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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference **CAM/42UG/LSC/2015/0014**

Property **43 Cobbold Road, Woodbridge, Suffolk IP12 1HA**

Claimant **Proxima GR Properties Limited**

Defendant **Mr Christopher Jeremy Nunn**

Application **Determination of the liability to pay and reasonableness
of service charges & administration charges pursuant to
s27 of the Landlord & Tenant Act 1985.**

Tribunal Members **Judge Reeder
Mr Roland Thomas MRICS (valuer member)
Mr Peter A Tunley (lay member)**

Date of inspection **11 May 2015**

Date of hearing **11 May 2015**

Date of Decision **11 May 2015**

DECISION

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DECISION

The relevant costs for insurance

1. The tribunal determines that the relevant costs recharged to the defendant in respect of insurance of £118.67 for 1 July 2012 - 30 June 2013, £120.67 for 2013-2014 and £144.73 for 2014-2015 are reasonably incurred and that those amounts are reasonable and payable.

The costs of the proceedings before this tribunal

2. The tribunal refuses the defendant's application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 providing that the claimant's costs of and occasioned by the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant in this or any future service charge accounting year.
3. The tribunal orders that the defendant reimburse to the claimant the whole of any tribunal issue fee paid together with the whole of any tribunal hearing fee paid, pursuant to rule 13(2) of the First-Tier Tribunal (Property Chamber) Rules 2013.
4. The tribunal grants an order requiring the defendant to pay the applicant's costs of the proceedings before the tribunal on the ground that the defendant has acted unreasonably in his conduct of the proceedings before the Tribunal, pursuant to rule 13(1)(b) of the First-Tier Tribunal (Property Chamber) Rules 2013. The amount of costs to be determined by the County Court.

Further steps in the proceedings

5. The case is referred back to the County Court sitting at Ipswich under claim number A61YP968. A copy of this decision was sent to that court.

REASONS

The application, parties, premises & disputed charges

6. This claim relates to 43 Cobbold Road, Woodbridge, Suffolk IP12 1HA. The claimant is Proxima GR Properties Ltd who became the registered proprietor of the head leasehold title in respect of the premises in February 2008. The defendant, Mr Nunn, is the lessee of the premises.
7. The claimant has issued proceedings in the county court seeking a money judgement for unpaid ground rent, insurance charges and administration charges. The matter comes before the tribunal pursuant to an order made by District Judge Mitchell sitting in the county court at Ipswich on 14 January 2015. That order states "matter transferred to the [first tier tribunal] for determination". It does not identify the precise issue or issues transferred.
8. That order was made in proceedings (claim no A61YP968) in which the claimant also seeks a declaration, pursuant to s168 of the Commonhold & Leasehold Reform Act 2002, that the defendant is in breach of covenant.
9. The claimant's application before this tribunal is for a determination of whether the relevant costs recharged in respect of insurance, being £118.67 for 1 July 2012 - 30 June 2013, £120.67 for 2013-2014 and £144.73 for 2014-2015, are reasonably incurred and whether those amounts are reasonable and payable by the defendant. The claimant does not ask this tribunal to consider the ground rent or administration charge issues or to determine whether the defendant's non-payment of service charge constitutes a breach of covenant. It intends to pursue those issues before the county court.
10. It follows that the tribunal has only considered the issue of the insurance costs for 2012/13, 2013/14 and 2014/15.

The inspection by the Tribunal

11. 43 Cobbold Road is situated in a small block located at the end of a cul-de-sac on a residential estate. The block comprises 8 properties (33-47 (odd) Cobbold Road) with

4 properties located on each of the ground and first floors. The ground floor properties have entrances to the front of the block, whilst the first floor properties are entered from the rear. The block is of traditional construction with a timber frame, brick walls and slate roof. The block has the benefit of a communal lawn and drying area to one side, whilst an adjacent hard standing 'quad' provides 8 allocated parking spaces and 2 communal spaces for general use. The sports fields of a school are found to the rear.

12. The tribunal has made a visual inspection of the external parts of the block and immediate grounds and location. Neither the block nor location exhibit any unusual aspects for the purposes of insurance.

