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Residential
Property
TRIBUNAL SERVICE

**EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CAM/38UC/LSC/2010/0103

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

Address: Flat 86, Lizmans Court, Silkdale Close, Oxford, OX4 2HG

Applicant: Lizmans Court Management Company Limited

Respondent: Mr D. Ostick

Application: 3 August 2010

Inspection: 18 November 2010

Hearing: 18 November 2010

Appearances

Applicant

Mr O Pele Peerless Properties, Managing Agents
Mrs J Lord Director of Applicant Company

Respondent

Mr D. Ostick Leaseholder

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mrs S. Redmond BSc (Econ) MRICS
Mr D. Wills

The Tribunal determines that the Respondent's contractual liability to pay the estimated service charge contributions of £891.68 for the year ended 31 December 2009 and the half year ended 30 June 2010 in the sum of £459.21 has been correctly calculated in accordance with his lease terms and are due and payable by him

Introduction

1. On 3 August 2010 the Applicant company made an application under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for redetermination of the Respondent's liability to pay and/or the reasonableness of estimated service charge contributions of £148.40 demanded in respect of the year ended 31 December 2009 and £87.57 in respect of the half year ended 30 June 2010.
2. The Respondent is the lessee of the premises known as Flat 86, Lizmans Court, Silkdale Close, Oxford, OX4 2HG ("the subject property") by virtue of a lease dated 16 April 2004 and is made between (1) Sino Profit International Ltd ("the landlord") (2) Lizmans Court Management Company Ltd ("the Company") and (3) David Ostick ("the tenant") for a term of 125 years from 1 January 2003 ("the lease").
3. The factual background that gave rise to this application is largely a matter of common ground and can be stated shortly. It seems that on or about October or November 2008, a dispute arose between the Applicant company and the then managing agents, Kavanagh Harwood. Subsequently, the Applicants requested Kavanagh Harwood to return the service charge funds and documentation relating to the management of the estate. Kavanagh Harwood refused to do so and the Applicant became concerned about the security of the service charge monies held by that firm. The Applicant also had further

4. Apparently, the dispute with Kavanagh Harwood was resolved and the firm was removed as the managing agent in May 2009. In June 2009, Peerless Properties was appointed as the new managing agent. On 11 June 2009 an estimated service charge demand in the sum of £891.68 for the year ending 31 December 2009 was issued. On 30 December 2009, Peerless Properties issued a further estimated service charge demand for the year ending 31 December 2010 in the sum of £918.43. However, it should be noted that the Applicant is only seeking a determination for the period ending 30 June 2010. It should also be noted that the amounts in issue in this application differ from the sums demanded because they represent the unpaid balance by the Respondent. For the avoidance of doubt, the Tribunal's determination can only be made in respect of the total estimated amounts demanded. It follows that if the Tribunal determines that those amounts are reasonable, then any unpaid balance remains due and payable.

5. Protracted correspondence then ensued between the Respondents, the Applicant and Peerless Properties in which the former sought clarification about how the service charge contributions paid by the lessees on the estate had been calculated. He also proposed that each of the lessees pay an equal service charge contribution towards the service charge expenditure on the basis that all of the flats on the estate were largely similar in size. That proposal was not accepted by the Applicant and on 3 August 2010 it issued this application.

The Issues

6. At the commencement of the hearing, the Tribunal informed the Applicant's representatives that it did not have jurisdiction to determine issues relating to the exercise of the Applicant's discretion to vary the service charge contributions payable by the lessees and whether an equal service charge contribution was reasonable. Equally, the Tribunal did not have jurisdiction to recommend any alterations to the service charge structure and/or proportions. The only issues the Tribunal could determine were the Respondent's liability to pay the service charge contributions demanded for each of the two years in question and if the estimated sums demanded were reasonable.

7. The Tribunal also informed the Respondent that it did not have jurisdiction to make an award of costs against the Applicant that he had claimed in a schedule of costs. He confirmed to the Tribunal that he was not challenging his contractual liability under the terms of his lease to pay the sums in issue nor was he contending that they were unreasonable. His case was simply that the varying percentages by which the service charge contributions for each lessee on the estate did not represent a fair apportionment given that all of the flats were largely similar in size. In the alternative, he put the Applicant to proof that the service charge contributions demanded from him had been correctly calculated in accordance with his lease terms.
8. Given the basis on which the Respondent's challenge was made, it is not necessary to set out the relevant lease terms that give rise to his contractual liability to pay a service charge contribution in each year. It is sufficient to note that paragraph 7 of the Particulars of the lease provides for him to pay a contribution of 1.149% of the estate charge, 15.385% of the block service charge and 3.846% of the garage service charge. The Applicant was able to satisfy the Tribunal that the proportions being charged totalled 100% in each case so that there was no under or over collection of the service charge.

