

In the Leasehold Valuation Tribunal

Ref LON/00AD/LIS/2006/0028

Applicants Miss I Procommenos

Respondent Mrs A Marcus and Mrs G B Marcus

Property Ground floor flat, 24 Church Road, Erith Kent DA8 1PG

And

Applicants Mrs A Marcus and Mrs G Baum

Respondents Mr B Kearney and Ms S Wilson

Property First floor flat 24A Church Road Erith DA8 1PG

Tribunal

Ms E Samupfonda

Mrs H Bowers

Mr R Eschle

The Tribunal had before it two applications. Ms Procommenos is the tenant of the ground floor flat. She sought a determination of the reasonableness and her liability to pay service charges under section 27A Landlord and Tenant Act 1985 (the Act) for the year end December 2005. She also made an application under section 20C for an order limiting the recovery, through the service charges, of the respondent's costs incurred in these proceedings. The respondents are the landlords and freehold owners of the premises at 24 Church Road. They issued proceedings in the Barnet County Court to recover inter alia unpaid service charges from Mr Kearney and Mr Wilson, the tenants of the first floor flat. The proceedings were transferred to the LVT for a determination under section 27A of the Act. The applications were joined as they were brought in respect of the same matters and in order to secure consistency.

Appeal decision of Berrycroft Management Company v Sinclair Gardens Investments (Kensington) Limited [1977] 22EG 141 in which it was held that the right of a landlord to nominate an insurer is unqualified and that the landlord was required to give reasons for the insurance chosen. The Tribunal noted that the tenants were of the view that they were disadvantaged by being insured as part of the landlord's portfolio as matters affecting other properties such as claims histories and subsidence were matters taken into consideration. Whilst acknowledging that that maybe the case, the Tribunal had regard to the case of Viscount Tredegar v Harwood (HL) [1929] AC 72 in which Lord Shaw of Dunfermline said that there were sound business reasons for a landlord with a large property portfolio to insure properties with one insurer otherwise management becomes very complex and costs considerable. The lands Tribunal in Forcelux v Sweetman [2001] 2 EGLR 173 held that the landlord did not have licence to charge a figure out of line with the market norm and that in determining whether the insurance premium is reasonable, the question to be answered is not whether the expenditure was necessarily the cheapest available but whether the charge that was made was reasonably incurred. It was recognised that cover for commercial landlords was more expensive than that available for owner occupiers. In this case, we found that there was no evidence to show that the landlord who has the obligation to insure, has acted unreasonably and charged a premium that is out of line with the market norm.

The fact that the landlord's figures are higher than the quotes obtained by the tenants is not sufficient to show that the costs have not been reasonably incurred. The onus is on the tenants to submit evidence to show that the costs are unreasonable, a formidable task given that insurance companies are reluctant to provide alternative quote to non freeholders and often premiums quoted to tenants will not be confirmed until a proposal form has been completed.

The tenants did not produce any evidence to support their challenge of the cost of the insurance valuation.

In the light of the above and the principles set out in *Berrycroft* and followed in *Forcelux v Sweetman*, we felt bound to determine that the costs for insurance in each of the service charge years in dispute have been reasonably incurred and that the tenants are liable to contribute in accordance with the terms of the lease.

(ii) Management Fees

The accounts show that the management fees were £244.40 in 2003, £282.00 in 2004 and £471.00 in 2005. Ms Scott in her statement of case and in her letter dated 6 April 2006 to Ms Wilson on page 49 of the bundle outlined the items that are covered by the management fee. She explained that there had been incremental increases since Basicland took over management in 2003. She added that the cost of managing properties has increased to reflect the additional responsibilities that landlords have under recent legislation. She indicated that the fees charged for managing this property were significantly lower than that charged for similar properties that they managed. The intention was to charge a basic fee of £200 per unit per year. She also gave background information of Basicland staffing and responsibilities. The tenants challenged the management fee on the basis that unlike other properties with gardens, portage, cleaning and gardens, this property required little management outside issuing demands and arranging the insurance and repairs. Mr Kearney referred to a similar property with lower fees but did not provide sufficient information for it to be of assistance. The onus is on the tenants to provide evidence to show alternative quotes. The Tribunal cannot determine an application on the basis of unsupported evidence.

The Tribunal considered the level of management required for this property. It found that as a Victorian conversion comprising two flats, with all internal areas demised to the parties the requirements of extensive day to day management are minimal. There is indeed an increased obligation placed upon landlords to provide to tenants additional information as prescribed by the Commonhold and Leasehold Reform Act 2002. As an organised company it is assumed that Basic lands will have systems already in place and that much of the paperwork is self generating. We found that a fee of £200 per flat whilst on the high side was not significantly high enough to be considered unreasonable particularly in circumstances where works of repair are required and therefore arrangements necessary as was the case in 2003. The fees for the years 2003/4 were very low. We therefore determined that the current fee of £200 per flat was reasonable and payable by each tenant in accordance with the terms of the

lease. The Tribunal determine that the management fees for 2003 of £244.40; 2004 of £282 and for 2005 of £471 are reasonable.

(iii) Professional fees £100

We were informed that these fees were incurred by the landlord in completing the allocation questionnaire following the issue of proceedings in the county court against Mr Kearney and Ms Wilson. Ms Scott relied on clause 3 of the Fourth Schedule of the lease as she submitted that the collection of arrears was part of proper and convenient part of management of buildings. She said proceedings were issued as a result of their failure to contribute to the service charges. Mr Kearney said that they had made intermittent payments; however, they stopped making such payments because the landlord failed to provide clear explanations to their enquiries such as the issue of the management fee.

