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LON/00AG/LSC/2007/0155

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**ON AN APPLICATION UNDER SECTIONS 27A & 20C**  
**OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

Applicants: Ms H Brown – Flat 2  
Mr & Mrs T Wiedner – Mews Cottage

Respondent: Mr & Mrs P Brown

Re: Flat 2 & Mews Cottage, 77 Regents Park Road, London NW1 8UY

Application received: 30 April 2007

Hearing dates: 18 and 19 September 2007

Inspection date: 11 October 2007

Appearances: Mrs L Wiedner For the Applicants  
Mr D Brown  
Mr I A Rennie – Independent Expert Witness

Mr and Mrs P Jones For the Respondent  
Mr M Ferguson  
Mr H George – Quantity Surveyor

Members of the Leasehold Valuation Tribunal:

Mrs B M Hindley LLB  
Mr P Tobin FRICS MCI Arb  
Mr E Goss

1. This is an application to determine the reasonableness of service charges for the years ending May 2006 and 2007 – a total of £204,306. 40p incurred in connection with major works.
2. A previous Tribunal ( LON/OOAG/LIS/2006/0122) had determined, on 15 March 2007, that labour costs of 89,543. 75p - calculated at a day labour rate of £150 - were reasonable in respect of labour costs incurred up to June 2006. That decision had been made in the context of an application in which the applicants had contended that only £71, 635 was reasonable.
3. That Tribunal had disallowed administration charges sought of £31,814. 22p and supervision costs of £17,097. The Tribunal stated that they considered that ‘the administration and supervision service provided by the respondents fell below a reasonable standard for this size of works project. They particularly noted the lack of a contract between the parties, inadequate consultations regarding the respondents’ appointments, and no explanation of services provided. The respondents’ use of their private bank account was in breach of the RICS guidelines and no competitive tendering processes were available for examination by the applicants. The Tribunal also noted the inadequacy of documentation and receipts that departed from normal contract administration best practice and procedures. These shortcomings may have contributed to a significant increase in costs which is currently estimated by the Tribunal at three and a half times the original estimate. Even by the conclusion of the hearing the final cost was not available.’
4. At the commencement of the hearing the Tribunal established that the breakdown of the total costs now in question was labour @ £103,200 and materials @ £101,106. In view of the previous determination this left labour costs of £13,657 and the whole of the materials costs for consideration.
5. The respondents requested the dismissal of the application on the basis that it was frivolous, vexatious or otherwise an abuse of process since they saw it as an attempt to relitigate matters already determined. They complained that the applicants could, at the previous hearing, have put forward the issue of the materials and that they had consistently chosen not to examine receipts.
6. The Tribunal, without calling on the applicants to respond, dismissed the application since they were satisfied that the case was properly brought, particularly bearing in mind that the certificate in respect of the works was not supplied until 6 July 2007.

## BACKGROUND

7. The application concerns service charge costs in connection with major works effected at the subject property – a four storey terrace converted into three flats with a shop on the ground floor and a Mews house at the rear. The respondent landlords, who were also the leaseholders of two of the flats located on the first and third floors respectively, described the building before the works as ‘failing’ and as ‘in danger of collapse’.
8. It was accepted that Section 20 notices had been issued in 2002 and 2003 indicating estimated costs of £51,000 and that additional items, including major roof works not covered by the notices, had been carried out. By the time of the first Tribunal hearing the estimated costs were, apparently, £220,000.

9. The respondents said that no contract was entered into with the originally chosen contractor, Underpin and Makegood, because although the contractor was ready to sign for a September 2004 start date, no service charges had been paid and the contractor was not willing to proceed on that basis. By the time monies were available it was December and this was the wrong time to commence roof works. By late May 2005 it was apparent that the roof works needed to be more extensive and, therefore, expensive than originally planned and, with the contractor unable to begin at that time, the respondents chose to supervise the works themselves using casual labour employed on day work rates.

## INSPECTION

10. At the hearing both parties were of the opinion that an inspection would be helpful and so after the conclusion of the hearing, and with final written submissions having been received from both parties, the Tribunal inspected the subject property.

## THE HEARING

11. The cost of the roof envelope works was agreed by the parties @ £28,137. This cost was broken down as materials @ £15,800 and labour @ £12,337
12. In view of the previous decision and the fact that the respondents said that they had charged their costs on a labour and materials basis, the Tribunal considered all of the costs incurred under these two headings.

## LABOUR COSTS CLAIMED SINCE THE PREVIOUS TRIBUNAL (£13,657.)

13. The applicants contended that they were not liable for any further labour costs because no works had been effected since 29 January 2007, the date of the inspection by the previous Tribunal. However, in their closing submissions they conceded labour costs of £1,600.
14. The respondents handed in on the morning of the second day of the hearing and at the Tribunal's request, a detailed, revised and dated schedule of every item of expenditure charged from 16 May 2005 – 27 January 2007. The Tribunal examined the labour charges shown from 1 July 2006 – the previous Tribunal having determined the labour costs up to June 2006.
15. The Tribunal found that the itemized labour charges amounted to £6,568.75p. To this sum Mrs Jones said that it was necessary to add £6,000 for specialist roof labour. She explained its given date on the schedule – 13 July 2005 - as an administrative error and said that the sum had not been included in the previous determination.
16. It was clear from the evidence that the roof works had been complete long before July 2006 and for this reason, and because the receipts produced did not substantiate the statement, being unattributable and lacking in required detail, the Tribunal was unable to accept that this £6000 had not already been included in the previous Tribunal's determination.
17. The Tribunal noted that the sum of £6,568.75p broke down into labour costs charged for shop restoration works (£412.50p), kitchen reinstatement works (£4, 556. 25p) and general site works (£1,600).

18. The Tribunal accepted the respondents' contention that under the various leases it was incumbent on the landlords to make good damage resulting from fulfilling their obligation to keep the property in good repair. However, from their inspection the Tribunal was satisfied that within Flats 1 and 3 there was a significant element of betterment - e.g. new wood strip flooring with slate tiling for the kitchen areas, French doors in place of some original windows and an improved lay out in Flat 1.
19. Accordingly, whilst the Tribunal accepted the respondents' statements that they had paid for improvement works themselves they, nevertheless, found the service charge costs attributed to the kitchen reinstatement works to be so high as not to be reasonable. The absence of any audit trail made it impossible accurately to attribute specific costs to specific works and, in the circumstances the Tribunal, taking a pragmatic approach, determined as reasonable and as reasonably incurred total labour costs of £2,500.

#### MATERIALS COSTS

20. The applicants claimed that a reasonable cost for materials for the totality of the works was £65,713 rather than the £101,106 sought by the respondents. However, in their final submissions the applicants conceded the sum of £70,142.
21. The Tribunal examined the materials charges shown in the respondents' revised schedule. From the list they found it impossible to ascertain what materials costs applied to specific works since items for substantial sums were merely listed as e.g. 'sanitary ware £713', 'miscellaneous over two months £610.54p' and 'composite bill, miscellaneous items £473. 47p'.
22. Further, other items which might be thought to include an element of labour were listed without explanation - e.g. 'electrics first payment £2,643. 75p', 'plumbing £3,000' and 'plumber's interim bill £1,000'.
23. Additionally, such items as bank charges, taxi fares, parking fines and electricity and water rates charges were included in the list although clearly these could not be classified as materials.
24. The basis of the respondents' case was that the works had been completed to a good standard because of the time and effort they had spent on what they described as an 'evolving project'.
25. The Tribunal accepted from their inspection that the works had been executed to a fair standard. However, in their opinion that standard had been achieved at a substantial cost and they were not satisfied from the evidence that all of those costs were either reasonable or reasonably incurred service charge costs. In their opinion service charge works of this magnitude and complexity required the employment of professionals so that, when challenged, their reasonableness could be evidenced by a full initial survey, a detailed specification, competitive costings and the provision of detailed accounting records.
26. The Tribunal considered that leaseholders were entitled to expect adherence to such standards when they were being required to contribute large sums of money towards capital works. It appeared to the Tribunal that it was even more important that such standards should be met when, as here, the two flats

which had benefited from a complete internal refit, were owned by the landlords.

27. Doing their best, therefore, with the inadequate information provided the Tribunal determines £80,000 as the reasonable and reasonably incurred costs of materials.

#### DECISION

28. Accordingly, for the years ending 31 May 2006 and 2007 the Tribunal determines as reasonable and, therefore, payable service charge costs of £82,500 in addition to the £89,543. 75p previously determined.

#### APPLICATION UNDER SECTION 20C

29. The respondents said that they would not be seeking to recover their own costs but they would wish to recover the fees of their quantity surveyor in respect of his report and appearance at the hearing in the sums of, respectively, £2,256 and £1128.
30. The Tribunal considered that the unprofessional handling of the totality of the works by the respondents made the application to the Tribunal inevitable and, therefore, determines that the respondents should not be allowed to recover any associated costs.

#### REIMBURSEMENT OF FEES

31. The Tribunal further finds that the respondents shall reimburse the applicants their fees for the application and hearing in the sum of £500.

Chairman

*R. N. Handley*

Date

*22/10/07*