

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

Case Number CHI/43UG/LIS/2009/0051

In the matter of section 27A of the Landlord & Tenant Act 1985 (as amended) (“the Act”)

And

In the matter of Flat 10, Greenacre Court, South Road, Englefield Green, Egham Surrey.

(“the Premises”)

**BETWEEN**

Sandpitts Residents Limited

Applicant

and

Mr A Tomlins

Respondent

**Decision**

The matter was dealt with following inspection, but without an oral hearing, on 15<sup>th</sup> September 2009

**Date of Issue:** 25 September 2009

**Tribunal:**

Mr R P Long LLB (Chairman)

Mr D L Edge FRICS

## **Application**

1. The application before the Tribunal is made by Sandpitts Residents Limited ("the Association") in respect of flat 10, Greenacre Court, South Road, Englefield Green Surrey ("the Premises"). It is made pursuant to section 27A of the Landlord & Tenant Act 1985 ("the Act"), and seeks a determination, pursuant respectively to sections 27A (1) and (2) of the Act of the amount of service charge that may be payable in respect of the Premises for the accounting years ended 30<sup>th</sup> June 2008 and 30<sup>th</sup> June 2009. The Tribunal has treated the reference to the accounting year ending on 30<sup>th</sup> June 2007 in the Association's statement of cases as being merely a slip. The Respondent is Mr Alexander Tomlins, who is the lessee of the Premises. The amounts of the charges for the years in question appear to be £713-00 (that is to say 1/15 of the total cost of £10695-04 being the actual cost stated in the accounts for the year to 30 June 2008), and £975-00, the amount of the interim service charge demanded, for the year to 30 June 2009.
2. It is only the amount of the service charge for each year that is in dispute before the Tribunal. No issue has been taken over the question of the person responsible for making such payments as may be found to be payable, the person to whom they are to be paid, the date when they may be payable or the fashion in which they are to be paid.

## **Decision**

3. The Tribunal; has determined that the sum of £ 704-11 is payable for service charges in respect of the premises for the year 2007-08, and the sum of £975 is payable for the year 2008-09.

## **Inspection**

4. The Tribunal inspected Greenacre Court on 15 September 2009 in the presence of Ms Sarah Bayliss of Labyrinth Properties Limited, the managers, and of Mr Tomlins. Greenacre Court is a cul-de-sac, and there are two blocks there, as well as a three- storey terrace of five houses. Ms Bayliss explained that the block on the northern side is managed by a separate residents' management company, and falls within a quite separate service charge regime from that relating to the block on the southern side in which the Premises are located, and which the Tribunal inspected.
5. The Tribunal saw a block containing fifteen flats that appeared to have been built towards the latter part of the 1970's. It is constructed of brick under a concrete interlocking tile roof, and the original windows appear to have been replaced at some time with upvc double glazed units. There is a separate garage block. Mr Tomlins drew attention to the fact that his garage door does not open and that the garage is in fairly poor condition. The yard serving the garages appears to have been subject to some subsidence and the Tribunal was told that the apparent problem was being addressed. The gardens are not particularly extensive, and consist, as far as the Tribunal was able to see, of

lawns (one of which is steeply sloping) with a very few shrubs, and appeared to be in satisfactory condition.

6. The building as a whole evidently requires external redecoration, and Ms Bayliss said that subject to the possible cost of the work in the garage yard it was hoped that the redecoration may be carried out next year. Mr Tomlins drew attention to a small defective area of wood in the barge boards near to his flat that he said had allowed a wasp nest to be built there over a three-year period, followed by a bird's nest in the present year.

### **The Law**

7. The Tribunal prefaces its observations by pointing out that the law relevant to the determination of service charges is to be found primarily in sections 18, 19 and 27A of the Act. In brief summary, section 18 defines what is a service charge in terms that present no difficulty here; section 19 provides in the context of this case that a service charge must be reasonably incurred and that works shall be of a reasonable standard. Section 27(A)(1) allows the Tribunal to determine what sums are payable for services, repairs, maintenance, improvements insurance or management of any specified description, and section 27A(3) allows the Tribunal to determine in this context whether, if costs were incurred for such items, a service charge would be payable for their cost. To such extent as it might be argued that the legislation itself does not imply that the costs of the services themselves must be reasonable, the decision of the Court of Appeal in *Finchbourne v Rodrigues* [1976] 3 AER 581 CA is authority for that proposition.

