4907

LON/OOAM/LSC/2009/0636 and 0757

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985 (as amended) SECTIONS 27A and 20C

PROPERTY: **FLATS 1 & 2 22a ENGLEFIELD ROAD LONDON N1 4ET**

APPLICANT: **PLEDREAM PROPERTIES LIMITED**

FIRST RESPONDENT: **MS CHRISTINE HODGKINSON (FLAT 1)**

SECOND RESPONDENT **MR PUSHPAL DHAWAN (FLAT 2)**

Appearances:

For the Appellant: **Ms M Shalom of Counsel instructed by Sheridan & Stretton**
Mr P Scott of Peter Scott & Associates
Ms Bella Mutavelian of Crabtree Property Ltd

The Respondents both appeared in person

Date of Hearing: 18th January and 12th February 2010

TRIBUNAL
Mrs T I Rabin JP
Mr C White FRICS
Mrs G Barrett JP

Date of Tribunal's decision:3rd March 2010

FLATS 1 & 2 , 22a ENGLEFIELD ROAD LONDON N1 4ET

FACTS

1. The Tribunal was dealing with two applications by the Applicant, Pledream Properties Ltd. This applications were transferred from the Brentford County Court for a determination whether the estimated major works charges levied by the Applicants for works originally estimated in 2006 and undertaken in 2009 were reasonable and payable by the First Respondent, Ms C Hodgkinson and the Second Respondent, Mr P Dhawan. The service charges related to 22a Englefield Road London N1 4ET ("the Building"). The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Respondents are the long leaseholders of Flats 1 and 2, 22a Englefield Road aforesaid ('the Flats"). Copies of the leases of the Flats are in the bundles of documents produced.

2. The Tribunal made directions in relation to both applications and directed that they be dealt with together as they related to the same issues. Both parties were directed to produce statements of case, exchange these and exchange bundles of documents relevant to the applications by 13th January 2010. The Applicant did not serve their bundle of documents on the Respondents until 15th January 2010, although draft bundles had been served in advance. The First Respondent did not receive the final bundle until 16th January 2010 and the Second Respondent did not receive his bundle until he attended for the hearing on 18th January 2010.

3. The Applicant made an application for the hearing on 18th January 2010 to be adjourned, as they had not prepared their case, partly due to staff absences and general pressure of work. This application was made on 21st December 2009 and, although the Respondents made no objection, the Tribunal refused the request for an adjournment on 23rd December 2009 but extended the time for the delivery of the Respondents' statement of their objections to the charges levied to 8th January 2010 and the date for delivery of the bundles of documents to 13th January 2010. There was no compliance with the directions by either party.

4. The Second Respondent made a further application for an adjournment on 15th January 2010 in the afternoon. The First Respondent complained that she had not received documents from the Tribunal and had not had the opportunity to prepare her case. This application was also refused.

5. The parties attended the hearing on 18th January 2010 and the First Respondent, made a further application for an adjournment, supported by the Second Respondent. The First Respondent stated that she had not received a number of documents sent by the Tribunal as these had been sent to "First Floor Flat 53 Warwick Gardens London W14 8PL" rather than to "53 **B** Warwick Gardens. She advised the Tribunal of the error by fax dated 16th December 2009. She considered that she had been prejudiced by the Tribunal's failure to use the correct address She also complained that there was no response to her telephone calls to the Tribunal. The matter was complex and she had a number of documents in storage that she wanted to retrieve for the case. In addition, she had not received the bundle of documents until two days before the hearing, although she acknowledged that she had received a draft bundle containing virtually the same documentation.

6. The Second Respondent said that he had been unable to obtain the First Respondent's details from the managing agents and had only been able to contact her the week before. He wanted to work with the First Respondent to prepare the case and speak to the remaining leaseholders. He had only received the bundle of documents at the hearing and had not had a chance to review them.

7. The Applicant's representative pointed out that the only issue before the Tribunal was the on-account charge for the major works. Any other disputes regarding the general service charges had been resolved. She pointed out that the First Respondent was present at the pre-trial review and that she had been aware of the directions and the hearing date. The Second Respondent has already submitted an independent surveyor's report.

8. The Tribunal carefully considered the application for adjournment. It was noted that this was a matter which had been transferred from the County Court and that the proceedings had commenced prior to 17th January 2009, being the date of the Second Respondent's defence filed. There has been ample opportunity for the Respondents to prepare their cases and they have been aware of the issues in dispute for a considerable length of time. The First Respondent was present at the pre-trial review and was aware of the nature of the directions given. The Second Respondent was represented at the time of the pre-trial review and his representatives were provided with the directions.

