

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT
PANEL

LANDLORD AND TENANT ACT 1985 Section 27A

CAM/00MD/LIS/2004/0002

Address : 56/58 Ledgers Road Slough Berkshire

**Applicants : Alberto Bartoli; Ariel Garcia; Edilia Botero;
Juleen M Avowtuur; Joseph Machiavello**

Represented by : Alberto Bartoli

Respondent : Sinclair Gardens Investments (Kensington) Limited

Represented by : Mr J Goodman BSc.FRICS of Hurst Management

**Committee : Mr A A Dutton – Chairman
Mr D S Brown – FRICS MCIArb
Mr P A Tunley**

Hearing date : 28 September 2004

Decision Date : 25th October 2004.

DECISION

A. BACKGROUND:

1. This application under s27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") was made by Mr Alberto Bartoli and the other people named on the front page of this Decision to the Leasehold Valuation Tribunal on 27th March 2004. The application indicated that a challenge was made to the service charge for the years 2002-2003 and 2003-2004. The complaints related to the entire Management and Service Charges for those periods.
2. In the documentation before us we were provided with a copy of a specimen Lease relating to the flat at 58E Ledgers Road, Slough. The Lease was for a term of 99 years from the 25th December 1988. It provided that each tenant would contribute 1/9th of the costs incurred by the Landlord in providing Management Services which were set out in the Fifth Schedule to the Lease. The tenants' obligations in respect thereof were contained in the Fourth Schedule to the Lease. We will deal with those terms insofar as they are relevant to these proceedings in due course. It is however right to note at this stage, that the service charge year in the Lease ran to the 31st December in each year which caused some confusion at the hearing as to the period for which Mr Bartoli was making complaints. Again we will deal with that matter in due course.
3. The issues which Mr Bartoli sought to bring before the Tribunal were initially set out in an Applicant's statement which was received by the Tribunal on the 25th June 2004. The items disputed were as follows:
 - Services, in particular cleaning, gardening and maintenance services which were not performed satisfactorily.
 - The use of non-locally based contractors.
 - The lack of clear statements of expenditure and evidence as to the amounts having been spent.

- A general complaint that the service charges were above those for other properties in the locality.
 - Specific complaints concerning certain items of expenditure, namely:
 - External and interior decoration;
 - Gardening and cleaning duty;
 - Demolition of a shed and the removal of same;
 - Cost of purchase of a rotary clothes dryer;
 - Replacement of light bulbs;
 - Installation of a chain barrier and lock to the car park;
 - Management fees;
 - The attention and clearance of graffiti;
 - General property maintenance;
 - Replacement to lead on the roof.
4. The response to these complaints had been dealt with by the Respondent in the form of a Schedule which listed the individual items and also a statement made by Mr Stephen Goodman, the Managing Director of First Management Limited who in the guise of Hurst Managements, looked after the property for the Landlord.

B INSPECTION:

5. Prior to the hearing we inspected the subject premises. They comprise what appeared to be an original 2/3 storey detached house built sometime in the 19th century to which had been attached a three-storey modern development linked to the original property thus creating a underpass to car parking and gardens to the rear. The original property was in a somewhat neglected state and tiles were missing over the first floor bay window and there was evidence of some rotten woodwork. The upkeep of the more modern development appeared to be reasonable although lead flashings to the roof were lifting. The property was sited in a predominantly residential area although there was some commercial usage nearby and the railway within 150 yards or so. The garden appeared to be in reasonable order but was not large and car parking was provided for the lessees.

We noted that attempts had been made to prevent non-occupiers using the car park. A poorly fitted post was in situ together also with a chain-link barrier that at the time of our inspection was not in use.

6. We were able to inspect the common parts of the more modern part of the development. These were clean and lit. The flooring and stairs were quarry tiled. The common parts were not extensive. We were not able to gain access to the original property which formed the other part of the development.

