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Ref: LON/00BK/LSC/2010/0036

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER ss 27 and 20ZA OF THE LANDLORD AND TENANT ACT 1985

Applicant: 45-47 Leinster Square Management Company

Represented by: Mr S Hazel of Dale & Dale, Solicitors

Respondents: Various Lessees

Represented by: Mr Nein (Flat 5)
Mr Kim (Flat 15
Mrs Mohritz (Flat 22)

Premises: 45-47 Leinster Square, London W2 4PU

Hearing date: 3 June 2010

Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr J Power FRICS FCIArb

Date of Tribunal's decision: 22 July 2010

LON/00BK/LSC/2010/0036

45-47 LEINSTER SQUARE, LONDON W2 4PU

BACKGROUND

1. This was an application by the Management Company of the property under s 27A of the Landlord and Tenant Act 1985 dated 5 January 2010 for determination of liability to pay service charges for major works yet to be carried out, and a further application under s 20ZA of the same Act for dispensation of all or any of the consultation requirements contained in s 20 of that Act dated 24 May 2010. The subject property is a block of three terraced buildings converted into 22 flats. The Leases, demising a term of 125 years from 25 March 2005, contain identical provisions relating to the obligations of the Landlord. The Landlord is in creditors' voluntary liquidation (from 18 December 2007).

2. On 22 February 2010 the LVT issued its usual Directions in respect of the s 27A application, following a Pre Trial Review on 16 February 2010, setting that application down for hearing on 3 June 2010.

THE HEARING

3. At the hearing the Applicant Management Company was represented by Mr S Hazel of Dale & Dale, Solicitors. The only Lessee represented was Mr C Francisco of Flat 13 (whose father Mr M Francisco had attended the PTR on his behalf) although all other Lessees had notice of the proceedings.

THE CASE FOR THE APPLICANT

4. Mr Hazel referred to the Applicant Management Company's Statement of Case. The Landlord was obliged by the terms of the Lease, clause 9, to carry out repairs and maintenance and was entitled to be repaid by each Lessee according to the terms of the individual Lease: clause 2(a) defined the percentage each Lessee should pay. Clauses 2(b) and (c) defined the lift contributions to be made by those Lessees above the first floor and those relating to the common parts for those living at ground floor and basement level. The definition of the services to be provided by the

Landlord were to be found in clause 6.1 of the Lease. Each Lessee's details were attached to the original application. He said that it was generally agreed that the works the subject of the application were needed, and the fact that they were needed so soon after the commencement of the Leases would have been the subject of a claim against the developers if they had still been in business, which unfortunately they were not.

5. The works concerned the roofs. It had become apparent in the summer of 2008 that they leaked in wet weather and repairs were needed. The Applicant had taken professional advice and arranged temporary repairs, and had consulted a firm of chartered surveyors, Cardoe Martin, to survey the roof and recommend an appropriate method of repair. They advised that the roofs had defects caused by inadequate pitches, poor detailing of roof coverings and gutterings and poor quality workmanship. More repairs were required to the centre and right hand roofs than to the left which had steeper pitches and deeper gutters. Flat roofs at lower levels also required localised repairs as they were in poor condition. Two options were proposed, one more ambitious than the other, in summary requiring more moderate repairs to the two worst roofs under option 2, but the same repairs to the flat roofs. There was not a great difference in price between the two options, due to the cost of scaffolding and other preliminary items, and the Applicant preferred the first, more ambitious and expensive, option. Dry rot was found in the right hand building which could spread if not treated and cause structural damage, and it had been advised that if option 2 was pursued the central roof would be likely still to leak. Temporary repairs to the right hand roof had not been successful and although a temporary roof had been erected there had been flooding travelling down the building.

