

LON/00AE/LIS/2004/0008

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A & 20C
OF THE LANDLORD AND TENANT ACT 1985

Premises: Flat 1, South Gardens, The Avenue, Wembley Park, HA9 9PG

Applicant: South Gardens Management Co. Ltd

Represented by: Mr. Jonathan Cooper (Michael Charles, Surveyors)

Respondents: Mr. M. Murray

Tribunal: Miss. L. M. Tagliavini BA(Hons) DipLaw LLM
Mr. D. N. Huckle FRICS
Mrs. A. Landau JP LLB

Date of the Tribunal's Decision: 21st September 2004

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FLAT 1
SOUTH GARDENS
THE AVENUE
WEMBLEY PARK
HA9 9PG

THE TRIBUNALS' DECISION

1. This is an application by South Garden Management Limited pursuant to section 27A Landlord and Tenant Act 1985 and represented by Mr Johnathon Cooper BSc(Hons) MRICS from Michael Charles, Surveyors the Applicant's managing agent. The Applicant acquired the freehold of the subject premises in 1998 and its shares are owned by the lessees of the block. The Respondent is Mr Murray a long lessee of the subject premises and a director of the freeholder company.

2. The Applicant seeks:

- (i) A declaration from the Tribunal as to whether the services charges incurred for the years 1997-2004 are properly payable and the sums to be incurred for 2004-2005 will be properly payable;
- (ii) A declaration that the contribution to the major works carried out in 2003-2004 is reasonable and payable;

- (iii) A declaration that interest on the major works contribution is payable;
- (iv) A declaration as to whether interest on the service charge arrears is payable;
- (v) A declaration as to whether legal costs are payable.

3. The Tribunal inspected the block and the subject premises on 16th June 2004. The Tribunal found a two storey purpose built block of flats, with flat roofs, rendered elevations and UVPC double glazed windows built early 1960's containing 12 two bedroom flats with communal gardens to the front and individual gardens to the rear of the ground floor flats.

4. At the hearing the Applicant was represented by Mr Cooper. Mr Murray represented himself. A paginated and indexed bundle of documents was prepared by and relied upon by the Applicant. A separate and different paginated bundle was relied upon by Mr Murray.

The Applicant's Evidence

5. Mr Cooper stated that the service charges included the following:

- Insurance;
- Communal garden maintenance;
- Repairs and maintenance (external only);
- Auditing fees;
- Management fees (£80 plus VAT per annum per flat rising to £90 plus VAT in 2003);
- Sinking fund.

[No charge was made for communal electricity as this was run off the residents' supplies].

6. Mr Cooper said that the auditing fees were consistent from year to year although they had in one year been higher due to an increased work load. However, auditing fees were generally £400 plus VAT per annum.

7. Mr Cooper told the Tribunal that since 2003 gardening was done on an “on-going” basis by the gardener Mr Silver. Before that time gardening was undertaken by maintenance firm. In 2003-2004 gardening costs had amounted to £1,300 which included the cutting of the front grassed areas; clearing of leaves; trimming of hedges; planting (at residents' expense).

8. Since 2004 buildings insurance was covered by AXA Insurance when previously the policy had been held by Royal and Sun Alliance from 1997 – 2003. Over the years premiums had increased.
9. Mr Cooper told the Tribunal he had taken over in March/April 2001 as the managing agent. Since 1996/97 Mr Murray had failed to pay anything towards the service charges. Mr Cooper stated that the block is a difficult one to manage and that since 2001 no sinking fund had been available as any sums in the sinking fund had had to be used to pay for the maintenance of the block. The residents had now opted to self-manage the block and Mr Cooper would shortly be relinquishing his role as the managing agent.
10. Mr Cooper stated that he considered the level of service charges demanded were reasonable and even possibly on the low side. Although they had increased over the last two years they still remained at £742.50 and below the level of service charges usually found in that area. Mr Cooper gave the example of a two bedroom flat in the locality, without lift and with no common parts but with a garden where service charges were in the region of £800 - £1,000 per annum (including a sinking fund).

