RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985 (AS AMENDED), SECTIONS 19 (2A), (2B) & 20C
AND
THE LANDLORD AND TENANT ACT 1985 SECTION 27A

Case No:	CHI/40UC/LCI/2004/01
Property:	Heron House, Willow Walk, Bridgwater, Somerset, TA6 5DR
Applicant:	Heron House Management (Bridgwater) Limited
Respondent:	L. R. Butlins Limited
Date of Application:	Original Application dated 3rd February 2004 substituted by further application 29th March 2004
Members of the Tribunal:	Miss S M Casey, Lawyer (Chairman) Mrs Margaret Hodge, BSc (Hons) MRICS Mr L H Parkyn

Date decision issued:26 July 2004

1. Introduction

1.1 – There were two application before the Tribunal both relate to the property known as Heron House, Willow Wall, Bridgwater, Somerset, TA6 5DR ("the premises"). The Applicant had originally made an application to challenge the Landlord's choice of insurer. At a Pre-Trial Review held on 26 March 2004 a fresh application ("the section 27A Application") under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") was made in substitution for the original application. In consequence the first application was for a determination of liability to pay service charges, specifically the charge for buildings insurance for the period of 2000 – 2003 and the period of 2003 – 2004.

1.2 - Within the Application the Applicant under Section 20C of the 1985 Act sought an Order precluding the Landlord from charging, to the service charge account, any costs in connection with the Section 27A Application.

1.3 – The Respondent to both applications was the Landlord L. R. Butlins Ltd. The Respondent had been represented throughout the proceedings by its agents DGA Residential Managing Agents ("DGA").

2. Inspection

2.1 – The Tribunal inspected the Premises on 4th June 2004 in the presence of Mr & Mrs P Hardwick (Director and Secretary respectively of the Applicant) : the Respondent neither appeared nor was represented.

2.2 – The Premises comprised of twelve purpose built flats made up of two blocks. The two blocks were connected by a common external concrete stairway. Construction was said to be of a ferro-concrete frame, in-filled with block/brick. The roof was flat, and said to be covered with felt. Each flat had a separate front door. There were unallocated parking areas but no garages. There were common drying areas, common bin store and gardens at the rear of the flats. The Tribunal inspected Flat 5, owned by Mr & Mrs Hardwick, which comprised a hall, kitchen, living room, two bedrooms and a bathroom : the other flats at the Premises were said to be similar. There were no internal common parts, main entrances were at the front, side and rear. The Premises were all said to be residential leasehold, most being owner occupied with some rented.

2.3 - During the course of the inspection the Tribunal had drawn to its attention the fact that the common areas were external only. The Tribunal noted that there was a pylon at the rear of the Premises but this was not

situated within the grounds. The Tribunal also noted that the Premises were opposite the Sydenham Estate, which had some notoriety, although there had been no problems with vandalism or otherwise : Mr & Mrs Hardwick believed that the A372, which ran between the Estate and the Premises provided an effective barrier.

3. Hearing

3.1 – The hearing was also held on 4th June 2004 which Mr and Mrs Hardwick attended to present the Applicant's case.

3.2 – The Respondent did not attend and was not represented. However, DGA sent a letter to the Tribunal (by facsimile) dated 3rd June 2004 advising that DGA would not attending the hearing but made representation, within that facsimile, which will be referred to later.

3.3 – The Tribunal established that the only issue which concerned the Applicant in the Section 27A Application was the level of insurance premium claimed by the Respondent for the years June 2002 - June 2003 and June 2003 – June 2004, as a service charge.

3.4 – In presenting the Applicant's case, Mr & Mrs Hardwick relied on the bundle of documents submitted to the Tribunal with the Application and

also those provided in accordance with the direction given following the Pre Trial Review.

3.5 – For the period June 2002 to June 2003 DGA had arranged building insurance at a premium of £3,133.32 for a sum insured of £767,520.00, with AXA Insurance UK. Mr & Mrs Hardwick explained to the Tribunal that upon receipt of the service charge demand for the year 2002 – 2003 from DGA, they had queried the amount of insurance premium being claimed as it had appeared to the Applicant that there was a significant increase in premium over the previous year.

3.6 - Upon receiving the demand for payment the Applicant sought alternative quotations. These were on "like for like" basis with the policy obtained by the Respondent providing the same cover and meeting all of the "insured risk requirements" of the lease. As a result of the quotations received it was concluded that the Landlord's demand was unreasonable. The Applicant sent a letter dated 24 June 2002 to DGA acknowledging receipt of the demand for the June 2002/June 2003 period and requested a copy of the insurance summary. Subsequently, by letter dated 11 July 2002 the Applicant advised DGA that the proposed premium was unreasonably high and that alternative quotations were being sought. DGA did not reply.

