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LON/00BK/SC/2006/0092

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicants: Park Mansions Management (Knightsbridge) Limited

Respondents: Leaseholders of Park Mansions

Re: Park Mansions, 141-149 Knightsbridge, SW1X 7QT

Application received on 10 March 2006

Inspection of property on 26 September 2006

Hearing date: 26 September 2006

Appearances: Mr Patrick Taylor - for Applicant
(Director, Marsh & Parsons Estate & Management Residential & Commercial Ltd)

Members of the Leasehold Valuation Tribunal:

Miss J Dowell BA (Hons)
Mr D Levene OBE MRICS
Ms S Gosling

REF: LON/00BK/LSC/2006/92

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF:

PARK MANSIONS,
141-149 KNIGHTSBRIDGE, SW1X 7QT

B E T W E E N :

PARK MANSIONS MANAGEMENT COMPANY (KNIGHTSBRIDGE) LIMITED

Applicant

- and -

THE LESSEES OF PARK MANSIONS

Respondents

THE APPLICATION

1. This is an application dated 10th March 2006 by the head lessee of Park Mansions for a determination of liability to pay service charges for the cost of a major modernisation of the passenger lift at 141 Knightsbridge.

SUMMARY OF STATUTORY PROVISIONS

2. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
   (a) which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –
   (a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on 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.

(2) Sub section (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under sub section (1) may be made in respect of a matter which
(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

PRE TRIAL REVIEW

3. A pre trial review was held on 13th June 2006 at which the Applicant was represented by Mr Taylor and Mr R. Dunn appeared on behalf of his wife Mrs Jane Dunn the leaseholder of 90 Park Mansions. No other leaseholders were present and no written representations were received from them. The directions included a direction for a Statement of Case from the Applicant followed by a Statement of Case in Response and mutual exchange of witness statements.

THE HEARING

4. The hearing of the application took place at 10 Alfred Place, London WC1 on 26th September 2006. The Applicant was represented by Mr Patrick Taylor BSc, Dip Surv MIRPM Head of Property Management Marsh and Parsons, managing agents for the Applicant. None of the Respondents were present or represented. The Tribunal received a written representation in the form of an e-mail sent at 0949 on the day of the hearing from Mrs Jane Dunn of 90 Park Mansions.

PRELIMINARIES

5. Park Mansions is a seven-storey building located in prime central London. The ground and first floors are commercial retail premises and the second to seventh floors are residential comprising in total ninety-six flats. There are three entrances to the block at 141 and 149 Knightsbridge and 18 Brompton Road. The doors to 149 Knightsbridge and 18 Brompton Road are locked and only for use by the residents. 141 Knightsbridge has been designated as the main entrance to the building to which access is available from the street with twenty-four hour porterage. There is a lift at each of the entrances and this application relates to the lift at 141 Knightsbridge. The head lessee wishes to refurbish this lift in order to increase its size and speed and bring it up to modern standards.

6. We were satisfied that the application and the directions had been served on all ninety-six lessees in accordance with the Leasehold Valuation Tribunal procedure regulations. The only person who attended the pre trial review was Mr Dunn the husband of the lessee of 90 Park Mansions. Further we were satisfied that the Applicant had served copies of the Statement of Case on all the Respondents. None of the Respondents, including Mrs Dunn, served a Statement of Case in Response in accordance with the directions nor did any of the Respondents serve witness statements. Mrs Dunn sent an e-mail to the Tribunal at 0949 on the day of the hearing which was due to commence at 10. This e-mail referred to the letter that Mrs Dunn had sent in previously which we assumed to be her letter of 9th June 2006 to the case officer at the Residential Property Tribunal Service.

7. This application specifically requested that the Tribunal determine the liability of the lessees to pay a service charge in respect of the refurbishment of the lift at 141 Knightsbridge. We were told that the refurbishment of this lift was part of a programme of refurbishment of the entrance to 141 Knightsbridge. However we were not asked to determine liability for the costs of these works which are not included in this determination. Similarly we have not determined whether there has been compliance by the landlord with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 as we were not provided with the documentation which would have enabled us to make such a determination. Further we have not made any determination under section 19 of the Landlord and Tenant Act 1985. This states that relevant costs should be taken into account in determining the amount of a service charge for a period only to the extent that they are reasonably incurred. We can make no determination in this respect as we were not provided with the priced specifications nor were any alternative figures put forward by the Respondents. Finally, the application states "it is the principle of the expenditure rather than the value that is the issue. Funds collected for long-term works will be used". We have made no

determination as to the provisions of the lease in respect of the reserve fund and its use as we were given no evidence in this respect.