C. EVIDENCE:

7. At the hearing on 28 September Mr Bartoli represented the Applicant. Mr Maddox and Mr Garcia attended with him. His initial complaint to us was that the service charges were too high and above the average of other properties in the locality. He told us that until 2002 £800.00 had been charged but that in 2003, that had risen to £1500.00 per annum without any explanation or reason for the dramatic increase. He told us that cleaning, gardening and maintenance were not performed to satisfactory standard and that the contractors were not locally based. He confirmed that no explanation was given for the items expended but initially declined to go through the specific items. He did however, when pressed by the Tribunal, deal with some specific matters as follows:

- a. on the question of the removal of a shed he pointed out that two invoices had been rendered for the removal of what appeared to be one shed. He thought the costs of such removal and disposal were too high.
- b. On the question of insurance he again felt that the insurance premium was too high and had produced what purported to be a quote given to another lessee of the block which comprised nothing more than a handwritten note on a piece of Zurich notepaper indicating a quotation of £682.50 including insurance premium tax.

- c. On the question of decorating, he raised for the first time and as a surprise to both the Tribunal and to Mr Goodman, the suggestion that decorating works that had been carried out in 2001 that were billed within the service charge year ending December 2002, were too high. He attempted to introduce some quotations he had obtained from local decorators just prior to the hearing but these had not been provided to Mr Goodman and we did not allow them to be put in evidence. He told us that the decorating had not been done properly and that indeed only two weeks ago the decorators had returned to finish off some outstanding items.
- d. A complaint was made with regard to replacement of fencing panels. He submitted to us that only two fence panels had been broken and that there was no need for the number of panels to have been replaced for which they had been charged and that the cost of the works were excessive. He produced photographs showing two defective panels.
- e. On the question of cleaning he told us that the older property was not cleaned at all and on his investigations he had discovered that it was not included within the cleaning contract, which was accepted by Mr Goodman. He felt the cleaning was expensive for what was done.
- f. A complaint was also made in respect of works done to the roof. Unfortunately little information was available to us at the hearing but subsequently Mr Goodman was able to provide us with details of the work that had been done, which appeared to relate to a flat composite roof which was not immediately visible from inspection. Details of the works were forwarded to Mr Bartoli for his response which was received by the Tribunal on the 4 October. He complained that the sketch which was attached to Mr Goodman's letter was too vague for him to be able to tell what had been done and that the Management Company were not able to justify the "costs" or the quality of the work.

- g. On the level of service charges Mr Bartoli had prior to the hearing forwarded a letter of the 21 September 2004 which purported to contain details of other service charges for properties which he said were in the locality. These included costs for Meadfield Court Management Company Limited, Worcester Gardens Residents Limited and some particulars in respect of other properties showing maintenance charges at levels from £78.00 per six months to £57.00 per month.
 - h. Concerns were raised at the cost of providing a chain link barrier to prevent non-residents using the car parking, the costs of repairing a security light, which he told us still did not work and the cost of acquiring and installing a rotary dryer. He did not however continue with a claim that was made in respect of the abandonment of vehicles although he did object to paying twice for recovery of the same vehicles.
- 8. For the Respondent, Mr Goodman appeared and had submitted a written statement which we read and noted the contents. At the hearing Mr Goodman told us that he had a pool of contractors who worked from him travelling as far as the Midlands and that no travel costs were in fact levied. He told us that the labour rates of those contractors were in his view slightly lower than if he had used local labour. On specific items, which were disputed by Mr Bartoli he had the following to say.
 - a. In respect of the shed, he told us that this was in imminent danger of collapse. Part of it needed to be demolished immediately but a second part, which in fact was a separate shed although joined to the first one, could not be removed because it was full of tenants rubbish. The disposal costs were high because of the presence of asbestos and a delay between demolishing one part and the other to enable the tenants to remove such items as they had in the shed. He told us that the shed was not within the demise to the

Lessees although it was within the common parts and was used by lessees to store various items although not with any specific approval.