3.7 – The Tribunal heard evidence from Mr & Mrs Hardwick about the alternative quotations obtained. They had asked for a quote to cover 'All Risks' including theft, terrorism, subsidence, property owner's liability, public liability and employer's liability. The sum insured was to be £770.000.

The applicant's had received quotes as follows:

- Norwich Union, at a premium of £682.72
- Brit Insurance (Lloyds) at a premium of £1,292.76
- Royal & Sun Alliance at a premium of £1,296.51

3.8 – A further demand for payment of the insurance premium was received by the Applicant from RadcliffesLeBraaeur, solicitors instructed by DGA. The Applicant advised these solicitors that the information was awaited and restated the belief that the insurance premium was "excessively high" and that other quotations had been received around "£2000 cheaper". Prompted by the solicitors, DGA eventually did provide the information sought by the Applicant. The Tribunal noted that DGA had failed to respond to the Applicant's many request for information. The Applicant had sent copies of the alternative insurance quotes to DGA however the issue over the level of premium was not resolved. For reasons which were not made known to the Tribunal, DGA had not dealt with the issues raised by the Applicant.

3.9 – The Applicant then received from DGA a demand dated 31 July 2003 for payment of the insurance premium which was in dispute (the period of June 2002 – June 2003), together with a demand for the insurance premium for the year 2003 – 2004 in the sum of £3,930.26. The Applicant also considered this demand to be unreasonable on the same basis as they found the premium demanded for the period 2002 – 2003 to be unreasonable. The Applicant again sought alternative quotes.

3.10 - The sum insured given by DGA was for £815,874,00 at a premium of £3,930.26 for the period of June 2003 – June 2004. The quotes received by the Applicant for the same period, on a "like for like" basis at a sum insured of £820,000 were as follows:

- Zurich for £741.57
- Axa Insurance UK for £929.02

3.11 – The only evidence/representations provided by the Respondent was in the form of the letter dated 3rd June 2004 from DGA (previously referred to in parra 3.2). As these were the only representations made on behalf of the Respondents, and for completeness, they are recorded in full:

"Please note that we are instructed as agents on behalf of the

freeholder in the collection of the ground rent and buildings insurance only and in the circumstances and due to the distances involved we feel that our representation can be best made in writing herewith. No disrespect is intended towards the panel for our non-attendance and we apologise for not submitting the enclosed sooner but we have been awaiting information from our brokers.

First, we would like to confirm the insurance premiums charged since 1998 as follows:

Period	***Insurer***	***Sum Insured***	***Premium***
June 1998-June 1999	*ITT*	*359,193*	*1075.85*
June 1999-June 2000	*L & E*	*373,561*	*1,118.89*
June 2000-June 2001	*NU*	*392,239*	*1,186.13*
June 2001-June 2002	*Groupama*	*392,239*	*1,186.13*
June 2002-June 2003	*Axa*	*767,520*	*3,133.32*
June 2003-June 2004	*Axa*	*815,874*	*3,930.26*

In addition to the above, between 2001 and 2002 there were some additional premium charges.

However, it seems that the lessee's main dispute is the current level of

insurance being charged and the alleged substantial increase.

However, under the terms of the lease and legislation the landlord c/o its agents are duty bound to provide reasonable insurance cover with a reputable company. This does not necessarily mean the cheapest and I do agree that there could be cheaper cover available in the market place however the same is true that there would be more expensive cover.

I trust that the panel will take into consideration the effects that certain uncontrollable events have had on the insurance market and the resulting increases. For example, the events of September 11th had a horrendous effect on the insurance market and we are now only seeing, in the last eight months, a calmer environment, however current domestic and foreign affairs may change this. The year before September 11th the Independent Insurance Company went into liquidation, this too had a horrendous effect on the UK insurance market. One also needs to take into consideration general increases in market forces etc and also the fact hat since 1998 the sum insured has increased from 359,193 to a more reasonable level as it stands at the moment at 815,874, a sum insured increase in excess of 100%.

The current yearly insurance premium of 3,930.26 translates into a

sum of approximately £327.52 per unit within the estate. This in not in our opinion and experience excessive and is reasonable.

We trust the panel will take into consideration our representations as stated herewith and we look forward to hearing from the panel."

3.12–The Respondent did not provide an up to date insurance valuation (or otherwise) for the full cost of reinstatement to support the insurance cover, as ordered by the Tribunal in the Directions made following the Pre Trial Review, which would have assisted the Tribunal when considering the appropriateness of the sum insured.

3.13–To assist the Tribunal in identifying the full cost of reinstatement, reference was made to the Applicants' bundle of documents. Within that bundle was a letter dated 6 May 2004 from John Lampier & Son Ltd, insurance brokers. They provided a quotation for buildings insurance in respect of the premises for a period of 12 months:

- The buildings sum insured was for £850,000.00,
- Communal contents (automatically included) £10,000.00
- Premium including insurance premium tax for accidental damage cover £1,283,62

Terrorism insurance was not included within that quote. The letter went on to advise:

"Following the event of 11th September 2001 all insurers have reviewed the way terrorism insurance cover is provided and for renewals and new policies proceeding on or after 1st January 2003 your policy no longer includes terrorism cover. However, Zurich Insurance are now able to provide terrorism cover including the threat of nuclear attack and the premium for this from next renewal date will be £85.89 including insurance premium tax".

