SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case No. CHI/45UC/LSC/2007/0033

BETWEEN:

MRS JULIA BEHN

Applicant/Lessee

- and -

MRS AZALEA LUGONYA

Respondent/Landlord

PREMISES: Flat 1
75 Beach Road
Littlehampton
West Sussex
BN17 5JH ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR R WILKEY FRICS, FICPD JP
MR T SENNETT MA MCIEH

HEARING: 7th SEPTEMBER 2007

REASONS

1. The Application

1.1 On 20th April 2007 the Applicant applied to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 ("the Act") for a determination as to the reasonableness of a service charge levied by the Respondent over and above the usual annual maintenance fees to cover the Applicant's proportion of the cost of major works to the building in which the Premises are situated. This payment was requested in 2006 and amounted to £6,506.25 inclusive of VAT.

1.2 There was only one other item in issue which concerned a long term contract entered into for a period of two years by the Respondent with a firm of managing agents, namely Messrs Hobdens. The Applicant claimed that the Respondent had not followed the consultation requirements of Section 20 of the Act in respect of this contract.

2. Inspection

2.1 The Tribunal inspected the Premises immediately prior to the hearing on 7th September 2007. This is a flat in a substantial Victorian semi-detached house which has been converted into four flats, two of which are retained by the Respondent.

2.2 At the time of the inspection there was scaffolding to the front elevation of the building and workmen were in the course of scraping the old paintwork off windows which had not been replaced with double glazing in preparation for repainting. The Tribunal was able to see the very poor condition of the paintwork which had not yet been attended to. The bay window to the front at ground level, belonging to Flat 1 had been replaced (by the lessee) with a double glazed unit. UPVC windows had also been installed on the second floor. It was evident that the chimney had recently been rebuilt and the Tribunal saw an area of the flank wall which had been bowed but which had been taken down and rebuilt. The Tribunal also saw that a balcony which had been at first floor level on the front elevation had been removed and the canopy over this balcony was being repaired with a copper covering. A rainwater drain to the front of the house near to the front door was blcked and water was standing in it.

3. The Lease

3.1 By Clause 4(1) of the lease dated 24th August 1990 the lessee covenants to pay to the Lessor the Lessee's share (25%) of the Annual Maintenance Cost.

3.2 By Clause 4(5) of the lease the Annual Maintenance Cost is stated to be "the total of all sums actually spent by the Lessor during the period to which the Annual Maintenance Cost relates in connection with the management and maintenance of the Property ... " which includes:-

"(b) The costs of and incidental to the performance and observance of each and every covenant on the Lessor's part contained in sub-clauses (2) (3) (4) and (5) of Clause 5 of this Lease

(c) .....

(d) The costs of and incidental to compliance by the Lessor with every notice regulation or order of any competent local or other authority in respect of the property or any part or parts thereof

(e) All fees charges expenses and commissions ..... payable to any agent or agents whom the Lessor may from time to time employ for managing and maintaining the property."

3.3 By Clause 4(6) it is provided that "there shall be included in the Annual Maintenance Cost such sums as the Lessor or his Managing Agents or Surveyors shall reasonably consider desirable to be retained by the Lessor by way of a Reserve Fund as reasonable provision for the costs expenses outgoings and other matters mentioned or referred to in sub-clause (5) of this clause."

4. The Law

4.1 Section 27A of the Landlord & Tenant Act1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

(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
(e) the manner in which it is payable.

4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

4.3 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

4.4 By Paragraph 2 of Schedule 11 of CLARA "a variable administration charge is payable only to the extent that the amount of the charge is reasonable."

5. The hearing

5.1 The hearing took place at the Tribunal's offices in Chichester on 7th September 2007. Present were the Applicant, her brother Mr Kirklands who presented the case on her behalf, the Respondent and Mr Darren Dalton of Hobdens, the Respondent's managing agent.

6. The Evidence and Representations

6.1 The Applicant's case.

6.1.1 Mr Kirklands contended on behalf of the Applicant that in view of the fact that the Council had served a notice on the Landlord to execute repairs to a house in multiple occupation

on 2nd March 2006 requiring the works to be carried out by 30th March 2006 the Property was evidently in a very poor state of repair. The kind of works required were not such that the defects had occurred recently but over a long period of time and had been neglected by the Respondent. It was unreasonable for Mrs Behn to have to pay a proportion of these costs for works which should have been carried out long before she became an owner of the property.

