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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00BJ/LSC/2012/0033
Premises:	49 CICADA ROAD WANDSWORTH LONDON SW18 2NN
Applicant(s):	(1) MISS ANNA HUMPHREYS (Flat 49B) (2) MR RICHARD CLAYSON (Flat 49A)
Representative:	
Respondent(s):	THE LONDON BOROUGH OF WANDSWORTH
Representative:	
Date of Receipt of Application	9th January 2012
Date of Directions	11th January 2012
Date of Paper Determination	1st May 2012
Appearance for Applicant(s):	
Appearance for Respondent(s):	
Leasehold Valuation Tribunal:	Mr S. Shaw LLB (Hons) MCI Arb
Date of Decision:	4th May 2012

DECISION

Introduction

1. This case involves an application made by Miss Anna Humphreys and Mr Richard Clayson ("the Applicants") who are the leasehold owners respectively of Flats 49B and 49A Cicada Road, Wandsworth, London SW18 2NN ("the Property"). The Respondent to the application is the London Borough of Wandsworth, which Local Authority is the freehold owner of the property. The application is brought pursuant to the provisions of sections 27A and 19 of the Landlord and Tenant Act 1985, and the Applicants seek a determination of the liability to pay certain service charges for the reasons set out below.

2. The Tribunal conducted a Pre-Trial Review in this case on the 11th January 2012 and Directions were given on the same date to the effect that the parties should submit Statements of Case in the usual way; the Tribunal indicated that it considered that the matter could properly be determined on paper without the requirement for either or any of the parties to attend. The parties were given an opportunity of seeking an oral hearing but no such request has been made. Indeed the Applicants requested a paper determination within their application. The matter has come before the Tribunal by way of paper determination and the case is being dealt with without attendance by the parties and on the basis of the written representations which have now been received from the parties, pursuant to the Tribunal's Directions.

3. The Applicants have prepared a bundle of documents to be used by the Tribunal in accordance with the Tribunal's Directions. Within that bundle is the application itself and a letter dated 25th January 2012 coupled with some e-mail correspondence appearing at pages 51 to 53 of the bundle. In that letter and the accompanying correspondence the Applicants set out their case. The Respondent's Statement of Case appears at page 57 in the bundle and the Applicants have responded to that Statement with a further letter or Statement at page 82 in the bundle, which response is a letter dated 15th March 2012. The Respondent has in turn prepared a document headed "Wandsworth's Rebutter" dated 30th March 2012 which appears at page 85 in the bundle. These various documents set out in full terms the parties' respective cases. It is proposed to summarise those cases and then to give the Tribunal's determination.

Applicants' Case

4. The application is for a determination of the sum payable in respect of the service charges for the service charge year 2010 to 2011. Those service charges are set out in a service charge account which has been adjusted after the initial estimate was given but in short the costs for that year which are summarised in the document at page 46B of the bundle, contain a charge of £1,213.24p in respect of repairs. The Applicants are required to pay a percentage of the service charges to be shared between them. Miss Humphreys who owns the leasehold of Flat B has a percentage of 53.571% so that her proportion of these costs was £649.94, and Mr Clayson who owns the leasehold of Flat A is required under his lease to pay 46.429%, so that his contribution is £563.30.

5. The bulk of these costs (not the entirety) is referable to some investigation and then repair of cracking or subsidence to the front bay of the property. It appears that a tree outside the curtilage of the property may have caused some structural damage. The Applicants' case as appearing from their letter dated 25th January 2012, is to the effect that the purpose of section 20 of the Landlord and Tenant Act 1985 is to inform leaseholders of expenditure exceeding £250 per flat. They contend that the work referable to the structural repairs should have been the subject of a section 20 consultation, since the overall sum spent resulted in each of the Applicants having to pay a sum exceeding £250 in respect of this job. It is this point, discreetly which is the subject of this application.

Respondent's Case

6. The Respondent, in its Statement of Case starting at page 57 of the bundle, makes reference to the consultation provisions of section 20 and sets out part of section 20(3) of the Act which provides that the consultation provisions apply "*to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*" The appropriate amount for this purpose has been provided for in the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 Regulation 6, and the appropriate amount for the purposes of the Act is £250.

