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CAM/00KF/LSC/2010/0035

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	Flat A, 58 Genesta Road, Westcliff-on-Sea, Essex, SS0 8DB
Applicant:	Inkberrow Ltd
Respondent:	Forcelux Ltd
Application:	9 March 2010
Inspection:	14 May 2010
Hearing:	14 May 2010

Appearances:

Tenant

Mr Curtis
Mr Bailey
) both Directors of Crowstone Estates Ltd, Managing Agents
)

For the Applicant

Landlord

Mr Jacob — Director of Respondent company

For the Respondent

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr F. James FRICS
Mr P. Tunley

IN THE LEASEHOLD VALUATION TRIBUNAL

CAM/00KF/LSC/2010/0035

IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF FLAT A, 58 GENESTA ROAD, WESTCLIFF-ON-SEA, ESSEX, SS0 8DB

BETWEEN:

INKBERROW LIMITED

Applicant

-and-

FORCELUX LIMITED

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for determination of the reasonableness of the buildings insurance premium claimed by the Respondent for the 2010 service charge year. The application had been made by the managing agent, Crowstone Estates Ltd. However, at the hearing, it was established that the lessee was in fact Inkberrow Ltd and, therefore, the managing agent had no *locus standi* to make the application. Accordingly, the name of the Applicant was amended.

2. In the Applicant is the present lessee of Flat A, being the ground floor flat at 58 Genesta Road, Westcliff on Sea, Essex, SS0 8DB, which it holds under a long lease dated 22 July 1980 made between Adrian Joseph Armstrong and

David Edmund Leon Gayda for a term of 99 years from 1 July 1987 (" the lease").

3. It was not the Applicant's case that the buildings insurance premium in issue was not contractually recoverable as relevant service charge expenditure. In addition, it was accepted that the Applicant's service charge liability was one third of the expenditure incurred by the Respondent, even though the contractual liability as set out in the lease is 25%. It is, therefore, not necessary to set out here the relevant lease terms that give rise to the Applicant's service charge liability.

The Relevant Law

4. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(1) 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.*
>
> *(2) Subsection (1) applies whether or not any payment has been made."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

5. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly."*

Inspection

6. The Tribunal inspected the subject property on 14 May 2010. It is a small one bedroomed flat comprising kitchen/living room, one bedroom and a shower room/WC in a converted semi -detached house comprising three flats. The property has the use of the front car parking area.

Decision

7. The hearing in this matter also took place on 14 May 2010. The Applicant was represented by Mr Curtis and Mr Bailey, both from Crowstone Estates Ltd, the managing agent. The Respondent was represented by Mr Jacob who is a Director of that company.

8. The Respondent had insured the subject property with Aviva for the period 1 February 2010 to 31 January 2011 as a total premium of £1,631.36 including IPT. The Applicant's individual liability is £543.79.

9. It was submitted on behalf of the Applicant that the buildings insurance premium was unreasonable for a number of reasons. Mr Curtis told the Tribunal that Crowstone Estates Ltd manage a number of properties in the area and was aware of the range of insurance premiums that were being charged for properties similar to the subject property. For example, he took the Tribunal to the summary of insurance cover for properties situated at 1/1a Annerley Road and 78/78a Valkyrie Road where the Applicant had obtained them as insurance for premiums of £214.49 and £269.93 respectively. This equated to £130 per unit whereas the buildings insurance for the subject property equated to £543 per unit.

10. Furthermore, Mr Curtis said that a number of comparative quotes had been obtained that demonstrated that the buildings insurance premium was unreasonable. Firstly, an undated written quotation from his firm's own insurance broker, Scrutton Bland Ltd, was obtained in the sum of £453.60. Secondly, by an e-mail dated 9 March 2010, a quotation of £449.06 had been obtained from an independent broker. Thirdly, Mr Curtis said that he had obtained a quote for 60 Genesta Road, the adjacent property, from Aviva in

the sum of £647.50, which is an identical property to the subject property, save that it had been converted into four flats. Consequently, for insurance purposes, this represented a high risk which supported the view that the buildings insurance premium claimed by the Respondent was unreasonable. Mr Curtis confirmed that all of the quotes obtained had been on a like-for-like basis other than the values insured were greater than the Respondent's.

