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HM COURT AND TRIBUNAL SERVICE

File Ref No. MAN/30UK/LSC/2011/0099

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

in relation to

Flat 2, 67, Wellington Street, Preston, PR1 8TQ

<u>Applicant:</u>	Wellington Street Management (Preston) Limited
<u>Respondent:</u>	Mr A Jabbery
<u>Application:</u>	By transfer from Preston County Court under an Order dated 18 August 2011
<u>Inspection:</u>	18 January 2012
<u>Members of the Leasehold Valuation Tribunal (the Tribunal):</u>	Mr. P. W. J. Millward LLB (Chairman) Mr. W. T. M. Roberts FRICS Mrs H. Clayton

The Application

1. By a claim issued on 14 December 2010 in Preston County Court the Applicant seeks to recover unpaid service charges from the Respondent relating to the above mentioned property (the Property). By the above mentioned Order the County Court ordered that the issue as to the amount payable by the Respondent by way of service charge be transferred to the Leasehold Valuation Tribunal for determination under paragraph 3 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and that the claim be stayed pending the determination of that issue. On 28 September 2011 the Residential Property Tribunal Service (RPTS) notified the Applicant that it had received the papers from the Court pursuant to that

Order and requested details of the service charge to which the claim related and a copy of the lease and plan. The necessary information was received by the RPTS on 11 October 2011. A copy of that letter was forwarded to the Respondent on 21 October 2011.

2. An Order for Directions was made by a Chairman of the Leasehold Valuation Tribunal on 10 November 2011 and sent to the parties on 11 November 2011. The parties were notified on 24 November 2011 that the matter had been set down for hearing on 18 January 2012.
3. Pursuant to the said Order for Directions the Applicant provided its Statement of Case with supporting documentation and paid the appropriate fee to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of the Property.
4. The application relates to a demand for service charges in respect of the year commencing 1 January 2010 and ending on 31 December 2010 for the sum of £680.00 being the Applicant's share of the total estimated cost for the maintenance of the block of flats in which the subject property is located but also including additional administration charges, costs and interest. The total claimed as at 31 December 2010 is £781.82.

The Lease

5. The Respondent is the lessee of the property under a lease (the Lease) for a term of 125 years granted to him on 7 April 2006 by the freeholder SVC Limited. Under the Lease management of the flat (together with all other flats in the same development) is assigned to the Applicant. The legal interest of SVC Limited has since been transferred to the Applicant.
6. By clause 3.3 of the Lease the Respondent covenants to contribute and pay 1/12th proportion of the service charge by a minimum of 2 equal instalments in advance towards the costs, expenses and outgoings as itemised in the 5th schedule of the Lease.
7. By clause 7 of the 5th schedule of the Lease the Applicant covenants to insure the development against loss or damage by fire and other risks.
8. Payment of costs incurred by the Applicant as a result of any failure to pay the service charge by the Respondent are recoverable as provided for in clause 1.2, and interest on such unpaid sums are payable by the Applicant under a covenant given by the Respondent in clause 1.1, of the 3rd schedule of the Lease.
9. By clause 3.2 of the 4th schedule of the Lease the Applicant is authorised to create and maintain a reserve fund towards costs, expenses and outgoings of maintenance and repairs of a periodically recurring nature.
10. Each flat owner is a shareholder in the Applicant. The management company is therefore owned equally by all flat owners. The company was not properly run by the flat owners and ultimately it appointed Homestead Consultancy Services Limited (Homestead) as its managing agents on or about 29th March 2010. Homestead found that Annual Returns had not been filed by the company, which put the company at risk of financial penalties or even striking-off, thus jeopardizing the investments of all flat owners. As a matter of urgency the Annual Returns were brought up to date but a late penalty fee of £1,500 was incurred. This was paid to Companies House on 28th June 2010.

The Law

11. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:
 - (1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
 - (3) For this purpose-

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 provides that

- (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.

Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)... may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Inspection

- 12. The Leasehold Valuation Tribunal (the Tribunal) inspected the Property and surroundings in the presence of the Respondent and Mr Jabbery senior on the morning of 18 January 2012. The Applicant was represented by Mr Bentham of Homestead. The property is a ground floor, one bedroom flat with a small hallway, combined living room/dining room, a small kitchen and bathroom/w.c. The converted house in which it is located comprises 4 similar flats over 4 floors and is one of 3 similar houses on the development. There is a communal parking area at the rear.
- 13. The communal areas are in poorly maintained condition and in need of re-carpeting and decoration and the rear car park is untidy. There is evidence of severe water ingress on the communal areas of the upper floors. It was clear that the windows in the communal areas had not been cleaned for sometime.