THE LEASE

8. Mr Taylor had attached to his Statement of Case documents he described as "relevant extracts from two sample leases. It is considered that these two leases are representative of all leases in the building". We are not prepared to make a determination on the basis of extracts from two leases, one of which was a draft. In order to construe a lease it is essential to read the whole lease. The original application to the Tribunal was accompanied by the counterpart lease of 90 Park Mansions made on 4th May 1979 between the British Petroleum Pension Trust Limited (1) and Park Mansion Management Company (Knightsbridge) Limited (2) and Patricia Jane Dunn (3). Our determination is based solely on the provisions of this lease.

RELEVANT PROVISIONS OF LEASE

9. When looking at whether the lessees are obliged to contribute to costs incurred by the landlord under the service charge this is a matter of construing the lease as a whole.

The relevant clauses in the lease are as follows:

(A) (6) "the Main Building" shall mean principally the block of flats known as Park Mansions Knightsbridge SW1 registered at HM Land Registry with title absolute under Title No. 446242 but excluding those parts on the ground floor and basement containing shops and store areas.

(D) The Company has been formed as a company limited by guarantee without a share capital for the purpose of managing maintaining and controlling the Main Building and on the signing hereof the Tenant shall automatically become a member of the Company. (The Company is the Applicant in these proceedings).

(E) The Lessor has granted a lease to the Company of the boiler rooms the lift rooms the gardens the storerooms the staircases landings and entrance hall the structure and the roof and all other common parts within the curtelage of the Main Building for a term co-terminus with the term hereby granted at a rent of a peppercorn to enable the Company to manage the Main Building in accordance with the covenants on the part of the Company herein after contained.".

Clause 2 The Tenant hereby covenants with the Lessor and under a separate covenant with the Company as follows:

(a) to pay the reserved rents and other moneys hereby reserved or made payable at the time and in the manner which the same are hereby made payable without any deduction.

Clause 3 The Company covenants with the Lessor and in a separate covenant with the Tenant as follows:

(c) During the said term to keep the entrance hall staircase landings corridors and lifts in the Main Building and the fittings thereof in good and sufficient repair decoration and condition adequately dusted and cleaned but not so as to impose upon the Company (or its successors or assignees) any responsibility whatsoever for any breakdown failure or stoppage of any service provided or carried out by the Company.

(e) to employ during normal working hours such servants or servants as the Company shall in its absolute discretion decide and to afford the services and perform the duties herein set out and (except any failure beyond the Company's control) to maintain a reasonable lift service for the conveyance of the Tenant his family servants and visitors to the floor on which the demised premises are situated provided nevertheless that the Company may cease working any lift or lifts for such periods as may be necessary and shall not be liable to the Tenant its servants or others for any stoppage of the said lifts.

(h) to maintain and keep clean the boilers and heating and hot water equipment and the lifts and all other services and equipment serving the Main Building in good order and repair and to repair and replace (if necessary) any boundary walls.

10. The Fifth Schedule contains the Company's expenses and outgoings and other heads of expenditure in respect of which the Tenant has to pay a proportionate part by way of service charge.

(1) The expense of maintaining repairing and renewing redecorating amending cleaning repointing painting graining varnishing or papering the main building or any part thereof whether inside or outside and all the appliances apparatus plant and other fixtures and fittings and things thereto belonging together with the expense and cost of complying with the provisions of the London Building Acts and Public Health Acts Town and Country Planning Acts and all other statutory provisions affecting the main building.

(2) The cost of periodically inspecting and maintaining overhauling repairing and where necessary replacing the whole of the boilers and other plant and machinery used for the supply of hot water to the heating and domestic hot water systems serving the Main Building and the conduits and other pipes valves and radiators of any common parts of the main building and lifts lift shafts and machinery and ventilating equipment therein.

