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HM Courts
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Service

LEASEHOLD VALUATION TRIBUNAL

Case no : CAM/33UF/LSC/2012/0016

Property : **Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk**

Application : For determination of liability to pay and reasonableness of service charges for the year 2010–2011 [LTA 1985, s.27A]

Applicants : London Land Securities Limited (freeholder), of 70 Tudor Road, Hampton, Middlesex TW12 2NF

Mr R K Sharma & Mr S Sharma (leaseholders), 70 Tudor Road, Hampton, Middlesex TW12 2NF

Respondents : All other registered leaseholders

DECISION

Handed down 18th June 2012

Tribunal : G K Sinclair, J R Humphrys FRICS & G F Smith MRCIS FAAV REV

Hearing date : Monday 14th May 2012, at the tribunal offices, Great Shelford

Introduction

1. By this application the Applicants seek a determination by the tribunal that the sums actually incurred by the freeholder in the year 2010–2011 were reasonably incurred and payable by the leaseholders as a whole.
2. The odd feature of the application is that it is brought not only by the freeholder, London Land Securities Ltd, but also by Mr Ravinder K Sharma and his son, Mr Sonal Sharma, as leaseholders. London Land Securities Ltd is a company registered in England & Wales and of which members of the Sharma family are the shareholders and directors. The registered office of the company is their family home at 70 Tudor Road, Hampton, Middlesex. This, and the tribunal's decision which follows, require some understanding of the background to this dispute.
3. In 1999 the current freeholder acquired Trafalgar Court at auction. A former hotel, it was in the process of conversion into 32 flats when the developers ran out of money. By then 11 flats had been sold and there were 13 others, but work to convert a wing on the ground floor into 8 further flats was then, and still is, barely started. In fact matters have since got worse with the removal of the roof and external walls of the ground floor ballroom, leaving that part of the premises exposed to the elements.
4. In 2001, on the application of the 11 leaseholders, the tribunal appointed a Receiver & Manager. He lasted barely a year. After a short hiatus an application was made to

appoint another. This was granted and periodically renewed. Further applications were made to the tribunal, in the course of which the freeholder granted leases of all the other completed flats – a few to members of the Sharma family and the rest, at the nominal premium of £1.00 (one pound), to persons whose address appears on each lease and at the Land Registry only as 70 Tudor Road, Hampton, Middlesex. There are therefore three categories of leaseholder : those original leaseholders who paid market value (or their successors in title), members of the Sharma family, and those leaseholders who are bare trustees for or nominees of the freeholder.

5. During the time that Mr Robert Wells, the second Receiver & Manager, was managing the property there was considerable antagonism between the freeholder and himself. This was not helped by allegations of favouritism on his part towards the “independent leaseholders” in opposition to the Sharma family, mishandling of monies loaned by the freeholder to enable major works to start while funds from two or three flats were held up by probate or bankruptcy, and an alleged lack of competence in the handling of the major works authorised by the tribunal. The work ground to a halt, the contractor was dismissed, and (save for some insurance repairs) no further work has taken place since.
6. Quite what regular service charges were levied and paid (and by whom) was unclear, and with Mr Wells having difficulties in obtaining the release of funds from the freeholder some monies collected for that purpose may have been applied to normal service charge items such as insurance and electricity. Other monies were used by the Receiver & Manager for purposes which were not legitimate under the lease, eg for rehousing tenants after the fire authority ordered the closure on safety grounds of one wing of the building – despite this cost being included within the insurance cover in force at the time.
7. Mr Wells resigned (or ceased working) in 2009 and, when a third proposed manager was not regarded by the tribunal as sufficiently competent to handle such complex problems as this property involved, the management order was discharged and control returned to the freeholder from about October 2009.
8. Having regained control the freeholder focussed its efforts on two issues :
 - a. Obtaining a fresh specification and authorisation for the cost of finishing the major works which had been abandoned; and
 - b. Reconstructing and seeking to establish precisely what normal service charges were incurred and recoverable (as opposed to the major works, for which funds had been collected separately) during Mr Wells’ regime.
9. To that end a complicated and all-embracing application was made to the tribunal , which also included requests for dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 and for determination of the service charges incurred by London Land Securities Ltd from its resumption of control in October 2009 until the end of that financial year in June 2010, and of what could reasonably be levied in advance for the year 2010–2011.
10. At a pre-trial review held in June 2011 it was agreed that in the interests of enabling a start to be made to essential roofing and other external works the major works aspect would be dealt with as a priority and the “past service charges” dealt with separately and

later. It was agreed that consultation had taken place so the application under section 20ZA was unnecessary.