11. On being questioned by Mr Murray, Mr Cooper stated that when he took over as managing agent of the block, service charges had been allocated equally between the flats since the acquisition of the freehold in an effort to simplify matters. However, since March 2003 he had reverted to the strict terms of the lease and service charges were now demanded in accordance with the contractual agreement. As a result the service charges due from 1/4/99 had been recalculated and 8 flats had received a credit.
12. The major works carried out in 2003/2004 totalled £35,934 of which £3,900 was due from Mr Murray together with a charge of £500 for the increased cost of the works. A section 20 notice dated 25/3/04 had been sent out as required by statute and although Mr Murray attended the managing agents' offices to inspect the tenders no comments were received from him within the period of time allowed. Approval for the works was given at an AGM of the freeholder company although work to only 8 of the 12 flats went ahead due to the refusal to allow works to be carried out by the other lessees. All other works have since been completed but as a consequence the remaining 4 flats were billed an extra £500 due to the subsequent increase in costs incurred arising from the piecemeal approach to the works.

13. The demands to Mr Murray included a charge for his contribution to the purchase price of the freehold which was agreed at £15,000 of which Mr Murray's contribution was £1,250. To date Mr Murray had failed to pay his contribution to this and a cheque paid in part payment in the sum of £592.50 had been returned uncleared. Nevertheless, Mr Murray remained as a director of the freeholder company.

14. The legal costs sought from Mr Murray largely concerned the correspondence arising out of Mr Murray's refusal to pay his contribution to the purchase price of the freehold although some covered other items. Mr Cooper agreed that by removing the legal costs relating to the purchase of the freehold and making appropriate apportionments of the remaining costs between the other lessees who were also being chased for outstanding charges, the amended legal charges due from Mr Murray would total £544.

The Respondent's Evidence

15. In reply to the application Mr Murray stated that he sought to challenge the application on the following basis:

- (i) The charges were unreasonable being spent on 'dubious' faults.
- (ii) The charges for 1997/98 are out of time.

- (iii) Trees have been cut down in the communal garden which was unnecessary.
- (iv) Several dubious insurance claims have been made.
- (v) Mr Murray has not been allowed to see the invoices and accounts relating to the service charges.

16. Mr Murray stated that he believed that the money demanded by the Applicant had been mis-spent. Mr Murray stated that his demands that he be allowed to inspect the invoices at his own flat was refused. Mr Cooper stated that Mr Murray had been invited on several occasions to view the books and invoices and appointments had been set up for him which he had not kept.

17. Mr Murray stated that works of installing a new down pipe to Flat 3 should have been charged to that lessee only.

18. Mr Murray stated that during the major works he had been told by the builder that they were doing the work to his flat for nothing. Mr Murray stated that he should therefore have nothing to pay in respect of these works. In answer to questioning by Mr Murray, Mr Cooper stated that the builders were not authorised to do work free of charge. The works had not included the replacement of windows and

although doors had originally been intended to be replaced this item was subsequently deleted. Mr Cooper stated that the works had not yet been signed off and no final account for works had been prepared.

19. Mr Murray stated that where work was carried out to blocked drains he should not be charge for this but charges should be made to the individual lessees of Flats 3 and 4 which were served by the blocked drains.

20. Mr Murray stated that the cost of the works to remedy a leak to a top floor flat in March/April 1998 had been improperly claimed from the insurance company and was unreasonable although he was unable to provide any evidence to support this. Throughout his evidence, Mr Murray's raised issues of whether work detailed and invoiced should have been paid or was in fact checked by the managing agent.

21. Mr Murray complained that a tree in the communal garden had been wrongly removed at the request of another resident and therefore should be paid for by them. He stated that in any event he wanted two sapling trees put in its place. He disputed that his share of the bill for this work in the sum of £428.97 was properly payable by him.

22. Mr Murray stated he should not be charged for legal fees or interest and was amazed at the stupidity of the other directors running the Applicant company.

The Tribunal's Decision.

