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**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of an Application under  
Sections 27A (and 19) of the Landlord & Tenant Act 1985  
(Service Charges)

**Case No.** CHI/21UG/LSC/2012/0122

**Property:** Albert Mansions  
29-31 Marina  
Bexhill-on-Sea  
East Sussex  
TN40 1BP

**Between:**

**Mr. G. Venditto**  
("the Applicant")

**And**

**Mrs. S. Claire**  
**And**  
**Mrs. B. Nahaie**  
("the Respondents")

**Date of Hearing:** 13<sup>th</sup> December 2012

**Members of the  
Tribunal:** **Mr. R. Norman**  
**Mr. C.C. Harbridge FRICS**  
**Mr. P.A. Gammon MBE BA**

**Date Decision  
Issued:** 4<sup>th</sup> January 2013

**ALBERT MANSIONS, 29-31 MARINA, BEXHILL-ON-SEA,  
EAST SUSSEX TN40 1BP**

**Decision**

1. Mrs. S. Claire, the lessee of Flat 1 at Albert Mansions, 29-31 Marina, Bexhill-on-Sea, East Sussex TN40 1BP ("the subject property") is liable to pay service charges of £438.50 in respect of actual service charges for the years ending 24<sup>th</sup> December 2010 and 24<sup>th</sup> December 2011 and estimated service charges which were demanded in respect of

the year ending 24<sup>th</sup> December 2012. Payment to be made within 28 days of the date of issue of this decision.

2. Mrs. B. Nahaie, the lessee of Flat 3 at the subject property is liable to pay service charges of £1,450.50 in respect of actual service charges for the years ending 24<sup>th</sup> December 2010 and 24<sup>th</sup> December 2011 and estimated service charges which were demanded in respect of the year ending 24<sup>th</sup> December 2012. Payment to be made within 28 days of the date of issue of this decision.

3. The consultation procedure undertaken in respect of the major works to the roof of the subject property was compliant with Section 20 of the Landlord and Tenant Act 1985.

### **Background**

4. Mr. G. Venditto ("the Applicant") is the freeholder of the subject property and also holds a lease of Flat 2 at the subject property. He is represented by Mr. Okines of Arko Property Management the managing agent. Mrs. B. Nahaie is the lessee of Flat 3 at the subject property and Mr. Nahaie deals with matters concerning Flat 3 on her behalf. Mrs. S. Claire is the lessee of Flat 1 at the subject property.

5. An application was made by the Applicant for a determination of the actual service charges for the years ending 24<sup>th</sup> December 2010 and 24<sup>th</sup> December 2011 and of the anticipated service charges for the year ending 24<sup>th</sup> December 2012. There was also a reference to major works.

6. Directions were issued and, in response, a statement of case and accompanying documents were received from Arko Property Management on behalf of the Applicant.

7. The Directions required the production of a statement of case and accompanying documents by Mrs. Claire and by Mr. Nahaie but no statement of case or accompanying documents have been received from them.

8. Nothing at all has been received from Mrs. Claire. A letter was received from Mr. Nahaie on behalf of Mrs. Nahaie stating that she would not be able to be present at hearings during 2012 as she was out of the country and requested that hearings be rescheduled to March 2013. That request was refused.

### **Inspection**

9. On 13<sup>th</sup> December 2012, in the presence of Mr. Okines, the Tribunal inspected, from ground level, the exterior of the subject property, the common entrance and stairs and the interior of Flat 3. There was no attendance by Mrs. Claire or Mrs. Nahaie or by anybody on their behalf.

10. The subject property comprises a corner, inner terrace building located on Marina,

the sea front road at Bexhill-on-Sea. It has a restaurant on the ground floor and three upper floors; each forming a flat approached from a common entrance and staircase from the return frontage to Albert Road. The roof is of multi-pitched design covered with interlocking concrete tiles. It was not possible to gain access to the roof void. A photograph of the gable end facing Marina had been included in the Applicant's bundle of documents and the hanging tiles shown in that photograph had been removed. We saw from various vantage points on the ground that there had been patent structural movement to the roof structure. Within Flat 3 we saw some relatively minor cracks to some walls. The exterior paintwork was peeling.

## **Hearing**

11. The hearing was attended by Mr. Okines on behalf of the Applicant. There was no appearance by Mrs. Claire or Mrs. Nahaie or by anybody on their behalf.

12. Letters had been sent from the Tribunal Office to Mrs. Claire and to Mr. Nahaie at the addresses supplied in the application, notifying them of the proceedings, the Directions which had been issued and the date, time and place of the inspection and hearing. None of those letters had been returned by the Royal Mail. The only response had been the letter from Mr. Nahaie referred to in paragraph 8 above.

13. In the letter dated 26<sup>th</sup> October 2012 from Arko Property Management to the Tribunal Office enclosing the Applicant's statement of case and documents it was stated that copies had been sent to the Respondents and during the course of the hearing Mr. Okines gave evidence that in addition he had sent emails to Mrs. Claire and Mr. Nahaie and that from conversations with them it was clear that they were aware of the proceedings. He had spoken to Mrs. Claire by telephone about a month ago and she had mentioned the hearing. She is a property manager herself and had attended meetings with Mr. Okines and the Applicant. Mr. Okines also gave evidence that all communications concerning Flat 3 had been with Mr. Nahaie and that it was only recently that it had been discovered that in fact the lessee was Mrs. Nahaie.