6.1.2 Mr Kirklands also contended that due to the Respondent's neglect the cost of remedying the defects was going to be greater than if they had been attended to earlier.

6.1.3 He also pointed out that the Section 20 consultation procedure had not been followed with regard to the appointment of Hobdens as managing agent. Mrs Behn had not been consulted and was in effect presented with a fait accompli when she received Hobdens's letter of 11th April 2006 stating that they had been appointed as managing agents.

6.1.4 Mr Kirklands said that costs had been unreasonably incurred by the Lessor by including in the works being carried out certain items which were over and above what the local authority required to be done under the notice which they served, although he accepted that exterior painting would be required to be done under regular maintenance expenditure. He claimed, however, that the Respondent had included works which required scaffolding to be erected simply because scaffolding was required for the works specified by the Council whereas other works which were of greater significance to the lessees, such as the garden fencing, was not included in the works to be done. He thought that there had been no proper prioritisation of the works. Mr Kirklands also thought that there may have been a minor defect in the Section 20 procedure for the major works in that no time-scale within which the works were to be completed was stated but this was not a major point and he was not able to point the Tribunal to the particular provision in the Regulations to this effect.

6.1.5 An invoice had been rendered for the cost of a contractor attending to unblock a drain at the front door of the property. Water was not soaking away and it was alleged that this had caused some damp in the Applicant's front room. Either the work had not been done or had been done badly, it was said, because the drain is still blocked and the water does not drain away.

6.1.6 Mr Kirklands claimed that the Respondent should have built up a sinking fund over the years to help pay for these major repairs. The fact that this was not done was unfair on Mrs Behn as she was being asked to bear the whole of the 25% contribution towards the cost whereas the previous lessees should have been required to contribute too. Mrs Behn said that when she purchased the Premises her solicitor told her that "everything is up-to-date and that there is no outstanding service charge or ground rent." She produced a copy of the letter from her solicitor. This letter also advised: "There

could be ongoing maintenance or future maintenance of which you will have to pay a share of (sic), of course." She said she did not have a survey carried out when she purchased. She and a builder friend looked at the flat before she bought and the inside seemed alright. She appears to have had no advice about the state of the exterior of the building. She did not notice that the chimney was leaning at an angle. She did notice that the flank wall was bowed a little. She realised the state of the woodwork was bad and she replaced the bay window to her front room herself.

6.2 The Respondent's case

6.2.1 Mr Dalton accepted that there had historically been no routine service charge collection. At the time Mrs Behn purchased it is correct that there were no arrears of service charge or ground rent as the solicitor had reported. The Applicant must have been aware that there was no sinking fund or at least there had been nothing to suggest that there was such a fund. It was for Mrs Behn to satisfy herself about this and the condition of the property. She did not have a survey carried out. Mr Dalton accepted that the Section 20 procedure had not been complied with properly with regard to the appointment of his firm but asked that the Tribunal give retrospective dispensation. He said this was a side issue because a proper Section 20 notice and consultation had been carried out with regard to the major works and it was those costs that had not been paid.

6.2.2 Mr Dalton accepted that if the Tribunal did not dispense with the Section 20 requirements retrospectively in respect of the appointment of Hobdens as managing agents that the Respondent would be restricted to recovering from the Applicant £100 only in respect of their fees instead of the £150 per annum plus VAT which was 25% of the agreed management fees (plus £75 per hour for any additional agreed work carried out by them).

6.2.3 The Respondent had required the assistance of a professional managing agent in view of the notice served by the Council. Other agents had been approached but had declined to take the job on.

6.2.4 On appointment Hobdens instructed a surveyor to prepare a report on the condition of the building and as to what was required to remedy the defects. A tender document was prepared. The works went out to tender and a contractor selected. The Applicant did not make any representations under the Section 20 procedure with regard to the major works.

6.2.5 Mr Dalton confirmed that the Applicant had paid all the outstanding ground rent and service charges, save for the major works in the sum of £6,506.25.

6.3 Section 20C Application

6.3.1 Mr Kirklands submitted that as the Respondent had admitted that the Section 20 consultation procedure had not been followed for the appointment of the managing agent

the Applicant had been vindicated in bringing this case to the Tribunal and it should not be right in those circumstances for the Respondent to be able to recoup the cost of the Tribunal proceedings through future service charges.

