LON/00AU/LSC/2006/0271

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

Premises: Flat 1, 105 Newington Green Road, London, N1 4QY

Applicants: Ms. Jessica Leigh and Ms. Emma Hindley

Respondent: Hilsey Investments Ltd

Represented by: Shelleys Property Management

Appearances:

For the applicant
Ms. Leigh and Ms. Hindley

For the Respondent
Did not attend

Date of Hearing: 16 November 2006

Date of the Tribunal' s Decision: 20 December 2006

Tribunal:

Mrs. F. R. Burton LLB LLM MA
Mr P Tobin FRICS MCIArb
Ms S Wilby

LON/00AU/LSC/2006/0294

FLAT 1, 105 NEWINGTON GREEN ROAD, LONDON N1

BACKGROUND

1. On17 August 2006 the Lessees, Ms Jessica Leigh and Ms Emma Hindley, applied to the Leasehold Valuation Tribunal pursuant to ss 27A and 20C of the Landlord and Tenant Act 1985 for determination of their liability to pay service charges and for limitation of the Landlord's costs of proceedings.

2. An oral pre-trial review was held on 13 September 2006, at which the Applicants appeared in person and the Respondent did not appear and was not represented. Following the pre-trial review the Tribunal issued its standard Directions and set the case down for hearing on 16 November 2006. The issues to be determined were identified as follows: (1) Whether the sum of £1,538.14 for expenses incurred in the service charge year 2000-2001 prior to the Applicants' purchase of the subject flat is a valid service charge for the year 2005-2006; (2) the validity of the s 146 Notice; and, (3) Whether, under the terms of the Lease, interest and administrative charges in respect of the disputed sum of £1,538.14 could be a legitimate service charge for the year 2006-2007.

THE HEARING

3. At the hearing the Applicants again appeared in person and the Respondent was again unrepresented.

THE CASE FOR THE APPLICANT

4. It appeared that the subject property was a 2 bedroom flat on the first floor of a building containing three flats above a florist and launderette. The Applicants said that they had had great difficulty in communicating with the Managing Agent, a Mr A Grima of Shelleys, as he simply ignored their letters. They had even engaged a solicitor to attempt to resolve the outstanding issues, but Mr Grima had not responded

to them either and had simply continued to add interest and administration charges to a sum which they considered they did not owe.

5. Mr Grima had claimed that the Applicants owed (1) "arrears" of £1,538.14 comprising a "loan" of £500 charged to them by Shelleys for works carried out in 2000-2001, with administration and interest charges added to the "loan", and (2) further amounts claimed to be owed to Shelleys for an allegedly invalidly issued s 146 Notice for breach of the Lease and further allegations in that Notice.

6. The Applicants said that they had purchased the subject flat in June 2002 and had given notice of this to Shelleys on 8 July 2002, but had received a bill from Shelleys in May 2005 for an amount of £550, without any explanation for this demand. They had made several attempts to discover why this sum was being claimed from them, and were informed in July 2005 (by which time the amount of £550 had increased to £608) that the sum involved was in respect of a "loan"made by Shelleys to "the block" during the period 2000-2001 for works carried out to the property at that time (although this was before the Applicants had bought their flat).

7. The Applicants had ascertained that the works in respect of which the "loan" was made were in fact never carried out, and that the same works (repairs to the main roof of the property) were now being proposed in 2006 (in respect of which a Notice of Intention To Carry Out Work dated 27 July 2006 was on the file. They said that they had been advised by their solicitor that they were not liable for the sums claimedthat they had committed no breach of their Lease; that the s 146 Notice served on them was invalid and that to avoid incurring any further legal fees; and, they should make their application to the LVT in person, and pointed to a copy letter dated 13 February 2006 (and earlier correspondence) from their solicitors to Shelleys confirming the factual position in relation to the charges alleged to be outstanding .

THE CASE FOR THE RESPONDENTS

8. In the absence of any representative of the Respondents, the Tribunal examined the file in which was noted an email from Mr Grima dated 25August 2006 in which he states that if he was required to deal with the Applicants' application this

would incur "administrative and legal costs of £1,028.13 plus cost of any tribunal attendance". The same email claimed that the Applicants had been Lessees of the subject flat on 24 October 2001 when the alleged loan had been made and that they were "therefore liable", stating that the managing agents' delay in claiming repayment was " a bonus". The Applicants said that they were puzzled by this suggestion as they had acquired the property from their vendors, Paul Edmund Dean and Giulietta del-Signore Dean during the summer of 2002 and had drawn the Tribunal's attention to the copy Notice of Assignment of the Lease to them dated 8 July 2002 which was on the file.

