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LON/00AW/LSC/2006/0128
LON/00AW/LSC/2006/0234

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985

Property: **Flat 3, 10 Lennox Gardens, London SW1X 0DG**

Applicant: Mr Frederick Masri (tenant)

Respondent: The Wellcome Trust Limited (landlord)

Date heard: 21 August 2006

Appearances: Mr T Dutton, counsel, instructed by CMS Cameron McKenna LLP, solicitors
Mr W F Balch, Cluttons LLP, chartered surveyors

No appearance for the applicant

Members of the leasehold valuation tribunal:

Lady Wilson
Mr M Mathews FRICS
Mr T Sennett MA FCIEH

Date of the tribunal's decision: 5 September 2006

Background

1. These are applications by Mr Frederick Masri under section 27A of the Landlord and Tenant Act 1985 ("the Act"). One application, dated 3 April 2006, is to determine his liability to pay service charges for the service charge years ending December 2000, 2001, 2002, 2003 and 2004 and for the quantification of the landlord's costs of an earlier application to the tribunal which Mr Masri issued in October 2004. The other application presently before the tribunal, dated 11 July 2006, seeks to limit Mr Masri's liability to pay for major works which were the subject of the previous application to the tribunal on the ground that the landlord's delay in carrying them out since the tribunal's determination has increased the costs.

2. Mr Masri holds a lease of Flat 3, a flat on the second floor of 10 Lennox Gardens SW1 which is a Victorian terraced property which has been converted into five flats. The freeholder and respondent to this application is the Wellcome Trust Limited and the property is managed on its behalf by Cluttons LLP, chartered surveyors. The parties to the proceedings will be referred to as "the tenant" and "the landlord" in this decision.

3. The tenant's previous underlease required him to pay 20.5% of service charge expenditure, but, by agreement, the flats in the building were re-measured and, based on the revised measurements, the contribution referable to Flat 3 has been 14.09% throughout the relevant period. That percentage contribution was incorporated in his present lease dated 28 November 2003 which was granted under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

4. In December 2000 the tenant applied to the tribunal under section 19 of the Act for a determination of the reasonableness of the landlord's costs in the years 1997 to 1999 and in respect of some of the charges in the year 2000. The proceedings were compromised without a

hearing and the terms of settlement recorded in an agreement ("the Settlement Agreement") signed by both parties on 8 June 2001.

5. In this decision the applications made by the tenant will be identified as follows: the application made in December 2000 will be called "the first application", the application made in October 2004 will be called "the second application", the application made in April 2006 will be called "the third application" and the application made in July 2006 will be called "the fourth application".

6. Pre-trial directions in connection with the third application were made on 23 May 2006 at a pre-trial review which the tenant attended and at which the landlord was represented. The tenant filed and served a statement of his case as directed, the statement divided into two parts, the first relating to the service charges demanded of him for the years 2000 to 2004 inclusive, the second relating to the landlord's costs of the second application. The latter costs have not yet been demanded of him or of any of the leaseholders as a service charge but the fact that they have been incurred has been notified to the leaseholders under section 20B(2) of the Act. The landlord has served very extensive evidence in answer to the tenant's statement of case, particularly in relation to the second part, which deals with the costs of the second application, the reasonableness of which the landlord has invited the tribunal to determine even though the costs have not yet been demanded as a service charge. It should however be noted that the leaseholders other than the tenant will presumably be asked in due course to pay their appropriate share of these costs. They have not been joined in these proceedings or given an opportunity to challenge the costs which may be the subject of a future service charge. We have thus determined the reasonableness of the landlord's costs of the Part 2 of the third application as between the tenant and the landlord, but our determination should not be regarded as binding on the leaseholders other than the tenant since they have not had an opportunity to challenge them.

7. The pre-trial directions made at the review on 23 May directed the tenant to lodge a bundle of documents no later than 14 August 2006, prior to the hearing which was, by the directions, fixed to take place on 21 and 22 August. The tenant did not lodge any bundle of documents (although, as we have said, the landlord lodged a considerable quantity of evidence in support of its case).

8. A pre-trial review of the fourth application took place on 7 August 2006. The tenant had asked for the pre-trial review to be adjourned but his request was refused. At the review, which the tenant did not attend, the landlord's solicitor informed the tribunal that it would not seek to charge the tenant for any additional costs occasioned by the delay in carrying out the works which were the subject of the second application, nor would it seek to place on the tenant's service charge any costs which it incurred in connection with the fourth application. On that basis the pre-trial review was adjourned to be heard, if the tenant wished to pursue the application, immediately after the third application on 21 and 22 August..

