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LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AX/LSC/2010/0174

Landlord &Tenant Act 1985 (as amended) Section 27A, and Section 20C

Property:	**42B Richmond Road, Kingston upon Thames, KT2 5EE**
Applicants:	**Mr Brian Mark and Mrs Gwenda Mark (Freeholders)**
Represented by:	**Mrs Gwenda Mark**
Respondent:	**Ms Bernadette Vallely (Leaseholder)**
Represented by:	**In Person**
Also Present:	**Mr A. Hay**
Hearing:	**15th and 16th June 2010**

Members of the Tribunal:
Mr L. W. G. Robson LLB(Hons) (Chairman)
Mr B. Collins BSc FRICS
Ms J. Dalal

Preliminary

1. The Applicant freeholder seeks a determination under Section 27A of the Landlord & Tenant Act 1985 (as amended) of the reasonableness and liability to pay service charges under a lease dated 1st February 2002 (the Lease) relating to two items of major works billed on 3rd April 2007, and 17th June 2008. The case was referred to the Tribunal by the Kingston upon Thames County Court by order of District Judge Sturdy dated 4th March 2010 under case number 9QZ3526650. Extracts of Sections 20C and Section 27A are attached to this decision as Appendix 1.

Inspection

2. The Tribunal inspected on the morning of the hearing in the company of the Applicant, Mrs Mark, the Respondent, and Mr Hay. The building comprises firstly a pair of linked two Victorian properties, with commercial premises on the ground floor and residential flats on the first and attic floors. 42B is the more substantial flat, apparently being part of the original design, while the other flat is more recent, apparently built on the top of the commercial premises below. These two properties have a common entrance gate (with an inserted door) and a wide covered passageway, open at the rear, between them for

access to the upper and rear residential premises. Secondly there is a new residential development of 4 flats at the rear behind a security gate, which is just to the rear of the entrances to the flats to the front. The passageway had been renovated quite recently. We saw a replacement entrance door with new locks and ironmongery, leading from Richmond Road and a door mat well behind the front entrance door which we were informed was new. We were also shown some pipework at high level to one side of the passageway. The services to the rear development were newly ducted just above ground level in the passageway, with the electricity services to the two front properties passing through new ACCO ducts, which also drained the passageway. The tiles in the passageway had been in place some time, although some patches appeared new and did not match the existing colour very closely. Some tiles looked crazed and were losing their top surfaces. A number of new electric lights lit the passageway. The entrance gate had a new metal letter box with 6 slots. A new bin store has been created leading from the passageway. We noted that although the passageway and associated items had been renovated, the roof of No 42B had slipped slates, and that the decoration at high level was in need of attention.

Hearing

3. Pursuant to Pre Trial Directions given on 6th April 2010 the case was heard on 15th June 2010. There were no formal witness statements. The parties had made written submissions before the hearing, and made further oral submissions at the hearing. From the Directions the Tribunal considered that the matters in dispute were:

   a) Invoice dated 3rd April 2007; Removal of asbestos from the common parts (£3,042)

   b) Invoice 17th June 2007; redecoration of the common parts (£357.14), installation of drain (£90.71), repair of broken tiles and provision of mat (£83.57), cost of letter box (£89.30)

   From the Respondent's statement of case, after supply of relevant documents, further matters identified were:

   c) Validity of Section 20 Notices

   d) Management of work (£50)

   The Tribunal decided to deal with the Section 20 Notice for the works first of all in its decision, because if the Notice procedure was invalid, then the individual items in dispute would become largely irrelevant

4. Prior to the hearing, the Applicant conceded that the notices concerned with the works relating to item 3a) above did not comply with Section 20 of the Act, and purported to accept the Respondent's payment of £250 made on 28th April 2007 as full settlement in respect of those works. At the hearing Mrs Mark submitted that there were in fact two major works contracts in issue, and thus the Respondent was still required to pay a minimum of a further sum of £250 in accordance with the Service Charges (Consultation etc) Regulations (England) 2003 (the 2003 Regulations).

Section 20 Notice Procedure

5. The Applicant submitted that the Section 20 procedure for the invoice dated 17th June 2007 had been followed, citing letters written on 12th December 2006, 15th February 2006, , 23rd June 2006, 20th October 2006, 12th December 2006 3rd April 2007 and 10th May 2007.

6. The Respondent submitted that the letters cited as comprising the Notice of Intention did not identify the proposed contractor. There was no summary of the leaseholder's observations received in response to the Notice of Intention. No further notice was served until after the work was completed. The estimates and the letter dated 10th May 2007 were received on 19th July 2007. The Applicants did not reveal their relationship with the contractor Boldfort Ltd, which was not at arm's length. The Applicants did not write to the Respondent outlining the reasons for selecting the chosen contractor. The estimate received on 19th July 2007 was for £2,000 excluding VAT, but the final sum demanded was £2,875 excluding VAT. The first bill had been sent on 3rd April 2007. Since then 7 bills had been submitted for different amounts.

