided orally at the hearing. It also used its own knowledge and expertise. As the Respondent made no representations it was not disputed that the Applicant is entitled to submit the request for the service charge or even whether or not the Respondent was able to challenge its reasonableness and his liability towards all or only part of it.
17. Nevertheless, the issues to be determined by the Tribunal are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.
18. The Tribunal determined that the request for the service charge is fully in accordance with the terms of the Leases and the items of expenditure referred to therein are all payable by the Respondent under the terms of his leases.
20. The Tribunal determined that the amount payable by the Respondent is in the sum of £4,186.86, including interest and additional charges up to 12 July 2011.

Costs

21. The Tribunal is also asked by the Applicant to make an order that the Respondent should pay a contribution of up to £500.00 toward its costs upon the basis that the Respondent has acted frivolous, vexatious and/or an abuse of process.
22. The Tribunal finds that the Respondent has acted both frivolously and vexatiously and accordingly makes an order that the Respondent makes a contribution of £500.00 to the costs of the Applicant.



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P W J Millward – Chairman

24th July 2012