11. Mr Jacob, for the Respondent, said that the insurance rate per thousand pounds for 2009/10 is 5.93 whereas in 2008/09 it was 5.98. Although the rate had increased in the last year, it had remained the same for the preceding 10 years. The sum insured in 2008/09 was £270,000 which had been based on an insurance valuation carried out in November 2008. Mr Jacobs said that the Applicant had made no complaint about the buildings insurance premium for 2008/09 but was now complaining about the same rate per thousand for the present year. He relied on a number of earlier decisions in the Respondent's favour which supported his submission that the rate per thousand was reasonable. In ***Forcelux v Sweetman*** the Land Tribunal found that a rate of 5.6 per thousand was reasonable in 2001. In ***Scott v Forcelux*** a rate of 5.8 was found to be reasonable. In ***Forcelux v Jackson*** a rate of 5.93, the same rate being presently used was found to be reasonable.

12. Mr Jacobs sought to distinguish the alternative quotations relied on by the Applicant. He contended that they had not been obtained on a like-for-like basis. The Scrutton Bland Ltd quote did not include cover for subsidence and terrorism. Furthermore, the e-mail independent quotation dated 9 March 2010 amounted to no more than an opinion by the insurance broker and could not be regarded as a proper quote. Mr Jacobs was unable to comment on the quote obtained by the Applicant for 60 Genesta Road because he said that he had not seen this before the hearing.

13. Moreover, Mr Jacobs relied on letters dated 27 January 2009 and 22 February 2010 from the Respondent's insurance broker, HIA International Ltd, confirming that in each of those years they had undertaken a full market review with various insurers before placing the block insurance for the

Respondent's portfolio of properties, of which the subject property forms part. In 2009, the brokers confirmed that Norwich union offer the best terms with regards to premium, service levels and claims handling and had reduced the excess for subsidence claims to £500 instead of the market standard of £1,000. In 2010, the best terms were provided by Aviva and the block policy was placed with that company. Mr Jacobs confirmed that the Respondent received no commission from the insurer and that there was no commission sharing with the broker. However, the Respondent did receive 18.75% of the net premium for "small claims handling".

14. The Tribunal found that the buildings insurance premium claimed by the Respondent in the 2010 service charge year was reasonable on the basis that the Applicant had, on balance, not sufficiently proved that the premium was unreasonable. In the course of the hearing, it was accepted by Mr Curtis that the alternative quotes from Scrutton Bland Ltd and the independent broker were not on a like-for-like basis. In addition, the Tribunal considered that the quote obtained in relation to 60 Genesta Road was qualified because it was a bare quotation and, for example, provided no information as to the reinstatement value. Taken together, the alternative quotations obtained by the Applicant did not evidentially provide a basis on which the Tribunal could make a finding that the buildings insurance premium was unreasonable.

15. Furthermore, at the hearing, neither Mr Curtis nor Mr Bailey was able to deal with the argument advanced by Mr Jacob as to the insurance rate per thousand. Although, by a letter dated 6 April 2010, this argument was generally raised, it was not fully particularised until the oral submissions made by Mr Jacobs and the hearing. The Applicant was, therefore, only faced with this argument on the day and could not properly respond to it. Had the Respondent complied with the Tribunal's Directions in the preparation of its statement of case, the Applicant may have been able to adduce evidence in this regard to enable the Tribunal to find in its favour. Given that of the Respondent is the landlord of a substantial portfolio of properties, undoubtedly, further applications will be made by other tenants in relation to buildings insurance premiums claimed by it. It is highly likely that, either Mr Jacobs or another representative for the

Respondent, will advance the same argument as to the insurance rate per thousand and will rely on earlier LVT or Lands Tribunal in its favour. In that event, provided that this argument is evidentially dealt with properly, it would enable another Tribunal to make a finding that the buildings insurance premium is unreasonable.

Section 20C & Fees

16. The Applicant had also made an application under section 20C of the Act for an order preventing the Respondent from being able to recover all or part of the costs it had incurred in these proceedings. However, at the hearing it was accepted by the Respondent that it cannot recover its costs through the service charge account. However, for the avoidance of doubt, the Tribunal makes no order under this section on the basis that the application has wholly failed. For the same reason, the Tribunal also makes no order with that of the Respondent reimburse the Applicant the total fees of £210 it has paid to have this application issued and heard.

Dated the day of June 2010

CHAIRMAN..... I. Mohabir
Mr I Mohabir LLB (Hons)