7. In response to questions, the parties agreed that the development work had commenced in 2005 and ended in 2007. Mrs Mark submitted that the final redecoration work was done in July 2007. The Respondent submitted that all work had been done by 1st June 2007, as there had been a Press opening that day. She considered that the work relating to the 3rd April 2007 invoice had started in November 2006.

8. The Tribunal asked Mrs Mark to compare the terms of her letters put forward in connection with the Section 20 Notice with the procedures set out in Part 2 of the 2003 Regulations. While the letter of 15th February 2006 described the work proposed, and the reasons for doing the work, there was no express invitation to make observations. There was no invitation to offer alternative contractors. The proposed costs were vague. The letter of 12th December 2006 put forward more firm proposals to the Respondent, but the Tribunal could find no letter, or group of letters, which came close to fulfilling the "Paragraph b) statement" required pursuant to Section 20 prior to commencement of the works still in dispute. Mrs Mark stated that the Applicants had tried to consult, and the Respondent had even sent in observations, but she readily admitted that she had been unaware of the nature of the 2003 Regulations until the Respondent had pointed them out in her letter of 28th April 2007. Her professionals had not advised her on this point, and she had not taken legal advice. She submitted that the letter of 10th May 2007 sent by recorded delivery had not been accepted by the Respondent and was returned by the Post Office. It had been delivered by hand on 19th July 2007. Nevertheless, the Tribunal considered that the letter of 10th May 2007 was inadequate to comply with the Section 20 consultation procedure.

9. The Tribunal decided that the Applicants had not complied with the Section 20 procedure relating to the invoice dated 17th June 2007. Even by putting all the correspondence together, there were major deficiencies in the statutory consultation process required by Parliament. The works were not emergency works where a failure to consult might be excusable due to urgency of the works. Nor were the defects minor procedural items, which caused no actual

prejudice to the Respondent. The Tribunal considered the possibility of a Section 20Za application, but there seemed no utility in such an application in the light of the evidence. The deficiencies in the procedure had apparently operated to the Respondent's detriment, by depriving her of the right to be consulted, nominate a contractor, to make observations prior to work commencing, and to see clear and competitive alternative estimates.

10. The Tribunal further considered whether there were two major works contracts, attracting a further £250 contribution from the Respondent, as submitted by Mrs Marks, or merely one. The Tribunal found the extract from the contractor's estimate (at page 66 of the bundle) highly persuasive in showing that the work had been conceived and done as one contract. Therefore we decided that no further payment was legally due in respect of the works in issue.

Specific items noted at paragraph 3b) and d) above

11. The parties made a number of submissions relating to the individual items of charge. The Tribunal decided not to deal with these in detail, in the light of its decision at paragraphs 9 and 10 above, save to note that the Applicants produced very few invoices, although directed to do so, and no properly prepared service charge accounts. There was no independent surveyor supervising the works. The Applicants referred to inspections by the mortgagee's surveyor, but provided no details. We also saw no details of the instructions to the mortgagee's surveyor, which might have been of assistance. Neither party had any previous knowledge of the RICS Service Charge Residential Management Code, a copy of which was shown to them by the Chairman. Further, the work done had appeared to be largely for the benefit of the development at the rear. Even on inspection the Tribunal noted that works proposed in correspondence which would particularly benefit the Respondent's flat, had not been done. Nevertheless, some benefit had accrued to the Respondent from the works, but the statutory sum of £250 already paid by the Respondent appeared sufficient in the circumstances.

12. The Tribunal noted that the Lease service charge provisions have now become obsolete, due to the presence of the additional new flats in the development. The parties might usefully instruct an independent surveyor to advise and recalculate the appropriate service charge percentages for the Lease which appear to have become rather more complex due to this development. In the absence of agreement of the percentages, the parties can make an application to the Tribunal to vary the terms of the Lease, and any other lease in the building. Now that the Tribunal's ruling has been made, hopefully the parties can move forward constructively, using the RICS Code, when dealing with other service charge matters.

Section 20C Application

13. As this case originated as a County Court claim, the question of limiting costs payable as part of the service charge under Section 20C was noted in the Directions. Mrs Mark submitted that the Lease at clause (a)(b)(iv) gave the landlord power to add the costs of this application to the service charge. While the interpretation of this somewhat vague clause is doubtful, the Tribunal

decided in any event to exercise its discretion under Section 20C to limit the landlord's costs of this application which are regarded as relevant costs to nil. The Respondent has been entirely successful in this case, and had apparently no alternative but to defend these proceedings. The Applicants appear not to have sought or obtained relevant legal advice prior to commencing the development and their claim. The Respondent should not be obliged to pay any part of their costs.

Signed: .....
Chairman
Dated: ....6th July 2010

APPENDIX 1

Section 20C Landlord & Tenant Act 1985

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances."

Section 27A(1) Landlord & Tenant Act 1985

"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"