### **The Lease**

8. According to the office copy of the register of the Respondent's title provided to the Tribunal the Premises are held under a Lease ("the Lease") dated 3<sup>rd</sup> August 1981 made between G F Falconer & Sons Limited (1) Sandpitts Residents Limited (2) and Shah Akbar Ahmed Khan and Wendy Elizabeth Khan (3). The copy lease of that date provided to the Tribunal and made between those parties refers throughout to Flat 11 rather than Flat 10. The Tribunal could see no obvious explanation for this inconsistency, although it accepts that there may be scenarios that would explain it. The Associations in their statement say that all the leases are similar, and the Tribunal proceeded on that basis. Ms Bayliss said at the inspection that she believed there might be some inconsistencies concerning maintenance of windows, but no issue relating to windows appears to arise in the accounts for the two years with which the Tribunal is concerned.
9. The lessee's obligation to pay service charges is contained in paragraph (t) of the Second Schedule to the Lease and the Association's obligations, the aggregate cost of which is to be repaid by means of the service charge, are set out in the Fourth Schedule. In that Schedule, the Association covenants to insure the buildings containing respectively the flats and the garages, to keep the 'Reserved Premises' (here meaning the buildings on the site except for the flats themselves and the garages) in good repair, to redecorate the internal

communal parts of the flats and the external parts of the buildings at least once in every three years, to keep the entrance halls, landings and staircases clean and properly lighted, to maintain the gardens and to employ such staff or contractors as may be required to carry out such works and other duties as are necessary for the proper running and management of the Reserved Premises.

10. The provisions governing the service charge are contained in the Fifth Schedule. The lessee is required to pay one fifteenth part of the aggregate cost to the Association of complying with its obligations contained in the Fourth Schedule. Those costs are stated to include including the cost of complying with any statutory requirement, the fees of professional persons instructed in connection with any question arising as to the maintenance or management of the block or the ascertainment of the service charge, the cost of insuring against third party claims, the cost of purchase or hire of equipment and all administration accountancy legal and other costs of the Association in carrying on its business.
11. There are provisions for a payment on account of the likely cost of services in the ensuing year and for the payment of balancing sums by the lessee or the Association as may be appropriate upon a final account being taken following 24<sup>th</sup> June in each year. Although there is a provision in paragraph (o) of the Second Schedule for the lessee to pay interest on any cost incurred by the Association in making good any breach by him of his repairing or painting covenants, the Lease appears to contain no obligation to pay interest on arrears of service charge.
12. It may be appropriate to add in the light of Mr Tomlins' concerns over the state of repair of the garage that the liability for its repair appears to fall upon the lessee by virtue of the provisions of paragraph (d) of the Second Schedule to the Lease, although the obligation to decorate it appears to fall upon the Association by virtue of the provisions of paragraph 3 of the Fourth Schedule. For the avoidance of doubt, however, the responsibility for repair of the garage forecourt, which the Tribunal understands is a matter of investigation at the moment, is plainly a matter for the Association by virtue of the provisions of paragraphs 2 and 5 of the Fourth Schedule.

#### **Determination**

13. The Tribunal determined the matter without an oral hearing. Due notice of its intention to proceed in that fashion was given as part of directions issued on 2<sup>nd</sup> June 2009, and neither party had requested an oral hearing.
14. A statement of case had been received from the Association in accordance with the directions that the Tribunal had issued. Mr Tomlins had written to the Tribunal on 30<sup>th</sup> July 2009 to say that he "did not dispute the sums claimed other than thinking that they were high charges". The Tribunal did not feel able to conclude that a letter written in those terms amounted of itself to an admission of the sums claimed.