9. The tenant did not appear at the hearing on 21 August. He had not previously indicated, either to the tribunal or to the landlord, that he would not be attending, nor had he asked for the hearing to be adjourned. The landlord was represented by counsel and solicitors. Shortly after the hearing was due to begin the case officer telephoned the tenant's home to enquire whether he proposed to attend but there was no answer. In these circumstances we decided to hear the case in the tenant's absence.

The law

10. By section 27A of the Act, an application may be made to the tribunal for a determination whether a service charge is payable and, if so, by section 27A(c), the amount which is payable.

By section 19(1), relevant costs shall be taken into account in determining the amount of a service charge only to the extent that they are reasonably incurred and, where they are incurred in the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

Part 1 of the third application

11. This relates to the service charge years ending December 2000 to 2004 inclusive. In a schedule attached to the third application the tenant has, on the basis of the information available to him, which he claims to be inadequate because he was, at the pre-trial review, refused the disclosure which he sought, disputed his liability to pay £2320.62. In his written statement he appears to go further and to seek a number of other reductions based on the landlord's managing agent's alleged incompetence and what he considers to be unexplained discrepancies and unsatisfactory accounting.

12. The landlord's statement of case is signed by Mr W F Balch of Cluttons who has had overall charge of the service charges which are the subject of all four applications. In the statement Mr Balch makes a number of concessions about the tenant's liability to pay service charges for the years in question. These are based principally on the terms of the Settlement Agreement relating to the service charges payable for the years 1997 to 1999 and for some charges payable in 2000, the principles of which Mr Balch is prepared to apply to the service charges which are the subject of Part 1 of the third application. Applying those principles, Mr Balch has proposed the reductions in the service charges payable by the tenant which are set out in Appendix 9 to the landlord's statement of case. This appendix shows that the amount by which the landlord considers that the service charges payable by the tenant for the period in question should be reduced is £3561.07, which exceeds the sum which the tenant claims as the appropriate

reduction in the schedule to his application. Accordingly the landlord, while not accepting the justification, reasonableness or accuracy of the tenant's proposed deductions, says that, in the interests of saving costs, it will not only not dispute the reductions proposed in the tenant's schedule but will reduce the charges by £3561.07, so that the amounts which the tenant should be determined to be liable to pay should be determined as:

2000:	£567.04
2001:	£949.45
2002:	£993.60
2003:	£994.26
2004:	£1346.10

13. Given that the tenant chose not to appear before us to support his case or to be cross-examined, and given that the landlord's proposals appear on the evidence put before us to be fair, we consider that it is reasonable and proportionate to adopt the figures which the landlord has proposed and we accordingly determine that the tenant is liable to pay the amounts set out in the preceding paragraph.

14. The service charge accounts for the year 2005 have now been prepared and were put before us by the landlord, but since the tenant had not seen them when he prepared his case and since the landlord has not invited us to determine the tenant's liability to pay service charges for the year 2005 we have made no determination in relation to that year.

Part 2 of the third application

15. This relates to the reasonableness of the landlord's costs in connection with the second

application, which are said by the landlord to be £38,390.59 including VAT. Of this sum, £29,890.26 is the charges and disbursements, including counsel's fees, of CMS Cameron McKenna, and £8500.33 the charges and disbursements of Cluttons.

16. The second application related to works which the landlord proposes to carry out to the basement flat in 10 Lennox Gardens in order to eradicate damp. The tenant maintained that the works were not the landlord's responsibility and thus could not be the subject of a service charge, that the works were improvements rather than repairs and that he was therefore not liable to contribute to their cost, that the statutory consultation requirements had not been complied with, and that the delay in carrying out the works had increased their cost. The tribunal, having inspected the property on what was intended to be the first day of the hearing and then adjourned the hearing to another day, found in favour of the landlord on all the issues and refused the tenant's application for an order under section 20C of the Act, holding also that the tenant's lease entitled the landlord to recover the reasonable costs of proceedings before the tribunal. The tenant sought permission to appeal to the Lands Tribunal on, it is assumed, all points, but was refused permission by the President of the Lands Tribunal on 22 November 2005.

17. The tenant's primary case in relation to the landlord's proposal to place the whole of its costs on the service charge is that the landlord's costs were not reasonably incurred because it achieved its success before the tribunal through the dishonesty of its solicitors, counsel and surveyors. We have read his statement on these issues and can find no basis whatsoever for these allegations. Indeed, most of them are clearly absurd and, again, none of them he chose to pursue at the hearing.