3.14-The Tribunal asked Mr and Mrs Hardwick whether they thought it appropriate to have terrorism insurance. They felt that this cover should be maintained and confirmed the Applicant had no issue over the level of premium in this respect.

4. Decision

4.1 – The Tribunal made the following finding of fact:

(a) There was a liability upon the Applicant to pay a service charge under the Lease dated 31st January 1980 made between Hamstar Properties Ltd (1) and the Applicant (2) ("the Lease") clause 3

(5)(a). The "insured risks" were defined in the clause 4(5) of the Lease.

(b) The Applicant did not dispute the liability to pay a service charge which would include the cost of the building insurance.

(c) The Applicants disputed only the amount of insurance premium being claimed by the Landlords.

4.2 – Following the Pre Trial Review on 26th March 2004 the Respondent had been directed to file an answer to the Applicant's statement of case which had been filed at the Tribunal offices, copied and sent to the Respondent. The Tribunal also directed that the Respondent's answer should include:-

"A copy of the latest insurance valuation for the full cost of reinstatement to support the insurance cover on a Day One basis".

The Respondent did not file an answer and did not provide details of any insurance valuation.

4.3 – Also, the parties were directed to agree a bundle of documents or, in default, to file separate bundles. No bundle was agreed and the Respondents did not file a bundle of documents. All documents submitted by the Applicant had been copied and sent to DGA for the Respondents.

4.4 – The Tribunal found that the Applicants had dealt with it's concerns about the level of insurance premium in a responsible and constructive manner and that Mr and Mrs Hardwick were reliable witnesses. The Tribunal found that the Applicants had attempted to communicate with the Respondent and DGA both of whom had failed properly to address the issues raised.

4.5 – The Tribunal had sight of the alternative quotations provided by the Applicant for the two periods in question. The quotations obtained were on a like for like basis with the Landlord's policies. All of the insured risks identified by clause 4(5) of the Lease were covered in the alternative quotations.

4.6 – In making it's determination the Tribunal had to have regard to section 27A of the 1985 Act (as amended) as follows:

27A Liability to pay service charges : jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, 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.

Further, the relevant costs incurred by a landlord shall be taken into account when determining the amount of any service charge only to the extent that they are reasonably incurred (section 19(a) of the 1985 Act).

4.7 – The Tribunal found that the insurance premiums demanded by the Respondents for the two relevant periods of 2002 – 2003 and 2003 – 2004 were in contrast to the alternative quotes, unreasonable as they were significantly higher than the alternative quotes supplied by the Applicants for no apparent reason : certainly the Respondent had not advanced any cogent argument to explain the reason for such a substantial increase. Further, the alternative quotations obtained by the Applicant, had all been from leading insurance offices. To emphasise the difference, the quotation from AXA for 2003 – 2004 was for £929.02 when DGA had renewed cover with the same insurer for a premium of £3930.26.

4.8 – The Tribunal accepted that within the insurance market there would be a range in the level of premiums and the comment in DGA's letter of 3rd

June 2004 that "...there could be cheaper cover available in the market place however the same is true that there would be more expensive cover".

4.9– The Tribunal decided in this case that the range in the level of premiums between the quotes and the premiums charged through the service charge was so significant that it was fair to conclude that the service charge being claimed by the Respondent was unreasonable.

4.10-Accordingly the Tribunal, by reference to the alternative quotes and all of the evidence presented during the course of the hearing determined;

(a) the appropriate premium for the buildings insurance for the period June 2002 to June 2003 should be the sum of £1000.00

(b) the appropriate premium for the building insurance for the period June 2003 to June 2004 should be the sum of £900.00 plus a sum of £85 for terrorism insurance, accepted by the Applicant as reasonable.

4.11–The Tribunal confirmed that once the Respondent or its agents have revised the level of service charges payable by the tenants at the Premises the same shall be paid by the tenants, in each case as the leases provide.

4.12–The Tribunal considered it likely that the Respondent had the power within the terms of the Lease to recover any costs incurred in connection with the application. Further the Tribunal determined that it was unlikely that the Respondent had in fact incurred any such costs, but for the avoidance of doubt and for completeness, the Tribunal decided under Section 20 (C) of the 1985 Act that none of the Respondent's costs incurred or to be incurred in connection with the Application were to be regarded as "relevant costs" to be taken into account when determining the amount of any service charge payable by the tenant.

Signed.....

Miss S M Casey (Chairman)