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MAN/OOBU/LSC/2006/0005

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Decision of the Leasehold Valuation Tribunal in respect of
56 Russell Place, Sefton Road, Sale & Grosvenor Place (Sale) Management Co. Ltd.

Landlord & Tenant Act 1985, Sections 27(A)(i) – and S.20(C)

Applicant:	Mr C. May, 56 Russell Place, Sale.
Respondent:	Grosvenor Place (Sale) Management Co. Ltd., acting by its managing agents, CPM Asset Management (Northern) Ltd. per Mr M. Shaw and Mr R. Dean.
Date of Hearing & Decision:	19 June 2006
Members of Tribunal:	Mr A. M. Baker, LI.B (Chairman) Mr E. Burton, M.R.I.C.S., Mr L. P. Bottomley, J.P.
Pre-Trial Review:	A procedural chairman issued directions on 5/4/2006 but directions 3, 5 and 7 were not adhered to by the parties.

Inspection and Interests Held

1. The Tribunal inspected the grounds of the development at Russell Place partially occupied by the Applicant's property, the common parts of the Applicant's block within the development and the exterior of the buildings of which the Applicant's property forms part, it having been agreed by the parties that all 57 shareholders in the Respondent company held identical leases mutatis mutandis for a term of 200 years, less 3 days from 1/7/2002 at a ground rent until 2053 of £100 p.a. payable half-yearly.

2. The development is situate on the A56 within a mixed development area close to the motorway system and appeared to be in good order and repair, being both tidy and well-presented in all respects save for a single washing line strung over an area of common garden.

3. The Applicant acknowledged that in recent weeks all his past complaints concerning the absence of cleaning of the external windows and common parts, the cultivation of the landscaped areas and the cutting of the garden's grassed areas had all been addressed. His only outstanding complaint was the occasional fly-parking by third party vehicles within the development's grounds and the washing line referred to above.

The Hearing

4. At the start of the hearing, Mr May crystallised his previously rather unclear areas of complaint as: (a) that the Respondent had, via their agents, ceased performing their obligations under the lease to clean the development's windows externally, clean the common parts inside and out, to maintain and cultivate the grounds of the development and several other elements comprised within Schedule 6 of the lease with effect from about August 2005 and that these services only re-commenced being provided variously between January – May 2006, (b) he was unable to discover over many months, the true reason for same and when the services for which he had paid would be re-started. Consequently he felt that, having paid his full service charge payment as requested in January 2005, he had paid for services he had not enjoyed due to the default of the Respondent and their agents, (c) there were also sundry other minor complaints of items that had not been properly dealt with in 2005/6, such as the fly-parking by third parties within the site, the maintenance of washing lines despite their specific ban under the lease, the provision of sufficient refuse receptacles etc., all of which he had complained about.

5. It soon became clear (and this was accepted by the Applicant) that the Respondent terminated the provision of the obligated services simply because, prior to the handover of it to the Tenants in May 2005, the original leasor and developer, Miller Group Ltd., had failed to collect the due service charges from many of the individual tenants (and had failed to take action for recovery of same). The effect of this was that the managing agents simply ran out of funds to pay their sub-contractors out of the service account funds held. Once the present directors of the Respondent had assumed their role as being in charge of affairs, the debts were chased up and outstanding funds collected/arrangements made so that now, the hearing was told, all sums due had been collected and hence the provision of services progressively being reinstated.

6. No accounts to establish this were produced but such assertion was unchallenged by the Applicant, although it was noted by the Tribunal as regrettable, that the accounts to 31 December 2005 were still not available for production and that the AGM for the Respondent covering such period had not yet been arranged, the last such meeting having been almost 14 months ago.