15. In its representations the Association set out the relevant terms of the Lease in some detail, and referred to the terms of section 19 of the Act that refer to the need for relevant costs to be reasonably incurred, and for works to be of a reasonable standard. It sent copies of the statement of account relating to the Premises, of correspondence between the managing agents and the mortgagees of the Premises, of the accounts to 30<sup>th</sup> June 2008 and of the invoices supporting those accounts, of the budget for the year to 30<sup>th</sup> June 2009 and of the invoices of that year. Certified accounts for the year to 30<sup>th</sup> June 2009 were not available to the Tribunal. It submitted that Mr Tomlins currently owed £2261-08, and said that they knew of no dispute over that figure. It requested that the Tribunal determine that that sum was due by him to the Association. The Tribunal was given no detail of the nature of the works undertaken or expenditure incurred other than such as was available to it from its inspection or from such information as was contained in narratives in the copy invoices.
16. At the inspection Mr Tomlins repeated that he did not dispute the sums claimed, although he thought some of the charges high. The Tribunal asked him in the presence of Ms Bayliss if he was able to indicate which of the charges he thought high, but he did not feel able to elaborate upon the point. The Tribunal therefore proceed to deal with the matter by examining each of the charges in turn first to satisfy itself that the charge in question was one that the terms of the Lease permitted, and second so far as it may do so from the information available to it, and within its collective knowledge and experience, to establish whether the individual charge appeared to be of a reasonable amount and the works if any to be of a reasonable standard.

#### Year to 30 June 2008

17. The Tribunal took the charges for the year ending 2008 in the order in which they appear in the account for that year on page 38 of the bundle. There was no invoice to support the insurance cost of £2159-00 in that year, nor was the Tribunal shown a copy of the schedule of insurance cover. Since the cost was not specifically the subject of any challenge, it could do no more than to conclude from its collective knowledge and experience of such costs that the premium appeared to be of the sort of level that might have been expected for a property of this sort in its locality, assuming that there was nothing particularly unusual in the extent of the cover or in the claims history.
18. The Lease is clear in paragraph 5 of the Fifth Schedule that the Association may recover "all administration accountancy legal and other costs of the Association in carrying on its business". That definition is sufficient in this instance to permit it to recover both the accountancy costs relating to preparation of the service charge accounts and the company's statutory accounts, as well as the fee for filing the annual return. The accountancy charges appear reasonable for what was done, and the annual return fee is a statutory one, although the Tribunal observes that it could be reduced from £30 to £15 if the return had been filed on-line. However, none of this renders either of these items unreasonable.

19. There is nothing before the Tribunal to suggest that any of the costs for cleaning, maintenance, electricity or drains was unreasonable, nor did the Tribunal see anything upon its inspection to suggest that the standard of any of these works was inadequate in any way.
20. There is nothing in the Lease that expressly permits the Association to employ managing agents to manage the Premises and the estate on its behalf. The Tribunal concluded that the reference in paragraph 6 of the Fourth Schedule permitting it to employ “such staff or contractors as may be reasonably required to carry out ..... such other duties as are necessary for the proper running and management of the Reserved Premises” was capable of being construed as permitting the Association to employ managing agents. It bore in mind that, even if it is wrong about that, the amount that each lessee would instead have to contribute in their capacity as a member of the Company to make good any shortfall arising from the expenditure on managing agents would be exactly the same as the amount of the service charge payable by them for that item. That is because lessee each contributes to the service charge equally and as a member of the Company would also have to contribute to the Company equally.
21. The basic management fee for the year appears to have been at the rate of £140 plus VAT per flat, but it appears from the invoice on page 75 in the bundle that the quarter beginning October 2007 was for some reason charged only at the rate of £112.50 plus VAT per flat. Thus there are three invoices for £616-88 in the year and one for £493-50. The figure for management shown in the accounts is £2467-52 inclusive of VAT (£616-88 x 4), but the total of the four invoices is £2344.14 inclusive of VAT, which is the figure that should, on the information before the Tribunal be included for management in the accounts. The difference between the two figures is £123-38, which is the same as the difference between the October 2007 invoice and the other three invoices. Unless there is some other explanation it seems to have been assumed when the accounts were prepared that the charges for management had been the same in all four quarters.
22. The Tribunal was not shown a copy of the contract between the Association and the managing agents, but noted that there had been additional charges for things like correspondence with lessees over communal hallways and dealing with insurance claims, as to which see paragraph 23 below. These are matters that might in many cases have been regarded as included within the management obligation but it seems that this was not so here. That may have been because the basic rate per flat appears relatively low for the location, and the Tribunal did not consider that the overall charge was unreasonable for the work that is likely to have been entailed.
23. The Tribunal was very far from being clear what was entailed in what were described as “secretarial fees” amounting to £235-00 and could find no invoice for them.
24. The remaining costs for the year amount to £387-50 for a health and safety inspection, no doubt arising from the relevant regulations, of £1125-66 for

garden maintenance, of £810-00 for window cleaning and of £367-12 for "sundry items". The Tribunal was content to accept the figures for the health and safety inspection and for gardening as being authorised by the Lease and reasonable for what is likely to have been done. The figure for sundry items appears to be the total of various invoices from the managing agents, mostly for dealing with two insurance claims (eleven invoices, all for £29-38 each), but also for a few smaller items. On the information before the Tribunal these invoices total £357-12, not £367-12, so that the small sum of £10-00 must be disallowed in this context.

25. Thus for the year ending on 30 June 2008 the Tribunal determines that the total of the service charges for Greenacre Court is £10561-66. That is the amount of £10695-04 shown in the accounts for the year less £123-38 mentioned in paragraph 21 above and £10-00 mentioned in paragraph 24. The amount payable in respect of 10 Greenacre Court is one fifteenth of that sum in accordance with paragraph 1 of the Fifth Schedule to the Lease, namely £704-11.

#### Year to 30 June 2009

26. In this case the Tribunal has proceeded by reference to the budget of anticipated cost for the year on page 102 of the bundle by reference to which the demand for £975-00 is understood to have been issued. It has had reference too to the schedule of actual expenditure to 21 May 2009 on page 103-4 that shows that a sum of £10753-41 had actually been expended to that date, which of course is still more than five weeks before the year-end.
27. In most cases the costs that have actually been incurred in the period are very much in keeping with the costs in the previous year. The costs of management have risen to £160-00 plus VAT per flat whilst the majority of other costs have, with one or two exceptions, remained more or less the same. Other than in the case of those exceptions, and save as to the matter of the mathematical differences itemised above, the Tribunal's comments relating to the costs to 30 June 2008 are similarly applicable to 2009.
28. A major difference that the Tribunal had some difficulty in accepting without further evidence lies in the cost of gardening. As indicated in paragraph 5, the gardens are not particularly extensive, and consist of lawns with a very few shrubs. They appear to have been satisfactorily maintained, and the Tribunal is unaware of the reasons that led to an apparent change in contractor later in 2008. However, it found it hard to see how gardens of this nature could reasonably engender cost of works of £200 per month in the winter months of 2008-09 as invoices on pages 122, 124 and 125 of the bundle show. It must accept however that perhaps remedial works were required when the new contractors took over or that they incurred some other costs at that time. It bears in mind that the cost of the new gardeners has not been challenged before it and therefore simply records its reservations about these costs for the future information of the parties.

29. There are one or two references to Insurance Premium Tax in the invoices of Chambers and Newman Limited with which the Tribunal had some difficulty. That difficulty may stem perhaps from no more than the very brief narrative in the invoices. In particular there is a reference to the tax being charged in respect of "Directors and Officers", for which a charge of £411-90 is otherwise raised in the invoice on page 144 of the bundle, and even more obscurely of a similar charge to Insurance Premium Charge in respect of "LVT Legal Expenses" on page 130. The Tribunal has concluded that the only explanation of these charges to tax must be that the items referred to are insurances in the one case covering liability of directors and officers of the Association, and in the other covering costs that it may incur in LVT proceedings. It observes that the invoice for the buildings insurance also comes from Chambers and Newman Limited, and that that company (whose invoice bears no indication of the nature of its business) is presumably an insurance broker. If it is wrong about its assumptions then the Tribunal would expect appropriate adjustment to be made to deal with any overcharge resulting from any erroneous charge of Insurance Premium Tax.
30. Finally in terms of the exceptions there is a reference to a charge for £547-00 for "Labyrinth Emergency Assistance". The Tribunal is aware from its knowledge of previous cases that this is a charge for arrangements to provide some kind of emergency call-out assistance to buildings managed by the managing agents engaged to manage Greenacre Court, although it is not aware of the precise nature of those arrangements and in the absence of a hearing had no opportunity to investigate the point. The cost has not been challenged and on that basis the Tribunal does no more in this case than to record for the benefit of the parties that other Tribunals on other occasions may wish to have more detailed information made available to them on the point. The fact that this Tribunal accepts the figure on this occasion affords neither precedent nor guarantee that another may do so.
31. Thus the Tribunal did not consider that, despite the reservations it has expressed upon certain elements, it might reasonably find that any of the items in the 2008-09 budget were unreasonable. Equally, it was satisfied that the items included in it were all capable of being recovered under the terms of the Lease. Although the schedule of actual expenditure to 21 May 2009 suggested that the overall expenditure will perhaps be less than the amount in the budget, the Tribunal felt unable in any way to project that figure into its conclusions because it had no information to indicate precisely what expenditure, whether originally envisaged in the budget or not, may yet be incurred for the remaining five weeks of the period. Therefore it has determined, bearing in mind the provisions in the lease relating to adjustment of the interim service charge paid, that the sum of £975 being the amount of the interim service charge demanded is the amount that is payable for the year 2008-09.

### Generally

32. It is apparent from the inclusions at page 27-8 of the bundle that demands for service charges have after October 2007 been accompanied by the appropriate summary of rights and obligations specified in section 153 of the

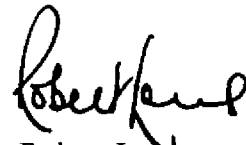


Commonhold and Leasehold Reform Act 2002 that are set out in The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257) so that no issue arises as to their recoverability under that aspect of the legislation.

33. The Tribunal observes, again for the avoidance of any doubt, that it is not a matter for it under the terms of this application either to seek to calculate any arrears that may be due by the Respondent to the Association, nor to adjudicate upon any administration or other charges that may have been raised in the account between them. It is concerned by the terms of section 27A of the Act merely to establish the amount of the service charge payable in respect of the Premises for the two years in question. It is for this reason that, subject to the content of paragraph 32, it has not reached a determination of the sum that the Association claims is due to it. The additional amounts that make up the sum to which the Association refers appear to arise from various administration charges that it has sought to levy that may or may not now be appropriate to be determined should the matter subsequently come before any Court.

#### Refund of Fees

34. The Association has sought to recover the fees amounting to £100 payable to the Tribunal in respect of this application from Mr Tomlins as part of the charges against his service charge. The Tribunal doubts whether the lease permits it to do that. However, it has jurisdiction under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 (SI 2003/2098) ("the Regulations") to order that one party shall repay to another any fees incurred in such an application as long as it is satisfied that the party ordered to make such repayment is not in receipt of any of the benefits or allowances mentioned in paragraph 8 of the Regulations. In explaining his circumstances in the letter of 30<sup>th</sup> July 2009 referred to in paragraph 14 above Mr Tomlins makes no reference to receipt of any of those benefits. The Tribunal therefore orders that the sum of £100 be repaid to the Association by Mr Tomlins to defray the costs of the application unless within 21 days of the issue of this decision Mr Tomlins produces evidence in writing to the Tribunal to show that he is in receipt of any of the benefits referred to in paragraph 8 of the Regulations, a copy of which will be sent to him with this decision.



Robert Long  
Chairman

23<sup>rd</sup> September 2009

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23<sup>rd</sup> September 2009

Dear Tony,

I enclose the decision for 10 Greenacre Court.

Yours sincerely,



Robert Long

P.S. A historic document this - Long's last Marsous!  
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