4219

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/BB/0CE/2015/0180 & /0255 & /0277**
Property	:	**Ground Floor & First Floor Flat, 13 St Martins Avenue, London E6 3DU**
Applicants	:	**(1)Arora Properties Limited (2)Arora Estates Limited**
Representative	:	**Ms Somia Menon of Synergy Home Management Limited**
Respondent	:	**Chamber Estates Limited**
Representative	:	**Ms Muir, counsel) & Mr Martin Paine of Circle Residential Management Limited**
Type of Application	:	**(i)Enfranchisement (ii) Statutory Costs (iii)Service Charges (iv)Administration Costs (v)S.20C & Wasted Costs**
Tribunal Members	:	**Judge LM Tagliavini Ms M Krisko FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR 11 & 12 January 2016**
Date of Decision	:	**3 March 2016**

DECISION

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(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

The applications

1. The Applicant seeks a number of determinations namely:

(i) A determination of liability to pay and the reasonableness of service charges for the service charge years 2013/2014, 2014/2015 and 2015/2016 relating to the building insurance contributions for both flats pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act").

(ii) A determination of the liability to pay two administration charges in the sum of £540 (each) for grants of notice of assignment dated 9/12/14 and 11/12/14 for the first floor flat and ground floor flat respectively pursuant to schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2202 Act").

(iii) A Section 20C application pursuant to the 1985 Act.

(iv) A determination of the premium payable for the collective enfranchisement application pursuant to section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993.

NB: All other matters pertaining to the enfranchisement have been agreed.

(v) A determination of statutory costs pursuant to section 91(2)(d) of the Leasehold Reforms and Urban Development Act 1993.

The hearing

2. Ms Menon represented the Applicant lessees. The Respondent landlord was represented by Ms Muir, (enfranchisement issues only) and Mr. Paine represented the landlord on the remaining issues.

The background

3. The property which is the subject of these applications is a mid-terrace, two storey Victorian property converted into two self-contained flats. Both leases are for a term of 99 years from 1st January 2004 and both are on the same terms. The valuation date is 17th December 2014 and the unexpired term is 88 years.

4. Photographs of the building were provided in the hearing bundles. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicants* hold long leases of the property which requires the landlord to insure the building and the tenant to contribute towards the cost by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

**Aurora Properties – Ground Floor Flat*
Aurora Estates Limited – First Floor Flat

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) A determination of liability to pay and the reasonableness of service charges for the service charge years 2013/2014, 2014/2015 and 2015/2016 relating to the building insurance contributions for both flats pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act").*

   (ii) A determination of the liability to pay two administration charges in the sum of £540 (each) for grants of notice of assignment dated 9/12/14 and 11/12/14 for the first floor flat and ground floor flat respectively pursuant to schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2202 Act").

   (iii) A Section 20C application pursuant to the 1985 Act.

   (iv) A determination of the premium payable for the collective enfranchisement application pursuant to section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993.

(v) A determination of statutory costs pursuant to section 91(2)(d) of the Leasehold Reforms and Urban Development Act 1993.

***The Respondent sought a preliminary determination striking out the applications relating to the insurance premiums for 2012/13 and 2013/14 on the grounds that the tribunal had no jurisdiction as they were subject to a county court judgment or had been agreed and paid by the previous lessees/assignors.**

The hearing

7. The tribunal was provided with two lever arch files and heard the oral evidence of Mr. Gunby and Mr. Murphy.

The enfranchisement issue

8. By an initial notice dated 17 December 2014 the Applicants asserted that the price payable for the freehold of the subject property is £16,000 plus £100 for the additional property (front and rear gardens). By a counter notice dated 19 July 2015 the Respondent asserted that the price payable is £100,000 including the additional property.

9. The Applicants relied upon the expert report of Mr Peter F Gunby MRICS dated 21st December 2015 who stated that the enfranchisement value is £4,700. The respondent relied upon the report of Mr Richard Murphy who stated that the enfranchisement value is £116,067. Both experts gave oral evidence to the tribunal and spoke to their respective reports.

10. The central issue which gives rise to this disparity of valuations is the interpretation of the meaning of the Reserved Rent. The lease(s) provide as follows:

Clause 1 of the Lease(s) contains the definitions.

Clause 1(f) says that 'the reserved rent is set out in The Third Schedule hereof".

Clause 4 of the Lease(s) states:

'The landlord acknowledges receipt of the Purchase Price from the Tenant and demises the Property to the Tenant for 99 years from the 1st January 2004 ("The Term".)

The tenant covenants to pay the Reserved Rent out of the Property, which is defined in The Third Schedule as:

"Two hundred and fifty pounds (£250.00) per annum for the first ten years doubling on each tenth anniversary of the Term.

