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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property	:	**Flat 5 Bosmere Mill, Coddenham Road, Needham Market IP6 8NU.**
Applicant	:	**Mr S Pryke**
Respondent	:	**Bosmere Mill Limited**
Case Number	:	**CAM/42UE/LSC/2010/0027**
Date of Application	:	**26th February 2010**
Dates of Hearing	:	**10th May and 22nd July 2010**
Date of Decision	:	**22nd July 2010**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr M G Wilson (Chair)** **Mr Roland Thomas MRICS** **Mr Peter Tunley**
Appearances	:	**Applicant: in person, assisted by Miss Bennett** **Respondent: Mr Cattermole, Director of Bosmere Mill Limited**

DETERMINATION

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1. APPLICATION

This was an Application under Section 27A of the Landlord and Tenant Act 1985 for determination of the liability to pay, and the reasonableness of, service charges.

2. INSPECTION

The Committee inspected the communal areas of the block of which the flat formed part on both hearing dates (on the latter occasion it inspected

the pump house (access to which had not been possible on the first of the hearing dates)). The property was as described in the Application Form and in the lease contained in the hearing bundle and could shortly be described as a converted Victorian mill building of wooden construction under a tile roof. The building had been converted into eight flats. Outside there was a communal garden, parking spaces and a pump house of more recent origin.

3. THE LAW

Section 27A of the Landlord and Tenant Act 1985 reads (in part) as follows:

(1) An Application may be made to a leasehold valuation tribunal for a determination on 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.

(3) An Application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to-
  (a) the person by whom it would be payable,
  (b) the person to whom it would be payable,
  (c) the amount which would be payable,
  (d) the date at or by which it would be payable, and
  (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which-
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

4. HEARING

The hearing took place on two separate days, on 10th May and 22nd July. Before the first of those dates the Applicant had, as directed, prepared a hearing bundle. The hearing on the first date was adjourned at the conclusion of the Applicant's case. The Applicant, through Miss Bennett, explained that he had 19 detailed challenges to make to the service charge accounts for the years ended 2005, 2006, 2007, 2008 and 2009. While the substance of the challenges were locatable in the 110-page hearing bundle, the Respondent had not been made aware in advance of the hearing of the detailed challenge that he would have to meet. Thus the Tribunal had to make a decision as to whether to proceed and have the Respondent deal at his own pace with each matter or whether to adjourn and to allow the Respondent to prepare a written response. The Tribunal decided on the latter course. The Applicant's own notes were incorporated into the hearing bundle and, between the two hearing dates, the Respondent's response, and a number of accompanying documents, were added. By the final hearing date the hearing bundle ran to almost 180 pages. As both the Tribunal and the parties were, after two separate days of hearing, familiar with the bundle, it will be convenient in what follows to refer to documents without giving a detailed description of them.

The Applicant's Case

This was comprised in the documents appearing between page 49 and 54.8, being the Applicant's written statement and Miss Bennett's notes, referred to above. The first of the hearing dates was devoted entirely to an outline by Miss Bennett of Mr Pryke's challenge to the service charges. During the second of the hearing days, Miss Bennett dealt with questions from the Tribunal about Mr Pryke's statement and her "Notes". The precise nature of the challenges made by Mr Pryke are described in the Tribunal's determination appearing below and it is unnecessary to detail them here. However, it is convenient to record that Miss Bennett in her closing remarks summarised her application as designed to establish that Mr Pryke's criticisms of the Management Company were not mere "gripes" but an assertion of his right to have the Management Company comply with the law both so far as its invoices were concerned, and in respect of what the Act refers to as "qualifying works" and "qualifying long-term arrangements".

The Respondent's Case

Between the two hearing dates, Mr Cattermole on behalf of the Company was allowed to submit further written material. Its final response appeared in a letter dated 8th June 2010, and in about 40 pages of additional written material. Mr Cattermole was also authorised to include in the bundle a statement by Robert Simpson of Simpson Peto, Building Contractors. Mr Simpson did not attend the final day's hearing (although he did attend the first day) because he had been called for jury service. It is, again, more convenient to deal with Mr Cattermole's response to the various challenges by dealing with his response in the Determination that follows. However, it is, again, convenient to record here Mr Cattermole's closing remarks. He told the Tribunal that he had, through the medium of Bosmere Mill Limited, attempted to do his best by the tenants, some of whom had been in their flats since the development had been completed some years ago. He was aware, as will appear below, of various non-compliances with statute and regulation. He said that he would be implementing changes. He had faced, he said, numerous requests for information etc from the Applicant, with which he had done his best to deal – though in the end, he admitted that he had lost his patience. It remained the fact that the most recent instalments of ground rent had not been paid by the Applicant. He thought the attack made by the Applicant on Mr Simpson's good faith had been unwarranted and "out of order". Overall, he concluded, he thought the building very well run (and referred to other buildings in which he had an interest as tenant, with which Bosmere Mill compared favourably).

DETERMINATION

The Tribunal determined the 19 points identified by the Applicant as in dispute as follows:

1. Invoices issued without summary of Tenant's Rights and Obligations (for example, those at pages 60, 62 and 68 of the Hearing Bundle)

> The Respondent acknowledged that he had not complied with his obligations in this respect – an obligation arising from section 153 of the Commonhold and Leasehold Reform Act 2002 (and effective since October 2007) to provide a summary of rights and obligations on each invoice. If the summary was absent, which in this case, and in the case of every invoice, it was, the tenant was entitled to withhold payment.

