

LON/00AH/LSC/2005/0168

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A and 20C
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant: Mr R Hills and Mr H Ray

Respondent: Nigel F Springer T/A Affinity Designs Ltd

Re: 71 High Street, South Norwood, London, SE25 6EB

Application received on 22 June 2005

Hearing date: 12 October 2005

Appearances: Mr R Hills (for Applicant)
Mr H Ray

Mr D Harding of McConvilles London Ltd (for Respondent)

Members of the Leasehold Valuation Tribunal:

Mrs T I Rabin JP

Mr H Preston

Mrs M B Colville JP LLB

71B AND 71C HIGH STREET SOUTH NORWOOD LONDON SE25 6EB

FACTS

1. The Tribunal was dealing with an application by the Applicants, Mr Roger Hills and Mr Harvey Ray to determine whether the service charges which had been levied during service charge years 2002-2003 and 2003-2005 and which were to be levied for roof works in respect of 71 High Street South Norwood London SE25 6EB ("the Building") in 2005-2006 were reasonable and properly incurred and by whom they were payable. The charges were levied by the Respondent Landlord who was originally Affinity (Designs) Ltd and whose interest in the freehold of the Building was transferred to Grand Central Properties Limited on 19th January 2004. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicants are the long leaseholders of Flats 71B (Mr Hills) and 71C (Mr Ray).
2. A copy of the leases of Flats 71B and 71C (the Leases") has been produced to the Tribunal. Both the Leases are in substantially the same form and the Applicants' obligations in relation to the payment of the service charge are set out in Clause 3(2) and the Fourth Schedule of the leases and the Respondent's obligations in relation to the provision of services are set out in Clause 4(d) and the Fourth Schedule of the Leases.
3. The Tribunal did not consider that an inspection of the Building was necessary.

MATTERS TO WHICH THE APPLICATION RELATES

4. The matters in dispute for the years in question were as follows:
 - (a) Professional fees for service charge years 2002, 2003, 2004 and 2005
 - (b) Insurance Premiums for service charge years 2003, 2004 and 2005
 - (c) Roof repairs undertaken in 2002
 - (d) Estimated roof repairs to be undertaken in 2005-2006.

DIRECTIONS

5. A pre-trial review was held on 17th August 2005 when the Tribunal gave directions. The Respondent was directed to provide the following by 7th September 2005:

- Copies of all invoices in support of the outstanding service charges and insurance payments and details of premium charged and commission received by the Respondent
- The specification and details of the tenders received and quotes accepted for the intended roof works
- Comments in support of the service charges and comments on the Applicants statement of 15th June 2005.

This would be regarded as the Respondent's case

6. The Applicants were directed to submit a response to the Respondent's case by 21st September 2005 together with alternative quotes for insurance and estimates obtained for the roofing works which would be regarded as the Appellants' case.

HEARING

7. The hearing took place on 12th October 2005 at 10 Alfred Place London WC1E 7LR. The Applicants attended in person and the Respondent was represented by Mr D Harding, director of the managing agents Messrs MacConvilles. The Tribunal noted that the Respondent had failed to comply with the directions within the time scales ordered by the Tribunal. A Respondent's bundle was produced to the Tribunal on the morning of the hearing and has been sent by courier to the Applicants the evening before. The Respondent's bundle was not complete in that it did not include invoices relating to the disputed service charges or details of how the insurance is obtained. A copy of the tender document was included in the bundle. Mr Harding apologised for the late delivery of an incomplete bundle and the Applicants agreed to proceed since they had previously seen many of the documents included and were anxious for a determination of the issues.

THE LAW

8. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-

- (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, as to

- (a) The person by whom it is payable
- (b) The person to whom it is payable
- (c) The amount which is payable
- (d) The date at or by which it is payable and
- (e) The manner in which it is payable

- (2) Subsection (1) applies whether or not payment has been made

EVIDENCE AND DECISION

9. The Tribunal first considered the potential cost of the re-roofing works and the costs that had been incurred on repairs during the service charge year

2002. Mr Hills gave evidence on behalf of himself and Mr Ray. He stated that the Building was built at the turn of the 20th century and consisted of a basement flat (Flat 71A), a shop on the ground floor, a studio flat on the first floor (Flat 71B) and a flat located on part of the first and the whole of the second floor (Flat 71C). Each of Flats 71A, 71B and 71C pay 25% of the service charges, as does the lessee of the ground floor shop. The main roof is pitched with that part located over part of Flat 71C being flat. Mr Hills believed that the Building was converted in the 1980s. Mr Ray purchased Flat 71C in 1999 and Mr Hills purchased Flat 71B in May 2002. There were problems with the roof from the time that Mr Ray purchased his flat to the extent that he was obliged to place buckets under various leaks immediately after moving in. Mr Ray tried to get the then freeholder to carry out works to repair the roof but was unable to get any action or indeed a response and was obliged to seek legal advice. There was substantial damage to Flat 71C as a result of water ingress and, although the insurers paid for some of the damage, Mr Ray was obliged to seek a remedy for his uninsured loss through court action, which was settled prior to the hearing.

10. Some minor works were carried out to the roof in 2001. The Respondent's unpaginated bundle contains an estimate from Sheppard Property Services dated 12th November 2001 for remedial work to the roof at a cost of £3150 and, although Mr Hills stated that remedial work was undertaken, it was not clear that this was undertaken by Sheppard Property Services. Mr Harding was not involved in the management in 2001 and was unable to confirm what works had been undertaken in 2001. Further works were undertaken in 2002 and there is an invoice from K Neacy dated 2nd August 2002 which related to the renewal of the box gutter, renewal of the boarding to the lower flat roof and renewal of the fascia board to the lower flat roof including the gutter and downpipe. The cost was £4,490. K Neacy also presented an invoice for replacement of broken slates at a cost of £120 dated 23rd January 2003. The roof was improved but it was still far from satisfactory and Mr Ray suffered a further bad leak in 2003.
11. Mr Harding gave evidence. He said that his firm had recently been appointed to manage the Building which had been managed by the freeholders until recently. His firm had been instructed to investigate the condition of the roof and prepare a report. The inspection was undertaken by a colleague of Mr Harding and took place in April 2004 and a specification was subsequently prepared. The long leaseholders were all served with a Section 20 Notice on 2nd February 2005 with a brief schedule of works that were proposed, a copy of the specification and a list of the three firms who were being asked to tender. The long leaseholders were invited to comment. A further Section 20 Notice was served on 28th April 2005 and giving details of the two estimates that had been selected. These were Stone Epps at £32,736.02 and Russell Trew Roofing Ltd at £34,595.15 (excluding VAT). The long leaseholders were invited to comment and to inspect the estimates.

12. Mr Hills obtained six estimates himself. Three of the estimates were not based upon the specification provided. The three estimates which were prepared using the specification were as follows, excluding VAT:

(a) Beckingham and Bromley Roofing	£21,500
(b) Garhigh (Southern) Ltd	£19,155
(c) Remfry Restoration Ltd	£22,193.10

13. Mr Harding accepted that the quotations obtained by Mr Hills were all considerably lower than those obtained on behalf of the Respondents. He himself had not seen the roof but his colleague had seen it and reported that it was in a bad condition. The flat roof is in a poor condition and is deteriorating quickly and needs to have work undertaken urgently. The then freeholder undertook some roof works in 2001 and 2002 which were remedial in nature and undertaken in a manner which limited the costs. He did not think that the roof should be repaired again as there could be various problems causing the water ingress and the roof was now dated and needed replacement. The freeholders had cut corners in the past and this had been unsatisfactory. He is prepared to proceed with Garhigh (Southern) Ltd, who had offered the lowest tender in accordance with the specification, subject to having a discussion with them in order to satisfy himself that they were a suitable firm to undertake the roof works. He agreed to consider ways in which the costs could be reduced without compromising the quality of the roof. He also agreed that he would ask those other contractors who had given estimates which were not in accordance with the specification to quote again, using the specification.

The Tribunal considered that the specification provided was professional and exhaustive, fully covering all the required works. Garhigh (Southern) Ltd have given an estimate of £19,155, excluding VAT, the lowest in accordance with the specification and this is reasonable compared to the other estimates obtained by both the Applicants and the Respondent. Provisional sums have been included to cover the eventuality that there may be additional work which will increase the final cost. The Tribunal noted that Mr Harding was prepared to consider reviewing the specification in discussion with Garhigh (Southern) Ltd to see if there could be savings. The Tribunal determines that the Garhigh (Southern) Ltd estimate is reasonable for the work specified to be undertaken.

14. The Leases provide for the Applicants to contribute to the cost of repairs to the structure. It is agreed by both the Applicants and Mr Harding that the roof is in a poor state and has been for a long time. Ineffective and abortive repairs were undertaken in 2001 and 2002 which do not appear to have addressed the problems in the roof. There is no evidence that a proper inspection was carried out when these works were undertaken and they appear to be no more than poor patching. It is not reasonable to expect the Applicants to pay for inadequate roof works and find themselves faced with a large bill for major roof repairs which may well have been less had the roof problems been properly addressed over the

past five years. The Tribunal will therefore disallow the costs of K Neacy in the sum of £4490 for roof works and £120 for replacement slates. These sums are not payable by the Applicants and, in the absence of any proper invoices or demands to clarify whether these sums have been paid, the Tribunal order that any part of this sum that has been paid should be reimbursed to the Applicants.

15. The Tribunal then considered the cost of insurance premiums. The Applicants had not obtained comparable quotes for the same cover as required by the directions and apologised to the Tribunal. Mr Harding said that insurance premiums reflected the claims history of a building and that there had been numerous claims. The Respondent had shopped around and had obtained a competitive quote. Mr Harding produced cover notes for 2003, 2004 and 2005, all of which were with the Royal and Sun Alliance. The Tribunal noted that the premium for 2004 was £966.93 and for 2005 had reduced to £917.71. Mr Harding expressed the opinion that the buildings cover was not adequate to rebuild the Building, should it be damaged by one of the insured risks. He will reconsider the level of cover when the policy is renewed in January.
16. The Tribunal did not consider that the insurance premiums were excessive, given the current insurance market, the location of the Building and the claims history. The Royal and Sun Alliance are a reputable insurance company. In the case of **Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd EGCS 143 CA** it was determined that a landlord is entitled to select the insurer it wishes, provided that it acts reasonably. The Applicants have not shown that the premium is unreasonable in the current climate and, in the absence of any evidence to the contrary, the Tribunal determines that the insurance premiums charged are reasonable and payable by the Applicants. These should be paid by the Applicants immediately since the Respondent has already expended the funds.
17. The Tribunal finally considered the question of the professional fees. The Respondent's bundle was not only delivered late, but was woefully inadequate in providing information about the amounts claimed for professional fees. Mr Harding had set out the amounts he considered to be outstanding for professional fees relating to each of Flats 71A, 71B and 71C High Street. The Tribunal is only concerned with Flats 71B and 71C, which were the subject of this application. Outstanding professional fees were shown as follows:

(a) Flat 71B High Street

31 st March 2003	£219.47
June 2004	£125, 55
April 2005	£643.43

(b) Flat 71 C High Street

19 th April 2002	£178.53
March 2003	£219.47
June 2004	£125.55
April 2005	£643.43

18. Mr Harding had only recently been appointed as managing agent and he stated that he had provided all the information that he had available but was unable to identify the fees charged. He referred the Tribunal to the demands in the Respondent's bundle which referred to professional fees but did not indicate to what they related. The Tribunal spent a considerable time going through the Respondent's bundle to try and match the demands to the invoices provided. The only one that the Tribunal were able to identify was the invoice dated 14th June 2004 from MacConvilles in the sum of £512.20 which related to a defects analysis report on water ingress. The Tribunal considers that this is an expense properly chargeable to the Applicants under the terms of the Leases and determines that the sum of £125.55 is payable by each of the Applicants. None of the other demands were identifiable from the papers before the Tribunal and were therefore disallowed.
19. The Tribunal noted that there were a number of invoices from W.G.R.Saunders and Son, solicitors in the Respondent's bundle. These all related to fees in respect of the dispute with Mr Ray regarding the damage to his flat. There is no provision in the Leases which allows for solicitor's costs for dealing with disputes with individual tenants to be charged. The Tribunal therefore disallows the solicitors charges which amounted to a total of £819.13 and these are not payable and, to the extent that they have been paid by the Applicants, are to be reimbursed. It is not clear from the Respondent's bundle whether these have been paid or not.
20. Mr Harding requested the Tribunal to determine the reasonableness of the estimated service charges for the period from February 2005 to January 2006 insofar as they related to building surveyors fees for the roof repairs, which were at 12½ % plus VAT and management charges, which had been calculated at 6½ % of the total expenditure, namely all items in the estimated budget, with the exception of the management fees but including the building surveyors fee. He said that the management fee covered collecting rent, inspecting the property and miscellaneous matters and confirmed that the 6½ % fee was charged on the roof repairs and the building surveyor's fee for supervising the roof works.
21. The Tribunal considered that the fee of 12½% was reasonable for preparation and supervision of a roofing contract of the nature of the subject contract. However, the fee should be calculated on the sum of £19,155 or any different figure adjusted by agreement between the parties. The Tribunal determines that a fee based on 12½ of the final agreed cost of the roof would be reasonable.

22. The management fee based upon 6½ % of the total expenditure is not reasonable. The figure appears to have been arbitrarily selected and is not appropriate for a property like the Building. The managing agent will only be involved in routine management and accounting, collecting ground rent twice a year and insurance on an annual basis. We have been told that there are no common parts cleaned and there is no garden. No bills have been produced which would indicate that there are common parts needing maintenance. There can be no justification for charging a fee of 6½% on fees charged for supervision. The Applicants have complained that they have not received even the basic level of management and maintenance and Mr Hills has been obliged to undertake necessary redecoration of the outside steps himself. Mr Harding said that he would become more involved with the Building now that his firm had been appointed to manage it and that he would address Mr Hills' concerns about the condition of the outside steps.
23. The Tribunal is of the view that the management requirements are small and that for a property consisting of a commercial ground floor and three residential flats, the annual management fee should be £150 per unit per annum which would be commensurate with the level of management and the type of property.

DECISION

24. The Tribunal determines that the lowest estimate for the re-roofing works is reasonable and that the cost is payable by the Applicants in accordance with the terms of the Leases. The Tribunal considers that the insurance premiums are reasonable and should be paid immediately by the Applicants.

25. The following adjustments are to be made to the service charges:

Flats 71 B and 71C

Disallowed for each flat

£1152.52	Roof repairs by K Neacy
£ 219.47	Professional fees 31 st March 2003
£ 643.43	Professional fees April 2005
£ 819.18	Legal fees 2002

The legal fees are to be reimbursed insofar as they have been paid


Flat 71C

£ 178.53	Professional fees 19 th April 2002
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26. The Tribunal determines that a supervision fee of 12½% of the cost of roof works is reasonable. The managing agent's fee of 6½% of expenditure is unreasonable and the Tribunal determines that a reasonable fee for managing the Building would be £150 per unit per annum.

Section 20C of the Act

27. The Applicants have asked that the costs of these proceedings are not to be regarded as relevant costs when the Respondent determines the service charges. The Respondent, through Mr Harding, said that in the circumstances he did not object to this application. The Tribunal has found that there is a history of poor management of the Building and the Applicants have been unable to have their concerns addressed over a long period of time. The Respondent has displayed a disregard for the requirements of the Tribunal and, had the matter been dealt with in a more satisfactory manner by the Respondent, the application may well not have been required. In all the circumstances the Tribunal considers that it would be just and equitable in all the circumstances to make an order under Section 20C of the Act

CHAIRMAN.....

DATED: 27th October 2005