APPLICANT'S CASE

11. The Applicant's case was set out in an undated Statement of Case which was amplified by additional points dated 12th September 2006. The Statement of Case explained that the freeholder of the building was Knightsbridge Green Limited who had the reversion on all leases and was the recipient of ground rents. The management of the residential element of the building is vested in Park Mansions Management

Company (Knightsbridge) Limited which is a company in which both the landlord and leaseholders are shareholders and which has a lease of the common parts of the building. This lease was included in the bundle and is dated 7th January 1992 made between Ropemaker Properties (1) and Park Mansions Management Company (Knightsbridge) Limited (2) for a term of 75 years from the 29th September 1977. The company wished to carry out a major modernisation of the passenger lift at 141 Knightsbridge. When the block was originally constructed there were three entrances each served by porterage but this has now been reduced to the servicing of one entrance at 141 Knightsbridge were there is twenty-four hour porterage. We were told that the lift works would be carried out at the same time as a major refurbishment of the ground floor entrance hall at 141 Knightsbridge.

12. Mr Taylor provided the Tribunal with a works specification to the passenger lift for 141 Knightsbridge which had been prepared by International Lift and Escalators Consultants Limited. This documents consisted of 52 pages and was endorsed "200506/Issue 02/draft".

13. The proposed works are as follows:

- Replacement of the passenger lift car with a new unit of increased size.
- Replacement of the lift control mechanisms to modern operating standards.
- Replacement of the lift drive mechanisms to modern operating standards which are an AC gearless variable frequency drive which will result in an increased speed of operation from approximately 0.5 metres/second to 1.0metres/second.
- Replacement of the lift car doors on each landing to wider units.
- Installation of all associated health and safety equipment to current best practice standards in the lift shaft and motor room.
- Increasing the permitted car weight limit of the lift from 300kgs to 630kgs.
- Installation of finishes within the new lift car to match the refurbished entrance hall.
- Installation of additional wire mesh cladding to the internal side of the existing internal wire mesh lift shaft to reduce the hole side to meet the machinery directives.

14. At the inspection Mr Taylor conceded that the current lift showed the weight limit to be 450kgs and not 300kgs.

15. The Tribunal was told that the current lift was approximately forty years old and was not 100% reliable. There was a maintenance contract in existence which was not shown to the Tribunal. Mr Taylor said that in addition to the cost of the maintenance contract the company had spent in the region of £15,000 per lift on the maintenance of each lift, in the last year.

16. Mr Taylor said that the managing agents had gone out to tender on all three lifts and that the consultation procedure under section 20 of the Landlord and Tenant Act 1985 had been complied with. He attached to his Statement of Case letters to the leaseholders dated 26th June 2006 and 8th September 2006. However the estimates referred to in the letter of 8th September 2006 were not attached. The letter gave details as to where the estimates could be inspected. Mr Taylor told the Tribunal that

there had been no response to these notices apart from Mrs Dunn who wrote two letters after service of the first notice.

17. Mr Taylor submitted that the works were necessary because:

(a) the capacity of the current lift is inadequate for its current use. This has arisen because 141 Knightsbridge was now the only portered entrance. There was a far higher demand in the use of the lift at 141 Knightsbridge not only for residents but also for visitors and tradesmen.

(b) The current lift can only comfortably accommodate four normal sized males which was inadequate for a portered entrance of a luxury block of ninety-six flats.

(c) Accompanied wheelchair-bound persons found it difficult to enter and exit the current lift. The existing lift opening does not meet current Disability Discrimination Act requirements for a new lift car.

(d) Even if the existing lift car were refurbished for an estimated next fifteen years the cost would be £60,000.

(e) The nature of this block of flats has changed over the years and it is now a luxury block of flats. The porters have now been given uniforms and generally the block is being upgraded.

18. Mr Taylor submitted clauses 3(e) and 8(d) and paragraphs (1) and (2) of the Fifth Schedule of the lease gave the company authority to carry out these works. (These provisions are set out above).

RESPONDENTS' CASE

19. The only Respondent who has taken any part in these proceedings is Mrs Jane Dunn, the lessee of 90 Park Mansions. Her written submissions to the Tribunal consist of an e-mail dated 26th September 2006 which refers to a letter to the Tribunal dated 9th June 2006. Mrs Dunn did not comply with the directions given by the Tribunal on 13th June 2006. Her e-mail gave no reason for this.

20. Mrs Dunn explained that she had lived at Park Mansions since 1959 and that she lived there full-time until 1973 and part-time since then and that at no time were their porters at all three entrances. She said that she was concerned that it was proposed to replace the lift at 141 Knightsbridge "at great cost" when it appeared to be working well and that there were many more urgent items needing attention such as the boiler, the roof. However she did not submit any evidence in respect of the works which she said were necessary to the boiler and roof.

