

Refs: LON/00BB/LIS/2005/0024

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DETERMINATION

RE APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985 (as amended)

Property: **The Downings and the Becketts, Beckton, London E6 4WP**

Applicant: Secure Reversions Ltd.

Respondents: Twelve listed Lessees of Flats at the Property.

Hearing: Wednesday 8 June 2005

Inspection N/A

Representatives: Mr Paul A Church F C A with Mr Martin Palumbo of Remus Management Ltd
[for Applicant]

No representations or appearances were made by the Respondents

Members of Tribunal:

Professor J T Farrand QC LLd FCI Arb Solicitor

Mr P Tobin FRICS MCI Arb

Mr J J Tomalin

1. The Application, neither dated nor signed, was made under cover of a letter dated 15 February 2005 from Mr Palumbo. Under the terms of the relevant Leases, management of the Property is the responsibility of The Becketts Residents Management Company Ltd, the Lessees being £1 shareholders, which had appointed Remus Management Ltd as its Managing Agents. The named Applicant is the current Freeholder/Lessor of the Property. It is understood that there have been changes in the twelve Lessees listed with the Application but no requests have been received for any persons to be joined or replaced as Respondents.
2. The Application sought a determination of liability, in effect of the Respondents, to pay service charges for the years 2002 and 2003 (ie under the new s.27A of the 1985 Act). An earlier Application relating to the service charge years 2000 and 2001 had been determined by a differently constituted Tribunal, on 1 February 2002, which found that all the costs charged had been reasonably incurred, except in respect of gardening (ie under the now repealed s.19(2A) of the 1985 Act). That Tribunal had also been satisfied that “these proceedings were necessary because of the failure of some leaseholders to pay service charges” (Ref. LVT/SC/010/083 & 084/01). Nevertheless, this Tribunal was informed, in the Statement made on behalf of the Applicant, that “a few Lessees have still not yet paid all sums owing from 2000 and 2001” and that this “has caused serious cash flow problems to the Residents Company, which makes management of the estate extremely difficult”. Accordingly, it was stated that the purpose of the present Application was “to obtain a Determination of the reasonableness of the Service Charge for 2002 and 2003 so that proceedings can now be issued for all the years that are outstanding.” It was indicated that forfeiture of Leases was being contemplated by the Applicant.
3. Following a Pre-Trial Review held on 9 March 2005 (attended by three of the listed Respondents as well as by the Applicant’s representatives), Directions were issued requiring a Statement of Case from the Applicant plus copies of the service charge accounts for 2002 and 2003 and supporting invoices as well as of other relevant documents. The Respondents were also required to provide a Statement “in answer” as well as copies of relevant documents. The Directions proceeded to specify the date and time of this Hearing and concluded with a warning in heavy type: “Non-compliance with the Tribunal’s directions may result in prejudice to a party’s case”.
4. The Applicant has duly complied with these Directions by providing the Tribunal and the Respondents in particular with the explanatory Statement already mentioned as well as certified Service Charge Accounts for the two years in issue with supporting documentation including invoices for costs. In contrast, no statements or documents whatsoever have been received from the Respondents, none of whom saw fit to attend the Hearing or to send any representatives or representations or to request a postponement, although the Tribunal was satisfied that notices of the Hearing had been properly sent to them. Consequently, no

issues or items had been identified as in dispute between the parties or even as agreed.

5. In these unsatisfactory circumstances, the Tribunal considered the Service Charge Accounts for 2002 and 2003 (which had been certified by the Managing Agents but also examined and signed as in order by independent Chartered Accountants) in the light of the clear and convincing Statement in support provided on behalf of the Applicant. The Tribunal also had regard to the descriptions and findings set out in the previous Tribunal Determination for the preceding service charge years.
6. The conclusion reached by the Tribunal was that it could see no basis on which to find that any of the costs included in the Service Charge Account for the two years in issue had been unreasonably incurred. In particular, the Tribunal observed that the cost of gardening etc in 2002 was £276.90 as against the cost of £500 plus VAT allowed as a (reduced) reasonable amount for 2001 by the previous Tribunal.
7. There has never been any suggestion, to the Tribunal's knowledge, that Respondents' Leases did not explicitly enable recovery of the costs from the Lessees as a proportionate (one-twelfth each) service charge and the Tribunal's reading of the specimen Lease supplied revealed no ground for such a suggestion. In particular, it was observed that the Lease included provision for a Reserve or Sinking Fund (clause 11.2, also Fourth Schedule para.15). However, it was also observed that, following the issue of certified accounts, a Lessee's liability to pay excess costs does not arise until receipt of a written request for a further contribution, beyond any payments on account, has been made by The Becketts Residents Management Company Ltd (see clauses 12.6 and 16.2).
8. Accordingly, on the assumption that appropriate written requests have been or will be duly made, the Tribunal determines that the amounts shown as due per flat in the Service Charge Accounts for 2002 and 2003 are payable by the Respondents as Lessees under the terms of their Leases.
9. Finally, it had been noted in para.(9) of the Pre-Trial Directions referred to above that "the Respondents notified the Tribunal and the Applicant that they wished to make an application under s.20C of the Landlord and Tenant Act 1985 at the hearing." This would be an application for an order, in effect, preventing the Applicant from recovering its costs of the present proceedings as a service charge. In the event, no such application has been made with the consequence that the Tribunal has not been called upon to exercise its discretion to make a s.20C order. However, it appeared to the Tribunal unlikely that it would consider it "just and equitable" to prevent recovery of what were, in the circumstances of this case, justifiable management costs.

CHAIRMAN

DATE



15th Jan 2005