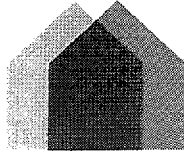


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

LON/00BE/LIS/2006/0143

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

Applicant: Terence Sullivan

Respondent: London Borough of Southwark

Property: 13 Haredale House, Scott Lidgett Crescent,
East Lane, Bermondsey London SE16 4UZ

Date of Application: 23 November 2006

Date of Hearing: 8 March 2007

Venue: 10 Alfred Place, London WC1E 7LR

Appearances for Applicant: Mr T Sullivan
Mr P Kokkinos

Appearances for Respondent: Mr J Joseph
Mr K Orford

Also in Attendance: None

Members of the Tribunal: Mr John Hewitt Chairman
Ms Marina Krisko BSc(EstMan) BA FRICS
Mr Eric Goss

Date of Decision: 4 July 2007

Decision

1. The Decision of the Tribunal is that:

- 1.1 the contribution payable by the Applicant to the Respondent in respect of roofs carried out and demanded of the Applicant in an invoice issued to him dated 29 June 2001 is the sum of £2,531.04.
 - 1.2 The contribution of £2,531.04 is now due and payable by the Applicant to the Respondent.
2. The findings of the Tribunal and the reasons for its decision are set out below.

Background

3. The Applicant is the lessee of the Property pursuant to the terms of a lease granted by the Respondent (the Council) to Terence Sullivan and Colleen Susan Catherine Sullivan (as Lessee) under the Right to Buy scheme. The Property is a maisonette laid out on the second and third floors of the building, which are at the top of the building.
4. The lease is dated 31 July 1989 [49-79]. By clause 4(2) the Council covenanted to keep in repair the structure and exterior of the flat and of the building. By clause 2(3)(a) the lessee covenanted to pay the Service Charge, as set out in Parts I and II of the Third Schedule to the lease., at the times and in the manner therein set out.
5. The Third Schedule sets out detailed provisions for the service charge regime. There was no issue between the parties on the provisions in the lease for the service charge regime.
6. In 2001 the Council decided to undertake major roof repairs to the building and gave notice to lessees under s20 of the Landlord and Tenant Act 1985. The share of the costs of works attributed to Mr and Mrs Sullivan was £5,155.84 and this sum was demanded as a payment on account in an invoice dated 29 June 2001 [152]. In the event when the final accounts had been prepared the contribution claimed by the Council was reduced to £5,062.09 [135].
7. Works of repair were duly carried out under the terms of a contract which covered both Haredale House and Woodville House.
8. The Applicant has raised issues as to the quality of the works of repair and the reasonableness of the cost claimed by the Council.
9. Directions were duly given and the application came on for hearing before us on 8 March 2007. At the conclusion of the hearing the Council requested further time to submit further documents in support

of its case and this was granted. Further documents were duly filed and served and we comment on them later in this decision.

10. Shortly after the conclusion of the hearing the Tribunal inspected the building and to saw parts of the roof of it. The parties had opportunity to bring to the attention of the Tribunal members certain attributes of the building and the roof.
11. The Tribunal was provided with a page numbered trial bundle. Reference in this Decision to a number in square brackets ([]) is a reference to the page number of the trial bundle. The Applicant's documents are in the final section of the trial bundle and are page numbered 1-104. When referring a page number of this section the prefix letter 'A' is used.

The Case for the Applicant

12. Mr Sullivan gave evidence in support of his case. Mr Sullivan acknowledged that he was not a builder and had no experience of the building trade, but he said the work was not done properly. He said the new roof system was laid in three days by two men working mostly in the pouring rain. Mr Sullivan explained that he retired in 2001 and was at home with time to watch what was going on. He explained that now, after rain, there is considerable ponding on the new roof.
13. Mr Sullivan also said that since the new roof was laid there had been water leaks into a top floor flat, number 10. He produced photographs [A89-A90] which he said showed dampness and mould growth. Mr Sullivan also claimed that there were cracks in the landing ceilings and that water leaked through. He produced further photographs [A91-A104] to support his case.
14. Mr Sullivan told that he informally asked a friend, Mr Mahon, a roofer, for a quote for the renewal of the area above his flat and was quoted £2,100 which he thought was a reasonable sum for him to have to pay.
15. Mr Sullivan was also highly critical of the Council. He said the poor state of the roof was due to years of neglect. If the roof had been properly maintained it would not have needed such major repair. He also complained that the state of the roof was not brought to his attention when he exercised the right to buy in 1989.
16. Mr Kokkinos gave evidence in support of Mr Sullivan's case. He took us through the right to buy paperwork and submitted that s125 notice [A2] did not make reference to defects to the roof. Mr Kokkinos also claimed that the Council has not yet looked into the problems in flat 10. Mr Kokkinos also submitted that paragraph 7 of the Council's Response [A81] admitted that the building had defects.
17. In his final submissions Mr Sullivan submitted that:

