Southern Rent Assessment Panel & Leasehold Valuation Tribunal

Case No.CHI/00ML/NSI/2003/0044

Re: 16 Sackville Gardens, Hove, East Sussex

Between

16 Sackville Gardens Limited (landlord/applicant)

And

Mary Pickett (tenant/respondent)

DECISION OF THE TRIBUNAL

Appearances:

Mrs Curti, Mrs Heasman, Mr Redfearn in person for 16 Sackville Gardens Limited

Mr Timms in person for Mrs Pickett
Mrs Pickett

Hearing: 04 November 2003

Tribunal: Ms J A Talbot MA Cantab.
Mr N Cleverton FRICS
Ms J Dalal

Date of Issue: 04 December 2003

Introduction

1. On 09 April 2003 the landlord, 16 Sackville Gardens Limited, commenced proceedings in Brighton County Court against the tenant Mrs Mary Pickett for arrears of ground rent and interim service charges in the sum of £215.00. Mrs Pickett, put in a defence and the case was then transferred to the LVT by the DJ in Brighton County Court on 30 July 2003 on the basis that the matter was more appropriately decided by the tribunal.

2. The tenant has made a further application for a determination under Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act") that the landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

3. The landlord has since requested that the tribunal consider making an order requiring the tenant to reimburse the fees paid to the tribunal in respect of these proceedings.

The Statutory Provisions

The relevant statutory provisions are as follows: In relation to service charges:

Section 192A Landlord and Tenant Act 1985 (as amended)
Limitation of service charges: reasonableness
(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination-

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
(b) whether services or works for which costs were incurred are of a reasonable standard, or
(a) whether an amount payable before costs are incurred is reasonable.

(2B) An application may also be made to a leasehold valuation tribunal by a tenant by whom, or a landlord to whom, a service charge may be payable for a determination-

(a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,
(b) whether services provided or works carried out to a particular specification would be of a reasonable standard;

(c) what amount payable before such costs are incurred would be reasonable.

In relation to the application to limit the inclusion of the landlord's costs of the proceedings:

Section 20C Landlord and Tenant Act 1985
Limitation of service charges: costs of proceedings
(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Rent Assessment Committee (Leasehold Valuation Tribunal) Regulations 1993, Regulation 11A: Reimbursment of fees
Where the tribunal is requiring any party to the proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him to the tribunal in respect of the proceedings, the tribunal shall not make any such requirement unless the tribunal has –

(a) given notice to the parties that the tribunal is considering making such a requirement
(b) given notice to the parties of the appointed date, time and place at which the tribunal will consider the representations of the parties in respect of the making of such a requirement ... and
(c) has considered the representations of the parties.

The Lease

4. The lease of Mrs Pickett's flat is dated 10 February 1971 and was made between B.W. Hodges Ltd and Lionel Lazarus. It demises flat 3 on the first floor, and was granted for a term of 999 years from 10 February 1971 at a rent of £15.00 per year.

5. The lessee is required, so far as is relevant to the matters before us, by clause 1, "to pay by way of service charge a yearly sum equal to one fourth part of the total yearly charges and expenses incurred by the lessor in carrying out its obligations under the Seventh Schedule ... such sum or a proportionate part thereof to be paid on the usual quarter days in each year". The service charge is to be paid "to the Lessor or such other company firm or person whom it may from time to time appoint".

6. The Seventh Schedule specifies the lessor's responsibilities under the lease, including its obligations to insure and repair the building and clean the common parts. It also specifies the charges that are to be included in the computation of the service charge. This includes, at clause 7, a provision that "the lessor shall employ such persons as it shall reasonably think fit for carrying out its obligations under this Schedule". At clause 8, the lessor is required to "keep proper books of account of all charges and expenses incurred by it is carrying out its obligations under this Schedule" and to produce annual accounts.

7. That account, at clause 9, "shall be prepared and certified by the lessor or such other company firm or person it may properly delegate who shall certify the total amount of the said costs charges and expenses (including the audit fee for the said account if any)." If the lessee wants a independent audit, he has the right to call for one, "provided that in such event the lessee shall be wholly responsible for all costs charges and expenses properly incurred in and about such audit".

8. The Sixth Schedule specifies the lessee's obligations under the lease, including at clause 16 an obligation to observe any regulations the lessor ight make "to govern the use of the Flats and the Reserved Property. Such regulations may be restrictive of acts done on the property detrimental to its character or amenities." The clause further provides that the lessee will indemnify the lessor for the cost of certain matters: "Any costs charges or expenses incurred by the Lessor in preparing or supplying copies of such regulations or in doing works for the improvement of the property providing services of employing gardeners porters or other employees shall be deemed to have been properly incurred by the lessor in pursuance of its obligations under the Seventh Schedule hereto notwithstanding any specific covenant by the Lessor to incur the same and the Lessee shall keep the Lessor indemnified from and against his due proportion thereof under Clause 22 of this Schedule accordingly". Clause 22 provides that any new Lessee must become a shareholder in the freehold company and "enter into a direct covenant with the Lessor to observe and perform the obligations on the part of the Lessee contained in this Schedule".

The Inspection

9. The members of the tribunal inspected the property on 04 November 2003 before the hearing. Also present was Mrs Curti, the tenant of flat 1 and member of the landlord company. The property consisted of a substantial two-storey detached Edwardian house converted into four flats, of brick construction under a tiled roof, situated on level in a pleasant and convenient residential area of Hove near the seafront. All the flats are sold on long leases and two are sub-let.

10. Externally we saw there was a shared front garden, well laid out and maintained. We did not see the rear garden which we were told is owned by one of the tenants. There was a communal bin area to the side. Internally there was a small hallway, stairs and landing. These common parts were clean and tidy but in need of some redecoration. We noted a small area of damp above the main from door. Attached to the door were two letter boxes with locks, one serving flat 3 only and the other serving the rest of the flats.

The Hearing

11. The hearing took place in Hove on 04 November 2003. It was attended by Mrs Curti, the tenant of Flat 1, her daughter Mrs Heasman, and Mr Redfearn, the tenant of Flat 4, in their capacity as members of the freehold company, 16 Sackville Gardens Limited. Mrs Pickett, the tenant of Flat 3, also attended along with her representative Mr Timms.

12. Preliminary Directions had been given at a Pre-Trial Review hearing on 07 October 2003. At that hearing it was established that the tenant was witholding £100.00 of the sum being claimed, having paid the remainder. This £100.00 was the element of the service charge relating to the management charges being charged by Mrs Curti for her management of the property on behalf of the landlord. These charges excluded the cleaning and gardening costs.

13. It was also established that the charges being claimed within the county court proceedings related to the accounting period for the year 01 September 2002 to 31 August 2003. There was a Direction that the landlords should provide a statement of the service charge account for that period, along with a breakdown of the duties carried out by Mrs Curti for the management fee.

14. We stressed the Tribunal's independent and expert status and explained that we would approach the matter with an open mind, making our decision after carefully considering all the evidence, both written and oral. We further explained that we could only deal with those matters within our jurisdiction.

15. In this decision, any reference to a page number refers to the paginated bundle of documents provided by both parties to the tribunal service. Although we have not set out the oral evidence in detail, we have of course given due weight to all of it in reaching our decision. We describe herein what appeared to us to be the salient points in evidence and argument.

Service Charges

16. We reminded the parties of the limits of our jurisdiction, namely, the reasonableness of the service charges in dispute. Any remaining matters would have to be disposed of by the county court within the legal proceedings

referred to at paragraph 1 above. To the extent that we have expressed views on matters not technically within our jurisdiction, such as the interpretation of the service charge provisions in the lease, we have done so purely in an attempt to assist the parties and the court. We make it clear, however, that in the case of such matters, nothing in our conclusions will bind the county court in its subsequent disposal of the existing proceedings in which the referral to this Tribunal was made.

17. We also reminded the parties that the amount in dispute was relatively small. Our aim was to deal as helpfully as possible, within our powers, to resolve the problem, and urged them to bear this in mind and keep a sense of proportion.

18. Mrs Curti, assisted by Mrs Heasman, gave evidence on behalf of the landlord. Her case was that the management costs charged to the service charge account were reasonable. The background was that Mrs Curti, with the approval of all the tenants, including Mrs Pickett, had taken over the management of the property in 1999. It had previously been managed by professional managing agents, Deacon & Co. They had raised professional charges of £376.00 plus additional charges for preparing accounts. The tenants were running into arrears. Mrs Curti's solicitor suggested money could be saved if Mrs Curti took over the management tasks.

19. As a result, the total current charges for the year in question for management were £100.00, shared equally between the tenants. A further £80.00 was charged for "company secretarial and preparation of accounts". Mrs Curti described the tasks she carried out for this fee. The company secretarial tasks included keeping company records, filing the annual return and accounts to Companies House, and legal work in connection with a flat sale. Other management tasks included keeping and preparation of accounts, typing and submitting quarterly ground rent and service charge demands, collection and banking of cheques, payment of bills and outgoings for the property, calling and minuting meetings of the freehold company, organising and paying for repairs. As far as repairs were concerned, these were dealt with on an ad hoc basis.