9. It was regrettable that the Tribunal used an incorrect address when writing to the First Respondent but it appears from the file that correct communication was in place by early December. The Tribunal has reviewed the bundle and noted that the papers contained in it related to the notices given, the specification and the estimates obtained, all of which were familiar to both Respondents. There was also a copy of a report from James Davidson, a surveyor appointed by the Second Respondent and other long leaseholders. The remaining documents in the two bundles were specific to the particular Respondent to which the bundle related. The Tribunal is satisfied that the Respondents were well aware of the contents of the bundle. Both of them had submitted defences to the initial proceedings in the County Court and these are in the bundles. The Tribunal is satisfied that the hearing could continue with no prejudice to either of the Respondents in view of their detailed knowledge of the issues under appeal. A further adjournment would be a waste of public money. The request was refused.

THE LAW

10. The Tribunal's jurisdiction in relation to this appeal is set out in Section 27A (3) of the Act as follows: -

> (3) An application can also be made to a leasehold valuation tribunal for a determination 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

THE HEARING

11. The hearing of the application took place on 18th January 2010. Ms M Shalom represented the Applicant and Mr P Scott and Mrs B Mutavelian gave evidence. The Respondents both gave evidence relevant to their individual claims. They both appeared in person. There was insufficient time to conclude the hearing on 18th January and it was accordingly adjourned to 12th February 2010.

12. The Tribunal determined that an inspection was not necessary. There were no issues as to the standard of the work and this had now been completed.

13. The Applicant provided two bundles, one relevant to each application. Each of the Respondents had submitted a defence to the county court proceedings and these were included in the bundles with any attachments. The Respondents were give time to review the bundles after the adjournment request had been refused and prior to the commencement of the hearing.

14. The Tribunal identified that the maters in dispute were the level of the estimated charges for the work relating to the external and internal decorations and repairs to the Building carried out pursuant to the service of a Section 20 Notice at an estimated cost for the First Respondent of £10,250.42 and for the Second Respondent of £5,202.87. The Respondents also allege that the Section 20 procedure was not properly followed.

EVIDENCE

15. The Applicant's representative stated that a Notice of Intention under Section 20 of the Act was served on all the long leaseholders in the Building in 2005 and that the long leaseholders had been invited to contact the supervising surveyor, Peter Scott of Peter Scott & Associates. A specification was prepared and a statement of estimates served on the long leaseholders, including the First Respondent and the Second Respondent's predecessor in title. On the suggestion of the long leaseholders, the proposed work was postponed for a year with a view to these works being undertaken in 2007.

16. All the long leaseholders were informed on 16th November 2006 that the original estimates were out of date and that the nominated surveyor would inspect the Building again and make any necessary adjustments to the original specification. The long leaseholders were invited to nominate a contractor to quote for the works but no contractor was nominated. Following the estimates being obtained, a Second Stage Section 20 Notice was served on the long leaseholders on 19th June 2007.

17. A Section 20 notice was not served on the First Respondent in June 2007 since a judgement in default had been obtained from the County Court on 5th December 2006, following which a notice under Section 146 of the Law of Property Act 1925 was served on the First Respondent on 20th February 2007. At the time of the service of the Section 20 Notice, the Applicant had obtained judgement, served a Section 146 Notice and issued a claim for possession. The judgement was subsequently set aside and a copy of the Second Stage Section 20 Notice was

served on the First Respondent on 18th December 2007, following the judgement being set aside.

18. The First Respondent had been aware that the Section 20 Notice had not been served on her but submitted that, had it been, she would have objected to the scale of the works and requested that a reduced schedule be prepared, something she had requested earlier during the procedure. She feels that by being omitted when the Stage 2 Section 20 Notice was served, her right to object was removed. Once she realised that the notice had not been served, she requested a copy of the specification and was surprised to note that it had not been reduced as she had requested earlier. She wrote to the Applicant's agents on 6th October 2008 requesting that the extent be limited. This request was not complied with.

19. The First Respondent stated that she worked in the accounts office of a small estate agency which managed about 175 flats. She is therefore familiar with the rates for maintenance works in South London where she works and which she claims were far lower. She also owned another flat in South Kensington where she would expect the rates of charge to be higher but the white stucco house in which the flat is located was decorated for between £7,000 to £11,000 over the three times that the property was decorated. She acknowledged that she did not propose a contactor as she thought there was little point in view of the number of long leaseholders who had objected to the extent and the level of cost of the works.

