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Ref: LON/00BE/LSC/2010/0153

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER ss 27 OF THE LANDLORD AND TENANT ACT 1985

Applicant: London Borough of Southwark

Represented by: Miss E Sorbjan and Miss E Bennett (Legal Officers)

Respondent: Mr and Mrs M Karim

Represented by: In person

Premises: 114 Sedgmoor Place, London SE5 7SE

Hearing date: 7 and 8 June 2010

Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr J C Avery FRICS
Mr A D Ring

Date of Tribunal's decision: 23 June 2010

LON/00BE/LSC/2010/0153

114 SEDGMOOR PLACE, LONDON SE5 7SE

BACKGROUND

1. This was an application under s 27A(1) for determination of liability to pay service charges for the years 2008-2009 and 2009-2010. The case was referred from the Lambeth County Court by order of District Judge Zimmels dated 25 February 2010. The original claim was for £2,746.07 but the amount currently involved pursuant to the final account is over £3,000. The LVT held a Pre Trial Review on 24 March 2010 at which the Respondent and representatives of the Applicant London Borough of Southwark both attended. In summary, the argument of the Respondent Lessee, Mr and Mrs Karim, was that under the terms of their Lease dated 10 May 1993, for a term of 125 years from that date at a ground rent of £10 p.a. (of which they had taken an assignment on 14 February 2006) they were not liable for those items of the service charge which concerned "the Estate" as in general terms the Lease did not make them liable for estate based fees. The case was set down for hearing on 7 and 8 June 2010 with an inspection at 10am on 7 June 2010.

THE INSPECTION

2. At the inspection the following were present and met in front of the subject property of flats 112-114 and 68-70 in order to view the location: Mr M Karim (Lessee), Miss E Sorbjan and Miss E Bennett (Legal Officers of the Borough's Home Ownership Unit). Besides the subject flat, No 114, there was 1 other flat in the particular charging unit described by the Borough as the "block" comprising 112 and 114 (although this "block" is not a term used in the Lease). Both these flats faced onto Sedgmoor Place and were accessed from the street on the ground floor. In physical terms there were also 2 other flats in the group of 4 in the "building", Nos 68-70 on the upper level, which were reached by an adjacent staircase leading to upper walkways above the Respondent's property. Miss Sorbjan told us that these four flats in this "building" had always been regarded as part of the Estate, called the Havil Street Estate, which comprised 2 parts – the North and South sections of the Estate – and that these two sections were situated either side of a separate property known as

the Ancient Pilgrims Foundation. She led us into the centre of the Estate, where a grassed area surrounded by pathways was found, and we were able to look into the private gardens enjoyed by Nos 112 and 114, which were fenced off and provided with a separate gate as an exit onto the adjacent paths (although the gate of No 114 was locked). She also led us to the far ends of the Estate where, at the Northern end we were able to inspect, affixed to a walkway wall, a long standing map of the "Havil Street Estate" (which showed all the buildings on the Estate, including the building containing the Respondent's flat) and at the Southern end (on the other side of the Ancient Pilgrims' Foundation) to see the similar buildings to those at the Northern end and also a further block of houses/maisonettes (however of different design to 112-114) facing onto Sedgmoor Place in the same way as the Respondent's building.

THE HEARING

3. At the hearing the Respondent Lessee, Mr and Mrs Karim, was not represented and clearly had some difficulty in understanding the unfamiliar proceedings, particularly in terms of the content of the dispute.

THE CASE FOR THE APPLICANT LANDLORD

4. Miss Sorbjan submitted that the London Borough of Southwark has issued proceedings for unpaid service charges in the Lambeth County Court on 14 December 2009, and had attached a copy of the Claim Form and Particulars of Claim to her Statement of Case. The Respondent had filed a Defence dated 18 January 2010 and a copy of this document was also attached. She said that by clause 2(3)(a) of the Lease the Respondent Lessee had covenanted to pay the Service Charges set out in the Third Schedule in the manner there set out, and under clause 4(2) of the Lease the Landlord (the London Borough of Southwark) was under an obligation to repair the structure and exterior of the flat and the building, while the Respondent had covenanted to contribute a proportion of the costs of this by way of clause 7 of the Third Schedule. Moreover, by clause 7(2) of the Third Schedule the original Lessee had specifically agreed to contribute to the Landlord's costs of or incidental to providing certain services specified in the Lease for the flat which were:

(i) central heating

(ii) hot water supply

(iii) caretaking, lighting and cleaning of the common areas

(iv) maintenance of estate roads and paths

(v) estate lighting

(vi) unitemised repairs.

