

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 1- 43 Webbs Close
Wolvercote
Oxfordshire
OX2 8PX

Applicant : Webbs Close Residents Association

Respondent : A2 Dominion

Case number : CAM/38UC/LSC/2010/0086

Date of Application : 20th July 2010

Type of Application : Application for a determination of liability to pay a service charge, pursuant to section 27A of the Landlord and Tenant Act 1985

Date of Hearing : 2nd November 2010

Tribunal :

Mrs. Joanne Oxlade
Mr. G. Rodney C Petty FRICS
Mrs. Najiba Bhatti

Lawyer Chairman
Valuer Member
Non-Legal Member

Attendees

Applicant

Robert Knight (27)
Frances Knight (27)
Sally Saville (Flat 3)

Respondent

Steve Michaux

Venue : The Best Western
Linton Lodge Hotel
Oxford
OX2 6UJ

DECISION

For the reasons given below we find that:

- (a) the Respondents were not required to comply with the statutory consultation procedure under section 20 of the 1985 Act before entering into a long term qualifying agreement in respect of gardening at Webbs Close
- (b) the sum of £3879 charged to the service charge account for gardening provided in Webbs Close in the year 2009/10 is not reasonable, and that a sum of £1700 is reasonable
- (c) the sum of £60 charged to the service charge account for management fees provided to each unit in Webbs Close in the year 2009/10 is reasonable.

REASONS

Background

1. Webbs Close, Wolvercote, Oxford is an estate made up of 18 flats and 25 houses, built by Oxford University Press in the 1960's. All of the flats are let on short lets - as are some of the houses. However, there are also a significant number of the houses (17 or so) let on long leases. We are told that the long leases are all identical in terms.
2. Mr. Knight is the Secretary of the Webbs Close Residents Association ("the RA"), which Association represents the interests of all residents - whether they occupy under a tenancy or a lease. The RA has not been *formally* recognised by the A2 Dominion ("the Lessor"). Mr Knight and his wife Frances live at No 27, and have done for many years.

Application

3. Mr. Knight issued an application pursuant to section 27A of the 1985 Act for determination of the reasonableness of service charges for the years 2009/10, 2010/11 etc. He made 2 points:
 - (a) was there proper consultation between the Landlord and residents before entering into long-term agreements for gardening and cleaning ?
 - (b) was the increase in the costs of gardening from £864 p.a. to £3879 p.a., and cleaning from £1438.81 to £2457.93, reasonable. He said that he did not think that the Landlord had thought through the costs consequences to the residents of cancelling long-standing local contracts.
4. On 23rd July 2010 directions were made for the filing of evidence, although the timetable was varied on 6th August 2010.
5. In a letter dated 29th July 2010 Mr. Knight raised 3 further points:

- (a) that the Respondent's reliance on a decision from the London LVT in respect of Management fees had been used to determine fees in the Oxfordshire area, although the decision itself made it clear that the decision related to Greater London only;
- (b) that all occupants of the estate had paid £18 per annum into a sinking fund since 1987, that one re-payment from it was given, but despite asking the Respondent about it the existence, location and size remained a mystery;
- (c) that he had only recently realised that the demands for service charges had been made on the basis of estimated costs, that there had been no reckoning at the end of the year, and he would wish for sight of all of the service charge sheets from 1987. In light of the application being limited to the current and subsequent years, no direction was made for disclosure of such documents.

Inspection

- 6. The application was listed for hearing on 2nd November 2010, and an inspection of the common parts took place beforehand, in the presence of those listed as attendees at the hearing (except for Ms. Saville). From this inspection we observed the size and layout of the estate and the communal gardens, the unadopted roads, and internal communal areas which were subject to cleaning.