All the walls on the top floor had been boarded it could not be seen if it was damp;
The landing ceilings are cracked and he just feels that the roof was not done properly;
Subject to seeing it, he would accept that a 20 year guarantee has been given.

The case for the Respondent

18. Mr Orford gave evidence to us. His witness statement is at [1-3] Mr Orford is employed by the Council as an Investment Programme Manager for the Bermondsey Area. He has a BSc in building surveying.
19. Mr Orford dealt first with the photographs produced by Mr Sullivan. He went through them in some detail. Mr Orford said that the black mould problems in flat 10 were due to condensation. He denied that the minor cracks in the landing ceilings were due to water leaks through the roof; the water looked too clean he said; more likely it was also condensation because there would be little or no insulation in the void above.
20. Mr Orford took us through the specification of works and the tender process in some detail. He explained the Bauder Total Roof System and its benefits. He said it was the most cost effective system to use. He denied that any ponding would cause water penetration. He said the integrity of the roof was good.
21. Mr Orford did not have any responsibility for the roof works carried out in 2001 and thus he was not able to make any comment on the allegation that the work was undertaken in three days by two men working in the rain. He was nevertheless quite certain that the Bauder roof system was properly laid and heated sealed. He was satisfied as to its integrity. Further he claimed that the roof had a 20 year guarantee.
22. In his final submissions Mr Joseph submitted that:
The contract went out to competitive tender;
The lowest tender was accepted;
The cost was a reasonable cost; and the work carried out to a reasonable standard;
The contract was signed off, the work inspected and an insurance company backed 20 year guarantee issued;
The sum of £2,100 suggested by Mr Sullivan does not reflect the Council's obligations to the roof as a whole;
The photographs produced by Mr Sullivan do not show any direct faults with the roof;

When Mr & Mrs Sullivan exercised the right to buy the flat was inspected and valued; had the flat and the building been in a better state of repair, the flat would have commanded a higher price.

23. In the light of the emphasis placed on the value of the 20 year guarantee, Mr Joseph requested the opportunity to send a copy to the Tribunal and to Mr Sullivan.

On 28 March 2007 the Tribunal sent to the Respondent a letter which stated:

'I refer to the hearing on 8 March 2007 when you were requested to provide a copy of the insurance company backed guarantee for the roof works which the Respondent contended had been issued for the benefit of the council and its lessees, but which had been mislaid.'

The letter went on to require the Council to provide the documents it wished to rely upon by 3 April 2007 and observed that in the absence of the documents the Tribunal would have no alternative but to assume that the works do not have the benefit of such a guarantee and would have to make its decision on the reasonableness of the cost of works on that basis.

By letter dated 3 April 2007 Mr Joseph said that the Council was still seeking a copy of the guarantee from Bauder. In reply the Tribunal said:

'The Tribunal has considered your letter dated 3 April 2007 and the enclosures. It notes your inability to provide a copy of the guarantee which you say was issued and that you have not yet provided any details of the nature and extent of the guarantee or any details of the insurance company which you say backs it.'

The Tribunal considers this to be most unsatisfactory.

The Tribunal has asked me to inform you that it will make its final decision on the application before it on 30 April 2007 based on the material that is before it at that time. It must be considered inevitable that in the absence of information about the guarantee which you say is in place little value can be attributed to it.

Any further documents which either party wish to submit to the Tribunal shall be submitted no later than 4pm Friday 27 April 2007.'