She added that pursuant to clause 2(1) of the Third Schedule the Landlord was obliged to provide a reasonable estimate of the amount which will be payable by the Lessee for the year, and by clause 2(2) the Lessee had covenanted to pay the estimate in advance and in equal amounts on the selected quarter days (1 April, 1 July, 1 October and 1 January). By clause 7(7) of that Schedule the Respondent had covenanted to pay an administrative charge of 10% of the total cost of the service charges of the year as a management charge. By clause 6(2) of the Schedule the Landlord was entitled to adopt any reasonable method of ascertaining the Lessee's proportion of the service charges and insurance payable as well as of different items of costs and expenses. They had in fact adopted a "bed weighting" method as agreed with the Home Owners' Council, a lessees' representative body, assigning 4 units with an additional unit for each bedroom so that the Respondent's property had a rating of 8, although other methods were used for charging insurance premiums and ground rent.

5. Miss Sorbjan said that the Landlord Borough Council accepted that there were problems with the Leases, in particular with the Respondent's Lease in the present case, and they had therefore applied to the LVT for a variation which would in due course address the defects. The variation application was not before the Tribunal at the present hearing. The Tribunal noted that there were obvious typographical and clerical errors (such as that the building in which the subject flat was located was described in the Lease as "68-114" Sedgmoor Place, whereas it was in fact comprised of 68-70 (on the upper levels) and 112-114 (on the ground and first floor level) but had not further knowledge of the variations sought which in any case would not apply to the present dispute. Certain service charge items included in the Leases of Nos 112 and 70 Sedgmoor Place (lift, entryphone system, cleaning of windows of common areas, maintenance of common television aerial or landline, refuse disposal and

maintenance of gardens or landscaped areas) had been struck out in the copy Lease before them and the alteration initialled by the original Lessee, Mary Theresa Goreham and Thomas Goreham, as had the definition of the Estate, although text apparently excluding liability for the estate charges had been left in, stating "but should the flat not form part of a Council estate this clause and any subsequent reference in this Lease to the 'estate' shall have no force or effect". Nevertheless the Borough had recharged to the Lessee certain costs in relation to the Estate, on the basis that the building had always formed part of the Estate (and was so shown on the map on one of the walkways which she had shown us on the inspection that morning); that the Land Registry plan showed the building within the red edged Estate; that the Third Schedule sub paragraph 7 (6) referred to the "maintenance and management of the building and the Estate but not the maintenance of any other building comprised in the Estate" and that this had to be read in conjunction with the list of specific services which the original Lessee had accepted and initialled even though there were longer lists of such specific services in the Leases of Nos 112 and 70 (No 68 had no Lease as it was tenanted); that the original title number at the Land Registry, SGL 427212, the title number of the old Havil Street Estate, appeared on the Respondent's Counterpart Lease of which Mr and Mrs Karim had taken their assignment, the new title number for that building (which appeared on the Karims' Leasehold Title documents) was TGL 84544 – it appeared that sometime between 1993 and 1995 the use of the original Estate Title number had been abandoned. Miss Sorbjan also relied on the use by the Respondent of the services: he had used the centralised supply of central heating and hot water through connection to the Havil Street boiler house; the Respondent also had access to the Estate, which was all connected by walkways and balconies, through their back gate; as a result she submitted that if the Lease was not sufficient to confer liability there was an argument that payment was due for the use of the Estate on a *quantum meruit,* on the basis that the Respondent had had the benefit of the services.