Hearing

- 7. At the beginning of the hearing we identified the relevant statutory material, parts of the lease, and issues.
- 8. We invited Mr. Michaux to take us through the lease and the consultation process for the long-term qualifying agreements, and to explain the extent of the work undertaken by the gardeners so giving rise to the annual service charge of £3879. He was then asked questions in cross-examination by Mr. Knight.
- 9. Mr. Knight then gave evidence on all relevant matters and was asked questions in cross-examination by Mr. Michaux. Ms. Saville gave some evidence about her observations of the standard of work of the current cleaners
- 10. During the course of the hearing we made the following rulings:
 - (a) we had no jurisdiction to determine the dispute about the sinking fund
 - (b) any dispute about overpayments of service charges from 1987 to 2007 would be determined on any subsequent application issued
 - (c) the cleaning costs payable by the Tenants of the flats could not be determined by the LVT.

Sinking Fund Dispute

11. Mr. Knight wished to resolve the issue of the sinking fund. He believed that 43 units had paid to the Lessor £18 p.a. (plus 15% management charge) since at least 1987, and that there would also be interest on these monies – so the total would exceed £17,000. He believed that the Lessees and Tenants were entitled to a refund of these monies, and that there was no satisfactory resolution with the Respondent, despite his best efforts.
12. Mr. Michaux said that A2 accepted that the units on long leases (17) would have contributed to a sinking fund (at £18 per unit per year, plus management charge of 15%), and that the documents helpfully supplied by Mr. Knight showed that this went back to 1987 (so 22 years). Unfortunately the units have been through several management hands, and no records can be found relating to this, but A2 accepted that this money had been paid. A2 were prepared to place £7395 into a separate account for use as reserves or contingencies. He said that although the demands made of Mr. Knight could be read as suggesting that the reserve would have been increased by £800 p.a., the demands showed that Mr. Knight was asked for 1/43rd of £800, but the tenants (i.e. those who occupied as tenants, not under a long-lease) would never have been asked to pay into the reserve fund. Nevertheless, before us Mr. Michaux accepted that any sums payable from the reserve on estate matters required to be performed under the lease should be payable at 1/43rd per unit, so that any bill which came in for the estate and which was paid from the reserve would be paid as to 17/43 from the reserve fund and A2 would pay the rest. They were simply not in a financial position to pay the 26/43 of this into a reserve account for future expenditure on the estate. As for refunding the sums, the landlord was entitled under clause 3.17 the lease to hold such sums as may be set aside for “depreciation or future or contingent liabilities”, and they would be reluctant to refund the monies without varying the lease to exclude the power to collect a reserve.
13. Materially, Mr Michaux submitted that the LVT did not have jurisdiction over this matter. We agree. Our jurisdiction is limited, as set out at s27A of the 1985 Act (set out in full in the appendix), to liability to pay and reasonableness of the service charge and not *where* funds should be paid from.
14. However, as the matter has been contentious, we assured the parties that we would record the above matters in this decision in light of the assurances given by A2, in the hope that the parties can resolve this without litigation, and to enable Mr. Knight to have some secure basis on which to speak to the members of the Association.

Overpayments

15. At the hearing Mr. Knight said that he had only realised recently that throughout his time at Webbs Close a demand had been made each year for service charges on the basis of estimated figure - but that there had never been reconciliation at the end of the year when the actual sums spent were known. For example in April 2002 the sum of £1766.59 was demanded for gardening, but the actual costs were £864 per year. He did recall in one year receiving a refund. He therefore believed that there would be substantial sums due from the Lessor.

16. In fairness to Mr. Knight, although the matter was not specifically raised in the application (which related to 2009/10 and beyond), he had referred to it in a letter to the Tribunal on 29th July 2010. However, as it appeared to be coupled with issue of the sinking funds, no specific directions were made for the Tribunal to consider this. In that letter Mr. Knight did accept that if it could not be added to the present application then he would give consideration to issuing another application. In the circumstances this seems the better course, because the matter will be dependent on obtaining past records, and the parties should attempt to achieve some settlement of this before an application is issued. It is complicated because the Service charge has been collected by several different bodies over the years.