The hearing before the Tribunal

13. The claimant has been represented by Mr Simon Allison of counsel instructed by Messrs JB Leitch. He has been assisted during the hearing by Mr Charles Bettinson, head of insurance of estates and management for the claimant.
14. The defendant Mr Nunn has appeared in person and pursued his arguments vigorously.
15. The tribunal has been provided with hearing bundles which include the lease for the premises, the documents filed in the county court, a detailed 11 page statement of case for the claimant, a spreadsheet of the insurance premiums and claim history, a reinstatement cost assessment for the block by Messrs Cardinus Risk Management Ltd, insurance premium correspondence from the Lloyds of London registered insurance broker Messrs Tysers, the certificates of insurance from the insurer Messrs Zurich Insurance PLC, the 26 page insurance policy document from Zurich, service charge demands showing the sums demanded for insurance costs, the defendant's service charge account, and correspondence between the parties in relation to the insurance costs.
16. The bundles also provide witness statements from Mr Nunn. He alleges that the claimant has intentionally and fraudulently inflated the insurance costs. He seeks "a recommendation to the SFO to curtail [the claimant's] fraudulent activities which affect countless households around the country". He states that the inflation in costs is achieved by improperly including a number of uninsurable risks and by an

incompetent or improper approach to arranging building insurance. He argues that the uninsurable risk of cover for the claimant's office computer equipment is improperly included. He argues that the uninsurable risk of cover for sublets and bedsits is included. He argues that the "day 1 uplift" provided for is "ludicrous" and is "not part of competent legitimate industry practice". He argues that the reinstatement value is intentionally and falsely inflated. He refers to the commission of 15% as "improper". He states that the claimant has generated a "huge spurious premium".

17. Mr Nunn seeks to rely upon one insurance premium comparable in the form of a offer from HSBC of buildings cover from Messrs Aviva at an annual premium of £75. This relates to Mr Nun's property only and is based on a reinstatement cost of £37,500. Mr Nunn argues that if this adjusted to reflect the 8 properties in the block it produces an annual block premium of £600 based on a block reinstatement cost of £300,000. The individual flat reinstatement cost of £37,500 appears to be based on the sale price of Mr Nunn's flat in 1998 rather than the value in 2014/15. The exact scope of the risks insured is not clear from the documents produced.
18. Mr Nunn seeks to rely upon a second insurance comparable in the form of an offer from Royal & Sun Alliance of building cover at an annual block premium of £645.76 based on a reinstatement cost of £345,000. The exact scope of the risks insured is not clear from the documents.
19. By letter dated 17 March 2015 Mr Nunn has also sought to rely upon a quotation from NIG. This is based on a reinstatement value of £300,000 and again the exact scope of the risks insured is not clear.
20. In his oral arguments before the tribunal Mr Nunn has repeatedly asserted that the claimant is acting fraudulently by intentionally falsifying insurance documents and intentionally inflating the insurance cost recharged under the lease. He contends that Mr Vincent Tchenguiz is directing this fraudulent activity and that he is "well known crook".
21. Toward the end of the hearing he introduced a new argument to the effect that the claimant is obliged to permit the leaseholders in the block, and indeed him, to arrange building insurance for the block and argues that he would be able to do so at a materially lower cost.

22. The bundles also provide witness statements from Mr Charles Bettinson, head of insurance and estate for the claimant. He has addressed liability for insurance charges under the lease, the procedure for quantifying the reinstatement value and the role of Cardinus Risk Management in that procedure, the procedure for ensuring value for money and the role of Messrs Tysers in arranging buildings insurance. He also confirms that the RICS Building Cost Information Service costings guidance is used to inflation adjust the reinstatement cost from year to year.
23. Mr Bettinson argues that the comparables relied upon by Mr Nunn and not 'like for like' with the insurance arranged by the claimant and seeks to identify what he says are a number of deficiencies in those comparables.
24. The documentary evidence has been considered with care by the tribunal. Both parties have been given ample opportunity to address the tribunal on the relevance and importance of the documentary evidence, and to present and develop their respective arguments. The tribunal has used its best endeavours to identify Mr Nunn's grounds for challenging the insurance costs beyond simply alleging fraudulent inflation, and has itself questioned Mr Bettinson at length to clarify and analyse the substantive procedure used to obtain building insurance and arrive at the cost recharged to Mr Nunn.
25. Since the conclusion of the hearing both parties have made further written representations by letter to the tribunal. On 12 May Mr Nunn made further representations and enclosed some incomplete copy email correspondence with the insurers Ryan Group. On 18 May the tribunal received a letter in response from the claimant's solicitor.
26. Neither party has sought or been granted permission to file further evidence or argument after the conclusion of the extensive oral hearing. The content of the same raises no compelling ground to consider it as evidence. Given the issues raised prior to and at the oral hearing and the quantum of the sums in dispute it is not proportionate in the circumstances for the tribunal to consider this unsolicited material, and we do not do so in reaching this decision.