- b. He made complaint that he had not been able to attend the inspection on the 20 September 2004 because he had not been aware that it was to take place that day. He had last inspected the property in August 2004.
- c. On the question of the chain barrier he gave us a history of the problems involving illegal parking and the abandonment of vehicles. Investigations into the possibilities of preventing these problems had been undertaken and it had been decided that a combination padlock with a heavy duty chain was the simplest and cheapest way forward. He sought to justify the costs of £285.00 plus VAT by breaking it down as to £68.00 for the combination padlock and £10.00 for the other padlock; £20.00 for the chain; £5.00 for the bolts; £10.00 for the warning sign and the balance being a mark-up of 25% on the material and £150.00 for labour, plus VAT. Unfortunately he told us that the combination to the lock was frequently forgotten and in fact it had been taken by one of the residents. A post was to be installed but that was not the subject of these proceedings.
- d. On the question of roofing works, there was some confusion as to what had been done and as we have indicated earlier in this Decision Mr Goodman needed to take further instructions and subsequently wrote explaining the work that had been done to the roof. He told us they would get competitive quotes for any works that were likely to give rise to a cost over £500.00. A charge was made for surveyors fees of £124.84. This he told us was in fact an "in-house" charge levied at 12.5% in respect of any jobs where the cost of works was over £750.00. He told us it would involve agreeing specifications for the work and was in accordance with the RICS code of practice.

- f. In respect of gardening and cleaning he told us this was dealt with on a lump sum monthly contract. Although the property at 56 Ledgers Road, being the older property, was not cleaned, the Lessees thereof nonetheless contributed towards the cleaning costs. The work of the cleaning company included the gardening such as cutting the grass, attending to hedges and planting as necessary. The cleaning works included the hall, stairs and landings in the new building. The Contract he told us, had been put out for tender, he thought in 2001, and that he was satisfied that the charges being made were reasonable by reference to his own knowledge and experience of the cleaning costs for other properties that he was involved with. He was satisfied that the cleaning and gardening was being done satisfactorily but would have no objections to the Lessees putting forward their own contractors if they so wished.
- g. On the question of the damage to the fence, he told us that the panels had been taken down for the purpose of gaining access to the flank wall. He was unable to give us much information but did point out that the invoice related to the replacement of five and not the total number, which was some twelve panels. The Applicants had indicated that the cost of panels, in their view, would be no more than £10.00 per panel and £5.00 for each post and they could not therefore understand how the fencing costs had reached £889.45.
- h. On the question of insurance, Mr Goodman had given detailed information on this in his Witness Statement. He confirmed that the quotation was based on postcodes and that the property had a somewhat difficult claims history. In addition also terrorism insurance, from 2003 onwards, had to be dealt with separately. He stated that there had been no real increase in the insurance rates for the years 2002, 2003 or indeed 2004. He dismissed the purported quotation from the Zurich referred to above as not being of any help.

- i. In relation to Management fees he told us they were charged at the rate of £165.00 per flat and were dealt with in accordance with the RICS code. The fees were reviewed against other Management fees for local agents and that they had not been increased, notwithstanding the coming into effect of the Commonhold and Leasehold Reform Act 2002. The original figure would have been calculated by way of an assessment and had merely been uplifted for the passage of time. Mr Goodman confirmed that the Company were well aware of the rates being charged in the market place and had regard to those when fixing their Management fee.
- j. Matters then moved on to the question of charges being made for future expenditure, in effect contributions to a sinking fund. The statement of account indicated that a figure of £1,500.00 was being claimed for external decorations intended for the period ended 25 December 2006 and a sum of £260.00 for internal hall decorations for the year ending 25 December 2009. He told us that these figures had been calculated on the basis of the previous decorating costs which inevitably would rise with the passage of time but had also been affected by tighter Health and Safety requirements for scaffolding. He confirmed that the relevant Section 20 Notice would of course be served. When questioned by the Tribunal on the question of a sinking fund he told us that as far as he was concerned the Lease did so provide.

D. DECISION:

- 9. The Respondents had helpfully provided a Schedule of the items of service charge expenditure which unfortunately the Applicants had not attended to prior to the hearing. However for ease of understanding for the parties we think it might be helpful if we were to utilise the basis of the schedule in our Decision section of these Reasons so that it is quite clear what sums we have allowed and what sums we have disallowed.