The Submissions of the Parties

- 14. The Applicant's statement includes (inter alia) the following submissions:-
 - 14.1 It confirmed the important clauses in the Lease (as set out above).
 - 14.2 Confirmation that the Memorandum and Articles of Association of the Applicant empowered it to manage buildings.
 - 14.3 Confirmation that the Applicant appointed Homestead as its managing agents.
 - 14.4 It included a statement of expenditure since 1st January 2010 and copies of certified accounts prepared on its behalf.
 - 14.5 Confirmation that there was no requirement for qualifying works as defined by s.20ZA(2) of the 2002 Act and that no qualifying long term agreements had been entered into.

- 14.6 Confirmation of the urgency of preparing and filing out of date Annual Returns as soon as possible after the appointment of Homestead as managing agents and the resulting fine levied in the sum of £1,500, and
- 14.7 That one tenant had been illegally extracting electricity from the communal supply, leading to higher than expected electricity accounts, but that this had now apparently stopped.

15. The Respondent made no written submissions.

The Hearing

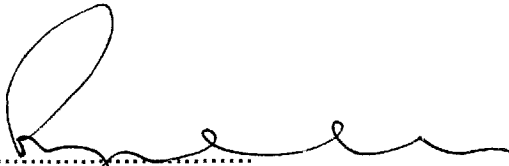
- 16. Both the Applicant (represented by Mr Bentham) and the Respondent (accompanied by Mr Jabbery senior) attended the hearing
- 17. The Applicant confirmed and repeated its written submissions, although it appeared that there was some confusion as to the date of appointment of Homestead as managing agent, and said in evidence that
 - 17.1 The Company was underfunded as the tenants had not met their obligations under their respective leases. Half of the service charges were outstanding and nearly £3,500 is owed by just 3 individuals including the Respondent. Judgement has been obtained against one of the other defaulters and proceedings would be commenced against the 3rd as soon as possible. It therefore has no money to undertake the necessary work.
 - 17.2 Mr Etoff (a tenant) was Company Secretary until 2010 when Mr Bentham was appointed. It took Mr Bentham until June/July 2010 to sort out the finances of the company and file the outstanding Annual Returns. Even so, a fine of £1,500 was incurred which meant that the projected work could not be funded and is therefore still outstanding.
 - 17.3 Receipts were produced for all expenditure met by the Applicant which in turn confirmed the previously produced accounts.
- 18. The Respondent stated in evidence that:-
 - 18.1 He had paid the service charge until the end of 2009.
 - 18.2 His family are in the building trade and can assess charges. He said he thought the charges proposed by the Applicant to be high.
 - 18.3 There is no dispute over insurance charges.
 - 18.4 Today is the first time that receipts have been produced by the Company.
 - 18.5 The estimate of expenditure was late – it should have been produced at the beginning of the year. Fees keep rising but no work gets done.
 - 18.6 He confirmed that he did not attend the hand-over meeting in 2010.
 - 18.7 On being questioned by the Tribunal he confirmed that the individual estimates for the cost of works were reasonable. He initially said that he thought the cleaning costs were high but then agreed that they were "ok".

The Tribunal's Determination

- 19. The Tribunal considered very carefully the written submissions of the parties, the documents provided and the evidence provided orally at the hearing. It also used its own knowledge and expertise. It was not disputed that the Applicant is entitled to submit the request for the service charge – only whether or not the Respondent was able to challenge its reasonableness and his liability towards all or only part of it.
- 20. The issues to be determined therefore are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.
- 21. The Tribunal had some sympathy with the Respondent's position, in that the Applicant has not

undertaken much of the work set out in its original estimate. However the main reasons for this being the case are (a) the lack of payment by a number of tenants and (b) the fine imposed upon the Applicant for failure to file Annual Returns on time, and as a result it had insufficient funds to undertake the work required pursuant to Homestead's appointment. The company is in fact owned by the tenants who are the only shareholders and at the time of its failure to file its officers were tenants. Homestead had no responsibility for this failure and in the opinion of the Tribunal the Applicant is entitled to recover its expenditure in this regard.

22. The Tribunal therefore determined that the request for the service charge is fully in accordance with the terms of the Lease and the items of expenditure referred to therein are all payable by the Respondent under the terms of his lease.
23. The Tribunal determined that the amount payable by the Respondent is in the sum of £781.82, including interest and additional charges up to the end of 2010 (but excluding the demand for payment of the first instalment of the service charge for 2011, which was not included in the application before the Tribunal).



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P W J Millward - Chairman

14th February 2012