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REF LON 00AU/LSC/2009/0846

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985

SECTION 27A AND 20C

AND IN THE MATTER OF 96 Hazelville Road London N19 3NA

Applicants

- (1) Dr K Fehilly Flat 96A
- (2) Mr T Steer Flat 96A
- (3) Ms S Levy Flat 96B
- (4) Mr T Higham Flat 96C
- (5) Ms S Patel Flat 96D

Respondent

- (1) Assehold Limited

The Tribunal

Mr P Leighton LLB (Hons)

Mrs E Flint DMS FRICS

Date of Decision

8th April 2010

Introduction

- 1 By an application dated 20th December 2009 the Applicants applied to the Tribunal for a determination of liability to pay service charges for the period 2008/9 and 2009/10 for the property known as 96 Hazelville Road London N19 3 NA
- 2 The matters in dispute are limited to the management fees for the years 2008/9 and 2009/10 and directions were given on 5th January 2010 for the matter to be determined by way of a paper determination

The facts

- 3 The property in question is a semi detached house converted into four flats which was owned by the Respondent and managed by Eagerstates Limited the managing agents
- 4 In 2003/4 the management fee was £95.18, 2004/5 it was £99.88, 2005/6 it was £104.58 2006/7 £109.28 and 2007/8 £115.15
- 5 On 1st December 2008 the managing agents rendered a bill for the year 2008/9 in the sum of £117.50 for each flat being £100 plus VAT. This sum was paid in full by each of the Applicants
- 6 A Right to Manage company was formed on 13th February 2009 for the purpose of taking over the management of the premises. Notice was given on 29th April 2009 which was opposed by the freeholder. A decision was made by the leasehold valuation tribunal on 7th September 2009 vesting the management of the property in the RTM company as from 28th December 2009
- 7 On 1st December 2009 the managing agents rendered a further bill for £352.50 being £117.50 in respect of alleged back payment for management fees in 2008/9 and £235 being £200 plus VAT fro the year 2009/10
- 8 The Applicants have refused to pay these demands and alleged that they are either irrecoverable in the case of the year 2008/9 and/or excessive in

respect of both years. They also alleged that the arrangement between the freeholder and the managing agent was a qualifying long term agreement within the meaning of the Service Charges (Consultation Requirements)(England) Regulations 2003 and that no consultation took place in respect of this agreement

- 9 The management agreement on which the freeholder relies was entered into on 1st February 2008 for a minimum length of 11 months from that date and provided for the payment of £2000 per unit in respect of each of the flats. At the time of the demand in 2009 no explanation was given for the claim for a second payment in respect of the year 2008/9
- 10 The management agreement dated 1st February 2009 contains a clause which provides that "this agreement if not terminated will continue to be in force upon transfer of the freehold or transfer of maintenance responsibilities to any RTM company ."
- 11 In their statement of case the landlords stated that the reason for the increase by 100% from February 2008 was because of the increased amount of work which the agents were required to undertake and that previous charges had been too low. They do not provide an explanation as to why they failed to demand the full amount when they issued the demand for payment in December 2008

The Law

- 12 Under the 2003 Service Charge Regulations a qualifying long term agreement is defined as " relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant in respect of that period being more than £100". The accounting period is defined as being one year. From the relevant date (i.e. the date of the agreement). The agreement in this case is expressly stated to be for a period of 11 months and although it is capable of being renewed it is not within the terms of the regulations.

13 Under the Commonhold and Leasehold Reform Act 2002 Section 96 it is provided that upon the vesting of management functions in an RTM company that company has the right to carry out those functions of management and section 97(2) provides that the landlord is not permitted to perform any of the functions to be performed by the RTM company except with the agreement of the RTM company. The only exception related to insurance where the landlord is permitted to insure at his own expense.

The Tribunal's Decision

- 14 The Tribunal is satisfied that the agreement in question is not a qualifying long term agreement as it is expressly stated to be for a period less than 12 months. Accordingly the regulations do not apply and there is no requirement for consultation
- 15 The Tribunal is not however, persuaded that the freeholder is entitled to make a second demand for payment in respect of the year 2008/9. The original demand was paid in full and the liability is therefore discharged. No explanation is tendered as to why the landlord should be entitled to make a further demand and no explanation was given to the freeholders at the time. Accordingly the Tribunal will disallow the claim for £117.50 in respect of the year 2008/9
- 16 As for the claim for £200plus VAT for the year 2009./10the Tribunal is of the opinion that Sections 96 and 97 of the 2002 Act apply and that the landlord is only entitled to claim a management fee for the period prior to the taking over of the property by the RTM on 28th December 2008
- 17 The Tribunal is of the opinion that a management fee of £200 per annum is not in principle unreasonable having regard to the duties placed upon managing agents by virtue of the 2002 Act and other legislation. However, since the fee can only relate to the period prior to the RTM company taking over the property the only sum recoverable in respect of the year 2009/10 is for a period of 27 days at the rate of £200 per annum. The figure amounts to £14.80 and the Tribunal allows a management fee for

this period in the sum of £15 plus VAT. It should also be noted that the relevant rate of VAT at the time when the demand was issued was 15% and not 17.5% as claimed.

- 18 Therefore the Tribunal will allow a sum of £15 plus VAT being £17.25 in respect of the management fee for the year 2009/10
- 19 It does not appear that the freeholder is entitled to add the costs of proceedings before the LVT to the service charge, but in any event the Tribunal will make an order under Section 20C that it should not do so as it does not consider that it would be just and equitable to do so having regard to the fact that the Applicants have largely made out their case. The application fee of £100 should be reimbursed to the Applicants.

Chairman Peter Leighton

Date 8th April 2010