- a. The removal of vehicles by the Local Authority. The bundle of documents that had been submitted by the Respondents were helpfully numbered and cross-referenced in the Schedule. The invoice was for £60.00 for the removal of two cars but was duplicated, apparently because the Local Authority turned up to remove the vehicles on one date but were not able to do so and then had to come back again. The Respondents did not dispute the cost of £60.00 for the removal but did dispute a second charge of £60.00 as the return by the Local Authority was caused through lack of communication between the Managing Agents and the Local Authority. We believe that the fault rests with the Managing Agents as it for them to ensure that clear instructions are given and to ensure that the Local Authority does not make a wrongful charge. Accordingly we would allow one charge of £60.00 plus VAT only.
- b. Electrical works. The amount claimed for this was £236.80 and related to the provision of some low energy light fittings and lamps, circuit breakers, halogen lamp and other low energy lamps. Materials were £136.80 and the labour £100.00. The only complaint made by Mr Bartoli was a general one about the use of non-local labour. However, we find that the charges in respect of this matter are reasonable and are allowed in full.
- c. Policy excess claim in respect of damage to the front wall. A sum of £200.00 was claimed being the policy excess which was not disputed and is therefore allowed.
- d. The shed removal. There are two invoices for this. One by J Blackman in the sum of £455.75 inclusive of VAT and another by Elite Cleaning and Hygiene Service for £775.50 inclusive of VAT. A total claim therefore, of £1,231.25. We were provided, by Mr Bartoli at the hearing, with a photograph showing the extent of the shed. Prior to its demolition, it appeared to comprise a somewhat decrepit wooden structure having some

brickwork and an asbestos cement sheeting roof which was broken in places and was overgrown with vegetation. We were able to see the site where the shed had stood which was not extensive. Whilst we appreciate the removal of asbestos is something that needs to be dealt with carefully and in accordance with regulations, we do not believe the removal of asbestos sheets would be that difficult. Mr Goodman had made much of the fact that the shed was an apparently dangerous state. We find it therefore somewhat surprising that the job order sent for the initial demolition was dated 21 February 2003 but the invoice for the demolition works appears not to have been rendered until the 20 April 2003. We were also concerned that the costs in both cases for removing brickwork that other builders had left behind, and a sales sign, were not service charges. The sale sign should have been removed by the Estate Agent and if other builders had left behind brickwork it was surely the Agents responsibility to get those builders back to ensure the site was cleared. Our finding is that a reasonable charge for removing the shed is £500.00 plus VAT. We therefore allow that amount in total for both the Blackman invoice and the Elite invoice insofar as the latter refers to the shed removal.

- e. Rotary Dryer: Within the Elite invoice which we referred to above is a claim for £150.00 plus VAT for the acquisition and placing of a rotary clothes dryer. On our inspect of the property there is clearly a relatively new rotary clothes dryer in situ but this has been installed by banging a stake into the ground. We find it unreasonable that a charge of £150.00 plus VAT would be rendered. Our own knowledge and experience would indicate that a rotary dryer could be purchased for around £40.00. In the absence of any concreting the labour charge would be minimal. We therefore disallow the sum of £176.25 and instead will allow the sum of £88.13 inclusive of VAT.
- f. Carpark. This related to the installation of chain barrier. Mr Goodman had helpfully given a breakdown to show how the labour and materials reached

£285.00. We have no complaint of the cost of the materials and would agree that it is not unusual for a contractor to make a mark-up on those but our knowledge and experience indicates that would normally be 10%. The cost of installing the chain barrier is limited. It would be, in our finding, a simple procedure requiring one man for perhaps half-a-day. In those circumstances we disallow the sum of £334.88 which has been claimed and substitute instead, the sum of £175.00 plus VAT (£205.63).