6. Miss Sorbjan said that she relied on the various covenants to pay which were found throughout the Lease. There was a specific provision for the payment of a 10% management charge if no managing agent was employed, and on the fact that there was liberty to the Landlord to calculate the proportionate charge for each Lessee in any reasonable manner, so that insurance premiums were, for example, fixed by the

broker on the basis of the size of a property and index linked. Premiums were competitively tendered and a quotation provided for each size of flat so that, for example, every 4 bed flat or maisonette paid the same premium. She went on to explain that when service charge demands were sent a "Frequently Asked Questions" full colour type of leaflet was sent out so that Lessees could read explanations as to how their service charges were calculated and what was included. She identified "the Estate" as all the area edged pink on the Land Registry plan, although the Borough's Service Charge Accountant, Mr G Dhudia, (who had attended to assist her) said that in later Leases this was not the "Estate" actually used by his department for charging but the whole of the North and South areas together were "the Estate". She added that there were changes ongoing in the way that service charges were dealt with by the Landlord as, for example, they had recently employed a consultant who had devised a new method of producing the annual estimates: however the Borough had decided not to use this method (which had included items across the Estate which some buildings did not have, such as lifts) as they had not considered that it made the Lessees' estimates any clearer than before. She added that several breakdowns had been sent to the Respondent when these had been requested although it had not always been possible to meet all his requests, eg when he asked for actual expenditure in respect of a service charge year just ended with a few days of the year end since it was the Borough's practice to prepare actual accounts during the ensuing 6 months as good practice required. They had nevertheless attempted to explain to Mr Karim that if the estimate had charged too much he would receive a credit and if too little a further sum would be levied.

THE CASE FOR THE RESPONDENT LESSEE

7. Mr Karim had prepared a helpful Scott Schedule in which he listed all the disputed items in the service charges for which he had been billed and sued for non payment in the County Court, in which claim the Landlord had also included interest at 8% and costs. He pointed to his Defence in the County Court which indicated that the building in which he resided was not a part of the Estate known as 68-114 in his Lease as that building had been taken out of the Estate in his Lease. He submitted that the terms of the Lease must be decisive. He was not clear how the insurance premium was calculated, but believed that he could obtain cheaper quotations, having

obtained quotations from 5 companies for the same cover (although he had brought none to the hearing). He had requested details of the insurance and had received nothing, although he knew that he was entitled to those, also to the certificate and receipt for the last premium. He did not understand how the calculation of the heating and hot water charge was made. He added that his heating did not work in any case and, despite his reporting it, it had not been repaired. He did not understand the "Care and Upkeep" item in the service charge account, especially as the Council cleaners refused to clean the forecourt in front of his property as they said it was not part of the Estate and submitted that grounds maintenance was specifically excluded from his liability under his Lease. He did not understand the unitemised repairs and Estate lighting charges. He also found the 10% levy on all the service charge costs for administration "high and unreasonable". Moreover he was not pleased with the standard of administration as he had made many telephone calls and written four recorded delivery letters in an attempt to secure an explanation of the service charges. As a result he did not wish to pay any charges which the Council might levy through the service charge for the LVT proceedings. He was also unhappy with the Estimate for 2009-2010 as it included charges for items which he did not even have in his building, such as Lifts. These discrepancies appeared to be due to the new methods suggested by the consultant whose advice had not in the end been adopted as it was thought to be even more confusing than existing systems and Miss Sobjan said that the "erroneous" charges would not be applied in practice.

8. Miss Sorbjan explained that the supply of full central heating and hot water attracted a factor of 4.52 in the Borough's calculation of the proportion of the heating costs allocated to the Respondent's flat (as if they had received only central heating or only hot water this would have been a lesser figure). This was then multiplied by 8 to reflect the bed weighting factor of 4 bedrooms in the subject property. As the total bed weighting factor for the Havil Street boiler house to which the Respondent Lessee's property was connected was 4,289 the charge for the subject property was 8 x 4.52 or 36/4289. This covered the gas, maintenance of the boiler house, repairs and overheads. She explained that "Care and Upkeep" was basically cleaning, and said that a letter had been sent to Mr Karim about the failure to clean his forecourt. However she said that this letter was incorrect in that it stated that that area was "private" and that he should clean it himself but that this was wrong as it was part of

the Estate. She said that she would take this matter up with the relevant personnel as she would about the repair of the radiator in his flat which was affecting his supply of heating. She added that electricity and lighting charges were billed from the actual costs from the previous year(s) and that the estimates were based on average costs over previous years' costs. She said that the Landlord had the obligation to insure the building so that a Lessee was not able to opt out of that and to arrange his own buildings insurance, but that the charges levied were competitively tendered by the broker. She said she would see that copies of the insurance documents were sent to the Respondent.

