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MAN/00CX/LSC/2010/0021

Residential Property Tribunal Service

Decision by the Leasehold Valuation Tribunal in respect of Croft House, 2 Croft Court, Menston, LS29 6NA

Landlord & Tenant Act 1985 - Section 27(A) and 20(C)

First Applicant:	Michael Oakes
Second Applicant:	Kevin Terrence Mitchell
Third Applicant:	Angela Timme
Respondent:	Town & Country Properties (Wharfedale) Ltd. per Mr M. Hanson
Date of Hearing:	9/7/2010
Date of Decision:	10/7/2010.
Members of Tribunal:	Mr A. M. Baker, LL.B. (Chair) Mr P. Livesey, FRICS Mrs C. M. Hackett, JP

Inspection and Interests Held

1. The Tribunal inspected Croft House and its environs prior to the hearing both externally and as to the common parts, internally. The Tribunal also inspected internally Flat 1, being the only second floor flat in Croft House it being in the ownership of the Second Applicant. The parties agreed that the three Applicants held essentially identical 999-year leases at an annual ground rent of £14 with an annual service charge being payable.

2. Croft House is a formerly substantial stone built single residence built circa 1900 and now converted, pre the creation of individual leases, into 12 units to include units added onto the original structure. Many units, if not all, are held on a buy-to-let basis, 4 being retained personally by the Hanson family. Croft House is located in a very convenient and well serviced location near to shops and facilities in a sought after area and it enjoys a fairly substantial garden in well kept condition. The internal communal areas have recently been redecorated to a good standard and the building at large appears to be in good repair although the parties agree that significant works to the roof will be needed in the short to medium term and Flat 1 continues to suffer damp and water ingress due to problems in that regard.

The Hearing

3. The hearing was held at Phoenix House, Bradford and although both sides lodged papers very late and outside the timescales required in the directions issued on 12/5/2010, the issues between them were well crystallized and will be dealt with hereafter in turn. Only the service accounts for years 1/12/2008 – 30/11/2009 and 1/12/2009 – 30/11/2010 are at issue between the parties.

4. **Communal Cleaning** - Having seen the produced invoices, Mr Oakes, acting as spokesman for all the Applicants, accepted that now the contractors used by the Respondent had been changed and were being paid at a more acceptable hourly rate, this head of claim would not be pursued.

5. **Window Cleaning** - Mr Oakes submitted that the provision of window cleaning by the Respondent is outside the range of service works permitted under Part A of the Third Schedule of the leases, was not agreed to by all of the tenants (either formally or informally) and therefore was not chargeable. Mr Hanson claimed that the contractor had the ability to clean inaccessible windows not available to individuals and he had informally gained the concurrence of the majority of the tenants to do the work which was carried out. The Tribunal determined that whilst Mr Hanson's actions were both logical and probably cost effective, if they were not unanimously agreed, they could not be imposed on all the tenants to override the lease's terms. As such, £240 p.a. for each of the two service years, should be discounted (£40 per 2 months per annum). If Mr Hanson wished to continue the facility as with others that appear hereafter, it would have to be accounted for to those content to enjoy it, outside the ordinary service charge mechanism.

6. **Gardening** - Mr Oakes submitted that the claim was for work carried out by the Respondent's own internal staff (as was much of the work charged to the service accounts at large) and was for excessive hours spent (especially in the winter months) further, it was charged out at an excessive hourly rate as reflected by the sub-contracted rate now in force. The Tribunal found that the hours spent, bearing in mind the extent of the gardens, flower beds and foliage, was reasonable for the area involved and allowed for the significant one-off tasks carried out in the winter months. However, the charged out rate was patently excessive in light of the current rates being charged and therefore in 2009 there would be a £62.50 re-crediting and in 2010, £262.50. The Tribunal also felt that the lack of transparency in the Respondent's invoices, obscured the reality involved and did itself no favours when in fact outside sub-contractors were being used. Mr Hanson was so recommended to adjust his practises in this regard henceforth and to utilise fuller work descriptions in his accounts at large.

7. **General Maintenance** - Complaints made about disrepair to a bin store and entrance hall handle were withdrawn by Mr Oakes and he accepted that the raised issue of a doorstop was de minimis. He complained at the rate of charge made for changing external light bulbs and sensors, having lately seen invoices produced

therefor. Mr Hanson explained such included the time spent to acquire the materials and to carry out associated electrical work and the Tribunal so found that the charges raised were fair and reasonable.

8. **Roof Maintenance** - Mr Oakes submitted that 3 invoices for such work carried out primarily to the roof of Flat 1 between 5/09 and 4/10 were in respect of the same work and cumulatively totalled in excess of £3,000 (the limit for triggering a Section 20 consultation procedure on this site – 12 x £250) and so the excess above such figure should be discounted, especially as the need to return at all indicated a poor standard of work had been applied without the use of specialised roofing contractors. The Tribunal determined that one of the four subject invoices was for non-roofing work and that the other three were, as Mr Hanson claimed, for separate problems that arose in the vicinity of the Flat 1 roof. Accordingly, Section 20 would not have been triggered. The Tribunal also accepted that the Respondent had used a specialised sub-contractor for part of the work but the lack of documentary transparency previously referred to, had not helped matters for anyone. No discount was applicable.