20. The First Respondent had to leave the hearing at lunchtime. Although it was out of the normal sequence, the parties all agreed to hear her evidence early to ensue that she would be able to leave the hearing in time. She went through the specification and clarified the items that she considered unreasonable. She also made submission in which she claimed that the situation she found herself in was due to an administrative mess. She would have objected had she been given the opportunity and her main objections were the extent to the schedule of works as she felt that a number of items could be omitted. She felt that some of the works could be delayed by a year or eighteen months and the costs could be substantially reduced. She claimed that four fifths of the long leaseholders felt the same way as she did.

21. The Tribunal then resumed the normal procedure and heard from Mr Peter Scott, BSc FRICS of Peter Scott Associates. He confirmed that he had prepared the specification in 2005 and that it had been updated in 2007 when there were only some minor charges. He agreed that some of the long leaseholders had requested that the work be delayed for a further period when the second specification was prepared but he pointed out that this work had originally been scheduled for 2005, delayed at the request of the long leaseholders until 2007 and there was a limit to the period during which there could be a further delay. In his view, further delay would have resulted in a loss of amenity, deterioration of the fabric of the Building and leaks from poor joinery to the windows. Although some of the external decoration could have been delayed, the fact that there was scaffolding erected made it convenient for all the works to be undertaken at the same time that essential works requiring scaffolding were done. The additional cost arising for erecting scaffolding again would be considerable.

22. Mr Scott went through the specification with the Tribunal He explained that the works had been categorised into higher and lower priority items with the lower priority items representing about £1,600 of the total cost. He reiterated that it would not be economic for these lower priority works being undertaken at a different time. He estimated that there would be additional costs of about £3-£4,000 including arranging for access to various parts of the Building.

23. The joinery repairs referred to in the estimate relate to works where the responsibility for the window repairs lay with the individual long leaseholder under the terms of their leases. The repairs found necessary were itemised and reported to the various tenants who then were given the option of not having their windows done.

24. Mr Scott noted that there was a general challenge to the level of the costs but pointed out that a full Section 20 tender process had been undertaken and that the long leaseholders were invited to propose contactors and they did not respond. The hearing was adjourned after Mr Scot had finished his evidence

25. The hearing was resumed on 12th February 2010. The First Respondent said she had heard from one of the other long leaseholders that he had been told by someone at the managing agents that all the long leaseholders with the exception of him had paid and that he was the only one not paying.

26. The Tribunal then heard from Ms Bella Mutevelian. She is the property manager for Crabtree Property Ltd who took over management of the Building from Sable Estates Ltd on 1st October 2007. She noted that the First Respondent said that she had written on a number of occasions and had asked for the specification to be reduced but had received no response. Ms Mutevalian stated that she could find no record of any letters being received. She also denied giving any information regarding payment of the sums demanded by any of the long leaseholders to any of them as this was confidential information covered by the Data Protection Act. She also denied giving either the First or Second Respondent the other's telephone number, as this was again confidential.

27. Although Ms Mutevelian was not involved in the management of the Building until 2007, she was aware that the major works were postponed form 2005 at the request of the long leaseholders. The previous managing agents had relied on advice given by Mr Scott in regard to the extent of the work to be included in the specification and, despite the Respondents' wish that the specification be reduced, the Applicant had decided that the recommended specification should be followed. The First Respondent was unable to produce copies of any letters where a reduced specification had been requested and, apart from the Respondents, no request had been made by any of the long leaseholders for a reduced specification.

That concluded the Applicants case

28. The Second Respondent gave evidence and stated that he had wanted the work postponed since his surveyor considered that the works could be delayed for a year or eighteen months. He relied on a report from Mr James Davidson BSc, MRICS prepared on behalf of three of the long leaseholders. Mr Davidson concluded that some of the works could be postponed for 12-18 months with the

joinery repairs being the most important, although he considered that the work to the front of the Building should be undertaken immediately.

29. The Second Respondent noted that Mr Scott had referred to the poor condition of the windows but pointed out that the windows were included in the individual demises and should not have been considered when the works were to be undertaken. He found that all the sums quoted in the tenders based on the specification to be too expensive. He did not produce any alternative quotes or suggest another contractor, even though he had been offered the opportunity to do so in November 2006 but said that he had undertaken development work himself and had appointed builders to undertake work in the past and in his view, the work was expensive and unnecessary.