7. The Respondent's position is that the question as to whether or not particular items of work should be batched, or treated separately for the purposes of the

consultation provisions, is dealt with by the Court of Appeal in the case of ***Martin & Seale v. Maryland Estates* (1999) 32 HLR 116, CA, page 125.** In that case the Court of Appeal held that in approaching the issue as to whether or not the consultation provisions were triggered, it was necessary to take *"a common sense approach."*

8. The Respondent points out that in respect of the items of work referable to this structural repair there were essentially three composite parts. The first was the cost of a structural survey carried out by Trenton Consultants Limited pursuant to an invoice dated 17th May 2010 in the sum of £386. The second part of the cost was a drain survey which was required as part of the investigative procedure carried out by Drain Surgeons Services Limited pursuant to an invoice dated 1st October 2010 in the sum of £183.15p. The third part of the work was the building work itself carried out by F G Keen Limited pursuant to invoice dated 4th November 2010 in the context of which the structural damage to the front ground floor bay was made good in the sum of £315.14p.

9. The Respondent's case is that none of these jobs individually exceeded the statutory £250 threshold, and therefore no consultation was called for under the Act. The Respondent makes four points. The first is that part of the work contained within the £1,213 was on a wholly unrelated matter – a point which the Applicants appear not to challenge. The second point is that, of the three items that were concerned with the cracking to the living room walls and the ceiling and front bay, each item was commissioned at different times and from different contractors. Thirdly, two of the items were investigative, and the extent

of any work required pursuant to these investigations was not known until the investigations had been carried out. Accordingly since the Respondent could not be sure what work was required, it would not have been feasible to consult since the Respondent would not have known what work it was consulting about nor of course the value. Fourthly the Respondent makes the point that the actual work referable to the making good of the structural damage was well below the £250 threshold, as of course were the other items referred to.

10. The Applicants did respond to the Respondent's Statement of Case by letter dated 15th March 2012. They make the point that the remedial works were carried out after investigation by way of excavating a trial hole. Their understanding is that the works carried out were recommended in the original structural engineer's report. On this basis and given that these investigations were required to confirm whether the cracking was a continuing problem and that this investigation informed the decision about the nature of the repairs, the investigative reports and their costs should be treated as part of the single project and the overall cost taken as a single cost. The Respondent responded to this further statement by the yet further statement referred to above dated 30th March 2012. Effectively, it relies on the decision of the Court of Appeal referred to above and again makes the point that this work was the subject of separate contracts, the contracts were of a different nature, relatively small sums were involved, and overall it would be inappropriate to treat all of this work in one batch.

Analysis of Tribunal

11. The particular passage which is of application in the Court of Appeal decision of *Martin & Seale v. Maryland Estates Limited* can be found in the final paragraph of the judgment of Lord Justice Walker, at page 126 of the report. At the end of his judgment he states:

> *"It seems to me that since Parliament has not attempted to spell out any precise test, a common sense approach is necessary. The Judge was influenced by the fact that all the works were covered by one contract. That would not to my mind always be a decisive factor but, on the particular facts of this case, that was the right approach. The legislative purpose of the limit is to provide a triviality threshold rather than to build into every contract a margin of error which may in some cases, including this case, simply duplicate a contingency sum which has already been provided for ..."*

12. References to the need to take a *"common sense approach"* are necessarily flexible, and by their nature, somewhat subjective in application. This particular case is not an especially easy one in which to draw the dividing line between separate pieces of work and one particular job. On balance, the Tribunal leans in favour of the Respondent in this case and finds that these works were not subject to the section 20 consultation procedure. The reasons for the Tribunal so finding are in effect those set out by the Respondents in their two Statements of Case. In particular, each of the jobs was commissioned at different times from different contractors. The work carried out was a separate, albeit necessary, piece of work rather than part of a composite job which was the same job. The investigative reports had to be obtained before the substantive building work could take place, and it seems to the Tribunal that the Respondent is right in saying that at that time, and before these reports were obtained, it would have been difficult if not impossible for the Respondent to

consult, given that the nature of the remedial work was at that stage not known, let alone its value.

13. As indicated, these cases are not always easy to determine in terms of whether the works concerned are separate and self-contained, or whether they areall part of the same job, - but on this occasion, the Tribunal finds in favour of the Respondent for the reasons indicated. The determination in this case is specifically on the question of whether or not section 20 consultation was required (which the Tribunal has determined was not the case). It would in principle be open to the Applicants to make a fresh application, if they take the view that, notwithstanding the fact that consultation was not required, nonetheless the costs incurred have for some other reason been unreasonably incurred, or are excessive and thereby not payable. This is not a course that the Tribunal encourages, particularly in a case of this kind, where the costs involved in seeking any such determination would themselves be disproportionate to the sums in issue.

Conclusion

14. For the reasons indicated above the Tribunal determines this application in favour of the Respondent and it follows that the application is dismissed.

Legal Chairman: **S. Shaw**

Dated: **4th May 2012**