LON/00AU/LIS/2005/0045

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

Premises: Ground Floor Flat, 2 Bryantwood Road, London, N7 7BE

Applicant: Mrs. Dorothy Wogu

Respondent: Pledream Properties Ltd

Represented by: Sable Estates

Attending:

For the Applicant
Mrs. D. Wogu in person
Miss Adaku Oragwu

For the Respondent
Mr. Richard Jenkins of Pledream Properties Ltd
Dr. Elaine Graham of Sable Estates

Dates of Hearing: 1 August 2005 and 3 October 2005

Date of the Tribunal' s Decision: 28 November 2005

Tribunal:

Mr. I. Mohabir LLB(Hons)
Mr. F. L. Coffey FRICS
Mrs. M. B. Colville JP LLB

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AU/LIS/2005/0045

IN THE MATTER OF GROUND FLOOR FLAT, 2 BRYANTWOOD ROAD, LONDON, N7 7BE

BETWEEN:

Ms D E WOGU

Applicant

-and-

PLEDREAM PROPERTIES LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. Unless stated otherwise the references in bold herein are respectively to the Applicant's bundle of documents **[AB]** and the Respondents bundle of documents **[RB]** and the pages that appear within those bundles.

2. The Applicant makes two applications in this matter. The first application is made pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Applicant's liability to pay and the reasonableness of service charges arising in the service charge years 1989-2006. The disputed service charges are set out below. The limitation point taken by the Respondent in relation to the service charge years up to 31 March

1997 is also dealt with below. The second application is made pursuant to s.20C of the Act to disallow, in whole or in part, the Respondent's entitlement to recover its costs incurred in these proceedings under the terms of the lease.

3. The Applicant occupies the subject property by virtue of a lease dated 5 November 1982 granted by Doris Louise Bacon to Steven Barry Gilbert for a term of 99 years commencing from 25 March 1982 ("the lease") **[RB/14]**. Under the terms of the lease, the Applicant's liability to pay service charges arises in the following way. By clause 2(9)(a) of the lease, the lessee covenanted to pay either £25 or such other sum the landlord deemed reasonable on 24 June and 25 December as a contribution to cover all of the costs incurred by the landlord in the performance of its covenant. In the same clause, the lessee's contribution is calculated to be two fifths of the actual amount expended by the landlord and also any reserve the landlord considers to be appropriate. By clause 2(10), the lessee also covenanted to pay two fifths of the total premium paid by the landlord to insure the building. By clauses 4(2) and (3), the lessor covenanted to maintain, repair and insure the building.

Inspection

4. The Tribunal inspected the subject property on 1 August 2005. The subject flat, one of three, is formed by conversion on the ground floor of this end-terraced three storey dwelling houses. The house itself opens into a splayed bay to the front, at ground floor level. To the rear it opens into a two storey addition. The property is of load-bearing brick construction, partly faced in

yellow, London, stock bricks, with the remaining surfaces being covered with a painted mortar render. All under a pitched roof covered with slating and with mortar fillets at the abutments with the enclosing parapet walls. The rear addition roof is laid to a low pitch, and covered with 'built up' felt roofing. The front bay is covered with zinc sheet, while the hood to the door surround to the principal entrance door, is covered with sheet lead. The windows to the frontage comprise wood, sliding sashes, within timber cased frames. To the rear, they are generally of proprietary, uPVC casement pattern. The rainwater goods are in uPVC.

Hearing

5. There were in fact two hearings in this matter on 1 August 2005 and 3 October 2005. The latter hearing was necessary to enable the parties to make any further submissions about the documentation concerning the internal and external works carried out in the present service charge year that the Tribunal had required the Respondent to file and serve pursuant to the Directions made on 2 August 2005. In any event, the parties made no further submissions at the adjourned hearing. The substantive submissions made by the parties were at the hearing on 1 August 2005 and this Decision will confine itself to the submissions made on that occasion.

6. At the hearings, the Applicant was represented by her daughter, Ms Oragwu, and also appeared in person. The Respondent was represented respectively by Mr Jenkins, the Managing Director of the Respondent company, and Dr

Graham-Leigh of the present managing agents, Sable Estates Limited ("Sable").

