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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Case Reference: CHI/00ML/LIS/2012/0075

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

Applicant: Kevin Maguire and Sandra Maguire

Respondent: 12 Chichester Terrace Management Company Limited

Property: 12 Chichester Terrace, Brighton, East Sussex BN2 1FG

Date of Hearing 9th January 2013

Appearances
Applicant

Mr and Mrs Maguire

Respondent

Mr C Welton, Director
Mr D Lowe, Director
Mr J Rolls, Managing Agent
Ms P Massey Employee of the managing agent

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Mr A Mackay FRICS
Ms J Dalal

INTRODUCTION

1. This is an application under section 27A of the Landlord and Tenant Act 1985 by Mr and Mrs Maguire the owners of Flat 2, 12 Chichester Terrace. The Respondent company is the owner of the freehold. It a company in which each of the leaseholders owns a share. The Respondent also manages the building with the assistance of external managing agents.

2. The Applicant looks to challenge the cost of external painting works to the rear of the property. These works were undertaken in about November 2011 following an interim demand for payment.

THE LAW

3. The relevant law is contained in section 27A and section 19 of the Landlord and Tenant Act 1985.

Section 27A Liability to pay service charges: jurisdiction.

(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. .
(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 of an application under subsection (1) or (3).
(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

19 Limitation of service charges: reasonableness. .

(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.
(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.

INSPECTION

4. The Tribunal inspected the building on the morning of the hearing. The building is a grade 1 listed mid terrace Regency building within a Conservation Area overlooking the seafront. It was apparent that the front elevation of the building had recently been decorated externally although some weathering was apparent. The Applicants showed the Tribunal internally within their flat. The Applicants highlighted in the Belvedere, to the front elevation, some rotting timber work and also in the rear bedroom east flank wall damp penetration. The Tribunal also inspected the rear flat roof and the Applicants pointed out that they had suffered water penetration from this roof in the past. It was clear the rear elevation had also been recently decorated.

HEARING

5. The Applicants explained that they had lived in the building for approximately 13 years. They believed that the building was to be managed by an external property manager Mr Jonathan Rolls. The Applicant accepted that he and one of the Respondents directors, Mr Douglas Lowe, did not always see eye to eye.

6. The Applicants accepted that under the terms of their lease they were responsible for paying 20% of the service charge costs.

7. The Applicants accepted that they had received a first stage consultation notice proposing decorations works to the building as a whole. No further consultation notices were received. The Applicants had however attended an AGM of the company on 16th April 2011 (copy of the minutes included at page E3 of the Respondents bundle). The Applicant contends that at this AGM he only saw the quote from Clarke & James which is to be found at G11. Mr Maguire accepted he

agreed to this and was told if they proceeded now and paid promptly a discount equivalent to the VAT element would be offered.

8. The Applicants said that they thought they would receive further information with regards to the works and the specification. Mr Maguire said in his opinion the quotes obtained were inadequate in the detail offered as to the material to be used and how the figure was arrived at. He also believed that the works would be overseen by Mr Rolls as the properties managing agent.

9. The works to the front elevation were undertaken in the Summer of 2011. The Applicants accept that they paid in full for those works. A letter sent by them to the managing agent dated 27th July 2011 agreeing the works was at page G13 of the Respondents bundle.

10. About 2 or 3 months prior to the rear elevation decoration works being undertaken the Applicants noticed some mould in the top left hand corner of the rear bedroom. Initially they were not overly concerned. Subsequently they did request Mr Rolls to inspect and it was agreed that Mr Lowe attended with a representative of Clarke & James prior to the rear redecoration works being undertaken. It was agreed there was a small damp patch but was not believed to be a major issue. The Applicants accept that the quotation from Clarke & James did not include any works to rectify any damp issue since at the time the works were undertaken no damp problem was known about.

11. There was some dispute as to the final cost of the works but the Tribunal were referred to H9 of the Respondents bundle. It was agreed that the total cost of the works to the rear elevation for redecoration including VAT was £10,745. A contribution had been received form the owner of number 11 Chichester Terrace in the sum of £350 making the amount of the Applicants contribution to be £2079.

12. The Applicant explained after the works were undertaken he repeatedly raised with Mr Rolls the issues with ongoing damp penetration to the rear bedroom. In their view when the decorating works were undertaken by Clarke & James steps should have taken to undertake remedial works to the rear flank wall. As a result they were unhappy with the standard of the works undertaken.

13. The Applicants were unhappy that the works were overseen by Mr Douglas Lowe and not Mr Rolls. The Applicants did not believe he had the necessary skills to oversee such works.

14. Subsequent to the works being undertaken the Applicants asked for details and proof as to exactly what materials and quantities of materials had been used by Clarke & James. It was their contention that to show the works had been properly undertaken and that the fee claimed was reasonable they were required particularly given what the Applicants contended was the inadequacy of the original estimate in detail. The Applicants contended that a fee of £4000+VAT would have been a reasonable cost for the works.