24. Under cover of a letter dated 24 April 2007 Mr Joseph sent a copy of a guarantee.
25. By letter dated 17 May 2007 Mr Sullivan submitted that the guarantee specified the Contract as:

'Haredale House, Saint Saviours Estate, East Lane, London SE', rather than Haredale House, Dickens Estate and he queried whether the wrong estate and address made a difference.

Findings and Reasons

26. The Tribunal notes that the guarantee document was headed:

'The Bauder Roof System Certificate of Guarantee'

It appears to have been issued on 20 April 2001 by an entity known as 'Erisco-Bauder Limited'. No address, place of incorporation or company number are given.

The guarantee covers *'...against product failure due to faulty manufacture and failure due to faulty workmanship for a period of twenty years from...20 April 2001.'*

The guarantee was issued on the understanding that Erisco-Bauder Limited will be permitted to carry out an annual and decennial inspection on 20 April 2002 and 20 April 2011.

No information was provided as to any inspection that was requested or made on 20 April 2002.

In particular no information was provided as to the insurance company said to have backed the guarantee.

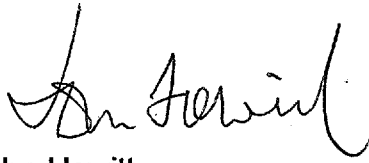
27. The Tribunal found both Mr Sullivan and Mr Orford to have been honest and genuine doing their best to assist the Tribunal. Mr Sullivan conceded that he was not experienced in the building trade; and that to him it just felt wrong that the roof was laid quickly and in pouring rain. Similarly, he assumes that the mould in flat 10 and the water marks on the landing ceilings to be due to leakage through the new roof.
28. In contrast Mr Orford is professionally engaged in the building trade and is a surveyor. For this reason and because he came over to us as being reliable the Tribunal prefers the evidence of Mr Orford on these matters. We therefore find as a fact that laying the roof in inclement weather was not deleterious and that the mould growth and water marks are not caused by water leakage through the new roof.
29. We find, indeed it was not seriously contested, that the contract was properly tendered and that the lowest price was accepted. Subject to seeing an insurance company backed guarantee in satisfactory terms, we would have been satisfied that the cost of the works was within a reasonable range. The contract sum was some £62,357. The Council could not prove that that the work took more than 3 short February days. We accept Mr Sullivan's unchallenged evidence on the time taken to complete the works. Given the scale of the works we find that

there is room to be very suspicious about the quality of the works and hence whether they were reasonably carried out at a reasonable price. We bear in mind the apparent speed of work and that it was wet on at least one of those days, and the heavy reliance on the guarantee by the Council to cure any defects or quality of workmanship issues. In these circumstances the value of the guarantee takes on significance.

30. No evidence about the insurer has been given to us. The Council asserted that the guarantee was insurance company backed. On two occasions, (see letters referred to in paragraph 23 above) the Tribunal gave the Council opportunity to provide information about the insurer. It has not done so. In these circumstances we find that the guarantee is not backed by an insurance company.
31. The guarantee has been issued by Erisco-Buader Limited but there is no evidence before as to the financial standing of this company, and hence as to the value of the guarantee it has given. Given the expertise and experience of the members of the Tribunal in these matters we cannot with confidence say that the guarantee is a valuable one. We find we must make an adjustment to the contract sum to reflect this great uncertainty, given that the guarantee still has some 14 years to run. In the absence of evidence we can but take a broad brush approach. We do and relying on our experience we reduce the contract sum by 50%.
32. Accordingly, we find that the sum claimed by the Council, namely £5,062.09 should be reduced to £2,531.04.
33. For the sake of good order we wish to comment that we are surprised that the right to buy s125 notice did not mention the probability of major roof repairs. The roof would have needed major works by the mid to late 1980s. However any shortcomings in the notice are not a matter for this Tribunal. Equally we do note that the Sullivans had lived in the Property for a good number of years and knew its history well. Also they took valuation advice and their surveyor did highlight to them the inherent problems with flat roofs.

Section 20C Application

34. Mr Joseph gave an undertaking to the Tribunal that the Council that it would not seek to put any costs incurred in connection with these proceedings through the service charge account for Haredale House and this being so the Tribunal finds that it is not necessary for it to make a formal determination on the application.



John Hewitt
Chairman
4 July 2007