Ms Procommenos challenged the request for her contribution of £50 because the proceedings did not concern her.

The Tribunal considered clause 3 of the Fourth Schedule. This provides that the tenants should contribute to "all other expenses (if any) reasonably incurred by the landlord in and about the maintenance and proper and convenient management and running of the building." We were not persuaded that this clause although seemingly wide, was in fact wide enough to recover this fee. We considered that such costs can only be recoverable where there are clear and unambiguous provisions in the lease.

(iii) Cost of the asbestos survey.

Ms Scott informed us in her statement of case that the agents are legally obliged to undertake an asbestos survey of the common parts under the Control of Asbestos at Work Regulations 2002. A copy of the survey dated 18 May 2005 was produced. She said that the tenants were charged £176.25. This is a flat fee irrespective of the areas surveyed. She referred us to a previous Tribunal decision of the Eastern Rent Assessment Panel Ref CAM/00K/LSC/2004/0041, 10 St Ann's Road, Southend-on-Sea, Essex in which the Tribunal determined that £176.25 was reasonable for an asbestos survey of a small communal hallway.

The tenants challenged this item because the hallway is part of the demised premises for the ground floor flat and the first floor flat has right of access.

The Tribunal considered the survey on page 69 of the bundle and the lease. It found that of the 6 areas listed, the first three second floor loft (not inspected,) ground floor entrance hall and ground floor meter cupboard (not inspected) were part of the demised premises under the terms of the lease and were therefore not the landlord's obligation. Of the remaining 3 items; ground floor porch, ground floor front garden and ground floor externals, an equivalent of a desktop survey was possible in conjunction with a very brief external inspection would have ascertained that there was no need to take further samples. Ms Scott acknowledged that the hallway was part of the demised premises. We noted that the only samples taken were from the hallway. We acknowledge that the agents are under legal obligation to conduct such surveys and that the survey of the hallway if it were a common part and irrespective of size was necessary and proper management of the building. However, in this case a visual inspection was all that was necessary. We therefore determine that this cost has not been reasonably incurred and that a sum £50 plus VAT was reasonable.

(iv) Repairs and maintenance.

Mr Kearney and Ms Wilson challenged the cost of £564 demanded in respect of repairs to a wall and footpath carried out in 2003 by City Power contractors. They produced photographs. They said that they were dissatisfied with the standard of work carried out and had notified the agents of their dissatisfaction. They considered that the cost was unreasonable given the level of work carried which they said amounted to building a small part of the wall and concreting around the edge of the footpath. Ms Scott said that there was no evidence on the property file of complaints received.

In respect of the wall, it appeared from the photographs to be 2ft high and an approximate length of 1ft had been rebuilt and re-rendered, the mortar on the capping stone seemed fresher than the rest, the existing rendering was not consistent with rendering being carried out at the same time. As for the repairs to the path, the linear length of the work was approximately 10 - 11 feet and

the work seemed to entail a cement fillet to this length. The workmanship did not appear to be of a high standard.

We found it surprising that the tenants said that they had made a number of complaints but there appears to be no records on the file. For the amount of work undertaken and quality, our expert opinion is that the work was expensive and the cost unreasonable. We therefore determined that £350 is a reasonable sum payable by Mr Kearney and Ms Wilson.

(v) Administration Charges.

The landlord sought to recover £300.80 by way of administration charges. Ms Scott said that of these costs £65.80 was for the land registry search and £235 included the court application fee and associated preparatory work. She did not rely on the lease but said that the cost was recoverable under schedule 11 section 1 (3) (a) of the Commonhold and Leasehold Reform Act 2002 as a variable administration charge. She produced a copy of the demand sent to the tenants and said that demand was accompanied by a summary of the tenants rights and obligations. Mr Kearney denied receiving any further information apart from the demand.

We found that this sum was not recoverable as there was insufficient evidence upon which we could be satisfied that the demand was accompanied by a summary of the rights and obligations of tenants in accordance with paragraph 4 (1) of the Act. Paragraph 4 (3) provides that "a tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand." We were not persuaded by Ms Scott's submission that section 1 (3) (a) permitted the landlord to recover the above costs. It is our view that, even if the amount had been validly demanded, the applicant could not rely on section 1 (3) (a) which provides that ".....variable administration charge means an administration charge payable by a tenant which is neither-

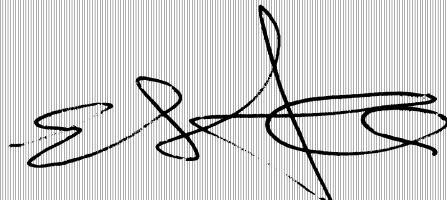
(a) specified in his lease"

as we construe that this refers to an *amount* not being specified or calculated in the lease rather than this clause giving an additional right to a landlord to recover charges that do not exist in the lease.

(vi) Section 20C

Ms Procommenos sought to limit the landlord from recovering the cost of these proceedings through the service charge under section 20C of the Act. The Tribunal can only make such order on the application as it considers just and equitable in the circumstances. The Tribunal found that it would not be just or equitable to allow the landlord to recover the cost of these proceedings because the application was properly brought. It is apparent that Ms Procommenos had queried the reasonableness of the costs as outlined above and the landlord had not accepted her interpretation of the lease. It was a reasonable course of action that she took to place the matter before the Tribunal. Furthermore, Ms Procommenos was not a party to the County Court proceedings issued by the landlord, however her application has been considered by this Tribunal together with those proceedings therefore the landlord did not incur additional costs in the case of the proceedings before the leasehold valuation tribunal as evidenced by the fact that Ms Scott was able to substantially submit representations applicable to both applications.

Chairman



Dated

5/6/06