DECISION

8. **Interpretation of the Lease**. The Tribunal finds that the confusion apparent in the Leases goes beyond the obvious errors (such as the description of the building) in the Respondent's Lease. The Leases of Nos 112 and 70, which the Tribunal requested, each have other errors although unlike that of the Respondent they do not exclude liability to pay for Estate costs. Moreover the Tribunal does not find that the service charge demands and estimates, and the information provided in these documents, is at all transparent or easily understood, and is not surprised that Lessees are confused; for example "Care and Upkeep" is an unnecessarily complex term for "Cleaning". It appears to the Tribunal that, far from there being "typographical" or "clerical" errors to be corrected in the Respondent's Lease, there was a deliberate attempt to exclude liability for Estate charges (perhaps because the subject property had its own garden) when the Lease was first granted but that this was not, however, entirely successfully done. It is clear that the building in which the subject property is located is meant to be described as Nos 68 and 70 and 112 and 114, and that the exclusionary words on the first page, stating that any later reference to the estate should be ignored, were meant to cover all general estate costs but NOT, it seems, those estate costs which were retained (and renumbered) on the second page following the definition of the services "more particularly set out hereunder" and as set out in paragraph 4 above; and that those deleted from that list (which appears in full in the Leases of 70 and 112) were meant to be so deleted. Moreover the manner in which the Respondent is billed bears no relation to (a) the building (b) the Estate as the Borough has apparently created a "block" (not a word which appears in the Lease)

comprising Nos 112 and 114 which they regard as the chargeable unit for service charge purposes.

9. **The Respondent's liability.** The Tribunal therefore considers that the service charge heads for 2008-2009 should be dealt with in respect of the Respondent as follows:

(i) Central Heating and Hot Water. The Respondent uses these and they are included in the specific list of liability for which the First Lessees accepted the charge. Miss Sorbjan accepted that £77.12 should come off the total billed for this item, leaving a sum of £2,175.25 to be paid.

(ii) Caretaking, lighting and cleaning of common areas. "Common areas" are not defined anywhere in the Lease. Mr Karim does his own cleaning in the only common area in relation to his building as the Borough cleaners refuse to clean his forecourt. He is billed via a block charge unknown to his Lease (whatever liability 112 might have for the Estate) as his property and 112 are billed together as a "block" and there is no other area to clean in relation to his building. There should therefore be no charge to his service charge account for this item and £197 should be deducted from his service charges.

(iii) Maintenance of estate roads and paths. The Tribunal cannot identify this item in the service charge demands and accounts and "Grounds Maintenance" (which is said to be "Gardening" is deleted from the Respondent's Lease). The Borough presumably accepts that the charge of £53.49 is incorrect as they have applied for this to be changed in the variation application. £53.49 should therefore be deducted from the Respondent's service charges.

(iv) Estate Lighting. This item appears to belong with (ii) above, but is separately charged in the March 2009 account at £59.32. The Respondent has contracted in to pay for this item, so there is liability and the Respondent should pay £59.32.

(v) Unitemised repairs. This item appears to be charged to the Respondent's "block" instead of in the manner of other service charge items across the Estate. However this

should be paid on the same basis as the heating charge as half the total liability for 112 and 114, ie £118.75 and this amount of £118.75 should be paid.

This leaves (a) insurance and (b) the management charge.

Insurance. The Respondent says that this amount of £320.42 in 2008-2009 is "too high" but has provided no alternative quotations or other evidence. £320.42 is therefore payable and £320.42 should be paid.

Management. The Lease provides that 10% of the total service charge expenditure shall be paid where no managing agent is employed. However this should not be the £300.14 claimed as the total amount now to be paid by the Respondent for 2008-2009 is £2673.37 of which 10% is £267.37, leaving a grand total of £2941.11 and this amount is due and should be paid.

10. 2009-2010. The Tribunal has only the estimates for this year, which Miss Sorbjan has admitted are unreliable as they include items not appropriate for the Respondent eg besides lifts (none in his building) also TV aerial and entryphone. The Tribunal therefore determines that the Respondent should be liable to pay by way of interim charges for the 4 quarters of 2009-2010 the same figure as for the actual charges for 2008-2009 and should expect a balancing charge, in credit or debit, when the actuals are known at the time that the accounts are ready for that year.

11. The Tribunal determines accordingly.

Chairman.....

Date..... 23.6.2010