18. Apparently the works to the basement which were the subject of the second application would, if the works had been carried out immediately after the tribunal's determination, have cost about £14,470, of which the tenant's share would have been a little over £2000. It is not

clear whether that sum would have included fees and VAT, but on any view the costs which the landlord incurred in the preparation and presentation of the case before the tribunal very greatly exceeded the amount at stake.

19. For the purpose of the present hearing the landlord's solicitors have collated four substantial bundles of documents showing how the costs were comprised, and we have no doubt that the work was done and that the charging rates are reasonable for a City firm of solicitors and very experienced counsel and surveyors. We have no quarrel with the right of a major landlord to instruct the solicitors, counsel and surveyors of their choice and to pay them for very thorough preparation, even of a relatively straightforward, single issue, case, albeit with complicating features, as this was. However, that does not necessarily mean that the landlord is entitled to recover all its costs from the leaseholders.

20. In our view it can very rarely be reasonable for the legal and other costs of proceedings greatly to exceed the amount at stake. In the present case Mr Dutton, who agreed that we were entitled to make a summary assessment of the costs rather than carry out anything analogous to a detailed taxation, submitted that the case was particularly difficult for a number of reasons. One, he said, was that the determination was capable of affecting all the leaseholders of flats in the building and not just the tenant, another was that the case involved points of law and difficult questions of fact and included allegations of dishonesty. Another was that the tenant was a difficult opponent. In these circumstances, he submitted, it was reasonable for the landlord to instruct solicitors and counsel from an early stage, rather than leave the preparation of the case to the surveyors.

21. We have considered the work carried out which is summarised in schedules at appendices 13, 14 and 15 to the landlord's statement of case. We observe that solicitors were involved from the start and that, for example, the statement of the landlord's case was prepared first, in draft,

by Mr Balch and then drafted by Cameron McKenna and then revised by counsel. The preparation of the landlord's statement of case appears alone to have cost £3364.88 plus VAT. No doubt in the end it was an excellent statement of case, but, to us, the amount seems wholly disproportionate. The same applies to all the other work done and its costs, which appear more appropriate to a complex commercial dispute involving many thousands of pounds or an important issue of principle.

22. We have borne in mind that the tenant is clearly a difficult and tenacious litigant, and that the dispute involved points of law and the interpretation of a lease (although the issues appear to have been relatively run-of-the-mill for this jurisdiction), and that the outcome of the dispute was likely to affect all the leaseholders. Nevertheless we are quite satisfied that the landlord's costs greatly exceeded what was reasonable in the circumstances. We have no doubt that the case could have been perfectly adequately prepared by Cluttons, whose reasonable costs of doing so and attending the hearing should not have exceeded, in our view, £4000 plus VAT. In our view the solicitors' input need have been minimal, and confined to a few letters and instructions to counsel at a total cost of £500 plus VAT, plus disbursements (excluding counsel's fees) of £500 plus VAT. Given the difficulties of the case and of opposing this particular tenant, we are on balance satisfied that it was not unreasonable to instruct counsel to represent the landlord at the hearing, and we are satisfied that adequately experienced counsel could have been found to do so for £2000, covering the adjourned first day of the hearing and the subsequent full day's hearing. We thus consider that the landlord's costs of and incidental to the second application went very far beyond what was reasonable and we determine the reasonable costs to be £7000 plus VAT, a total of £8225. The tenant is liable to pay 14.09% of that sum, namely£1158.90.

Schedule 12 paragraph 10

23. Mr Dutton invited us to make an order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 that the tenant pay £500 towards the landlord's costs incurred in connection with the present proceedings (the third application) on the ground that the tenant has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

24. We have no doubt that such an order is appropriate. The tenant saw fit to make very many wild allegations about matters most of which had clearly already been determined by a tribunal and the Lands Tribunal, and then chose, without warning, not to pursue them. It would be difficult to conceive of behaviour more unreasonable in connection with tribunal proceedings. We accordingly determine that he must pay the landlord £500 towards its costs of the present proceedings.

Section 20C

25. The tenant has asked in his application for an order under section 20C limiting the landlord's right to place the costs of the present proceedings on any service charge. We do not make such an order, the landlord having acted reasonably in relation to the proceedings, but we emphasise that this is not a determination that the costs are reasonable in amount.

The fourth application

26. At the pre-trial review of this application the landlords's representative made the concessions identified at paragraph 8 of this decision and the pre-trial review was adjourned to be heard with the present proceedings if the tenant wished to pursue it. It seems from his actions

that he does not wish to pursue it, which is not surprising in view of the landlord's concessions which amount, in effect, to agreement to his case. Accordingly we propose to treat the application as withdrawn.

CHAIRMAN.....

DATE.....5 September 2007.....