The Relevant Law

9. 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

10. 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

11. The Tribunal carried out an external inspection of the estate on 18 November 2010. It comprises a series of 3 and 4 storey brick built blocks and attached bungalows around a courtyard with allocated parking spaces or garages for 92 of the 94 units. Common parts were basic with built on covered access porches and entry phone. The estate appeared to be in reasonably well kept condition.

Decision

12. The hearing in this matter also took place on 18 November 2010. Mr Pele of Peerless Properties and Mrs Lord, a Director represented the Applicant company. The Respondent appeared in person.
13. Mr Pele explained that when his firm was appointed as the managing agent, the service charge documentation it had received from Kavanagh Harwood was incomplete. To enable an estimated service charge budget to be set for 2009, he had simply adopted the same budget figures that had been applied for each of the years from 2004 to 2008. In 2010, the overall estimated expenditure had been increased by 3% to reflect the capital expenditure that had been incurred in 2009 for replacing the windows of the flats on the estate with PVCu double glazed windows.
14. Mr Pele went on to explain that the service charge contribution for each lessee is comprised of an element of cost for the estate charge, a block charge and a parking or garage depending on their contractual liability. The percentages

used to calculate the service charge liability for each lessee had been those provided to him by the Applicant's solicitors, Blake Laphorn. He said that the service charge liability varied between lessees for the estate and block charges depending on the number of bedrooms in each flat. For example, a one bedroom flat only has half the service charge liability for a two-bedroom flat. Similarly, a three-bedroom flat pays three times as much. However, a flat rate was applied in respect of the parking or garage charge as the case may be. The Respondent has the benefit of a garage. Mr Pele said the Respondent's proposal that each of the lessees pay an equal service charge contribution was rejected at an AGM because this would have resulted in a doubling of the service charge contribution payable by the lessees of one bedroom flats.

15. In relation to the estimated estate costs for the year ended 31 December 2009, Mr Pele referred the Tribunal to the budget estimate and heads expenditure in the total sum of £14,444.15¹. The Respondent service charge liability was calculated by applying 1.149%, being the contractual rate under the terms of his lease.
16. The estimated block costs for Silk Block, in which the subject property is located, for the year ended 31 December 2009 was placed at £4329.81² to which a rate of 15.385% had been applied to calculate the Respondent's service charge liability. The same method was applied in relation to the garage costs of £1,549.26³ at a contractual rate of 3.846%. Having carried out its own calculation, the Tribunal concluded that the estimated service charge contribution demanded from the Respondent for the year ended 31 December 2009 had been correctly calculated at £891.68 in accordance with the rate applied by Peerless Properties. Mr Pele said that the same methodology had been applied in 2010 except that each of the estimated heads expenditure had been increased by 3%.

¹ see page 217 of the bundle

² see page 221 of the bundle

³ see page 224 of the bundle

17. The Respondent's primary submission was that the differing contractual rates applied in each instance to calculate the service charge liability of each lessee was unreasonable because each of the flats on the estate was largely the same in size. However, the Tribunal explained to the Respondent that it did not have jurisdiction in this application to find that the contractual rate provided for in his lease to calculate his service charge liability was unreasonable because this application was brought under section 27A of the Act and the section 19 statutory test of reasonableness could not be applied in this way. Each application made before the Tribunal was jurisdiction specific. What the Respondent was effectively seeking to do was to vary his lease terms and that could not be done in this application. For these reasons, the Respondent's submission was wrong in law.
18. The Respondent's alternative stance was to put the Applicant to proof that his service charge contributions had been calculated in accordance with the terms of his lease. That process had been explained by Mr Pele in evidence and his calculations verified by the Tribunal.
19. Accordingly, the Tribunal determined that the Respondent's estimated service charge contributions of £891.68 and £459.21 for the years ended 31 December 2009 and 30 June 2010 respectively were correct and due and payable by him. The Respondent did not contend that these sums were unreasonable and, therefore, they were allowed by the Tribunal as claimed.

Section 20C (Costs) & Fees

20. Mr Pele told the Tribunal that the Applicant had not incurred any costs in making this application save for the fees it had paid to have the application issued and heard. These had amounted to £200 in total.
21. Given that the Applicant had not incurred any costs in this matter, it was not necessary for the Tribunal to go on to consider the Respondent's section 20C application under the Act or to make any order in this regard.

22. As to the fees paid by the Applicant, the Tribunal was of the view that it had made real attempts to explain or clarify to the Respondent how his service charge liability had been calculated. His stance to withhold payment or challenge the calculation appears to have been based on a misconceived belief that the express contractual rates provided for in his lease should be varied so that each lessee would pay an equal service charge contribution which, in his view, was a fairer apportionment of the overall service charge expenditure. That proposal had been considered and rejected at an AGM. It seems, therefore, that the Applicant was obliged to bring this application not only to recover the sums in issue but also to seek confirmation as to the Respondent's service charge liability. Given that the Applicant has succeeded entirely on all of the issues, the Tribunal considered that it was just and equitable to make an order that the Respondent reimburse the Applicant the fees of £200 it had paid to have this application issued and heard.

Dated the 30 day of November 2010

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