6. Mr Hazel said that the specification had been properly tendered by 4 contractors, Maguire, the cheapest (at £88,343.00) had since gone into liquidation so that the Applicant wanted to instruct the next cheapest, GWS (£99,417.00). However, this figure had been revised in 2009 in discussion between Cardoe Martin and GWS to take account of dry rot and remedy to damage to a flat and common parts to £113,920.32. The total costs of the project were increased to £149, 119.85 to include professional fees (planning supervision fee of 1.5% , the contract administration fee of 10%, agent's coordination fee of £400) and VAT at 17.5%. (A

4% discount had been included in this revised figure) The items costed had been included in the original specification, although the dry rot treatment advised had not specifically been included and had had to be added because of the extent of the dry rot found. It was proposed to use the JCT Minor Works Building Control contract, which controlled the costs by use of the priced specification, and included a retention sum. The Applicant had written to all the Lessees, through its managing agent Barley Chambers on 7 May 2009. There was no formally recognised Tenants Association. There had been a further letter dealing with the estimates on 19 August 2009 and attaching a report from the Applicant's surveyor, which invited the Lessees to inspect the specification and the contractors' responses. None of the contractors had any connection with the Applicant or the Landlord. A letter confirming the Applicant's intention to proceed to contract with GWS was sent on 23 October 2009, also summarised the observations received during the consultation period, the only written one being from a Mr Pena (Flat 19). There had also been informal meetings with the Lessees on 27 May 2009 and 11 March 2010.

7. Mr Hazel said that the Applicant sought a declaration that the costs would be recoverable under s 27A. The Lessees agreed that the roof works were necessary, 15 out of the 22 had already paid a contribution, 7 had not, 1 had a receiver and another had sent a cheque to be cashed when the contractor was appointed, and others were in the process of paying except 1 who was selling.

8. With regard to the s 20ZA application, Mr Hazel said that there was a difference of opinion as to how the dry rot should be dealt with. The application concerned the dry rot and reinstatement redecoration. The contractors had been invited to allow a provisional sum of £12,000 as the full extent of the work was not known in advance. Maguire, the original contractor , had queried whether the allowance was enough as it might be necessary to remove a kitchen in Flat 22 where the dry rot had been found and to remove the work tops, and that the dry rot might have spread to the flat beneath (Flat 18) and to the stairwell. There were breakdowns of the sums already required for structural timber repair, dry rot chemical treatment, stripping out to access the dry rot, and reinstatement decoration, to which additional cost of £12,055 was added for damp proofing, kitchen removal and reinstatement and a provisional allowance for any replacement that might be necessary. He submitted

that it was accepted by virtually all the Lessees that the roof needed urgent repair. A temporary roof was in place. The issue was the consultation over the extra works which had been anticipated in the specification but the extent of which had not been realised. The professional advice was that the dry rot should be dealt with at the same time as the roof. The difference between the original specification price and that which would probably now be incurred was a maximum of £19,250 + VAT, as it might not be necessary to do all the anticipated works so that the actual figure might be less. Undertaking a further consultation would incur further delay and expenses.

9. Mr Hazel then called Mr Andrew Owen, MRICS, the surveyor from Cardoe Martin, who had conducted the survey. He confirmed the long term leaks which he had found needed the work advised. He said that the buildings were of mid 19th century stucco work on brick, with typical windows and shallow pitched slate roofs. There was a parapet party wall which projected through the roof. There was a central valley gutter and a central ridge draining to each end. There were concealed gutters with down pipes concealed front and rear. He said there was only dry rot in Flat 22 at present. Two of the three roofs were badly detailed, with a shallow pitch and gutters. The roof construction was generally poor. They could not sensibly be repaired and two really needed rebuilding. He added that the original £12,000 was intended to deal with the known dry rot (concealed by finishes). Flat 22 was under the worst roof and he might have to remove the kitchens in both Flats 22 and 18, although he hoped not to have to do both. Nevertheless he needed to have the money in place in case it was necessary to remove both. A temporary kitchen would be provided when the kitchen(s) were removed. He did not want to leave the dry rot in place to dry out naturally as there might be structural timbers affected which could not be seen, and he did not want to leave potentially unsafe timbers in place untreated. It was possible that the dry rot could live off the damp on the walls.