11. On Friday 12th August 2011 a hearing took place on the issue of the major works. With some minor amendments and omissions the tribunal approved the specification and directed that funds collected should be placed in a separate Trafalgar Court Major Works trustee account. The decision dated 17th August, as later amended by a Certificate of Correction dated 29th August 2011, authorised the collection for the major works in advance of the net amount £528 153.42. Such amount was to be apportioned as set out in each lease.
12. Past service charges, including those incurred by the freeholder since October 2009, were dealt with at a three-day hearing starting on Monday 24th October 2011. By then the financial year 2010–2011 had long finished and, although no final approved accounts had yet been prepared by the freeholder's accountant, draft accounts were available and – the tribunal was informed – the finalised accounts should not really differ. Insofar as that year was concerned the tribunal therefore dealt with the year not as sums payable in advance as a fair estimate but as sums actually incurred during that period. The tribunal's decision on the years 2004–2011 was handed down on 19th January 2012 and was dispatched to the parties on 25th January 2012. The tribunal's findings in respect of the year 2010–2011 appear at paragraphs 74 to 77 inclusive.
13. By letter dated 13th February 2012 Mr Sonal Sharma, one of the Respondent leaseholders (purporting to act also for other unnamed leaseholders), applied for permission to appeal against the tribunal's decision dated 19th January 2011. In its refusal of permission the tribunal stated, at paragraph 1 :

Contrary to what is asserted under point 1, the freeholder's original application dated 28th February 2011 (received by the tribunal office on 3rd March 2011) for determination of the reasonableness and payability of service charges included, as a charge payable in a future year, the year "2011". In all directions orders issued subsequently by the tribunal in connection with this application the period in question was described as "the years 2004–2011" (as above) and no such point was taken, either then or at the hearing when evidence was given and submissions made concerning the service charge year 2010–2011 (which had in fact expired long before the hearing date).

This application and hearing

14. On 2nd February 2012 this present application was received at the tribunal office. Despite the instructions given on the application form it was accompanied by a large amount of documentation which the tribunal office was expected to copy and serve on other parties. The application and accompanying documents sought blithely to adduce evidence proving the freeholder's expenditure both for normal items and also in respect of the pending major works contract. A "Statement of actual expenditure for insuring and maintaining the common parts and for external and internal major works to recommending contractor stage" for the period July 2010 to June 2011 was produced.
15. At the hearing Mr Ravinder Sharma and Mr Sonal Sharma, with occasional assistance

from Mrs N Sharma, represented the Applicants. Mr Stephen Tearle and Mr Alan Roper were the principal spokesmen for the independent leaseholders present – the effective Respondents. The fact that Messrs Sharma were appearing as leaseholders as well as on behalf of the freeholder company, suggesting that both freeholder and leaseholders are united in opposition to a small “awkward squad”, has to be understood in the context explained above, viz that the other non-attending leaseholders were mere nominees or ciphers of the freeholder, with no real personal financial stake or obligation whatever.

16. Mr Sonal Sharma also confirmed that, following refusal of his application for permission to appeal, he had not renewed that application to the Upper Tribunal (Lands Chamber). He therefore accepted that he was bound by the tribunal's decision dated 19th January 2012.
17. Having made a determination concerning the service charge period 2010–2011 on the basis of the evidence put before it in October 2011 the tribunal cannot revisit the same ground. It notes that, with one minor alteration (for petrol and repair materials for trimmer and cleaning) the first part of the service charge statement put before it is exactly the same as that considered at the previous hearing. Then only the freeholder's management fees had been challenged. The first, at £3 600, had been halved by the tribunal and the second, at £1 500, had been disallowed entirely. These findings must stand. The tribunal has no power (save in case of accidental error or omission) to do otherwise.
18. The second part of the statement of account relied upon deals with the major works. Again, it largely includes figures concerning professional fees which the tribunal had approved as part of the application concerning the major works in its decision dated 17th August 2011. The only fresh items were :
 - a. A charge of £45.83 incurred by Reynolds Jury Architecture in attending the site on 16th November 2010
 - b. A charge of £297.00 in connection with attendance at a meeting with strategic director Steve Blatch at the offices of North Norfolk District Council in Cromer
 - c. A management fee of £2 500 levied by London Land Securities Ltd in connection with the major works.
19. The first item was minor and not objected to. The second, as initially set out in writing, appeared to be a fee for the Sharmas' attendance at the meeting in Cromer. This was the subject of some annoyance by the independent leaseholders, some of whom had also attended the meeting at their own expense. However, calm was restored when Mr Sharma explained that this was only the cost of the architect's attendance. No further objection was made.
20. The same could not be said for the claimed management fee. Mr Pooley, one of the independent leaseholders and a builder, enquired how – given their past incompetence, and with an architect and quantity surveyor involved – London Land Securities Ltd was going to earn 5% of the project cost. After some comment from the tribunal that this might best be looked at after work had actually been done and time sheets were available, Mr Sharma agreed that this item could be withdrawn and looked at later.

21. The tribunal emphasised that the fact that some expenditure on professional fees for the major works had actually been incurred should not be regarded by the freeholder as justification for re-invoicing costs which had already been approved once as major works costs recoverable in advance. There should be no double counting.

Findings

22. Insofar as the normal service charge costs incurred during 2010–2011 are concerned the tribunal dealt with these fully at its hearing in October 2011 and decision handed down on 19th January 2012. It cannot revisit those findings, and this part of the application was misconceived. Had London Land Securities Ltd sought legal advice this would no doubt have been identified and avoided.
23. As for the major works items incurred, save for two items for expenses incurred by the architect engaged by the freeholder and the claim in respect of the freeholder's fees for managing the major works contract (withdrawn at the hearing) the costs have already been dealt with in the tribunal's decision dated 17th August 2011. They should not be billed for again. The two items for expenses mentioned above were agreed after they had been properly explained and they are allowed.

18th June 2012

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal