

LON/00BG/LAM/2005/0026

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 24 OF THE LANDLORD
AND TENANT ACT 1987, AS AMENDED, AND SECTIONS 27A OF THE
LANDLORD AND TENANT ACT 1985

Address Flats 1 & 2, 73 Brick Lane, London E1 6QL

Applicants Ms Megan Williams Flat 2
Sonar Global Investments Ltd Flat 1

Respondents Contessa Property & Investments Ltd

Appearances Ms Megan Williams For Applicants
Mr Paul Cleaver

Mr Simon Edwards For Respondent

The Tribunal Ms E Samupfonda LLB
MR C Kane FRICS
Mrs L M Ferrier

Hearing: 23rd March 2006

In the Leasehold Valuation Tribunal

Ref LON/00BG/LAM/2005/0026

Property	73 Brick Lane, E1 6QL
Applicants	Ms M Williams (Flat2) and Sonar Global Investments Ltd
Represented by	Ms M Williams
Respondents	Contessa Property & Investments Ltd
Represented by	White Druce & Brown

Tribunal
Ms Evis Samupfonda
Mr C Kane
Mrs Ferrier

Introduction

1. This was an application for a determination under section 27A Landlord and Tenant Act 1985 (the Act) of the reasonableness and liability to pay the service charges in respect of the cost of insurance for the service charge years 2004/5 and 2005/6 and for the appointment of a new manager pursuant to section 24 of the Landlord and Tenant Act 1987. An application was also made under section 20C of the Act.
2. An oral pre-trial review was held on 8th December 2005 Ms Ovadia attended and represented the applicants. The respondent did not attend and was not represented. The issues to be determined were identified as those set out above and directions were issued accordingly. An inspection of the property was considered unnecessary. The premises are described as a mid terrace 5 storey (including basement) brick building containing 2 leasehold flats on 1st, 2nd and 3rd floors and commercial restaurant on ground and basement. The freeholder is Contessa Property and Investment Ltd.

3. Hearing

At the hearing on 23rd March 2006, the applicants were represented by Ms Williams. In accordance with the directions, Mr Cleaver of Urang Properties Management Ltd, the proposed manager accompanied her. Mr Simon Edwards Associate Director and Head of Commercial Property Management at White, Druce and Brown attended and represented the respondent.

4. Summary of the applicant's case

Insurance

Ms Williams stated that she acquired the flat in January 2004. Since that time the managing agent has not collected the service charge or carried out any management functions other than to issue demands for the ground rent and for her contribution towards the cost of the building insurance. For the years 2004/5 the landlord demanded £564.12 and for the years 2005/6 he demanded £241.55. She added that upon receipt of each demand, she sought further information, clarification and an explanation as to how the figures had been arrived at and how her contribution had been apportioned. She also (sought) requested copies of the documentation. Initially she met some resistance but eventually she was provided with the insurance details for the year 2004/5 unsupported by any explanation. The sum sought from her for the following year was reduced to £241.22 again without an explanation. She was advised that the insurance liability would be apportioned on a 50% based for the restaurant and 25% each for the 2 residential lessees.

She considered that the cost incurred by the respondent in respect of the insurance was excessive and therefore unreasonable based upon her own enquiries. She acknowledged that the quotes that she had obtained were not on a like for like basis and that as a lessee she had encountered some difficulties. The quote from Endsleigh was based on the rebuilding cost of her flat of £100,000 with the knowledge that there is a restaurant on the ground floor. A premium of £188.21 was quoted. The Tribunal noted from the copy of the quote that in fact that no reference was made to the restaurant. Ms Williams' mortgage broker was able to obtain a quote of £447. He informed her that the bulk of the cost was attributable to the commercial premises.

In answer to the Tribunal she conformed that she had been aware of the existence of the restaurant at the time of purchase and she had not obtained a survey or received detailed information about the cost of insurance other than from her solicitor who advised that it would be around £200.

5 Summary of the respondent's case

Mr Edwards did not produce a copy of the insurance details for the year 2005/6. He was not sure who the insurers were although he was confident that the building was insured. He surmised that the cost of the insurance had decreased as a result of negotiations between the insurance broker and the insurance company. He confirmed that the

same parties had negotiated the cost for the previous years. He accepted that the sum of £241 was a reasonable figure compared to £564. He therefore conceded that the cost incurred for the insurance in 2004/5 was unreasonable. He also conceded that the lease does not allow the respondent to charge the residential tenants the cost for business interruption and that as this had been incorrectly levied the cost would be refunded. He said that he was not sure if the respondent earned any commission.

6. **Appointment of a new manager**

Summary of the applicant's case

Ms Williams based her application for the appointment of a new manager upon what she considered to be poor management by the respondent. She highlighted the fact that she had served the respondent a preliminary notice under section 22 of the Landlord and Tenant Act 1987 on 22.04.05 giving 75 days to remedy the defects that she had itemised. Although the landlord's agent responded by obtaining quotations from Loran Property Maintenance, City Maintenance London Ltd and an unnamed contractor the repairs were not carried out. And she has not been informed why. She was of the view that once the major works had been carried out the property did not require extensive management. She put forward Mr Cleaver as a suitable replacement manager.

Mr Cleaver submitted in evidence his background knowledge and experience of managing properties. Previously he was an investment banker but now he owns and runs Urang Ltd together with 2 others. He is responsible for the management of properties. He said that he and his staff are currently undertaking the I.R.P.M course. He described how his company Urang Ltd operates and confirmed that it has amongst its portfolio similar properties to the subject. A standard management fee of £240 plus VAT per flat/unit per annum is charged but this may vary depending on whether the restaurant would be included. A handover fee of £150 is also chargeable.

He said that although Urang Ltd does not employ surveyors he was confident that it could cope with the major works identified in the various estimates and if necessary a surveyor would be appointed. He anticipated that the freeholder would be liable to contribute 50% of the cost.

Summary of the respondent's case

Mr Edwards said that he would like to continue as manager. He acknowledged that the two residential tenants had been let down. He said that he was appointed last week of November 2005 as Head of Commercial Management. He said that he had not managed 100%

residential properties and that of the total (:) Contessa portfolio less than 10% are residential premises. He stated that White Druce and Brown have an agreement to charge Contessa the freeholder of the flats an agreed annual management fee but he could not identify which cost pertained to individual lessees. He stated that the lessees will be charged for any future costs incurred but this was not retrospective.

He advised that if a new manager is appointed for the flats he would prefer that the order incorporated the restaurant.

Decision

In determining the application we have to have regard to the law, the terms of the lease and the evidence.

Under the terms of the lease the respondent is responsible for insuring the building. By clause 8 of the Second Schedule the applicant is required to contribute a fair and proper proportion towards the cost of insurance. A landlord can only recover costs that have been reasonably incurred as per section 19 of the Act. In evidence Mr Edwards accepted the sum of £241.12 was reasonable thereby conceding that the cost incurred in 2004/5 of £564.12 was unreasonable. The Tribunal noted that Ms Williams made reasonable efforts to obtain comparable quotes but as a lessee she could only obtain quotations that were of limited use as they were not on a like for like basis. The respondent's apportionment of 50% to the restaurant and 25% to each lessee was not challenged. The Lease did not make provisions entitling the landlord to charge the residential tenants the business interruption rate.

The Tribunal therefore determined that for each service charge year in dispute the applicants are liable to contribute the sum of £241.12 (excluding the business interruption element to be calculated) as a fair and proper proportion of the cost incurred.

The Tribunal considered section 24 of the Landlord and Tenant Act 1987. We decided that the respondent had failed to comply with his repairing obligations as set out under the lease. The correspondence submitted indicate that the respondents acknowledge that major works costing in the region of £10,000 were necessary and to this end sought several estimates for the major works and then failed to carry them out despite the request from the applicants to do so. Mr Edwards did not know why. The respondents failed to collect the service charges from the residential tenants despite being so informed by the applicants.

The respondents only produced the details of the insurance for 2004/5. No details were provided for 2005/6 and the applicants were not provided with any details contrary to section 30 of the Act.

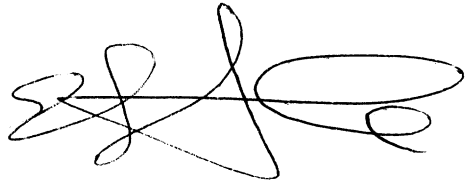
Although Mr Edwards on paper appeared suitably qualified he admitted that he had very little experience in managing residential properties. The Tribunal consider that as Head of commercial management it is likely that he would not be able to give this property the attention it needs. Although he said that he was now taking personal responsibility for managing this property, he was not aware of the landlord's responsibilities within the lease and did not know who owned the restaurant on the ground floor. Although he was aware that there was a service charge to Contessa Properties Ltd which included the 2 flats, he could not identify what that charge was or the amount.

The Tribunal noted that the respondents failed without reasonable excuse to attend the pre trial review.

The Tribunal decided to appoint Mr Cleaver as the new manager for both the residential and commercial properties. Although he is not professionally qualified he seems to have a better understanding of the requirements of residential property management. He is making sure that he and his staff are suitably qualified by undertaking the training course with the Institute of Residential Property Management. He also demonstrated a positive level of commitment as he addressed relevant questions and issues that may arise from managing residential and commercial premises.

Chairman

Evis Samupfonda



Dated

20th April 2006

**ORDER OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987 FOR THE
APPOINTMENT OF A MANAGER**

Re: 73 Brick Lane, E1 6QL

Case Number: Ref: LON/00BG/LAM/2005/0026

Between: Ms M Williams and Sonar Global Investments Ltd

Applicants

Contessa Property & Investments Ltd

Respondent

ORDER

UPON HEARING Ms Williams and Ms Edwards

IT IS ORDERED THAT:

1. Mr Paul Cleaver of URANG LTD ("the Manager") to be appointed Manager and Receiver of the Property with effect from 24th June 2006 for 2 years.

The Manager's general duties:

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- 2. The Manager shall manage the Property in accordance with:**
- a) the respective obligations of the landlord and the tenants under the various leases by which the flats and commercial unit at the Property are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the repair decoration, maintenance, provision of services to and insurance of the Property and**
 - b) in accordance with the duties of a manager set out in the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.**

Without prejudice to the generality of the foregoing it shall be the duty of the Manager.

- 3 To maintain appropriate building insurance for the Property.**
- 4. To collect and receive all sums whether by way of ground rent, insurance premiums, payment of service charge or otherwise arising under the said leases.**
- 5. To maintain on trust an interest bearing account of accounts at such Bank or Building Society as the Manager shall from time to time decide into which ground rent, service charge monies or other monies arising under the said leases shall be paid.**
- 6. To maintain efficient records and books of account which will be open to inspection by the tenants of the flats in the Property or their duly authorised agents, together with relevant vouchers, at all reasonable times.**
- 7. To enter into contracts for and to supervise all items of repair and maintenance.**
- 8. To enter into contracts for the maintenance and supply of goods and services.**
- 9. To deal with all enquiries, requests, reports, complaints and correspondence with tenants and solicitors, accountants and other professional persons, in connection with the management of the Property.**
- 10. To take any legal action that the Manager shall see fit in order to recover any arrears of ground rent or service charges.**

Remuneration:

11. The Manager shall be entitled to the following remuneration (which for the avoidance of doubt will be recoverable under the service charge):
- i) The basic fee of £240.00 per unit.
 - ii) A sum equal of 10% plus VAT of the net of VAT cost of major works. For the avoidance of doubt major works are works costing in excess of £250.00 per unit.
 - iii) Handover fee of £150.00

IT IS FURTHER ORDERED THAT;

12. The Manager, the Applicants and the Respondent or his successors in title as landlord and the Joined Parties, shall have liberty to apply to the Leasehold Valuation Tribunal in respect of this Order.
13. This Order shall remain in force for 2 years from June quarter day.
14. The Manager shall have liberty to apply to the Tribunal for further directions

CHAIRMAN.....

DATE.....8/5/16