9. It appeared to the Tribunal that the alleged breach of the Lease on which the Respondent relied as a basis for the s 146 Notice was the claimed "sabotage" by the Applicants of entry into their flat by a contractor who had attended to carry out "*scheduled* roof repairs" as set out in a letter on the file from Shelleys dated 9 December 2005, and for which Shelleys appeared to have debited the Applicants' account with charges imposed by the contractor and themselves totalling £146.88 . However, upon examination of the Lease it appears that clause 4(vii) required "reasonable notice" for this entry into the subject flat and that that clause specified that this permission for entry of "the Lessor and its Surveyors and Agents with or without workmen and others" was required only "at all reasonable times", and that paragraph 3 of the Fourth Schedule makes provision for such entry upon "reasonable notice in writing to the Lessee (except in case of emergency)". The Applicants submitted that they had had no such notice. As it appears to the Tribunal that "*scheduled*" roof repairs as mentioned in the Managing Agents' letter of 9 December 2005 referred to above, could not(in the absence of some explanation from the Managing Agents) be an "emergency", the Tribunal was unable to understand in what way the Applicants had committed any breach of their Lease in not facilitating this unannounced entry into their property. As the s 146 Notice also relies on non payment of service charge pursuant to clause 3(iv) of the Lease, for which in the absence of the Managing Agents there appears to be no evidence, the Tribunal is also unable to understand how the Managing Agents' s 146 Notice (also dated 9 December 2005) can be valid.

10. Asked by the Tribunal if there was anything further that they could tell us which might justify the absent Respondent's stance on either the claim for unspecified unpaid arrears of service charge or for the breach of covenant supporting the purported s 146 Notice, the Applicants said that they could not. They submitted that the "intimidating, threatening and aggressive" email of 25 August 2006 already referred to was typical of the communications they received from the Managing Agents. However, they had noted that, as at 21 May 2002, the Managing Agents had not billed their vendors for building insurance in respect of that year (and the Tribunal noted such a comment endorsed on a letter of that date from Shelleys to the Deans from whom the Applicants had purchased the subject property later in that year). Nevertheless, the Applicants submitted that, as far as they knew, their solicitor had dealt appropriately with all such matters at completion of their purchase, and in the absence of Mr Grima the Tribunal was unable to take a different view. The Applicants undertook to send in to the Tribunal a copy of the completion statement in respect of their purchase of their flat.

DECISION

12. (1) In the absence of any contrary evidence from the Respondent the Tribunal accepts the evidence of the Applicants and determines that the Applicants are not liable to pay the sums demanded by the Managing Agents which are not reasonable nor reasonably incurred, not least as it appears that the "arrears" claimed by the Respondent were not demanded within the statutory period of 18 months of their being incurred. (2) The grounds relied upon in the s 146 Notice appear to the Tribunal to be similarly invalid for the reasons elicited in evidence.(3) Similarly the Tribunal determines that the administrative and other charges levied in respect of the current year's service charge, while permitted by paragraph 4(i) of the Fourth Schedule, are unjustified and not payable. The Tribunal is unable to understand the Managing Agents non attendance without excuse for (nor even notification of) their non attendance on behalf of the Lessor, since it is clear to the Tribunal that Mr Grima had notice of the application and chose to ignore both the Pre Trial Review and the hearing.

13. It was agreed that an inspection would not be of assistance.

THE s 20C APPLICATION

14. The Applicants submitted that it would be unjust if any charges were applied by the Managing Agents to the service charge in respect of any expenses they might claim to have incurred in connection with the Applicants' application. The Tribunal therefore makes an order pursuant to s 20C of the Act that no costs of the present application shall be applied to any service charge.

COSTS

15. The Applicants submitted that the need to make an application to the LVT had caused them to incur substantial costs. The Tribunal considers that the Applicants should not have had to approach the LVT in order to resolve the issues which they had persistently attempted to resolve with Mr Grima of Shelleys and determines that pursuant to the Tribunal's powers in this respect the Applicants' application and hearing fees shall be refunded to the Applicants by the Managing Agents and that these sums shall be paid within 14 days of the issue of this Decision.

16. With regard to the Applicants' further costs, which they estimated at about £1250 in total, the Tribunal considers that similar principles apply. These costs include solicitors' charges in relation to the invalid s 146 Notice, £60 for couriers and £72 for photocopying (all of which would have been in the Applicants' submission unnecessary had Mr Grima chosen to respond to the Applicants' concerns when they were raised with him). In exercise of the Tribunal's powers pursuant to the Commonhold and Leasehold Reform Act 2002, the Tribunal therefore determines that the Respondent shall pay to the Applicants costs up to the statutory maximum of £500 permitted by the Act due to the unacceptable conduct of the Respondent in this matter and that this sum shall also be paid to the Applicants within 14 days of the issue of this Decision. Although this is the maximum that the Tribunal is able to award towards the expenses that have been unnecessarily incurred by the Applicants, the Tribunal has seen documentation on the file indicating a much higher total of wasted costs and it is to be regretted that the Respondent put the Applicants to this expense.

17. The Tribunal determines accordingly.

Chairman.....

Date..... 20.12.06