- g. On the Schedule a claim was made for light bulbs in the sum of £63.45. Mr Goodman conceded this was a typographical error and that it should have been £51.70. No complaint was made about this and we therefore allow that sum.
- h. A charge was made for the surveyor's fees in respect of roofing works of £124.84. As we indicated in the Evidence section, this was a charge rendered by the Management Company themselves. In principle we would allow the costs of a surveyor's fee in respect of a Contract of this size. However it is only a small Contract and in those circumstances therefore we find that a reasonable sum would be 10%. The invoice in question related to replacement works to the main roof. That was shown at £850.00 plus VAT. Ten percent of that would therefore be £85.00 plus VAT. We are prepared to allow that amount instead of the sum of £124.84 claimed.
- i. Gardening and Cleaning: We were provided with a number of invoices which appeared to indicate that the sum of £128.00 per month was paid for gardening and cleaning. This was split as to 30% for cleaning and 70% for gardening. Having had the chance of inspecting the common parts and the garden we find this cost is too high. The garden would need little or no attention during the winter months and the common parts are basic and easily kept clean. Taking those matters in to account we find that a reasonable cost for dealing with the gardening and cleaning would be

£20.00 per week throughout the year, plus VAT. That is a total sum of £1,040.00 plus VAT of £182.00 making a total sum allowed of £1,222.00 against the amount claimed of £1,796.40.

- j. Electricity for the common parts. This was not disputed and is allowed at £148.78.
- k. Audit costs: This is £115.50 and again was not disputed and is allowed.
- l. Works to the main roof: This totalled £998.75. At the hearing Mr Goodman felt that he was prejudiced as this was not a matter that was specifically raised. In fact, Mr Bartoli had referred to this in his original statement but Mr Goodman was not in a position to respond at the hearing through lack of available information. We gave him leave to write to us to set out the circumstances, which he did on the 1 October 2004. He told us that having gained access to the roof of the property the area in question was a flat, built up roof, sitting to the rear of the ridge tiles which was approximately eleven metres long by four metres wide. To the shorter sides they had installed a ridge tile detail to replace the lead which had been lifting in the high winds and it was this work that was referred to in the invoice. The work was undertaken using a tower scaffold. A sketch was also provided. We have our concerns as to the costs of this work. Mr Bartoli in his response to Mr Goodman's letter repeated the complaints he made in respect of matters generally. We had been told at the hearing that the works were carried out under pressure from the insurance company who were concerned that there had been claims for water ingress and that the work needed to be done. In the absence of any alternative quotations provided by the Applicants, conceding however their difficult position on this through lack of information, we somewhat reluctantly allow the costs claimed. However we do believe it to be on the high side and are concerned that even having allowed Mr Goodman the chance to provide the

information the position is still somewhat unclear. Nonetheless, taking the matter in the round, we have concluded that the work needed to be done as a result of the insurer's intervention and that costs were reasonable and are allowed in the sum of £998.75.

- m. Fencing: The invoice totalled £889.45 and was for the dismantling of the existing fence that was rotten and replacement of five panels and five posts. The Applicants had made enquiries of local building merchants and indicated in evidence that panels would cost around £10.00 and posts around £5.00. We had the opportunity of inspecting the property. There is no breakdown of the invoice to show how much was paid for the panels. However our own knowledge and experience would indicate that the sums claimed are too high and that a figure of £300.00 plus VAT is reasonable for the replacement of five panels and posts. Accordingly we disallow the sum claimed of £889.45 and would allow instead the sum of £352.50 inclusive of VAT.
- n. Insurance – both full cover and terrorism. Mr Goodman went into great detail concerning the steps that were taken to obtain insurance cover. We are satisfied that the insurance is arranged through independent brokers who go to the market to obtain the best rate obtainable for the property. We accept also that there appears to have been a history of some claims although not in our view excessive and we accept also that insurance rates have increased over the period of time. The alternative quotation obtained by Mr Bartoli's neighbour is of no use. It does not indicate the information given to the Zurich upon which they based their "quote" and is not something that we can possibly rely upon. In those circumstances we are satisfied that the insurance premiums sought by the Respondent are reasonable and those are allowed at the sum of £271.70 for terrorism cover and £2,329.93 in respect of the annual insurance.
- o. Hurst Management Fees of £165.00 plus VAT per flat. We did not find the evidence given by Mr Bartoli on the question of comparable Management