1. The Tribunal finds that:
 - (i) The major works carried out in 2003/04 were properly notified by a section 20C notice to the Respondent. The Tribunal finds that these works were both necessary and carried out to a reasonable standard. The Tribunal also finds that the cost of the works to be reasonable. The Tribunal does not accept Mr Murray's assertion that he was told that these works were being carried out for nothing and therefore he should not be liable to pay for them. The Tribunal rejects this assertion as unfounded and lacking in any credibility. Further, the Tribunal accepts the evidence of Mr Cooper that as a result of Mr Murray's refusal to allow the approved works to proceed as planned additional costs had been unnecessarily incurred. The Tribunal finds that the additional charge of £500 is payable by Mr Murray.
 - (ii) The Tribunal finds that the insurance premiums paid are reasonable. The Tribunal notes that the Respondent has failed to provide any evidence to

support his assertions that these charges are not reasonable and accepts Mr Cooper's evidence on this point. Further, the Tribunal finds that the claims made on the insurance were made reasonably and properly and that there is no evidence to the contrary.

- (iii) The Tribunal finds that the charges in respect of the gardening provided are reasonable with the exception of the removal of the tree stump outside Flat 3. This appears to have been both unnecessary and at the personal request of the occupier of Flat 3 without any permission being sought either from the freeholder or the managing agent and any sum claimed in respect of this work should be omitted from Mr Murray's service charge for the relevant period.
- (iv) The Tribunal finds that the works to the drains were both a necessary and reasonable cost and are properly payable as a service charge in accordance with the terms of the lease.
- (v) The Tribunal finds that the dispute over the payment of the contribution towards the cost of the purchase of the freehold of £1,250 is not a matter raised by the Applicant in its application.
- (vi) The Tribunal finds that the legal costs charged to Mr Murray are reasonable and allowable under the terms of the lease pursuant to clause 8(i) but only in respect of the legal costs relating to matters arising in respect of service

charge issues and not in relation to the payment of the cost of the purchase of the freehold. These adjusted allowable legal costs amount to £544.

(vii) The Tribunal finds that interest is chargeable on the service charge arrears in accordance with clause 8(ii) of the lease.

(viii) The Tribunal finds that the service charges for the year 1997/98 are not statute-barred, which although reserved as rent have been subject to the Respondent's repeated acknowledgement of his willingness to pay when, in his opinion, the Management Company is properly run. Despite Mr Murray's criticisms the Tribunal noted that Mr Murray had to date not relinquished his role as director of the Management Company.

Section 20C

23. In closing Mr Murray made an oral application to the Tribunal for the costs of these proceedings not to be added to the service charges. Despite Mr Cooper's objections to the lateness of the application the Tribunal decided that the Applicant is not prejudiced by the lateness of the application. Mr Murray stated that he cannot afford the service charges as he has only a limited pension as income. Originally there had been four respondents but the others had dropped out. He stated he did not see why he should have to pay the costs and it was unfair if he was made to do so.

24. Mr Cooper stated that the leaseholders have a duty to meet their obligations and Mr Murray's refusal to meet his should not be paid for by the other leaseholders. Although there had been other leaseholders in arrears these persons had now paid or reached an agreement to pay.

Conclusion

25. The Tribunal determines that all the service charges demanded for sums paid for the years 1997-2004 including the charges for major works are properly payable with interest by the Respondent, except for the sums mentioned above (garden and the reduced legal costs) where the appropriate adjustments should be made. The Tribunal also determines that the sums to be incurred for the 2004-2005 will be properly payable as the Tribunal is satisfied on the evidence that these sums are to be reasonably incurred. The Tribunal finds it regrettable that the Respondent has failed to take advantage of the many opportunities afforded to him over the years to examine the requested documentation in relation to the service charges thereby seeking to satisfy himself of their reasonableness or made any genuine attempt to avoid this application to the LVT.

26. Therefore, in light of this decision the Tribunal finds that in all the circumstance it is just and reasonable to allow the Applicant to add the costs of these proceedings to the service charge.

Chairman: 

Dated: 21 September 2004