6.3.2 Mr Dalton advised the Tribunal that the Respondent had no intention of seeking to recover the Tribunal costs through future service charges. However, he submitted that as a matter of principle there should be no order to that effect because although the consultation procedure had not been followed for appointment of manager the moneys in dispute were nothing to do with that and that the major works costs were reasonably incurred and cost a reasonable amount. If the Tribunal so holds then in principle the Respondent should not have an order under Section 20C against her.

7. The determination

7.1.1 The Section 20 consultation

The Tribunal decided that in the circumstances of this case it was reasonable to dispense with the requirements of Section 20 for the appointment of managing agents. There was some urgency in putting the appointment in hand due to the notice served by the local authority. Furthermore Messrs Hobdens seem to have done a competent job since their appointment. Other agents were approached but declined to act due to the small number of flats involved. Hobdens's fees for this contract are, in the Tribunal's experience, very reasonable for the extent of the work covered by the same. The Applicant would be hard pressed to find a more reasonable fee. The ability for the Landlord to appoint managing agents is contained within the lease. For all those reasons it would be unreasonable for the Respondent not to be able to recover from the other two lessees in the building their full 25% of the managing agents' fees.

7.1.2 As far as the major works is concerned the Tribunal found that they had been reasonably incurred and that the costs were reasonable bearing in mind the extensiveness of them. The vast majority of the works being done were required by the local authority to be carried out and a notice to that effect had been served on the Respondent, ironically at the instigation of the Applicant. The few items over and above those required by the Council included exterior painting which was badly in need of being done and which Mr Kirklands accepted was to be expected under normal routine maintenance. A few more minor items which had originally been included in the schedule of wants of repair prepared by the surveyors instructed by the managing agents were deleted from the works to be carried out when other items became apparent once the work started. This was done to keep the cost of works within the original budget and was therefore to the Applicant's advantage. Another item, the garden fencing, was omitted because these

fences were the responsibility of the individual lessees. The approach to the tendering and execution of the major works seemed to the Tribunal to be very sensible.

7.1.3 It is understandable that the Applicant considers it unfair that she should have been hit by a proportion of the cost of these major works but unfortunately for her she is liable in law for them. Her mistake was in not having a survey carried out when she purchased the flat, as every prudent purchaser should. This would have spelled out to her the condition of the property and her solicitor would no doubt have then advised her that she would be responsible for 25% of the cost of that work. He alluded to this in his letter to her of 17th February 2004 but was not in a position to be specific because he had no survey which would have alerted him to the problem.

7.1.4 Having said this, it should not have come as any surprise to the Applicant that major external works would be required to be done within a short time of her purchasing the property. The condition of the paintwork must obviously have been noticeable to her. She herself said she noticed a bulge in the flank wall. It must have been obvious that the building was in a poor state.

7.1.5 The Applicant was also not given any reason to suppose that there was any money in a sinking fund to help pay for such repairs. Whilst there is a provision for such a fund in the lease, it is not a mandatory requirement and is permissive only. As Mr Dalton said in addressing the Tribunal, it would have been prudent for such a fund to have been built up but unfortunately for the Applicant this had not been done.

7.1.6 If the previous neglect of the condition of the building had added to the cost of the works currently being undertaken there was no evidence to that effect and so the Tribunal has no basis upon which to find that a reasonable cost for these works is anything less than the actual costs being sought.

7.1.7 As for the work carried out to the gully the Tribunal finds that it was reasonable for £76.38 to have been incurred in attempting to clear the drain in the first instance. Clearly the drain is blocked again. Mr Dalton, having seen this for himself on the inspection, has undertaken to have it cleared again. There was no evidence as to whether the fact that it is now blocked is as a result of poor work the first time or whether it has become blocked again for some reason. This sort of thing does occur from time to time and the Tribunal did not consider that they should disallow the cost of £76.38 incurred in respect of this item.

7.1.8 With regard to the Section 20C application, the Applicant has not succeeded in achieving a reduction in the service charge sought by the Respondent and in all the circumstances of the case the Tribunal did not consider it just or equitable to make an order under that section. This is academic anyway as the Respondent advised the Tribunal that she was

not seeking to recover the costs of the Tribunal proceedings in any future service charge demand.

8. Conclusion

8.1 The Tribunal finds that the Applicant is liable to pay the Respondent the sum of £6,506.25 in respect of the sum demanded on account of the special levy for major works on 18th August 2006.

Dated this 20th day of September 2007

.....

D. Agnew LLB, LLM
Chairman