14. The Tribunal was satisfied that Mrs. Claire and Mr. and Mrs. Nahaie were aware of the inspection and hearing and that the Respondent in respect of Flat 3 should be amended to Mrs. Nahaie (represented by Mr. Nahaie). Mrs. Claire and Mrs. Nahaie are collectively referred to as "the Respondents".

15. The Tribunal considered all the documents which had been produced, the evidence given and the submissions made at the hearing and what had been seen at the inspection and made findings of fact on a balance of probabilities.

16. The Applicant had provided a copy of the lease of Flat 3 and Mr. Okines gave evidence that the leases of Flats 1 and 3 were in common form; in other words they contained similar covenants, in particular, in respect of the payment of service charges.

17. The Respondents did not provide any statements of case or any other documents

and neither did they attend the inspection or hearing. As a result, it was left to the Tribunal to consider whether the sums claimed were reasonable and to clarify the amounts outstanding.

18. It was noted that each of the Flats had been charged one third of the cost of cleaning the common entrance and stairs and, as the occupiers of the restaurant on the ground floor made no use of those common parts, the logic behind charging that proportion of the cost was clear. However, Mr. Okines accepted that as the leases of the Flats required each lessee to pay only a quarter of the service charges then that was all that could be claimed.

19. The Tribunal considered the claim for service charges actually incurred for the years ending 24<sup>th</sup> December 2010 and 24<sup>th</sup> December 2011 and the anticipated service charges for the year ending 24<sup>th</sup> December 2012 and was satisfied that the sums claimed were reasonable.

20. In respect of the year ending 24<sup>th</sup> December 2010, the actual service charges payable by each of the Respondents was £468. However:

(a) In respect of Mrs. Nahaie, there had to be set against that figure the sum of £90 in respect of repairs which Mr. Nahaie had carried out leaving a total of £378 payable by Mrs. Nahaie in respect of actual service charges for 2010.

(b) In respect of Mrs. Claire she had made her own calculation of the service charges and had paid £571.60. Therefore in respect of actual service charges for 2010 she had overpaid by £103.60.

21. In respect of the year ending 24<sup>th</sup> December 2011, the actual service charges payable by each of the Respondents was £772.50. However:

(a) In respect of Mrs. Nahaie, there had to be set against that figure the sum of £500 which she had paid leaving a total of £272.50 payable by Mrs. Nahaie in respect of actual service charges for 2011.

(b) In respect of Mrs. Claire her overpayment of £103.60 should be carried over as a credit to 2011 leaving a total of £668.90 payable by Mrs. Claire in respect of actual service charges for 2011.

22. In respect of the year ending 24<sup>th</sup> December 2012 the anticipated service charges payable by each of the Respondents was £800. In the light of what was known at that time the service charges demanded were reasonable.

(a) Nothing had been paid by Mrs. Nahaie towards that sum. Therefore the sum payable by her in respect of the anticipated service charges for 2012 is £800.

(b) However, Mrs. Claire had made payments of £480.40 and £550 making a total of

£1,030.40. Therefore in respect of anticipated service charges for 2012 she had overpaid by £230.40. It was noted that there was in addition the sum of £50 shown as a credit to Mrs. Claire but the Tribunal found that that sum was in respect of two years' ground rent and was not relevant to service charges.

23. By adding the above sums and taking into account the credits the result is that at the date of hearing £1,450.50 is payable by Mrs. Nahaie and £438.50 is payable by Mrs. Claire.

24. It must be made clear that at the time the demand for anticipated service charges for the year ending 24<sup>th</sup> December 2012 was made, the need for major roof works was not known and as a result the actual service charges for that year will exceed by a substantial amount the anticipated service charges in respect of repairs. At the present time, the Tribunal cannot deal with those service charges as they have not yet been finalised but after 24<sup>th</sup> December 2012 when the actual costs for 2012, and in particular the costs of the emergency works, are known, the Respondents should expect to receive demands for the actual service charges for 2012.

25. It must also be made clear that when this application was made it was expected that the roof repairs would be undertaken during 2012 but in fact the works cannot be carried out until 2013. The cost will form part of the anticipated service charges for 2013 and in due course the actual service charges for 2013. As the anticipated service charges for 2013 were not clearly included in this application the Tribunal cannot deal with them at this time. However, the Respondents should expect to receive demands for the anticipated service charges for 2013 which will include a demand for each of them to pay a quarter of the estimated cost of the roof works; the total cost of which, in addition to the cost of the emergency works, is estimated in the Applicant's statement of case to be £43,390.

26. When the demands are made it is of course open to the parties to make applications to the Leasehold Valuation Tribunal in respect of such demands if they wish to do so.

27. In relation to the major works to the roof, the Tribunal considered the documents provided and was satisfied that there had been compliance with the consultation provisions of Section 20 of the Landlord and Tenant Act 1985.

Signed

R. Norman

Chairman