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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Case Reference: CHI/29UH/LSC/2012/0110

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Applicant: Mr. D and Mrs Y. Ebbatson
And Mrs B Moffatt

Respondent: Golding Homes Limited

Property: Hawley Court, London Road, Maidstone, Kent ME16 8QJ

Date of Hearing 8th November 2012

Appearances
Applicant

Mr D and Mrs Y Ebbatson

Respondent

Ms M Eniolu , Solicitor
Ms A Chapman
Mr J Horey
Mr T Hackman

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Mr. N. I. Robinson FRICS
Mr P. A. Gammon MBE BA

DECISION

INTRODUCTION

1. This is an application by Mr and Mrs Ebbatson the owners of the leasehold interest in 22 Hawley Court, London road, Maidstone, Kent ME16 8QJ pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985. Golding Homes Limited are the freehold owners of Hawley Court. The Applicants seek to challenge the cost of works undertaken to replace the original flat roof with a new pitched roof system. Mrs Barbara Moffat had been joined at her request as an Applicant. Application to be joined was also received from a Mr Lindsell which fell to be determined at the start of the hearing.

INSPECTION

2. The Tribunal inspected the exterior of Hawley Court on the morning of the hearing. The building appeared to be a purpose built multi storey block of flats probably built in the 1970's. The Tribunal viewed the new pitched roof from the ground. It appeared new external guttering had been fitted and what appeared to be a new fascia around the top of the building. Only a limited view was available as there was no access to the roof.

THE LAW

3. The law in respect of this application can be found in sections 27A and 19 of the Landlord and Tenant Act 1985 as set out below:

Section 27A Liability to pay service charges: jurisdiction.

(1)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.

(2)Subsection (1) applies whether or not any payment has been made.

(3)An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,

(b)the person to whom it would be payable,

(c)the amount which would be payable,

(d)the date at or by which it would be payable, and

(e)the manner in which it would be payable.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5)But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or

(b)on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

19 Limitation of service charges: reasonableness.

(1)Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a)only to the extent that they are reasonably incurred, and

(b)where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2)Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

HEARING

4. At the beginning of the hearing the Tribunal confirmed that they had read all of the papers filed in this matter. The Respondents as a preliminary matter objected to the joining of Mrs Moffat and also Mr Lindsell.
5. Mr Lindsell did not attend nor had he filed any papers in respect of the application save for returning the form asking to be joined as an Applicant. In light of his non attendance theTribunal did not join him in this application.
6. In respect of Mrs Moffat the Respondents sought to rely upon the fact that they had issued proceedings in the County Court. It was accepted by the Respondents that as yet they had not had entered Judgement in their favour although they suggested this was due to an administrative error. The Tribunal had previously joined Mrs Moffat and given no judgement had been entered against her the Tribunal left her joined as an Applicant although it was noted she did not attend the hearing nor had filed any papers in the matter save her request to be joined.
7. The Applicants were looking to rely upon, in support of their application, the fact that ,on their evidence, details of the roof works were not disclosed during the purchase of the leasehold interest by Mrs Ebbatson . The Applicants in their evidence were relying upon this non disclosure as grounds for not having to contribute to the cost as information should have been provided and if it was Mrs Ebbatson may have viewed the purchase differently.
8. The Tribunal indicated at the outset that whilst having sympathy an argument of this type did not fall within the Tribunal's jurisdiction for determining the payability and reasonableness of the sums claimed from them now. The Tribunal recommended that the Applicants may wish to take independent legal advice upon this aspect.
9. The Applicants relied upon their statement dated 11th September 2012.
10. The Applicants contended that they did not understand why the Respondents had not simply looked to undertake a repair to the flat roof rather than going to the expense of looking to replace this with a pitched roof. The Applicants accepted that all of the relevant consultation notices had been served and whilst they had not formally replied to these they had raised their concerns at the regular "Leaseholders Forum" meetings which the Respondent held from time to time for its leaseholders. The Applicants contended they had done nothing further as they had been reassured that supposedly the Respondent was looking into their concerns.