The lease

27. The tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. The tribunal has considered this lease carefully. The parties have been given the opportunity to address the tribunal on the lease provision which may be relevant to the dispute.
28. Paragraph 1 of the 6th Schedule provides that the lessor shall keep the block insured by an insurance office of repute in the sum equivalent at the least to the full reinstatement value of the block including an adequate amount in respect of professional fees and including insurance for liability against injury to persons.
29. Paragraph 1(j) of the lease preamble defines the insured risks to include fire, lightning, earthquake, storm or flood water damage, riot, civil commotion, vandalism, theft, subsidence and/or heave and landslip together with such other risks as the lessor may from time to time think fit.
30. Paragraph 1(a) of the lease preamble defines the block and paragraph 1(b) defines the building.
31. Clause 1(b) of the lease provides that the lessee is liable to pay, by way of additional or further rent, one eighth of the cost of effecting and maintaining insurance of the building and other parts of the block against loss or damage by the insured risks in accordance with the 6th Schedule.
32. Mr Nunn does not dispute the terms or effect of those lease provisions. He does not dispute that he is liable for 1/8th of the insurance costs. He argues that the insurance costs are not reasonably incurred as they are fraudulently inflated or alternatively are arrived at by incompetent or illegitimate practice.

The law

33. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows -

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.

34. Section 27A(4) of the 1985 Act provides that 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.

35. Section 27A(7) of the 1985 Act provides that 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.

36. Section 18 of the 1985 Act sets out the meanings of 'service charge' and 'relevant costs'.

37. Section 19(1)(a) of the 1985 Act provides that "relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred".

38. Section 19(1)(b) of the 1985 Act provides that "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".

Discussion & determinations

39. The terms of the lease are clear and are not disputed. The claimant is required to keep the block insured by an insurance office of repute. It must be insured for a sum which is at the least equivalent to the full reinstatement value of the block from time to time including an adequate amount in respect of professional fees and including insurance for liability against injury to persons. The insured risks are clearly defined as including fire, lightening, earthquake, storm or flood water damage, riot, civil commotion, vandalism, theft, subsidence and/or heave and landslip. This is not an exhaustive list as the lease expressly provides for the claimant to insure in addition for "such other risks as the lessor may from time to time think fit".
40. The scope of the insurance cover is clearly set out in the certificates of insurance and the 26 page insurance policy from Messrs Zurich Insurance plc. It adequately covers the insured risks envisaged by the lease. It is a fairly typical policy and un-remarkable in its scope. The inclusion of terrorism is a common modern risk and is obviously within the scope of the express discretion afforded to the claimant under the lease. Mr Nunn's stated objections relating to insured risks or purported uninsurable risks are based on misapprehensions by him. The tribunal is satisfied that the insurance policy adequately covers those risks required by the lease and does not cover any risks outside the scope of a reasonable interpretation of the lease.
41. The tribunal accepts that the "day 1 uplift" is to cover the eventuality of an increase in the reinstatement costs between the claim date and the works completion date. It is a common provision seen routinely in modern buildings insurance policies. In his oral evidence Mr Bettinson has stated in terms that its inclusion does not make any material difference to the resulting overall premium.
42. Mr Nunn's objection to including terrorism as an insured risk is without merit for the relevant period 2012- 2015. It is a common provision seen routinely in buildings insurance policies.
43. The commission structure is set out clearly in the documents before the tribunal including the helpful spreadsheet at page 164. The written statement from Mr Bettinson sets out in great detail the insurance related work by estate and management and by Messrs Tyser that this commission is intended to remunerate. The tribunal has

questioned him on the detail of those procedures and practices. We are satisfied that the commission structure is reasonable and does not unreasonably, or as Mr Nunn would allege fraudulently, inflate the insurance costs.

44. The tribunal accepts the claimant's evidence that every 3 years Messrs Tysers review the market with a view to placing the insurance with the most costs effective provider, and that this procedure was last carried out in 2012. This procedure appears to be borne out by the documentary evidence before the tribunal.
45. Mr Bettinson's second statement exhibits the reinstatement report prepared by Messrs Cunningham & Lindsey UK Ltd (loss adjusters and claim managers) in March 2009. This provides a reinstatement value of £466,000 for the block in 2009. The hearing bundles include later periodic reinstatement valuations which unsurprisingly increase from that figure to reach £657,000 by the 2014 valuation. Such periodic revaluation is a reasonable approach and indeed is in line with the RICS management guidance.
46. If Mr Nunn's estimate of his property as 40 sq m is adopted and the RICS Building Cost Information Service costings considered (£61,000 for basic quality, £73,000 for good, and £90,000 for excellent) and a mid range good quality adopted (£73,000) and then multiplied by the 8 properties in the building (as Mr Munn proposes) and multiplied by 5.6% to factor in the overall floor area of the building (which Mr Mann accepts) then a reinstatement cost of £616,74 results. This approach also confirms to the tribunal that the current reinstatement figure of £657,000 is within the permissible scale of what is reasonable albeit that it is toward the higher end of scale. This fairly reflects the nature of the building. It follows that this reinstatement value produces an insurance premium which is itself within the permissible scale of what is reasonable albeit toward the higher end of that scale.
47. Mr Nunn's new argument, pursued during the hearing for the first time, to the effect that the claimant is obliged to permit the leaseholders in the block, and indeed Mr Nunn, to arrange building insurance for the block is not supported by the terms of the lease. The claimant is not obliged to do so. Insofar as Mr Nunn argues that he would be able to secure buildings insurance at a materially lower cost he has not established that he would be able to do on a 'like for like' basis with the existing insurance policy which adequately covers the insured risks stated by the lease and contemplated by a reasonable landlord exercising its discretion under that lease. As a matter of law the

claimant is not required to deliver the cheapest premium available from the market but a reasonable premium which delivers reasonable value for money from that market. The tribunal determines that the claimant has done so.

