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MIDLAND RENT ASSESSMENT PANEL **Case Number: BIR/00CR/LIS/2007/0001**

Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002

DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

I. D. Jones, R. Rowberry, R. Hingley, D. Hancox, P. Edwards, D. Burford, C. Vincent, T. Shepherd, T. Bowen and P. Smith. **(the Applicants)**

and

G. Tompkinson trading as Midland Management Services **(the Respondent)**

on the Applicants' applications:

(1) under section 27A for a determination of liability to pay service charges for the year 2006; and

(2) for an order, under section 20C, that the Respondent's costs in connection with these proceedings shall not be part of any service charge

Properties: Flats 1,2,4,5,6,7,9,10,11 and 12 Richmond Gardens, 114 High Street, Amblecote, West Midlands DY8 4HG

Mr W J Martin, (Chairman)
Mr. S. Berg F.R.I.C.S.
Mrs C Smith

Date of determination: 21st June 2007

DETERMINATION: (1) The amount payable in respect of each Flat in respect of the relaying of the tarmac to the entrance ramp is £196.00 plus £41.13 in respect of consultant's fees.

(2) The Tribunal grant the Section 20C Order to the Applicants

The application:

1 On 4th March 2007 Ian David Jones applied to the Leasehold Valuation Tribunal (the **'Application'**) for a determination of liability and for reasonableness of a service charge levied in 2006 by G. Tompkinson trading as Midland Management Services (the **'Respondent'**) in respect of the resurfacing of the entrance ramp to the car park serving a block of twelve flats at Richmond Gardens, 114 High Street, Amblecote, West Midlands DY8 4HG (the **'Flats'**). On 9th March 2007 the remaining Applicants were joined as parties. Ian David Jones and the joined applicants are referred to hereafter as the **'Applicants'**. The Applicants requested a paper determination which was agreed to by the Tribunal. Pursuant to its Regulations the Tribunal, by letter dated 9th March 2007, gave notice to the parties of its intention to proceed without a hearing. The parties were invited to submit their written representations on or before 20th April 2007, and given a further period of two weeks thereafter, until 4th May 2007, for making comments upon the opposing party's case.

The Flats

2 The Flats comprise purpose built blocks with a car park and garage block which are approached by a steep entrance ramp from the High Street. Because of the steep slope, there is a retaining wall and steps, which give pedestrian access to the Flats.

The Disputed Service Charges

3 From the written representations of the parties the following became apparent:

3.1 The relaying of the tarmac to the entrance ramp was part of a package of works to the car park and grounds to the Flats. The additional work consisted of the re-laying of slabs, repairs to the retaining walls to the entrance ramp and re-pointing the damp proof course.

3.2 Originally the proposals included more works, particularly the resurfacing of the whole of the car park area. The Respondent instructed P.B. Consulting to obtain quotations for this work. By letter dated 26th October 2004 P.B. Consulting reported to the Respondent with details of the most competitive quotation. We will not deal with the items other than the tarmac, as they are not in dispute. The amount for the resurfacing the tarmac to the entire car-park was £14,047.00 plus vat.

3.3 By letter, which the Respondent states was sent to all of the Flat owners, also dated 26th October 2004, the Respondent stated that he understood there was a feeling that total resurfacing of the car park would be too expensive. P.B. Consulting had indicated that the cost for the re-surfacing of the entrance ramp only would be in the region of £2,500.00, but also stated that no quotations had been obtained in respect of this.

3.4 On 1st June 2005 P.B. Consulting wrote to the Respondent with copies of quotations from three companies in respect of the required work, and recommended that G.A. Construction should be employed. Their quotation is dated 12th May 2005 and in respect of the entrance ramp is 'To take up front driveway and re tarmac including white lining rest £3,680.00 plus vat'. The remaining work quoted for was: slabs (£540.00), cut out defective brickwork and repair retaining wall (£327.00), other repairs including part re-build to retaining wall (£1647.00) and re-pointing damp proof course (£280.00). All of theses sums were subject to vat. In summary the total estimate is for £6474 00 plus vat.

3.5 G A Construction duly carried out the work and on 23rd January 2006 invoiced the Respondent in the sum of £7321 (less £350 to follow later) - £6971 plus vat of £1219, making a total of £8190.93. Although the invoice refers to the account as 'all as quoted', there is clearly a discrepancy between the amount quoted in the estimate of 12th May 2005 of £6474 plus vat and the final invoice of £7321 plus vat. There is no explanation for the £350 'to follow later', although this might be in connection with emergency work carried out following vandalism to the front walls of the Flats, which is referred to in the Respondent's written submission.