Cleaning Costs

17. Mr. Knight had in his application questioned the reasonableness of the cleaning costs, which are payable solely by the tenants of the flats. However, as Mr. Michaux pointed out, the power of the LVT to consider the reasonableness of service charges relates only to those service charges which are *variable* – not *fixed* charges (see s18 of the 1985 Act, set out in the appendix) into which category the cleaning charges fall. If a challenge is made by a tenant on receipt of a notice of increase of rent then the reasonableness of and quality of the service provided can then be considered by the Rent Assessment Committee.

18. Ms. Saville had commented on the quality of the cleaning, saying that it was poor until 3 weeks ago but she had not raised this with the Landlords before. Mr Michaux said that he had not received a complaint before the hearing, but would now ensure that this was properly monitored.

Issues for Determination

19. By the end of the hearing, we identified the following issues which required our determination:
 - (a) whether there had been proper consultation between the Lessor and Lessee prior to entering into long-term agreements for gardening at Webbs Close?

- (b) whether the annual cost of gardening of £3879 was reasonable
- (c) whether the annual management charge of £60 per unit was reasonable.

Discussion

Consultation Requirements

20. Mr. Michaux gave evidence of the extensive consultation exercise undertaken by A2 in 2007 and 2008 covering the whole of the South-East region as part of the attempt to rationalise services. He adduced in evidence letters which were said to have been sent in 2008 to the Applicant as Lessee of 27 Webbs Close and the other residents of Webbs Close - which consisted of a covering letter, guidance notes on the consultation process, and a Notice of Intention to enter into a Long-Term "grounds maintenance and horticultural services" agreement. He also adduced a document in tabular form showing the comments received/feedback given to A2 from different developments.
21. However, Mr Knight said that he had not received any of this correspondence, and had he done so he would have responded. None of the other residents had received it.
22. We accept the evidence of Mr. Knight in this regard: it is clear from the correspondence that he is a prolific letter writer on matters concerning the Estate, and his concern for costs, quality of work, and proper process make it highly likely that receipt of such documents by him would have resulted in a response. It is also notable that although Mr Michaux *told us* that these letters had been sent, there was no *evidence* to show when or how they were sent. It is apparent that the documents were in a standard form, and sent out to many people using mail merge, and we accept that it would be entirely possible for individuals or whole estates to have been missed off the list.
23. However, the lease does not make any requirement to consult with Lessees, and the statutory requirement set out in section 20 of the Act (in appendix A) only applies when a Qualifying Long-Term Agreement is to be entered into and the tenant is to be charged more than £100 in any 12 months. In respect of the gardening the annual cost to each unit is $\text{£}3879 / 43 = \text{£}88.37$, and so the statutory provisions do not apply.
24. Accordingly, whilst we do understand the points made by Mr. Knight as to the manner in which the previous contractor had been let go, and the absence of proper consultation, this has no legal effect on the Lessors ability to recover the sum.

Reasonableness of gardening charges

25. We heard evidence from Mr. Michaux about the reasons for seeking to rationalise contracts - namely that a large organisation can achieve

cost savings by using a smaller number of large contractors. It is said that the cost of delivering the service over the whole of Oxfordshire reduced by about £20,000. No doubt there is an administrative ease in managing a few large contractors as opposed to many small ones