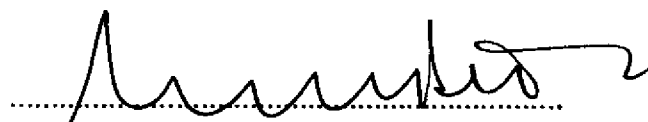
fees at all helpful. There was no indication as to the extent of the properties and to compare one development to another without providing details does not assist us. From our own knowledge and experience we find that a figure of £165.00 plus VAT per flat is within the normal range for the management of this type of development and is therefore allowed.

10. At the hearing Mr Bartoli, gave the first clear indications of his concerns in respect of the decorating works that had been carried out in the year to December 2002. It was certainly not clear from his application that this was a matter in dispute. At the hearing Mr Bartoli attempted to submit various quotations from local decorators indicating that the costs claimed by the Respondent for the works were too high. We refused to allow that evidence so late in the day as it was clearly prejudicial to the Respondent. It was quite clear from the evidence we received at the hearing that the matter had gone out to tender and that the lowest tender had been obtained. Our inspection of the premises did not indicate that the decorations were in a particularly poor state. There were one or two areas that needed attention and Mr Goodman had told us that the contract with the decorators provided for them to come back for sometime after the works were completed to put right any matters that appeared to be faulty. In the circumstances and having regard to the overall cost claimed, we do not find that the figure was unreasonable and therefore the amount claimed will stand.
11. We then turn to the question of future costs. Again Mr Bartoli's application has dealt with the years 2002-2003 and 2003-2004. As we indicated earlier in this decision the years actually end on the 31 December each year and we are assuming therefore that for the year 2004 he is looking at costs that may be incurred now and before the end of the year. The only matters we can really deal with are those relating to the gardening and cleaning. We have already indicated that a figure of £20.00 per week is appropriate but we will accept that an increase of 5% to cover inflation is not unreasonable. Insofar as the other recurring costs

are concerned we see no reason why they should not be at the same levels as those which we have allowed for in this Decision.

12. We now turn to the question of the payments to the sinking fund. Mr Goodman indicated that in his view the Lease made provision for those payments to be made. We have considered the Lease in some detail. At the Fourth Schedule, paragraph 3.1 the cost of the service charge is set out therein. It reads as follows: *"The cost of the services and other items for each year shall be actual expenditure as certified by the auditors of the Lessor incurred in providing the services and other items specified in the Sixth Schedule"*. It then goes on at paragraph 3.4 to say *"The total amount to be paid the tenant in any one year shall be the amount certified by the auditors as the service charge for the previous accounting period less the sum paid by the tenant in advance for such accounting period plus the advance payment for the next accounting period as requested by the Lessor"*. Reference to the sinking fund is somewhat nebulous. It is referred to at paragraph 2.12 insofar as the Landlords ability to obtain reimbursement from service charges paid in advance or from any sinking fund. It is also referred to at paragraph 1.1 of the Sixth Schedule which indicates as follows: *"For these purposes the Lessor may establish a sinking fund and any payments so made to be considered to have been properly incurred hereunder"*. There is however no indication in the Lease that there is an obligation to make a payment to the sinking fund. We find therefore that there is no provision in the Lease for a payment of a sinking fund to be required. The Lease is quite clear at paragraphs 3.1 and 3.4 of the Fourth Schedule as to what payments need to be made by the tenant and payments in advance to the years ending 2006 and 2009 do not in our finding fall within the terms of the Lease. Accordingly therefore we disallow any payments in respect of sinking fund elements. The only advance payment is provided for at paragraph 2.11 of the Fourth Schedule which provides for a payment in advance for the next ensuing year. That is not to say that we disapprove the idea of a sinking fund arrangement, however the Lease does not provide for same and therefore any payments would have to be on a voluntary basis.

13. No application was made by the Applicant under s20C and therefore that concludes our findings in this case.



.....

Chairman

25th October 2004

.....

Dated