48. Mr Nunn's proposed comparators do not assist the tribunal as none provides sufficient 'like for like' comparison with the insurance put in place by the claimant. Reinstatement values are too low. The scope of the insured risks covered are not clear. Some proper insured risks such as terrorism cover are excluded.
49. Mr Nunn's proposed methodology of taking the purchase price of his property as 1/8th of a base reinstatement value and then applying his compound inflation calculator by using the index link calculus at page 129 of the hearing bundle is an entirely different model for indexing the reinstatement cost than that adopted by the claimant. The tribunal is not satisfied that it will produce an accurate reinstatement value for the relevant years 2012-2015. In any event, the claimant's approach is a common approach and is a perfectly reasonable and permissible approach which delivers a reasonable resulting reinstatement cost.
50. The tribunal is aware of the issues raised in the media in recent times about the claimant, its predecessor entities Aztec GR Properties and Peveral Properties, and about Mr Vincent Tchenguiz and the Tenguiz family Trust. Mr Nunn has alluded to these issues when expressly and repeatedly accusing the claimant of acting fraudulently by intentionally falsifying insurance documents and intentionally inflating the insurance cost recharged under the lease, and when contending that Mr Vincent Tchenguiz is directing this fraudulent activity. His approach is typified by his letter to the tribunal dated 17 April 2015 which states that he seeks the following orders from the tribunal -

"these proceedings be transferred to the SFO with a view to confiscation of the assets of Mr Vincent Tchenguiz, controlling party of the claimant business, for the purpose of recompense to the many victims of this fraud around the country"

"an additional recommendation be made to the Home Office to assess the immigration status of Mr Vincent Tchenquiz with a view to extradition to Iran

where he will undoubtedly be required to answer charges of aiding and abetting the depose Shah in embezzling state funds".

51. Mr Nunn has provided no evidence to substantiate any of the claims he has made. The evidence, information and documents before this tribunal provide nothing to support these claims.
52. Mr Allison for the claimant describes Mr Nunn's conduct as spurious and vexatious. Unfortunately, that description has merit.
53. It is the view of this tribunal Mr Nunn has acted unreasonably and there is no reasonable explanation for the way in which he has chosen to conduct the proceedings before this tribunal.

The costs of the proceedings before this tribunal

54. The tribunal refuses Mr Nunn's application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 providing that the claimant's costs of and occasioned by the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him in this or any future service charge accounting year. The grounds for challenging the insurance costs have been rejected and have been misdirected and without merit.
55. The tribunal orders Mr Nunn to reimburse to the claimant the whole of any tribunal issue fee paid together with the tribunal hearing fee paid, pursuant to rule 13(2) of the First-Tier Tribunal (Property Chamber) Rules 2013. Mr Nunn's conduct as set out in the correspondence in the hearing bundles has meant that the county court proceedings, and subsequent transfer of the insurance cost issue to this tribunal, have been unavoidable if the claimant is to recover Mr Nunn's share of the buildings insurance cost. Further, the grounds for challenging the insurance costs have been rejected and have been misdirected and without merit.
56. After careful deliberation the tribunal has taken the unusual steps of granting an order requiring Mr Nunn to pay the claimant's costs of the proceedings before the tribunal on the ground that he has acted unreasonably in his conduct of these proceedings before

the Tribunal, pursuant to rule 13(1)(b) of the First-Tier Tribunal (Property Chamber) Rules 2013.

57. In his written statement filed for this tribunal and in his oral evidence and argument at this hearing Mr Nunn has expressly and repeatedly accused the claimant of acting fraudulently by intentionally falsifying insurance documents and intentionally inflating the insurance cost recharged under the lease, and has contended that Mr Vincent Tchenguiz is directing this fraudulent activity.
58. He has provided no evidence to substantiate these claims. The evidence, information and documents before this tribunal provide nothing to support these claims.
59. In the circumstances it is the view of this tribunal Mr Nunn has acted unreasonably and there is no reasonable explanation for the way in which he has chosen to conduct the proceedings before this tribunal. The sum due as costs pursuant to this order is left for determination by the judge in the county court as part of his or her consideration of the overall costs of this litigation between the claimant and the defendant.



Stephen Reeder
Judge of the First Tier Tribunal (Property Chamber)

26 June 2015