26. We heard evidence from Mr. Knight that Bob Hicks had provided services to the Estate for £864 per year, and kept the prices the same for many many years. They were happy with his services, he having started when the estate was first developed, and had his services terminated without warning or courtesy. Mr. Knight made the point that whilst the Respondent may have achieved a cost saving across Oxfordshire, the costs to Webbs Close more than quadrupled, and that an attempt to pacify the unhappy minority (44%) of the tenants, at the expense of the (assumed) happy majority (56%), was wrong-headed.
27. The first point is to consider the terms of the lease. The lease provides that the Lessor must "cut the grass on all open communal areas", but there is no provision in the lease for cutting hedges or tending shrubs, and no other provision for keeping the estate tidy. We heard evidence from Mr. Michaux about what the new contractors are required to do for that annual fee, but we were not satisfied as to exactly what they were contracted to do. For example, he initially appeared to suggest the gardening contract included all of the items at page 60, and when pressed to explain why communal cleaning was item 1 of the specification when the Lessees were obliged to pay for grass cutting only, he said that page 60 was not a specification for that. We had some concerns that gardening and cleaning of the flats were being lumped together, and so that there was a confusion as to what the Lessees of the houses should be paying for.
28. The acid test is whether the service charges are reasonable. We heard no other comparative evidence provided by contractors to show what costs they would charge and how often they would cut the grass. Using our knowledge and experience as an expert Tribunal, we consider that the grass would usually be cut twice monthly in the growing season from April to October (inclusive) and then probably 3 times between November and March. We also consider that in view of the site being flat and readily accessible that £100 per visit would be reasonable (so £1700 per annum). Ordinarily we do not determine the reasonableness of service charges yet to be spent (i.e. 2011/12) but as the QLT has been entered into for 4 years and as the charges will be fixed, we consider that the sum of £1700 lasts for as long as the contract is in place.

Reasonableness of Management Fees

29. Mr. Michaux said that the Lessees are required to pay £60 per annum for management fees. Mr. Knight said that initially it was £120 – and that this was set as a result of an LVT decision. However, the decision specifically says that the decision is limited to Greater London. Mr.

Knight says that the sum has only latterly been reduced. Mr. Michaux said that as a result of rationalisation they were able to reduce the costs, and not because the amount was wrongly rolled out to the entire stock.

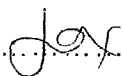
30. Irrespective of the history, the question for us is the reasonableness of the costs - that is the acid test. It has to be borne in mind that the Lessees have full repairing covenants on their houses (including sewers and drains), and so that the Lessor is not required to maintain or repair anything - except the unadopted roads, the drains and sewers not otherwise demised, and to effect insurance. Their functions are therefore limited, but they could nevertheless be called on to perform functions - such as repairing the unadopted roads etc. Neither party produced any comparable evidence of what was charged in the market place, and so we are left with using our knowledge and experience as an expert Tribunal. We consider that the sum of £60 per annum is a reasonable sum.

Costs

31. In the application Mr. Knight asked for an order under section 20C, that the Respondent's costs of the proceedings be not added to the service charge account. In fact there was no evidence called or submissions made on this aspect of the case at the hearing. However, it was not necessary to do so because the Lessor does not have the power to add costs of such proceedings to the service charge account, and so the Tribunal need make no order in respect of it.

Summary Conclusion

32. For the reasons given below we find that:
- (a) the Respondents were not required to comply with the statutory consultation procedure under section 20 of the 1985 Act before entering into a long term qualifying agreement in respect of gardening at Webbs Court
 - (b) the sum of £3879 charged to the service charge account for gardening provided in Webbs Close in the year 2009/10, 10/11, 11/12, and 12/13 is not reasonable, but that a sum of £1700 p.a. is reasonable
 - (c) the sum £60 per unit charged to the service charge account for management fees provided in Webbs Close in the year 2009/10 is reasonable.

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Joanne Oxlade

5th November 2010

Appendix

Section 27A of the Landlord and Tenant 1985 Act provides that:

"an application may be made to a leasehold valuation tribunal ("LVT") 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"

Section 18(1) of the 1985 Act provides that:

"In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent –

- (a) which is payable, directly or indirectly for service, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

- (a) only to the extent they are reasonably incurred, and
 - (b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and
- the amount payable shall be limited accordingly".

Section 20 (1) of the 1985 Act provides:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either —

- (a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section " relevant contribution " , in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement —

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount —

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5) , the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

“Relevant Contribution” is defined by the Regulation 4 of the Service Chares (Consultation)(England) Regs 2003 as £100.