7. However, from the management accounts produced on the Respondent's behalf, it was clear that although the expenses for cleaning, gardening and window cleaning were as a result of the above cessation were well below their budgeted sum, the expenses incurred on the various door entry systems on the development, and on health and safety works etc. almost exactly equalled such shortfall, so that if the former works had been carried out as budgeted, there would have been a considerable cash shortfall of about £100 per unit. This would have had to be carried forward to the current year to be recouped by the Respondent from the Tenants in addition to the current year's expected expenditure. There was no suggestion from the Applicant that any of such unexpected works were not authorised or properly incurred, although it was noted that the agents had been less than active in seeking warranty reimbursement in respect of the entry system costs in particular, from either the Miller Group or the N.H.B.C., as might have been expected to have been the proper course on such a new

development. The Tribunal noted a possible conflict of interest of CPM following their inactivity relative to their original appointment by Miller Group and any future hoped for appointments, especially in light of the state of the finances at the time of handover of the Respondent company to the Tenants.

8. It was not challenged that around 70% of the units on the development were not now owner-occupied, but rather sub-let, which may also have contributed to the lack of the usual interest shown in the keeping up of standards on the site and the active management of it.

9. It was also commonly accepted that communications by the Respondent and CPM to the Tenants following the AGM of May 2005, had been lamentable, bordering as it did on being non-existent despite the evident problems encountered. There was not even any meaningful or relevant explanation enclosed with the 2006 budget and requests for service charge. Further, the Applicant's request for copies of minutes of the quarterly director's meetings have been ignored and so the Tribunal could well understand the Applicant's frustration at the lack of information/action he received which in turn led to his own instigation of these proceedings, he not appreciating his rights under the Companies' Acts as a shareholder himself in the Respondent (along with all other tenants within the development).

Conclusion

10. Whilst the Tribunal appreciated the fiscal difficulties that the Respondent and CPM found themselves in during the summer of 2005, their failure to communicate with the Applicant both openly and with transparency, was very unfortunate to say the least and did very considerably contribute to the bringing of this action. The failure to provide the necessary certified year-end accounts and to hold an AGM is equally unsatisfactory but at least, if the evidence given about the newly achieved fiscal regularity is accurate, there is no good reason to believe that such problems should re-occur in future.

11. That being so, and the Applicant now understanding his entitlement as a shareholder in the Respondent, the Tribunal considered the appropriateness of the remedy sought viz the remission of about 1/3 of the attributable charges to the Applicant for the services he paid for but did not receive as above, which in 2005 would amount to about £92 with a similar slightly smaller sum applying in 2006 before full services were resumed. Although the sense of equity in the Applicant's mind is well understood, he has however apparently failed to allow for and appreciate the fact that thereby, he did not face a surcharge of a roughly similar sum that he would otherwise have faced this year for unbudgeted and uncollected legitimate expenses actually incurred by the Respondent. As such, we determined that the sum paid by the Applicant was indeed properly due and payable, such determination being expressly subject to the accountant's certificate required under Clause 7 of the lease (and not yet produced) being expeditiously provided to all of the Tenants and such confirming the figures produced to the Tribunal. Similarly, no such deduction in due course for the current year would be appropriate for the Applicant. Accordingly also, the Applicant's application to recoup the costs of these proceedings is also refused.

12. However, though CPM on behalf of the Respondent, tacitly accepted that the lamentable lack of communication was largely responsible for the instigation of these proceedings and accordingly voluntarily undertook not to add their costs to the service charges to be borne by the Tenants, we do feel it appropriate to still grant the Applicant's application under S.20(C) to the effect that the Respondent's costs incurred in relation to these proceedings shall not be relevant costs to be taken into account in

determination of the amount of any service charge payable by the Applicant. We are also happy to note CPM's undertaking to forthwith ensure that the remaining current lease blemishes in relation to the parking and washing line will be attended to forthwith.

Summary of Findings

13. The Tribunal determines that the Applicant's application under S.27(A) does not entitle him to any variation in the service charges for 2005 or 2006 as claimed, but the Tribunal grants his application sought under S.20(C).

A. M. BAKER
CHAIRMAN

Date: 20/6/2006