10. On behalf of the Lessees Mr M Kim (Flat 15), Mr Nein (Flat 5) and Mrs K Mohritz (Flat 22) had some questions to ask of Mr Owen. In particular they wished to know whether any assessment had been made of the mushrooms in Flat 22 (as plaster boarding had been put up in front of this outbreak). Mr Owen said that part of the sum for chemical treatment would be for this purpose although he could not be sure of whether it would be needed in that location. They also wanted reconfirmation of how

the £12,000 works broke down, to which Mr Owen responded that the notional split was £3,000 for repairs, £2,000 for stripping out, £3,000 for chemical treatment and £4,000 for reinstatement, with about £7,000 assigned to Flat 22 and £6,000 for Flat 18. Mr Nein was concerned that no one had looked at the lower flats, where there had been significant flooding, as 5 flats had had to be reinstated. Mr Owen responded that he had not been asked to inspect any of the lower flats, the budget would not meet redecoration to all 22 flats but he would be able to cut out any bad timbers in damaged joists and to bolt on new wood, using injections of a specialist product, to reinstate carpets and tiling where necessary and to deal with the worst affected wall.

11. Questioned by the Tribunal Mr Owen said that he knew GWS which was a long established roofing contractor, although a small firm. He did not consider that GWS was charging high rates, and remuneration was to be based on bona fide contractors' rates of 10-15% mark up. He would be supplying drawings for them to work from and would be trying to harmonise the pitch of the roofs in the adjacent buildings without compromising the parapet. He said as there was dry rot in 45, 46 and 47 should be included in the works. He said while it was feasible to do the roof first and the dry rot later there were disadvantages in that approach as while the roof was off there would never be a better time to get to some of the timbers. Moreover the dry rot was still active and could infect new timbers, so there would be some degree of risk, and it would not necessarily be cheaper. Mr Kim interjected that it might physically not be possible to do the dry rot after the roof as there might not be enough money left, and in any case this was the Landlord's decision as to how to proceed. There were ways in which money could be saved such as doing some work in alternative materials but the planning authority might not agree as the property was a listed building.

FINAL SUBMISSIONS

12. Mr Hazel summarised the two applications. He said that in relation to the s 27A application the costs should not be capped at £250 per flat because the consultations did not reveal any major differences of opinion. No other contractors had been proposed or desired. He asked for a determination that the works could be undertaken and the cost recovered through the service charges. The Lessees were

satisfied that the works should be done and if any further dry rot was discovered it would be possible for the contract manager to vary the contract. The Applicant sought certainty to include any additional dry rot found once the works were begun if any such dry rot were found in connection with the roof. With regard to the s 20ZA application he requested the LVT to exercise its discretion as it was "reasonable to do so" in accordance with the legislation. He said that no Lessee had sought further information at the specification stage or when Maguire had quoted. GWS' quotation had included Maguires and a "little bit more". Even if the Applicant had re-consulted (incurring delay and expense) he doubted whether any further result would be achieved but that delay and expense, bearing in mind the temporary roof had to be maintained in place until the works could be begun. Of course if the Lessees had objected all along he appreciated that the Applicant would have had to go to the LVT earlier.

DECISION

13. We told the parties orally that we were minded to dispense with further consultation and would give them our written reasons as soon as possible.

14. We noted that the original works had been estimated at £12,000 for probable works in No 45, of which a breakdown had been provided in the papers in the file, plus 10% fees and 17.5% VAT. Once it became clear that the works would extend into Nos 46 and 47 the Applicant had sought a s 20ZA dispensation from further consultation while seeking an extra £25,000, and a declaration that the costs would be reasonably incurred within the meaning of s 27A. The Tribunal was concerned that it was rather generous to approve an extra £20-25,000 without more clarity as to the costs. The Tribunal is of a view that Mr Owen should get some fairly firm prices from sub-contractors so as to encourage efficiency.

15. Accordingly the LVT hereby grants dispensation to the Applicant under s 20ZA of the Act and in lieu of carrying out a further consultation in the future that may be required over and above that now believed to be necessary. This dispensation is limited to a maximum additional £15,000 which the LVT assesses on the following basis:

Damp proofing	£2,000
Kitchen refit	£4,000
Kitchen worktops	£1,000
Contingency	£5,000
Fees & VAT	£3,000
	£15,000

16. The Tribunal determines accordingly that the sums proposed for the major works will be reasonably incurred for the purposes of s 27A.

Chairman.....

Date 21.7.2010