11. The Applicants contend that this clause 4 is to be interpreted as meaning that the ground rent is payable for the first ten years of the term of lease and no further sum is payable thereafter. The Respondent asserts that this clause should be interpreted, as requiring the ground rent to double every 10 years and the freehold must be valued on this basis. The tribunal calculates that the Respondent's approach gives rise to a figure in the region of £128,000 per annum by the expiry of the lease. Both parties agreed that the lease is badly drafted and gives rise to uncertainties.

The Tribunal's decision

12. The Tribunal accepts the Respondent's submissions on this issue and determines that the lease should be interpreted as providing for the increase in ground rent every 10 years. Although the tribunal finds this interpretation of the relevant lease clause is likely to make the property difficult to resale or re-mortgage, the tribunal is of the opinion that the wording is sufficiently clear to disclose the intention of the parties; *Chartbrook v Persimmon Homes Ltd* [2009] UKHL 38.

13. Further, it is the Tribunal's view that to adopt the Applicants' suggested interpretation is to render the rent review clause of no purpose. The tribunal finds the leases to have been very poorly drafted and determines that although a ground rent that doubles every 10 years for these modest properties, provides arguably a bad bargain for the lessee, it does not provide a reason to convolute the interpretation of the clause as is suggested by the Applicants.

Capitalisation rate

14. In reaching its decision as to the enfranchisement premium to be paid the tribunal preferred the evidence of Mr. Murphy in respect of the

appropriate capitalisation rate of 6%; *Nicholson v Goff* [2007] 1 EGLR 83. The Tribunal finds this capitalisation rate takes into account the poor drafting of the lease as well as the valuable ground rent provision and is preferable to the overly optimistic and unsubstantiated approach taken by Mr Gunby in his suggestion of a capitalisation rate of 7%. Therefore, the Tribunal finds that the capitalisation rate of 6% should be applied and a premium of £116,047 is payable as set out in the valuation of Mr. Murphy.

The statutory costs issue

15. The Applicants contended that the reasonable costs payable pursuant to section 33(1)(a) and (b) of the 1993 Act is £194.90 plus VAT together with surveyors fees of £650 plus VAT. The Respondent seeks the sum inclusive of VAT of £3,317.92 comprising solicitor's costs and includes valuation fees of £1,500. In support of the Applicants' arguments they relied upon a Statement of Case dated 28 September 2015 and asserted that the valuation fees are excessive, the solicitors costs are charged at an unreasonable rate and for an unreasonable period.

The Tribunal's decision

16. The Tribunal finds that the valuation fees claimed by the Respondent to be unreasonable. The Tribunal finds that the subject property is neither in a Central London location nor a building requiring a complex valuation report. Therefore the Tribunal determines the sum of £750 plus VAT is allowable to reflect a basic valuation carried out without internal access being obtained to the property (as admitted by the Respondent's valuer). Further, the Tribunal determines that three hours of work to reflect solicitor's work at the rates claimed is appropriate providing a sum £750 plus VAT together with disbursements of £15.60 plus Vat providing for a total figure of £1,758.7 to which the completion and conveyancing costs are to be added.

The insurance – preliminary issue

17. The Respondent asserted that the application in so far as it related to the service charge years 2013/14 and 2014/2015 should be *'struck out'* for want of the Tribunal's jurisdiction pursuant to Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent asserted that as the Applicants had purchased

these leases on 23 October 2014 and registered these with the Land Registry on 26 November 2014 they had not been liable for the insurance for 2013/14 and have not produced evidence that any pro rated sum was paid. Further, the Respondent asserted that in respect of the Ground Floor Flat, the insurance charge for 2014/15 was expressly admitted as being reasonable and payable and paid by the assignor having been demanded by the Respondent prior to the assignment to the current lessee/Applicant. The Respondent also contended that as the former lessee of the Ground Floor Flat was subject to a county court judgement in respect of the insurance charges for 2013/14 they could not now be disputed.

18. Further, the Respondent asserted that, as the insurance had been paid for both flats for 2013/14 and 2014/2015 by the previous lessees, the Applicants had not been asked to pay for insurance for those years and therefore had no standing to bring this challenge. The Respondent conceded that the Tribunal had jurisdiction to determine the issue of insurance for 2015/16 although a demand for this had not (at the time of the application) been made as a renewal notice and information had not yet been received..

19. The Applicants asserted that as the leases were purchased in October 2014 they had standing to challenge the insurance premiums for all three years being challenged. The Applicants asserted that they were not bound by the county court judgment or any written agreement in which the previous lessee(s) admitted the reasonableness of the insurance premium.

The Tribunal's decision – preliminary issue

20. The Tribunal determines that the 2013/2014 insurance premium, which is subject to a county court judgment cannot properly be subject to a further determination as to its reasonableness by this Tribunal. In any event, the Tribunal determines, that as the 2013/14 insurance premiums, have been paid by the previous lessees and nothing has been demanded from the Applicants, these are not costs incurred by the Respondent to which the Applicants are asked to contribute.