7. At the commencement of the hearing the Tribunal dealt with, as a preliminary issue, the limitation point raised by the Respondent in its statement of case that the Tribunal could not consider any service charge years before 31 March 1997. The Tribunal held that the Limitation Act 1980 had no application in this instance because s.42 of the Landlord and Tenant Act 1987 effectively created a trust in relation to service charge monies paid to a landlord. The landlord is the Trustee and the tenant is the beneficiary under the trust. Section 21(1) of the Limitation Act 1980 provides that any action by a beneficiary under a trust has no limitation period. That being said, the Tribunal indicated to the Applicant that it would not allow an inquiry to be made in relation to all of the service charge years originally complained about in the application. To do so would involve a disproportionate amount of time and costs on the part of the Tribunal and the parties. In any event, the Applicant had adduced little or no evidence regarding the service charge years between 1989-1987. The Tribunal, therefore, would be unable to make any findings in relation to those years. Both Ms Oragwu and the Applicant helpfully agreed to limit their challenge to the disputed service charges from the service charge year ending 31 March 2000 and subsequent service charge years up to the present time. The Tribunal then considered each of these in turn. As a matter of convenience, the disputed insurance costs for all of the relevant years are dealt with below as a discrete item.

Y/E 31 MARCH 2003 [RB/ 57]

D N Carpentry - £76.38

8. These costs were incurred as a result of having to clear rubbish from the front garden of the property and apparently was done at the request of the Applicant **[RB/68-69]**. Her service charge contribution was £30.55. The Applicant said that the rubbish was as a result of work being carried out to one of the other flats in the building. She submitted that because no maintenance had been carried out by the Respondent, she should not be liable for those costs and should be met out of the management fee paid to Sable. It was submitted for the Respondent that the sum claimed was reasonable.

9. The Tribunal found that the clearing of the rubbish was reasonably incurred and that the cost of doing so in the sum of £76.38 was also reasonable. The work had been carried out at the Applicant's request and clause 4(2)(a)(i) requires the Respondent, *inter alia*, to maintain and keep in good condition the other communal parts of the building. It was not disputed by the Applicant that this included the front garden area of the property. Under the aforesaid clause, the Respondent was obliged to remove the rubbish and is entitled to recover the cost of doing so. As to the cost, this would have required the attendance of a workman to and from the property and the use of a vehicle to carry away the rubbish. Having regard to these matters, the Tribunal did not consider the net cost of £65 to be unreasonable.

Y/E 31 MARCH 2004 [RB/58]

10. Save for the cost of insurance, the Applicant did not directly challenge any service costs arising in this service charge year. Instead, the Applicant sought accountability for the payment of £1,081.55, of which only £1,006.55 had been credited to the service charge account. The explanation given on behalf of the Respondent was that the difference of £75 represented the ground rent for one and a half years, which could not be properly allocated to the service charge account. A breakdown of the allocation of £75 for payment of the ground rent was in fact set out in a letter from Sable to the Applicant dated 21 October 2003.

11. In addition, the Applicant claimed that she made two further payments by cheque of £364.50 and £30.63 on 17 February 2003 and 31 March 2003 respectively **[AB/10-11]**, which had also not been credited the service charge account.

12. It seems that on 31 October 2002, the Applicant had settled forfeiture proceedings commenced her for service charge arrears on the basis that she paid three instalments totalling £1,435.08 together with the Respondent's costs of those proceedings. Although it was denied by the Applicant, it was clear on the face of a letter from the Respondent's solicitors letter to Sable dated 13 November 2002, that the compromise reached included the additional payment of the Respondent's costs by the Applicant. Indeed, the Tribunal had before it a letter from the Respondent's solicitors to the Applicant's solicitors dated 8 November 2002 confirming that the terms of settlement of the forfeiture

included the payment of the Respondent's costs. A further letter from the Respondent's solicitors to the Applicant's solicitors dated 23 January 2003 sought recovery of those costs in the sum of £395.13. The Applicant's subsequent payments totalling £395.13 were in fact set off against the Respondent's solicitor and own client costs as shown in the bill of costs dated 21 May 2003 **[RB/155]**.

13. The Tribunal was satisfied by the explanation given on behalf of the Respondent regarding the total payments made by the Applicant. The amounts challenged had been properly accounted for and represented payment of ground rent and costs in earlier forfeiture proceedings brought against the Applicant. Neither matter in respect of which payment was made is a "service charge" or "relevant costs" within the meaning of s.18 of the Act. Accordingly, the Tribunal has no jurisdiction to make a determination in relation to these matters.

Y/E 31 MARCH 2005 [RB/59]

(a) Total Cost of Treeworks by IMS Ltd - £305.51

14. These costs were as a result of the Respondent having to remove a Conifer tree at the front of the property. In a letter dated 2 December 2003 **[AB/82]**, loss adjusters instructed by the insurers of the adjacent property, at No.4 Bryantwood Road, confirmed that the Conifer tree was causing subsidence to that property.