9. **Decorating External Windows/joinery thereto** - Whilst the Applicants accepted that the lease permitted the Respondent to paint external woodwork, it was submitted that it was equally clear that window repair and replacement is the responsibility of the tenants and not the Respondent (relying on almost identical wording as interpreted in the Kenilworth Court Coventry Ltd. MRAP case) and as such, even if the majority of the tenants were happy for the Respondent to carry out such work due to bulk buying discounts and easy payment arrangements offered, such could not be passed for general contribution via the service charge without documented unanimity but should have been accounted for separately. Mr Hanson claims to have relied on oral legal advice that the work was so permitted and that it was logical in context to maintain a consistent external appearance of Croft House. Whilst the Tribunal were sympathetic to the Respondent's motivation and lack of bad faith, it interpreted Part B of the Third Schedule to the leases in a way akin to that claimed by Mr Oakes and whilst it determined that one of the challenged invoices of £243 was for legitimate work, there should be discounted for 2009, invoices of £1,720.40, £296.98 and £917.70 – a total of £2,933.08. Similarly, the estimated £2,000 for 2010 should be discounted also.

10. **Decorating** - The Applicants claimed that 4 stage payment invoices for common parts redecoration in March/April 2010 were in fact part of the same job and the Section 20 procedure should have applied thereto so as to discount the excess over £3,000, i.e. £1,785.77 in 2010. Mr Hanson confessed that he was unaware of the Section 20 procedure and although frustrated thereby, readily acknowledged his failure to comply with it. There was no retrospective application made under Section 20za by Mr Hanson, but the Tribunal's strong view is that even if there had been such, it would not have succeeded, as the work had already been completed, no external tender had been obtained (but rather the work had apparently been carried out by the Respondent's own staff) and in the Tribunal's view, the figures charged for

the work was of such level that the Applicants had almost certainly suffered significant prejudice by the Respondent's failure to comply with the requirements. As such, the Tribunal determined such discount of £1785.77 should so apply in 2010.

11. **Light/heat/power** - Having studied the invoices supplied, Mr Oakes withdrew a claim in respect of this head when told that a landlord was not obliged to seek out the very cheapest supplier if his choice made was reasonable. All however, agreed that the allocation of expenses relative to Unit 12, was ludicrous but that such was outside the Tribunal's remit.

12. **Reserve/sinking fund** - The Applicants submitted that the levying of an annual sum was not permitted under the lease and should be discounted despite the logic of such collection to mitigate large future expenditure. In addition, the Respondent had produced no discreet accounts for sums received, expended and how utilised, to establish transparency, especially as the Respondent admitted that in part, it had been used to smooth out peaks and troughs in service account levels rather than being saved for major one-off expenditure. Mr Oakes relied in this regard on the decision of SRAP in Old Sarum Properties Ltd. Mr Hanson claimed that the monies collected were held in a ring-fenced interest accruing account and he had never before been asked to produce such an account, but would readily do so henceforth. With a five figure expenditure looming in respect of the roof, the accumulation of funds to help pay for it was logical and such mode of collection had been started in 2006, before Mr Oakes bought his property. There had been no interim objection by the Second or Third Applicants who had previously acquiesced in its payment hitherto in years outside this action. The Tribunal therefore determined that in the case of the First Applicant, since he acknowledged having seen past accounts including the service charge prior to his purchase of his unit, caveat emptor applied and since there was no suggestion of inappropriate user of the sums collected, but rather a beneficial use in which the First Applicant had shared, he was now effectively estopped from objecting thereto. In the non-binding Old Sarum Properties case, the landlord was seeking to unilaterally impose such a charge for the first time, unlike here. As for the Second and Third Applicants, since they had accepted the charge without complaint in 2006 and 2007, they too were now estopped from successfully objecting for similar reasons. There will therefore be no discount given.

13. **Management Fees/charge** - Mr Oakes claimed that the Respondent was only entitled to 10% of the service contributions collected by the landlord as commission but that other sums had been claimed inappropriately. Indeed, it was claimed that a separate charge was being made by the landlord on which 10% was added to the fee. Despite the Tribunal searching through the papers produced to it, it found no evidence of same and the Applicants were mistaken therein and also in their contention that 10% was being charged on ground rents collected, on income from HKH and on bank charges (they were not being collected and quite properly so). However, in the light of the findings of the above generally, the appropriate management fee as charged, has to be adjusted for each relevant year as below:

14. On close examination during its deliberations, the Tribunal was disconcerted to note that the figures appearing in the Scott Schedule at Appendix 3 of the Applicant's bundle of 6/7/2010, do not accord with those in the service charge figures produced at page 95 of the Applicant's first bundle. As a result, it is on the latter that the Tribunal intends to rely and in like manner, use whole pounds only.

Summary of Findings

15. In light of the above, the following gross discounts to the gross issued service charges should be applied.

	2009	2010
Window cleaning	£240	£240
Gardening	£62	£262
External joinery	£2,933	£2,000
Decorating	-	£1,786
Management Fee	£323	£429
TOTAL	**£3,558**	**£4,717**

These figures equate to a rebate being due to each of the Applicants in 2009 of £296 and in 2010 of £393. Since the Tribunal determines the strict legal position only and certain of the Applicants will have in fact have benefited from certain of the expenditure for which they were not so strictly liable, it is of course up to them if they wish to fully enforce reimbursement in context.

16. In their applications, the Applicants sought a costs order pursuant to paragraph 20(C) to the effect that the Respondent should not seek to recover his costs in respect of this application from further service charge accounts. The Tribunal determines that such order is appropriate in context and so orders.

A. M. Baker
Chair

Date: 15 / 7 **/2010**