20. Mrs Curti was aware of the damp patch above the front door. She intended to obtain estimates for the necessary work and then decide, in consultation with the other tenants, which contractor to appoint and how much to charge the service charge account.

21. Mrs Curti kept a cash book to record the moneys received and paid out. She confirmed to the tribunal that there was a separate company bank account held at Barclays Bank in the name of Sixteen Sackville Gardens Limited, into which all moneys were paid and held, strictly on behalf of the landlord. She further confirmed that she paid her own share of the service and management charges in full into the bank account in her capacity as tenant, before drawing

out her management fees separately in her capacity as manager. These dealings were transparent and shown in the accounts and bank statements.

22. In reply to a question from the tribunal as to how the level of management charges had been arrived at, Mrs Curti said that it was a stab at a realistic assessment of the time and effort she undertook on behalf of Sixteen Sackville Gardens Limited, whose members were of course the tenants themselves, rather than a commercial rate. She stressed the intention was to minimise the total costs rather than breaking them down and itemising them. This meant that her expenses, for such incidental items such as postage and stationery, were also included in the overall figure rather than being separately charged. She had taken a global view in attempt to keep the charges low, fair and reasonable.

23. As far as cleaning and gardening were concerned, Mrs Curti carried out these tasks herself as well. The internal common parts were fairly small and consisted of the hallway, stairs and landing. Maintaining the front garden was a larger job, and a contractor had been employed for some of the year, but the tenants as a group were not happy with the standard of service and the contract had not been continued. Therefore Mrs Curti, assisted by members of her family, were maintaining the garden, leading to further savings to the service charge account. The cleaning and gardening charges were shown in the statement for the year's service charge account at £84.00 and £300.00 respectively. The relatively high garden costs reflected the contractor's fees.

24. In answer to a question from the tribunal, Mrs Curti said she considered she was doing a good job – providing a reasonable standard of management for a reasonable cost. The tenants had regular meetings in their capacity as shareholder and members of Sixteen Sackville Gardens Limited. Mrs Pickett was always informed of the meetings, but usually did not attend. Minutes of the meeting were kept. The opportunity was always there to inspect the cash book, bank statements, repair invoices, electrical accounts and other documents. Mr Redfearn, on behalf of himself and the remaining tenant, Mr Parrish, confirmed that they were very happy with Mrs Curti's management of the property, they trusted her judgment and considered themselves fortunate that she was able and willing to undertake the task for such relatively low a management charge.

25. Mr Timms then gave evidence on behalf of Mrs Pickett, who is of course also a tenant, shareholder and member of the freehold company. His case was that there was no power under the terms of the lease for the landlord to pay a member of the freehold company for management charges and therefore this was not a proper service charge item. He contended that it was only possible for an external professional managing agent to be appointed and paid. He also thought that the appointment of Mrs Curti breached the Articles of Association of the freehold company. However, we explained that it was not

within our jurisdiction to rule on matters and disputes of company law and accordingly this point was not pursued before us.

26. In support of his contention, Mr Timms explained that he had contacted LEASE, the Leasehold Advisory Service, for advice, upon which he relied. He referred to their letter dated 15 October 2002 which states: "As for the recovery via the service charge account for a specific fee for management services, there is no provision on the lease entitling the freeholder to do nor, in my view, would it be covered by the phrase 'total charges and expenses' in paragraph 1".

27. We referred to the relevant lease terms, as mentioned above (see paragraphs 4 – 7), and in particular the provision at clause 7 of the Seventh Schedule, that the landlord must employ "such persons as it shall reasonably think fit" in carrying out its obligations under the lease, including the obligations to keep accounts of all charges incurred. Mr Timms considered that this did not allow Mrs Curti, as a tenant and member of the freehold company, to carry out these functions and to be paid for doing so.

28. Mrs Curti responded to this point by saying that the landlord had taken legal advice from local solicitors, who had advised that the effect of clause 7 was that it was perfectly possible and proper for her to carry out management duties and that her charges formed part of the service charge and were thus recoverable from Mrs Pickett. This advice was taken before it became necessary to bring legal action against Mrs Pickett.

29. Mr Timms further contended that Mrs Curti, as a tenant, was obliged to pay her quarter share of the service charge, and he was concerned that, because she was also being paid for her management work, she was not paying her proper share. Mrs Curti responded to both this points by confirming that she did indeed pay her quarter share as a lessee, and then separately draw her payment for management charges. She did not discount her management charges from her service charge payment.

30. Mr Timms also suggested that the effect of clause 16 of the Sixth Schedule was to prevent the landlord from being able to employ or pay a tenant for providing gardening services, but his reasoning on this point was unclear.

31. There was some disagreement between the parties as to what had been said previously by the District Judge about service charge provisions. The history was that there had been two sets of legal proceedings brought by the landlord against Mrs Pickett for service charge arrears. The current referral to this tribunal was made within the second set of proceedings. The first set of proceedings were brought in 2002 and resulted in an Order dated 11 September 2002 for judgment against Mrs Pickett in the sum of £294.66. Mr Timms said the Judge had commented Mrs Curti must pay her quarter share.

Mrs Curti said the Judge had considered the lease, and been satisfied that Mrs Pickett must pay the service charge, including her management charges which were reasonable and that she was entitled to be paid for her work.

32. Turning to the standard of Mrs Curti's management, Mr Timms accepted that he had no concerns about her operation of the bank account, which he agreed was a separate account. He further confirmed that there was no suggestion of any inaccuracies, irregularities or incompetence in Mrs Curti's book keeping. In answer to a question from the tribunal, he conceded that her management work overall was of a reasonable standard, including the gardening and cleaning of common parts.

33. Mr Timms had some specific concerns about the provision of information and dealing with correspondence. He said that it was necessary to deal with the landlord by letter rather than attend meetings because of some unfortunate past events, and the degree of bad feeling that had arisen between the parties. Often Mrs Pickett's letter were not responded to, for example, a request for information about the identity of a new lessee and member of the freehold company. Mrs Curti said that it was not possible to reply to all Mrs Pickett's letters because there were so many of them, and that Mrs Pickett was always informed about meetings. However, she acknowledged that the information requested should have been provided.

34. Mr Timms thought the accounts should be separately audited as well as certified. However, Mrs Pickett had not exercised her right under clause 9 of the Seventh Schedule to call for an independent audit because she would have to bear the costs of this. He did not doubt the accuracy of the figures in the accounts as prepared by Mrs Curti. Mrs Curti said that the accounts were always agreed at a meeting of the freehold company and thus certified by the landlord, but had not been independently audited as this did not seem necessary and would incur unnecessary costs.

35. In response to a question from the tribunal on what he would consider to be a reasonable charge for management charges, Mr Timms said he had not thought about this because his central point was that it was not correct for a tenant to be paid for management at all. He thought independent professional managing agents should be used. A quote had been obtained by one of the other tenants from Parsons Son & Basley of £800.00 management charges, or £200.00 per flat per year. Although this figure was obviously much higher than Mrs Curti's charges, Mr Timms thought it was reasonable.

Decision

36. As explained, our jurisdiction in reaching our conclusions is limited to the question of reasonableness of the service charges, in this case restricted to management charges for management tasks carried out by Mrs Curti on

behalf of the landlord company. We have not made a determination about the full amount of £215.00 claimed by the landlord against the tenant in the county court proceedings which gave rise to the referral to this tribunal. Anything we say about the interpretation of the lease or the recoverability of service charges, is outside our jurisdiction in this case, and is said purely in the hope of assisting the parties. It is not binding on the county court but is an expression of the view we formed on the evidence before is.

37. We bore in mind that in this case, the people involved are on the one hand lessees, and on the other hand, members of the company that owns the freehold and has the landlord's obligations. The point of such an arrangement, which is quite common especially with small converted properties such as this, is to enable the tenants to have more control over the running of the building which is their home. However, it is important to bear in mind the separation of rights and responsibilities held by the same people in their capacity as lessees and members of the landlord company.

Service Charges

38. As the tenant's case was that there was no power under the lease for the landlord to pay a tenant to carry out management tasks, we first considered this point. It seemed to us that the lease was widely drafted in clear unambiguous language, so that the service charge was defined in Clause 1 as "the total of all the charges and expenses incurred by the lessor in carrying out it obligations under the terms of the lease". In our view, these costs and charges quite properly include management charges, indeed it would be most unusual if they did not. There was nothing to exclude them.

39. Moreover, Clause 1 must be read in conjunction with the Seventh Schedule, in which the lessor's obligations were further specified, as summarised in paragraph 6 above. These management tasks are carried out by Mrs Curti. The effect of clause 7 was to require the lessor to employ whoever it thought fit to carry out its obligations. This amounts at the very least to a power, and arguably a duty, for the landlord to employ a suitable person. There is no legal reason, either in the lease, or by statute, why this person should not be a member of the freehold company and a tenant.