15. It was accepted by the Applicant that no challenge was being made in relation to the total cost of the work in the event that the Tribunal found it to be reasonably incurred. She also accepted that it was prudent for the Respondent to remove the Conifer tree and allocate the cost of doing so if it was in fact causing subsidence to the adjacent property. However, it was submitted that the conclusion of the loss adjusters set out in the letter of 2 December 2003 was not supported by any objective evidence.

16. A survey report commissioned by the Respondent insurers, Norwich Union, also confirmed that the Conifer tree was causing the neighbouring property to subside. This was confirmed to Sable by a faxed letter from Norwich Union dated 22 April 2004 **[RB/83-84]**. A copy of the report was provided to the Applicant and the Respondent relied on its findings.

17. The Tribunal found that the removal of the Conifer tree was reasonably incurred. It was clear that the tree was causing the neighbouring property to subside. This was not only confirmed by the loss adjusters instructed by the insurers of the neighbouring property, but also by the Respondent's own insurers. The Respondent was entitled to rely on that professional advice. It was also clear that the cost of removing the tree could not be claimed under the existing buildings insurance policy. Having found for the Respondent, it was not necessary for the Tribunal to go on to consider the cost of removing the tree, as this was conceded by the Applicant to be reasonable.

(b) Accountability for Other Payments

18. The Applicant effectively repeated her position as set out in paragraph 10 above. She claimed that two payments of £100 made on 20 August 2003 and 12 November 2003 and a further payment of £854 had not been credited properly or at all to her service charge account.

19. The service charge account shows that of the payment of £854, only £804 was credited to the account. The explanation given on behalf of the Respondent was that the difference of £50 again represented the payment of ground rent, which could not be allocated to the service charge account. The remaining payments totalling £200 concerned the excess payment for a claim made on the buildings insurance policy as a result of a leak that occurred in the first floor flat. This was accepted by the Applicant.

20. For the same reasons set out in paragraph 13 above, the Tribunal had no jurisdiction to make any determination in relation to the payments made by the Applicant.

Y/E 31 MARCH 2006

21. The Applicant's challenge solely concerned the cost of major works to redecorate the common internal areas, the exterior of the building and other minor repairs. Those works commenced on 7 July 2005 and were completed on 17 July 2005.

22. Ms Oragwu said that in 2001 minor repairs and external redecorations were carried out by the Respondent at a cost of £4,450.79 plus VAT **[RB/60]**. She submitted that the major works carried out this year involved no structural work and that it was unreasonable that the estimated cost should be four times the amount charged in 2001. Even if inflation was taken into account, the actual cost should only be approximately £7,000. She further submitted that the tendering process undertaken by the Respondent did not preclude the estimates provided from being unreasonable **[RB/136]** although no comparable evidence of cost had been obtained by the Applicant. The cleaning of the carpets and relaying of the front path had not been done even though this work had been specified. No complaint was being made about the standard of the workmanship.

23. Ms Oragwu was referred by the Tribunal to the specifications prepared in 1999 (for the 2001 works) and the specification for the current works **[RB/61 & 115]**. She accepted that the 1999 specification did not include the internal redecoration to the common parts and that as a matter of principle that any cost comparison should be made on a 'like for like' basis.

24. It was accepted for the Respondent that the carpets to the common areas had not been cleaned and that a final account for the cost of the major works had been prepared. The Tribunal adjourned the hearing to 3 October 2005 in order that the final account could be prepared setting out the Applicant's contribution. At the adjourned hearing, the certificate of practical completion or final account was dated 14 July 2005. The final cost of the major works

including VAT was £10,721.56. To this sum was added the sum of £828.36, being the fees of the firm of surveyor's retained by the Respondent, Peter Scott & Associates, to prepare the specification and to tender for the work. The overall cost was£11,549.94. The Applicant's contribution in relation to the major works (only) was calculated to be £4,619.98.