21. In her letter of 9th June 2006 Mrs Dunn submitted that the proposed works represents an improvement and according to Schedule 5 of her lease she had no liability for the cost of improvements. She submitted that all three existing lifts were in regular use and good order and were not in need of repair or replacement. They were the subject of a comprehensive maintenance contract and the proposed works could only be

described as an improvement. Thus the management company could not recover the cost of the works under the service charge which would place the solvency of the management company in jeopardy. If the company became insolvent then the management of the building would be taken over by the freeholder.

22. Mrs Dunn went on to state that the existing lift had a capacity of six persons and that it was quite exceptional for more than six persons to wish to enter the lift car at any one time. She said there were instances when residents arrived from overseas with large amounts of luggage and that this problem arose because some leaseholders permitted short term lets in contravention of the City of Westminster byelaws.

23. Mrs Dunn also submitted that the lift provides adequate disabled access. She said that her goddaughter was confined to a wheelchair and had no difficulty in accessing her top flat in a wheelchair together with a carer.

24. Mrs Dunn's letter also stated that the managing agent had not addressed the issue of compliance with building regulations as any alteration to the lift well would require total enclosure of the lift wells to comply with current building regulations.

25. Finally Mrs Dunn submitted that the proposal did not represent good value for money and that there were higher priorities for the expenditure of leaseholders' funds.

INSPECTION

26. The Tribunal inspected Park Mansions in the afternoon of 26th September 2006. We inspected the exterior of the building which is located on the corner of Knightsbridge and Brompton Road. We inspected all three entrances and the common parts including the hallways, lifts, staircases and landings. We noted the size of the lift and gave particular consideration to the number of people the lift would comfortably hold and the ease of access for wheelchair users. We noted in each of the lifts that there was a panel on the wall which stated the lift could take up to six people/a weight of 450kgs. The location of the block is almost adjacent to the prestigious new development "The Knightsbridge" and opposite One Hyde Park (the old Bowater Building) which is currently being redeveloped to a high specification.

DECISION

27. The decision in respect of the lessees' liability to pay for service charges for the refurbishment of the lift at 141 Knightsbridge is circumscribed by the terms of the lease. We have set out the relevant clauses in paragraph 9 above. This is not a modern lease and it does not operate by directly linking the service charge to the costs incurred by the landlord in carrying out its covenants. Liability therefore rests on interpretation of the relevant clauses in the lease.

28. In our view the crucial clauses are clause 3(e) and paragraph 2 of the Fifth Schedule. The test is the company's obligation to maintain a reasonable lift service for the lessees, their families, servants and visitors balanced by the lessees' obligation to pay by way of service charge the cost of where necessary replacing the lift. On balance, on the evidence before us, we determine that the company's decision to refurbish the lift including replacing the lift car at 141 Knightsbridge comes within its covenant to

maintain a reasonable lift service and that the lessees are liable to pay for this work by way of service charge.

29. Our reasons for this determination are:

(1) this is a block of flats in prime central London. It is reasonable to take a decision to upgrade a forty-year old lift in order to maintain a "reasonable lift service".

(2) At our inspection we were satisfied that the current lift did not meet modern standards and would only hold four average-sized persons. We accept that the nature of this block of flats is that there will be residents and visitors from overseas and that the main lift must have the capacity to carry four people and luggage.

(3) We were satisfied from our inspection that the current lift would not easily accommodate a person in a wheelchair particularly because the door opening is so narrow. It was reasonable for the company to wish to provide a lift service which would comfortably and safely accommodate a person in a wheelchair with or without his or her carer.

(4) The porter service is restricted to this lift which will therefore have a higher level of use than the other two lifts. During our short visit we witnessed that it was a busy lift whereas we did not see the other two lifts being used at all.

(5) The lift did not seem unreasonably slow but we consider it is outdated in respect of its size and door opening.

(6) The scheme is promoted by the management company of which all lessees are members. Only one out of ninety-six lessees have objected to this scheme.

SUMMARY

30. We confirm that we determine, pursuant to section 27A(3) of the Act, that if costs were incurred for refurbishment of the lift at 141 Knightsbridge, as described by Mr Taylor in his Statement of Case, a service charge would be payable for the costs of this work under the terms of the lease of Flat 90. However, for the reasons set out above, we make no finding in relation to compliance with the consultation requirements under section 20 of the Act, reasonableness of the costs of the work, liability and reasonableness of the costs of the refurbishment of the ground floor entrance hall at 141 Knightsbridge and the maintenance of, and use of, the reserve fund.

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Jane Dowell
Chairman

Dated this 25th day of October 2006