40. There is also nothing in the Sixth Schedule, paragraph 16, to prevent the arrangement. This clause, far from preventing the landlord from charging for gardening (the relevant service for our purposes), actually allows the landlord to raise charges for gardening services. It also contains a comprehensive indemnity, meaning that the tenants, including any subsequent purchasers, are liable for the landlord's expenses in this regard. Mr Timms appeared to have misunderstood this provision.

41. We were satisfied that the lessees, in their capacity as members of the freehold company, had unanimously agreed that Mrs Curti should be that person. We saw no reason why she should not therefore receive a reasonable remuneration for this work. We noted that this had been the view also of the District Judge in the earlier set of legal proceedings.

42. Having decided this, we proceeded to consider whether Mrs Curti's management charges were reasonable and whether the work and services to which those charges relate were of a reasonable standard. We had no hesitation in determining that the charges of £100 for the year, which included out of pocket expenses, are eminently reasonable. The cost is also proportionate to the size and character of the building. We also determine that the charges for cleaning and gardening are reasonable.

43. We were further completely satisfied that Mrs Curti carried out the management tasks to a reasonable standard. On the evidence before us, it was clear that she had the best interests of the property at heart and was undoubtedly acting for the benefit of all the tenants, including Mrs Pickett. We further noted that she had the full support of the other tenants, who were grateful to her for the time and effort she took in taking on the management responsibilities.

44. We rejected Mr Timm's contention that it would be more reasonable for the landlord to appoint a professional managing agent at an estimated cost of £800.00 per year. This was a misconceived view based on a misunderstanding of the lease terms. On the evidence we were satisfied that there would be no additional benefit to the landlord or the tenants of employing external agents, because Mrs Curti was carrying out all necessary management tasks to a reasonable standard at a reasonable cost.

45. However, we express the view that it may be prudent for Mrs Curti to arrange that the accounts are periodically independently audited on behalf of the landlord, to protect her own position if nothing else. The cost of so doing could then be charged to the service charge account and thus shared by all the tenants. In suggesting this, we do not imply that the accounts are in any way deficient or misleading, but simply that it would ensure an element of independent monitoring and perhaps help to prevent any further disputes.

46. Similarly, while correspondence should be promptly attended to and reasonable requests for information complied with without the tenant having to send numerous reminders, all parties, including Mrs Pickett, should take responsibility for ensuring that correspondence is appropriate in tone and content. We stress that we are merely expressing our view and that we have no power to make an order requiring these things to happen.

47. Indeed, we further express the hope that in the future it will be possible for all the tenants to co-operate in the running of the freehold company, for the benefit of the property and all who live there. Now that both the county court and this tribunal, in two separate sets of proceedings, have found that the service charges properly include Mrs Curti's management charges, we trust it will not be necessary for this point to be litigated again. We understand that there has been an unfortunate breakdown of communication and trust between Mrs Pickett and the other tenants, and hope that in the future all parties will be able to overcome their differences and act in the best interests of the property.

Section 20C Application and Reimbursement of Fees

48. The landlords confirmed that they had not incurred any professional costs in connection with the tribunal proceeedings, and did not intend to pass any other charges for their own time to the service charge account. It was therefore not necessary for us to make an Order under Section 20C.

49. In relation to the reimbursement of fees, Mr Timms confirmed that he had received written notice by correspondence from the tribunal office, of the landlord's intention to ask us to consider making such an order. We considered the matter and concluded that it was just and equitable in the circumstances for the tenant to pay the landlord's fees.

50. We reminded ourselves that the matter had been referred to us by the District Judge in the county court to deal with the issues arising over reasonableness of service charges, within the context of legal proceedings brought by the landlord to recover service charges being withheld by the tenant. The landlord had not chosen to come before the tribunal. Although the decision to refer had been made by the District Judge, this had been at the request of the tenant. We bore in mind that this was the second time the landlord had found it necessary to bring legal proceedings against the tenant and that there had been a previous judgment against her.

51. The tenant has not succeeded on any of the points before us, in that we find all the management costs incurred as a service charge item to be reasonable, and of a reasonable standard. It is unfortunate, in our view, that the technical points taken by the tenant in relation to the lease terms, were misconceived. We therefore require the tenant to reimburse the landlord in the sum of £270, being £120.00 for the application fee and £150.00 for the hearing fee.

Dated

J Talbot

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Ms J Talbot, Chairman