25. In the Tribunal's view, the submissions made by Ms Oragwu on the Applicant's behalf were bound to fail. She accepted that there were significant differences in the work specified in 1999 and in the present year. It was also accepted by her that the only valid basis on which a cost comparison could be made was on a 'like for like' basis. Given the significant differences in the specifications, a valid cost comparison on a 'like for like' basis could not be made. In addition, the Applicant's submission that the cost of the major works, taking into account inflation, should be approximately £7,000 was completely unsupported by any evidence. The Respondent was entitled to rely on the professional advice given by the firm of surveyors, Peter Scott & Associates, retained by it in this matter. They properly conducted a tendering process and obtained estimates from four contractors. The significantly cheapest estimate was provided by Chartered Properties, who were ultimately awarded the contract. Whilst Ms Oragwu's submission that the tendering process did not preclude any estimate so obtained from being unreasonable might be correct in principle, it is not a submission that can be sustained in the absence of any evidence to support it. It is perhaps material to note that in his letter to Sable dated 10 August 2004 the Respondent's surveyor, Mr Scott, said that Chartwell Properties had won the tendering *"by being much cheaper*

than others on the eternal decoration items, and very competitive on scaffold, internal decoration and sealant work". He went on to say that *"... Chartered are a decent firm... and I have worked with Chartered Properties on several similar projects in the recent past and have found them to be a good firm overall. I recommend we proceed with them on this project".* By accepting the advice of its professional advisor in this matter, the Respondent cannot be criticised. Accordingly, for the reasons stated, the Tribunal found that the cost of the major works in the total sum of £11,549.94 to be reasonable. It follows that the Applicant's contribution of £4,619.98 for the cost of the major works was also reasonable.

INSURANCE

26. Only the buildings insurance premiums for the service charge years ending 31 March 2002 to 31 March 2005 were being challenged by the Applicant. The total premiums for each of the three years were £1,114.68, £1,315.35 and £1,375.85 respectively **[AB/7]**. Having regard to the premium charged in the preceding service charge year, the Applicant submitted that the increase in the disputed premiums was unreasonable. The Applicant had obtained a quote from Nationwide of £92.68 per month or £1,112.16 per annum for the same level of cover **[RB/107]**. To obtain the quote, the Applicant had provided the Respondent's policy schedule to Nationwide **[RB/98-101]**.

27. It was argued for the Respondent that the increase in the buildings insurance premiums was as result of "9/11". In addition, the quote obtained by the Applicant was for a small house and did not have regard to the claims history

of the property. Nationwide was not made aware that the property was a multi-tenure residential unit and that major underpinning works had been carried out in 2002. Had this information been disclosed to Nationwide, it was doubted whether if cover would have been offered. The Respondent's insurance brokers believed that the premiums charged by it to be fair and reasonable **[RB/109]**.

28. The Tribunal found all of the disputed buildings insurance premiums set out above to be reasonable. The insurance quote obtained by the Applicant from the Nationwide clearly states that it was given in relation to *"a standard property... with 3 rooms"*. The inference to be drawn was that Nationwide were not aware that the property had been converted into flats at the time the quote was given. On balance, the Tribunal was also satisfied that Nationwide were not aware of the claims history of the property regarding the underpinning works that had taken place in 2002. The Applicant stated that only the Respondent's policy schedule had been provided to Nationwide to obtain the quote. On the face of the schedule, there is no mention of the claims history of the property. In any event, the Nationwide quote obtained by the Applicant for the service charge year ending 31 March 2003, was only £35.52 cheaper than the actual premium charged by the Respondent. The Tribunal considered the difference to be *de minimis*. The Applicant accepted that an annual market increase in the buildings insurance premiums was to be expected. It follows that, the Tribunal having found the buildings insurance premium for the year ending 31 March 2003 to be reasonable, the premiums for the subsequent two service charge years were also found to be reasonable.

The increases were respectively £170.67 and £60.50 per annum. The Tribunal did not consider those increases to be unreasonable. It should also be made clear that there is no obligation on a landlord to accept the cheapest insurance quote that can be obtained on the open market: see ***Berrycroft Management Ltd v Sinclair Gardens Investments (Kensington) Ltd*** **(1996) HLR 444, CA**. The only obligation on a landlord is to show that the premium being charged is within a reasonable range. Accordingly, the disputed buildings insurance premiums were allowed as being reasonable.

Section 20C & Reimbursement of Fees

29. It was submitted by Ms Oragwu that there was no provision, express or otherwise, in the lease that allowed the Respondent to recover any costs it had incurred in these proceedings. This was accepted by Dr Graham-Leigh. She relied on clause 3(9)(a) of the lease, as set out in paragraph 3 above. However, none of the covenants set out in clause 4 of the lease refer to the costs incurred by the landlord in proceedings such as these. Unless there is an express provision in the lease allowing a landlord to recover costs, it is unable to do so: see ***Sella House Ltd v Mears*** **[1989] 12 EG 67**. Therefore, the Tribunal agreed with Ms Oragwu's submission and found that the Respondent was not entitled to recover it's costs or fees incurred in these proceedings.

CHAIRMAN..... J. Mohabir .....

DATE..... 28/11/05 .....