11. Further the Applicants conceded that the price charged for a pitched roof was reasonable and they did not look to challenge this.
12. The Applicants contended that it was not reasonable to replace a flat roof with such an expensive option. There are thousands of flat roofs and the repair of these is possible. The roof itself was in the Applicants submission neglected. Some of the problems were due to poor workmanship on previous repairs and this and the problems with the parapet walls could have been repaired by a contractor at a fraction of the costs now being charged.
13. It was the submission of the Applicants that they should only have to contribute an amount which they would have had to pay if the roof had been repaired and not replaced. The Applicants contend that they personally have benefitted little and whilst they accepted that the lease allowed this replacement they felt given there were only a small number of long leaseholders in the block they had little say.
14. The Applicants accepted that the demand itself was properly served upon them and had been accompanied by a summary of rights and obligations.
15. The Applicants also took issue with the fact that the Respondents had cancelled the collection of a "sinking fund" following a consultation. They felt that this was unreasonable and had exacerbated the problems relating to the roof.
16. The Respondents relied in support of their rebuttal of the application on the bundle of documents and statements filed in support. In particular the respondents relied upon Mr Hackman who gave evidence as the Asset Management Surveyor for the Respondent. He confirmed that he had an Honours Degree in Building Surveying amongst other relevant training and qualification
17. He explained that the roof was originally of a complicated construction given it was used as a drying area accessible to the flat residents with various upstands for the drying lines, honeycomb walls and lift motor room. The parapet walls were also in a dangerous condition. He accepted that previous repairs had been undertaken including previously installing insulation which had become saturated.
18. It was his opinion that a flat roof had a life span of about 20 years. A pitched roof would be likely to last about 40 to 50 years and even then the structure which was made of galvanised steel would not need to be replaced. In his opinion over the lifecycle the costs of the pitched roof were a better option and he relied upon a costing exhibited to his statement.
19. He understood that the question of repair had quickly been discounted after further reports showed the extent of the problems. Various quotes had been obtained in June 2008 (copies of which were annexed to his statement). These showed that the nett cost of a flat roof was about £148,000 compared with various costings for a pitched roof varying from about £98,000 to £195,000. We were told these were all of different specifications and all different from the final specification which included new external guttering, a steel fascia round the outside to support the parapet walls and digital television.Taking into account the costs involved and the various reports and letters from Prime Building Consultants Ltd (included in the Respondents bundle), in his opinion the roof needed total replacement . A repair would not last any time and the roof was now beyond its useful life.
20. With regards to the sinking fund Mr Hackman explained that the respondents were not under an obligation to maintain one. Each leaseholder had been contributing £88 per year. A consultation exercise was undertaken seeking the views of leaseholders. Responses were limited (as detailed in the documents submitted) and it appeared no appetite from

leaseholders to continue. As a result the sinking fund was ended in 2010. Even if it had continued there would still have been a considerable shortfall in respect of the costs now incurred.

21. The solicitor for the Respondent sought to rely upon a number of Tribunal decisions and also the decision in Freeholders of 69 Marina v. Oram and Ghoorun [2011]EWCA Civ 1258. It was submitted that the Applicants admitted that the amount claimed was reasonable and that the lease allowed recovery of these costs. The issue was whether it was reasonable for the Respondent to have replaced the flat roof with a pitched roof rather than undertaking a repair or replacement of the pitched roof which had existed. In her submission on the evidence the replacement with a pitched roof was reasonable having regards to the costs over future years and the cost of replacing the flat roof with a similar roof.

SECTION 20C

22. The Applicants contended that they had to make an application to challenge whether the change of type of roof was necessary. They were of course anxious to keep the costs down. The Applicants accepted that Mr Horey had tried to help but they did not feel that all their questions had been answered. Further the Respondents had been late by one day in serving their statement of case and had continued to send documents up to and including their letter of 1st November 2012.
23. The Respondents contended that they were allowed to recover the costs under clause 2(n) of the Applicants lease as a service charge expense. It was submitted on their behalf that they have dealt with questions and explained matters but the Applicants were not prepared to accept and they had had no choice but to respond to these proceedings. As a result the costs should be recovered as a service charge expense.

DECSION

24. This is an unfortunate case. As the Tribunal highlighted at the outset the question as to whether the Applicants at the time of their purchase should have received different information or advice is not a matter upon which the Tribunal has jurisdiction. The Tribunal must determine the matter having regard to the law set out above.
25. The Applicants accept that if the Tribunal determines that it was reasonable for the Respondent to replace the flat roof with a pitched roof the costs claimed are reasonable and recoverable under the terms of their lease and the demand previously issued will be payable. The Applicants specifically accepted that a valid demand had been issued and that the Respondents had undertaken a valid consultation exercise.
26. The Tribunal heard details of the exercise which the Respondents undertook to determine whether or not the roof should be repaired or replaced. It was clear from all the evidence that replacement of the flat roof was reasonable and required in the Tribunals determination given the problems that existed including water leaks into flats immediately below the roof surface, the detailing to the roof structure itself and the age of the roof covering.
27. The Tribunal heard evidence from Mr Hackman as to the considerations given to the replacement and choice of type. A clear methodology of the process was given. The Tribunal reminded itself that it is not necessary for the Respondent to choose the cheapest

option but the option chosen must be reasonable in all the circumstances. The Respondents had clearly assessed the costs over the length of the two roof types and also the initial replacement costs in reaching this conclusion. This is a decision for the Respondent to take. In the Tribunals decision they were entitled having regard to the evidence they presented to the Tribunal to determine that replacement of the roof with a new pitched roof was reasonable.

28. The Applicants also relied upon the Respondents ending of the sinking fund as further evidence that this was unreasonable. In the Tribunals determination this is not relevant. There is no requirement on the Respondent to provide a sinking fund (although they can under the lease). They clearly consulted on the ending of this arrangement which was a prudent step to take and made an informed decision in ending the same.
29. It follows that in the Tribunal's judgement the sums claimed in respect of the replacement roof by demand dated 27th July 2011 is reasonable and payable by the Applicants to the Respondents.
30. Given that the Applicants have not been successful the Tribunal declines to make an Order pursuant to section 20C although this Tribunal makes no finding as to the payability or reasonableness of any costs which the Respondent may claim.

David R. Whitney LLB (Hons)

Lawyer Chair

30th November 2012