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THE LEASEHOLD VALUATION TRIBUNAL

REF :LON/00AL/LSC2010/0097

AN APPLICATION UNDER SECTION 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985

Premises : 13 Halsbrook Road, Kidbrooke, London SE3 8QU

Applicant : Mr Tony Lawrence

Represented by : Applicant in person

Respondent : London Borough of Greenwich

Represented by : Mr White, Legal Officer, Mr Sandhu, Greenwich Principal Service Officer, Mr Sibley Policy and Strategy Manager

Tribunal : Mr O.E.Abebrese, BA, LLM, Barrister at Law ; Mr Ian Thompson BSC FRICS, Mr Eric Goss, Lay Member.

Hearing date : 29th April 2010

DECISION ON AN APPLICATION UNDER SECTION 27A AND SECTION 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED).

THE APPLICATION

1. This an application for a determination of liability to pay service charges made under Section 27A of the Landlord and Tenant Act 1985. The applicant made an application to the Tribunal dated 25th January 2010. The applicant seeks a determination of the liability to pay service charges for major works (window replacement) carried out during the service charge year 2005 (but invoiced in 2009) in the sum of £2,694.11) The applicant in his application alleges that the consultation procedures under Section 20 of the Act has not been complied with, and that the cost being claimed by the respondent are excessive.

DIRECTIONS

2. The Tribunal provided the parties with directions dated 11th February 2010. The terms of the direction in brief are as follows :
    - The applicant's application shall stand as his statement of case
    - By no later than 5th March 2010 the respondent to serve his statement of case and in particular to provide evidence to show how they have complied with Section 20B of the Landlord and Tenant Act 1985
    - By 26th March 2010 the applicant to serve a statement of case in response to the respondents dealing with each and every matter raised by the respondents

3. Both parties were also ordered to provide the Tribunal with copies all documents they are seeking to rely on at the hearing.

ISSUES BEFORE THE TRIBUNAL

4. The applicant in his application list the specific issues which he wishes to be determined by the Tribunal :
    - Whether Section 20B notice was sent by the respondents to the applicant in December 2003. This notice was not received by the applicant.
    - Whether the Section 20B notice sent in December 2003 in relation to works carried out in 2005 is satisfactory as the estimated works are not consistent with works carried out or the final block cost invoice.
    - Whether the cost of the works are reasonable. There has been no reduction of works not carried out. Works included in the original consultation figure have been re- charged as extras.
    - Whether shared cost representing 23% premium are reasonable and have been reasonably incurred. The respondents according to the applicant have refused to disclose specific details of the cost.
    - The leaseholders have received no benefit from the London Development Agency funding used to fund the contract.
    - Whether the respondents provided value for money regarding a further charge of 16% supervision and administration cost in view of the manner in which the contract has been administered.

APPLICANTS CASE

5. The applicant at page 12 of the bundle marked 'A' sets out his case in response to the respondent's case. The respondents claim that the five year contract commenced in 2003 and ended in 2008. The applicant is of the view that the works to the five estates were to be carried out over 3 years, by which time the funding from London Development Agency (LDA) had to be accounted for. The project area might have been expanded and the time frame extended as further funding was made available. His understanding is that the contract for works to the five estates was to be completed in 2006. The contractor was paid monthly for completed properties but invoices were not received until 2009. The applicant also refutes the suggestion that a Section 20B notice was served on him on 29th December 2003 within the 18 month period because the Section 20 notices were issued on 7th August 2002. The applicant claims that he never received the Section 20B notice. There are no correspondences to support the serving of the notices, in any event planning permission had not been applied for or obtained. The applicant also disputes that a further Schedule 3 notice was sent to him on 30th December 2003 notifying all the leaseholders that the cost had increased to £3650. The applicant maintains that the respondent did not comply with their statutory obligations under Section 20B as there were no demands for the cost of the works until March 2009. The applicant is also of the view that the Section 20B notices contained errors which originate from the contents of the Section 20 notices served in August 2002.

6. The final block invoice and estimates for the installation of the windows were different from the original invoices. The original invoices and estimates consisted of one flat that was already double glazed, communal window, provisional sum

for asbestos and 15% allowance for fluctuation. The final block did contain a 15% allowance for fluctuation built in but the cost of the works increased from the original figure. If the cost had had been based on those blocks which had already been completed this would have provided a more accurate picture of the cost. The applicant disagrees with the claim of the respondents that because it was a long term contract that the all statutory notices had to be sent out at the same time. The applicant it should be noted does not take issue with the quality of the works in respect of the windows. However, in August 2002 he did raise the issue of the cost of the windows. The windows were priced £1,000 more than quotes that he had received.

7. The applicant maintains that no request for advance payments were made to him from the first demands that were made to him was in April 2009 and at the time of the demands he was of the impression that the windows had been paid for by the London Development Agency. Furthermore once the relevant cost had been incurred the respondents delayed a further three years before sending the invoice in 2009. The works were completed in 2006.

8. The shared cost of 23% is not reasonable and the respondents he claims have not provided him an explanation as to how they derive at this figure until April 2009

RESPONDENTS CASE

9. The respondents are of the view that the five year contract commenced in 2003 and ended in 2008 and by time of the final costing from the contractor arrived, Home Ownership

were notifying leaseholders of the amount of their contributions. A Section 20B notice was served on the applicant and all the other leaseholders on 29th December 2003. The Section 20 notices were issued in 7th August 2002. A further Schedule 3 notice was served on all the other leaseholders on December 2003 informing them of the increase of cost to £3650.13. The applicant was properly served with the notices and the respondents have complied with their statutory obligations. The works project for the windows installation commenced on November 2006. The final accounts that were sent out were not that different from the estimates and the original invoice. Because the length of the contract for the works for contracts all the statutory notices had to be sent out at the same time. The amount being charged to the applicant is reasonable because it is based on a proportion of the rateable value of the estimated amount of £2694.11 and not the actual cost.

The respondents have provided details regarding the shared premium of 16.5% and do not know how the applicant has derived at a figure of 23%. The applicant was informed by Ms Bester that the cost had only increased by £173, which is not a dramatic increase. The respondents do not agree with the claims of the applicant that he did not receive any correspondence from the respondents between 2002 and 2009. The respondents have provided the Tribunal with correspondences and notices sent to the applicant between the period 2002 and 2009. The Tribunal were also provided with witness statements from Mr Hardev Sandhu, who is the Service Charges Principal Officer and is employed by Home Ownership and Mr Nicholas Sibley who is the employed by the London Borough of Greenwich as the Sustainable Development Manager.

STATUTORY PROVISIONS

10. Section 27A of the Landlord and Tenant Act 1985 deals with service charges and it states :

    (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 to whom it is payable

    (d) The date at or by which it is payable, and

    (e) The manner in which it is payable

11. The Tribunal also considered the Sections 18, 19 and 20 of the Landlord and Tenant Act 1985. Section 18 deals with the meaning of service charges and cost ; Section 19 defines limitation of service charges and meaning of reasonableness, and Section 20 deals with the consultation requirements. The Tribunal considered carefully the wording and application of Section 20B of the Act.

EVIDENCE, REPRESENTATIONS AND FINDINGS

Section 20 NOTICES

12. The Applicant in his application to the Tribunal states that the Section 20 notices was not received by him and furthermore the notice was sent two years before the work took place and it contained an estimated figure which did not relate to works carried out or the final block estimate. The applicant referred to the notices served on him dated 25th April 2002 and on 27th August 2002. The respondents were in some difficulty in identifying the notices which they were seeking to rely upon. They submitted that the notice dated 27th August 2002 is relevant even though it does not contain information regarding installation works. They also rely on the Section 20B notice served on the 29th December 2003. This notice they claim was served within the 18 month statutory limitation period. The applicant claims that he did not receive any notices after the notice served on him in August 2002 until the invoice dated 29th April 2009. In a letter to the respondents dated 29 August 2009 he notes that the reasons given to him by the respondents is 'it was a large contract and the invoices had only just been raised', if this was the case it would have been beneficial to all concerned to have broken the contract down into more manageable sections, perhaps then my concerns would have been addressed'.

13. The applicant adds : 'Even if the Section 20 notices was served I question its relevance, when far from being an indication of cost, it does not reflect my observations of my block but merely reiterates the

disputed original tender, this cannot be the intention of Section 20B legislation, or you may as well put a figure of £10,000 and as long as the final invoice is less everyone must accept your figures' The notice he concludes ' was allegedly sent over a year before planning permission was granted two years before the work was carried out and five years before the invoice was raised..... when the contractors had been paid, you were aware of the cost involved or at least the Section 20B if the invoice needs to be processed, it would in this case be particularly pertinent considering the actual invoices cost have such a dramatic differences to the original figures'

14. Section 20B states (1) 'If any of the relevant cost taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2) the tenant shall not be liable to pay so much of the service charge as reflects the cost so Incurred. Subsection 2 states' Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant cost in question were incurred, the tenant was notified in writing that those cost had been incurred and that would subsequently be required under the terms of his lease to contribute to them by the payment of the service charge'

15 The applicant relies on the wording of Section 20B and two authorities **London Borough of Islington v Lucy Shehata Abdel- Malek** and **The Lord Mayor and Citizens of the City of Westminster v Brian John Hammond and Others.** The respondents relied on the provisions of Section 18(2) of the Landlord and Tenant Act 1985. The Tribunal on the facts found on

balance that the applicant had been served with notice at his known address by the respondents. The Tribunal also found on the facts, evidence and the law that the respondents had not incurred any cost within the meaning of Section 18 of the Act and that at the time of the serving of the Section. The notices did not state whether cost had in actual fact been incurred. The Tribunal found the representations and evidence of the respondents to be muddled and confused.

In the **Westminster** case page 115 it was accepted that 'the word incurred has its ordinary natural meaning, that is to say that a cost is incurred at the time when there is an obligation to pay it. The cost was incurred when the works were complete and fell to be paid for. The tribunal accepted the evidence of the applicant in that in this instance the notice had been sent before planning permission had been granted, two years before the works were carried out and five years before the invoice was raised. On page 118 they also reject the argument that the obligation to pay is incurred at the time that the Council entered into the contract. The respondents in this case made representations that the meaning of 'incurred' should be applied to when they entered into the contract. The respondents were not able to respond to the principle in **Westminster** and the tribunal rejected their submissions. The respondents during the course of the hearing made an application for an adjournment in order for them to provide further information to the Tribunal regarding information that might have been provided to the applicant regarding the cost. The application was considered and thereafter refused by the Tribunal on the grounds that they had been provided with ample opportunity since the

commencement of proceedings to provide their evidence and in any event the applicant had raised these issues with them for several years and they had not provided him with the information which he required.

In **Gilje v Charlgrove Securities Ltd 2003 EWHC 1284 CH** and held that the purpose of the Section20 B) was to give the tenant warning of a bill for expenditure and to enable the tenant to set aside provisions to meet it. It is not sufficient to rely on estimates as these are not the same as cost incurred. For all the reasons stated above the tribunal make a finding for the applicant regarding Section 20B notice.

Whether cost reasonable

16 The applicant is not challenging the quality of the works carried out by the respondents. The applicant is of the view that the estimates and final invoice that was sent to leaseholders differed. The notices prior to the invoices he claims included one flat that was already double glazed it also included the communal window, a provisional sum for asbestos removal and 15% allowance for fluctuation. In 2002 the tenant adds that he questioned why the windows were over £1,000 more than the quotes he had received. The applicant is of the view that not all the windows were required to be replaced and that the property at 17Halsbrook was already double glazed and this should have given rise to a reduction in the price. The respondents claim that the leaseholders were being provided with value for money in accordance with the terms of the lease and this is reflected in the 'Lovell Residents Survey'. The funding received by the London Borough of

Greenwich from the South Greenwich Regeneration Agency was intended to benefit the Council in providing services which would be beneficial to all leaseholders. The funding it is submitted only benefited leaseholders because London Borough of Greenwich incurred an extra amount of cost and were not able to recharge the leaseholders for the actual cost and had to pay the difference. They maintained that they did check the windows to 13 Halsbrook and found all the windows did need to be replaced. The Tribunal noted that the applicant refers to 17 Halsbrook.

17 Section 19(1)(a) of the Landlord and Tenant Act 1985 contains the test of reasonableness. The relevant cost that shall be taken into account in determining the amount of a service charge for a period are those that are reasonably incurred. The Tribunal noted that the respondents were seeking from the applicant the sum of £2694.11. The Tribunal however found on balance that the cost had been reasonably incurred and were not persuaded by the applicant to the contrary. No evidence of over charging was brought by him or that the works were not of a reasonable standard.

Shared cost representing a 23% premium

18. The shared cost is based on the rateable value and these have been disclosed by the respondents. The shared cost is detailed in the contract. The Tribunal found after careful consideration of the shared cost that they are reasonable and that the items that have been included are not unusual or unreasonable. The Tribunal therefore did not accept the representations of the applicant that the figure of the shared cost is almost 23% which is added on to the cost of the

windows before the 16.5% of the supervision and management fees area added on.

Charge of 16.5 for management and supervision

19. The Tribunal found that in light of the size of the project undertaken by the respondents that the charges are reasonable. The charges are explained in the respondent's statement of case in relation to how the cost has been allocated between supervision, 6.5% and administration fee of 10%. The applicant does notdispute the charges but that he did not receive a good service. On balance the Tribunal noted that the respondents conducted a satisfaction survey which was favourable to the respondents.

Section 20(C) Landlord and Tenant Act 1985Application for Cost

20 The Applicant has made an application under this provision on the basis that he had no choice but to bring the s27a Application in front of the Tribunal and it would be inequitable for the service charge to bear the Respondent's costs. The Respondent's submissions on this issue were unconvincing to say the least and they were unable to take the Tribunal to the relevant clause within the lease that enables them so to charge. In any event, the Tribunal accepts the Applicant's submissions and allows the Application.

Cost of the application and hearing

21. The Tribunal also considered whether the applicant should be reimbursed by the Respondents for the cost of bringing the application to the Tribunal and the hearing. The Tribunal made an order in favour of the applicant on grounds that the applicant raised had raised the substantive issues to the respondent and they had not been properly considered by them. Furthermore at the hearing they showed a distinct lack of preparation, this was apparent in relation to the evidence which they relied on regarding Section 20B notice. The Respondents are therefore ordered to repay to the Applicant the sum of £250.00 in respect of the application and hearing fee.

Summary of Tribunal's Decision

22. The cost of £2,694.11 is a reasonable cost incurred by the Respondents in respect of the window replacement project carried out to the Applicant's property.

23 The Applicant has no liability to pay the sum of £2,694.11 or any part of it because the Respondent failed to notify the Applicant of the incurrence of this cost in accordance with s20B of the Act.

24. The Applicant's s20c Application is allowed.

25. The Respondent shall pay to the Respondent the sum of £250.00 by way of reimbursement of his hearing and application fees.

O. Abebrese

Chairman

Owusu Abebrese

Date : 14th June 2010