15. The Respondents explained that Mr Rolls is the managing agent for the building and collects service charges, prepares accounts and undertakes normal management functions. In respect of major works, such as the decorating works, he would usually charge an additional fee if he was going to oversee the same. As a result Mr Lowe a director of the company and leaseholder had offered to oversee the works himself to keep costs down.

16. The Respondents explained Mr Rolls had been asked to and had served an initial consultation notice. Three quotes were obtained including one from Clarke & James who had previously decorated the building and were known locally as a respected firm of decorators undertaking works to many of the buildings in the area.

17. It was agreed no detailed specification off works was prepared for the proposed contractors to quote against. The contractors were simply asked to quote for decorating the building. The Respondents suggest that for a job of this value this is not unusual and a single figure for the job would be the norm. The Respondents believe the cost is reasonable being the same price they paid 5 years previously to the same contractor for decoration works.

17. The Respondents contend that they have tried to address the Applicants concerns. They had agreed with the Applicant and Clarke & James certain snagging items including undertaking certain works to the rotting timbers in the Belvedere although the Applicants had not taken up the offer to have these works carried out.

18. The issue appears to have arisen as a result of the damp which has now become apparent in the Applicants flat. The Respondent has agreed in principle to undertake certain works to try and remedy this problem and consultation notices have been served but the works have not been progressed as the Respondent does not have funds to do so. The Respondents explained that it was the lack of funds which has meant they could not settle the Clarke & James invoice promptly and to thereby obtain the verbal discount offered and the full amount plus VAT is required by Clarke & James, as a consequence of this delay in making a prompt payment.

19. The Respondents contend that Clarke & James have completed the job which they quoted for. They did supposedly without additional charge undertake certain works to the rear flank wall to see if this would address the damp issue. Clarke & James applied a damp inhibitor to the rear flank wall. Clearly this has not worked.

20. The Respondents accept that no second stage consultation notice was served. The Respondents say that such a notice was not necessary as everyone agreed to the appointment of Clarke & James at the AGM and as confirmed in the minutes. Further the Applicants agreed in writing to the works by their letter of 27th July 2011 to Mr Rolls. The Respondents contend that under section 27A(4)(a) this is a binding admission and agreement on the part of the Applicants.

21. The Respondents contend that it is only after the works were completed that the Applicants looked to challenge matters due to their concerns over the damp issue.

22. The Applicants made an application under section 20C to limit the Respondents costs. The Applicant contends had no choice but to make this application as he was unhappy with the works undertaken and had received letter from a law firm seeking recovery of the sums claimed.

23. The Respondents in reply say that they have tried to engage with the Applicants. They submit the costs are reasonable and payable and they have had to deal with the application. They are a resident owned management company with voluntary directors and it is reasonable that costs incurred are recoverable.

DECISION

24. The Tribunal considered all the information and evidence submitted. This was an unfortunate case given all the leaseholders (including the Applicants) are also members of the Respondent company. Whatever the outcome the parties will have to continue to live together as leaseholders and members of the company.

25. The Tribunal considers that the Respondents have agreed to the works and the costs of the same and that Section 27A(4)(a) applies (please see paragraph 3 above for the full wording of the section). The Tribunal reaches this view given the Applicants on their own evidence admit that they agreed to the appointment of Clarke & James at the AGM and had sight of the quotation at this meeting. Subsequently at the end of July they wrote to Mr Rolls confirming that the works had been agreed and that they would pay their contribution upon completion of the works.

26. The Tribunal is satisfied that the cost charged by Clarke & James are reasonable for the works undertaken. Furthermore the Tribunal is satisfied that the works included within the quotation have been undertaken to a reasonable standard.

27. In respect of the damp issue the Tribunal finds that the cost of these works was not included within the scope of the works to be undertaken by Clarke & James. It is not reasonable to have expected them to undertake any works. The Tribunal is satisfied that this is a separate issue and should be dealt with as such.

28. With regards to the fact the works were overseen by Mr Lowe the Tribunal finds that this was reasonable in that it saved the Applicants the costs which would quite properly have been charged by the managing agent if they had overseen the works. As the Tribunal has found above the works have been undertaken to a satisfactory standard.

29. The Tribunal finds that the Applicants are liable to pay £2079 for the cost of the rear decoration works.

30. The Tribunal declines to make an Order under section 20C. The Tribunal has upheld the costs claimed by the Respondent who have therefore successfully resisted the application. The Tribunal has not considered whether the lease will allow recovery of any such costs and any costs charged may be subject to challenge as to the reasonableness of the same

David R Whitney LLB(Hons)

Lawyer Chairman
12th February 2013