The Landlord had acknowledged his failure. However, the defect could be cured by the reissue of the defective invoices. The Tribunal decided that it would be for the parties to decide whether this step would be necessary. In other words, if there was in fact a withholding of payment by the tenant (most invoices had been paid) then the landlord could decide to reissue at his own expense (see below).

For the future, the wording of the summary was easily accessible for the landlord ignorant of his obligations.

2. *Excessive Photocopying Charge*

This proposed charge for supplying documents had not actually found its way into the service charges and was, while excessive, not a matter for decision by the Tribunal.

3. *Failure to Consult over Repairs and Maintenance*

This part of the dispute was a central part of the Applicant's case. The obligation to consult is contained in Section 20ZA of the Landlord and Tenant Act 1985. The Tribunal noted that the Respondent, as he put it, "held his hands up" to this shortcoming. The Section applies, as will be seen, both to "qualifying works" and "qualifying long-term agreements".

The Section applies where the works result in a charge of more than £250 per tenant. In the absence of consultation, the charges may be restricted to that amount.

The Tribunal considered as a preliminary whether, on the evidence, the arrangement that the landlord had with Simpson Peto was an arrangement for works, or a qualifying long-term agreement. The latter are defined in the statute as agreements for over 12 months. It was not possible on the evidence to conclude that the arrangement was other than for "works" – a series of sets of (potentially) qualifying works. There was no evidence of a commitment for more than 12 months.

To the extent, then, that any works were for more than £2,000 (i.e £250 x 8 (the number of flats)) consultation was essential. If it does not take place, then the amount recoverable from each tenant may be restricted to £250. If, as was the case here, invoices

contained a number of different sets of work, those sets would need to be analysed to see whether they crossed the £250 threshold. The Tribunal's analysis of the invoices included in the bundle showed that they did not cross that threshold. The Tribunal noted that some invoices exceeded £2,000 but, to labour the point, the matter did not end there: the works needed to be, so to speak, compartmentalised (a good example could be found on page 54.28 of the Bundle).

Because the threshold referred to had not been crossed, there was no reason for the Tribunal to consider whether it would dispense with the obligation to consult (though it had no hesitation in commenting that had it been asked to do so in the case of the Simpson Peto work, it would have refused: the landlord's breach of the consultation requirement was flagrant).

4. *Insurance Quotation not referring to value of each flat insured*

This is not a requirement and this challenge the Tribunal rejected.

5. *Postage, Stationery charges excessive.*

In the accounting years 2004/2005 and 2007/2008 a total of £756 had been spent. The Tribunal agreed that these charges were not reasonable and were excessive. An appropriate amount was £100 for each of those years.

6. *No Consultation about Cleaning*

Here the Landlord had again failed to consult. If the arrangement with Mrs Simpson was a qualifying long-term arrangement, which was questionable, it did not cross the £100 per tenant threshold for the accounting period applicable to such long-term arrangements (as to which see 3. above and Rule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003) and was thus payable.

7. *Mr Simpson responsible for managing/overseeing work.*

This point has been dealt with at 3 above. In short, were the Management Company wish to continue to employ Simpson Peto, it would have to be mindful of the consultation requirements. As it was, the Management Company's use of Mr Simpson's firm when

Mr Simpson was a tenant of the building was always going to be a potential spur to critical comment

8. *Failure to send Annual Accounts*

There was nothing to suggest that any tenant other than the Applicant had not received the accounts which, the Tribunal accepted, had been produced. The Respondent agreed to provide further copies to the Applicant.

9. *"Digital Up-grade" Works*

The Applicant did not pursue the challenge to this work.

10. *Charge for Gardening*

It was agreed by the parties that this item (the landlord's responsibility) was being met by voluntary direct contribution by the remaining 7 tenants and did not in fact form part of the service charges.

11. *Charge for damage to Common Parts*

The Landlord had sought to recover these items from the tenants of the 2 flats whose sub-tenants were alleged to have caused the damage (one being the Applicant's tenant). This charge, in the absence of conclusive proof or an admission, should have been divided equally between all tenants.

12. *Service Charge, Insurance and Accounting Years differing.*

While doubtless inconvenient and confusing, it was not appropriate for the Tribunal to make any determination in this respect.

13. *Arrangement with Anglian Pumping Services*

This was another long-term arrangement about which there had been no consultation. However, until 2008/2009 the threshold had not been crossed. However in 2008/2009, it had. In this case (despite one of the Tribunal's member's expertise in this area, leading him to suggest at the hearing that the charges for earlier years appeared excessive) the Tribunal would dispense with the consultation requirement on the basis that if such simple but vital

equipment required repair, it would be axiomatic that it be done urgently. The Tribunal determined that the amount included in service charge accounts was payable. It was explained that the payments were made quarterly and the point was not pursued.

17. Choice of Carpet Colour

This point was not pursued.

18. "20C" Application

The Respondent confirmed that it did not oppose such a determination and the Tribunal made a determination that the Respondent's cost of the Application should not be recovered via the service charge.

19. Re-arrangement of Parking Spaces

The Tribunal indicated that it did not have jurisdiction to resolve this dispute.

In summary, the Applicant had made valid criticism of the landlord's approach to management. The Tribunal could not condone the Management Company's failure to comply with statute and regulation – especially as guidance to landlords was readily and freely available. While the landlord had disregarded his obligations to the tenants (had he ever properly understood them), he had done so with the intention, the Tribunal accepted, of containing and limiting management costs and expense. As the Respondent acknowledged, his approach would need to change, even though the management expenses may in consequence increase.

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GRAHAM WILSON
Chair

Date: 22nd July 2010.