3.6 The Applicants in the Application, and in their written representations, state that they do not dispute the £2514.00 charged for the other works in the package, namely relaying slabs, repairing retaining walls and steps, which they accept as being carried out to a reasonable standard. In fact, the sum of £2514.00 does not include the sum of £280.00 in respect of the re-pointing of the damp proof course, and nor does it include vat on these items. We assume the omission of the re-pointing is simply an error, and that of the total invoice the sum of £2794.00 plus vat of £488.95 (£3282.95) is not disputed.

3.7 In summary, the amount disputed (from the invoice) is therefore £4907.35. The estimated amount for this was £4324.00 including vat. In addition to this, P B Consulting rendered an invoice for their services in the sum of £987.00 including VAT. The Respondent was not happy with the standard of the work, and paid the sum of £493.50 in full and final settlement.

4 **The Consultation Requirements**

Section 20 of the Landlord and Tenant Act 1985 ('the **Act**') and the Service Charges (Consultation Requirements) (England) Regulations 2003 made under section 20 of the Act contain detailed provisions ('**the Consultation Requirements**') as to the requirements of the Landlord to consult with the Tenants (inter alia) if he intends to carry out 'qualifying works' in respect of which 'relevant costs' in carrying out the works exceed £250.00 including vat in respect of each tenant. If the Consultation Requirements are not carried out, the maximum contribution which can be recovered from each tenant in respect of the qualifying works is £250.00. As there are 12 affected tenants (although 10 only are a party to the Application) the total cost of the works (including vat) would need to exceed £3000.00 (£250 x 12) for the Consultation Requirements to apply to the works.

5 **The Tribunal's Approach**

It is clear from the written representations of the parties that there are disputes as to whether the Respondent consulted sufficiently to comply with the statutory requirements in respect the larger package of works. However, as these works are not the subject of the Application, the Tribunal considered that it would be reasonable to treat the re-surfacing of the entrance ramp as a separate and discrete 'qualifying works' ('the **Works'**) for the purpose of their determination. As the amount of the estimate for the Works exceeds £3000.00 including vat the Consultation Requirements apply to them. The Tribunal considered that it is not possible, from the written representations alone, to reach a just and equitable determination as to whether the Consultation Requirements have been complied with in respect of the Works. For this purpose it would be necessary to convene an oral hearing to elucidate further evidence from the parties. Accordingly, the Tribunal elected to proceed with their determination, and if their determination involved a finding that each of the Applicants was to pay an amount exceeding £250.00 an oral hearing would be convened to determine the issue of the Consultation requirements in respect of the Works. However, in the event that the Tribunal's determination involved a finding that each of the Applicants was required to pay an amount less than

(a) The tarmac stands proud of the manhole covers, and there is indeed a slight ridge at the join with the car park, which suggests that the tarmac has been laid on top of the existing surface.

(b) There are the beginnings of indentations in the surface, presumably where the potholes were situated, which suggests that these were not dealt with properly.

(c) The surface is crumbly in places.

7.2 The Tribunal agree that the surface area is 70 square metres. They find that the re-surfacing has not been done to the specification .They do not agree with the Applicants that the work as done is only worth about £800. They find that a reasonable price for the Works as they are would be £28 per square metre excluding vat,(£1960.00, which they round to £2000.00), plus vat of £350.00, making a total of £2350.00.

7.3 The Tribunal find that the sum of £493.50 paid to P B Consulting is reasonable. They make no finding as to whether the Consultants should be used or not, (as argued by the Applicants) as this is outside the ambit of the Application. There are clear failings in their supervision of the Works, but the Respondent has adequately dealt with this by reducing the invoiced amount by half.

7.4 In respect of each Applicant therefore, the Tribunal's determination is that the amount payable in respect of the Works is £196.00 (£2350 00 divided by 12 =£195.83 which they round to £196). To this should be added the sum of £41.13 (£493.50 divided by 12), making a total of £237.13.

Jurisdiction:

8 The jurisdiction of the Tribunal is not contested and they are satisfied that they have the jurisdiction to determine the Application.

Section 20 C Application

9 Section 20C (1) of the Act provides:

20C 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, residential property tribunal, leasehold valuation tribunal or the Lands Tribunal, or in connection with arbitration proceedings, 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.

Subsection (3) provides:

(3) The Court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The tribunal find that, as the Works are not completed to a satisfactory standard, it would not be just and equitable for the Respondent's costs to be added to the service charge account. Accordingly the the Section 20C Order is granted to the Applicants.

Signed **Dated** 13 JUL 2007

W.J. Martin, Chairman