21. The Tribunal also determines that the 2014/15 insurance premium are also not costs to which the Applicants have been asked to contribute as these have also been paid by the outgoing lessors and there is no evidence to show that this factor was or was not not taken into account at the time of the lease assignments. Therefore, the Tribunal determines that it is appropriate only to determine the reasonableness of the 2015/16 insurance premiums.

The Insurance premium reasonableness issue

22. The Applicants contended that the sums charged for insurance for the years 4/12/13 – 3/12/14, 2014/15 and 2015/16 are unreasonable and excessive being the region of £550 per annum per flat. The Applicants also asserted that the rebuild values are overstated, the commission paid is unreasonable, the lease(s) do not provide for landlord's building insurance and in any event the demands for payment do not comply with section s 47 and 48 of the Landlord and Tenant Act 1985 and sections 20B and 21B of the same Act.

23. The Respondent accepted that the insurance charge for 2015/2016 could properly be challenged by the Applicants and conceded that a 30% charge for commission was included in the premium in addition to a charge for Premium Credit. The Respondent contended that the insurance premium for 2015/16 had not yet been determined or demanded and therefore the reasonableness of this premium could not be properly be determined.

The Tribunal's decision

24. The Respondent gave no evidence to the Tribunal to indicate that any changes to the valuation, the portfolio approach, and the commission charged or the charge for credit would be made in respect of the 2015/16 insurance premiums. Therefore, the Tribunal determines that is has jurisdiction to determine the liability to pay and the reasonableness of services charges that are to be incurred.

25. The Tribunal finds that the lease provides for the placing of the buildings insurance by the landlord in accordance with clause 5(b) of the lease. The Tribunal finds that the properties have been overvalued for insurance purposes and accepts the evidence of Mr. Gunby* on this point, there having been no alternative evidence put forward by the Respondent on this issue. The Tribunal determines that this reduced rebuild value should be reflected in the 2015/16 premium or an adjustment made to the premium sought to the extent of a 30% deduction (if no adjustment to the rebuild value has already been made in the 2015/16 premium). Further, the Tribunal finds that the commission costs of 30% are unreasonable for this modest property and reduces this to 10% as the tribunal accepts that the charge is reasonably incurred by the Respondent in the placing of the insurance using the services of a broker.

**Mr. Gunby provided a reinstatement value in the region of £264K in contrast to the £379,688 declared value of the Respondent.*

26. The Tribunal finds that the charge identified as for Premium Credit is not a cost that is the liability of the lessees, as the lease makes no provision for the cost of credit obtained by the landlord in obtaining and paying for insurance. Therefore the Tribunal finds that the insurance costs for 2015/16 should be reduced by 20% after the removal of the Premium Credit sum.

Administration costs

27. The Applicant asserts that the two sums of £450 plus VAT charged by the Respondent in relation to costs incurred in contemplation of proceedings pursuant to section 146 of the Landlord and Tenant Act 1925 are excessive. The Applicants assert that the date for the notification of the lease assignments should be determined to be within 28 days of the date the lease was registered (26 November 2014) and that therefore no sum is due.

28. The Respondent contended that clause 4(k) of the lease allows for administration costs to be charged. The Respondent informed the Tribunal that these were costs incurred in contemplation of section 146 (forfeiture) proceedings as the Applicants had not provided the required Notices of Assignment in a timely manner i.e. within 28 days of the assignment. The Respondent also submitted that these are standard charges made by the Management Company and therefore are reasonable.

The Tribunal's decision

29. The Tribunal determines that the Applicants were late in notifying the Respondent of their interest i.e. within 28 days of the date of purchase. However the Tribunal determines that that the amount payable in respect of these costs is £100 including VAT per notice. The Tribunal accepts the Applicants' argument on this issue and fails to identify any complexity that would incur the Respondent in any reasonably greater costs.

Section 20C costs

30. The Respondent accepts that the lease makes no provisions for costs of this litigation to be added to the service charges and therefore the Tribunal is not required to determine this issue.

The wasted costs issue

31. The Applicants assert that the Respondent has acted unreasonably in its conduct and defence of these application and relies upon Rule 13(2) of The Tribunal Proceedings (First-tier) (Property Chamber) Rules 2013. In addition the Applicants sought reimbursement fees of £125 and £190 application and hearing fees respectively. The Applicants asserted that the Respondent had acted unreasonably causing delays, requiring revised directions and made late disclosure of jurisdiction points. The Respondent asserted that it had not behaved unreasonably in defending this litigation and opposed the reimbursement of the Applicant's fees.

The Tribunal's decision

32. The Tribunal determines that the Applicant has not sufficiently demonstrated that any award pursuant to Rule 13 should be made. The Tribunal finds that the Respondent's conduct in defending these proceedings does not meet the threshold requiring the Tribunal to make an order under this Rule.

33. Further in light of the above decisions the tribunal makes no order for the reimbursement of ant fees as the Applicants have only been successful to a modest extent in their applications.

Signed: Judge LM Tagliavini Dated: 3 March 2016