30. The Applicant's representative then made submissions on the question of the service of the Second Stage Section 20 Notice on the First Respondent. There were two sets of proceedings, one relating to arrears of service charges and the other relating to forfeiture of the lease. In relation to the first proceedings, the claim for arrears of service charges was deemed to have been issued by the Court on 1st July 2006 and judgement in default was granted on 5th December 2006. Following the judgement, a notice under Section 146 of the Law of Property Act 1925 was served and proceedings for forfeiture issued on 20th January 2007. These proceedings were incorrectly served by the Court but were not withdrawn on 6th August 2007when payment was made by the First Respondent as there was a dispute over the costs.

31. Since the forfeiture claim was not withdrawn at the time the Second Stage Section 20 Notice with estimates was served on 19th June 2007 no notice was served on the First Respondent as there were live forfeiture proceedings in place at the time. The Applicant's representative submitted that the service of proceedings by a landlord unequivocally claiming possession against the tenant was the equivalent of a physical re-entry and equivalent to a claim for possession and that the First Respondent had no legal right to Flat 1 at the time, even though the proceedings were subsequently withdrawn when the error came to light. .

32. The Applicant's representative pointed out that the work had not commenced at the time the Second Stage Section 20 Notice was served on the First Respondent. The work did not start until September 2009 and this gave the First Respondent plenty of time in which to make any comments that she wished to. She had been in no way prejudiced by the late service of the Notice and had been aware of the Applicant's intention to undertake the works since 2005. The Notice was sent to her shortly after the proceedings had been withdrawn. She had been given the opportunity to make comments and to nominate a contractor at an early stage, which she did not take up. The Applicant's representative acknowledged that the First Respondent had expressed concern about the level of costs in the past and that she had been given ample opportunity to comment throughout the proceedings.

33. The Applicant's representative submitted that there had been substantial compliance with the requirements of Section 20 and that the omission was due to an error outside the control of the Applicant. She requested that the Tribunal consider the application under Section 20 ZA if the Tribunal considered that the correct procedure had not been followed.

to their flat. All the long leaseholders with the exception of the Second Respondent accepted the offer. The decoration of the exterior of the windows was part of the Applicant's responsibility under the Leases and it would be counter-productive to carry out decoration where the joinery is rotten.

39. The Tribunal considers that the cost of the work has been properly tested by being offered to several companies to quote. Despite the Respondents' complaints about the cost of the works, no alternative contractor was proposed nor were any comments made after the estimates were submitted. The Respondents' objections in the case of the First Respondent were limited to only some of the items but the Second Respondent simply complained, without any supporting evidence, that each of the items was too expensive. The application related to an estimate of works only which may well be adjusted when the final account was completed after the works were finished. A draft final account was produced at the hearing that indicated that there had been some savings once a closer inspection of the Building was undertaken when the scaffolding was in place. The Applicant has taken all appropriate steps to obtain a suitable specification by relying on the services of Mr Scott and by following the full Section 20 consultation procedure. The Tribunal finds that the sums demanded were reasonable and payable by the Respondents.

40. The Tribunal has considered the question of the omission of the First Respondent from the Second Stage consultation under Section 20. The Tribunal was persuaded that the judgement was in force on 19th June 2007, even if the process was flawed and the judgement remained extant until it was withdrawn. In view of the findings in the cases of **Jones v Carter (1846) 15 M & W 718, Sarjeant v Nash Field & Co [1903] 2 KB 304** and **Woolwich Equitable Building Society v Preston [1938] Ch129**, all of which remain good law, the service of the proceedings was equivalent to a physical re-entry. The Applicant would therefore have been compromising their position had they served a Second Stage Section 20 Notice on the First Respondent after they had proceedings had been commenced and a judgement obtained. The First Respondent did not have a right to be included in the Section 20 proceedings in June 2007, notwithstanding the subsequent discovery that the summons had not been properly served as the Applicant had exercised a right of re-entry. She has made much of her inability to prepare for the case as some of her papers are in storage but this matter has been active for a considerable period of time during which both Respondents could have prepared their cases with ease. She admitted that the papers she had in storage only related to her desire to have work to be done reduced. Her desire for this was well known to the Applicant who had considered it but had rejected it.

41. The Tribunal does not consider that the Second Respondent was in any way prejudiced by not receiving the Second Stage Section 20 Notice. She had been given a second Notice of Intention on 16th November 2006 in which she was invited to nominate a contractor but failed to do so. She was well aware that the works were to be undertaken and had seen the original specification. She was served with a copy of the Notice on 18th December 2007, following the withdrawal of the proceedings and there is no record of her having made any comment, even though the specified time had passed. By her own account she requested a copy of the revised specification once she realised that she had not been served with a Notice.

42. In view of the Tribunal's findings that the Applicant was right not to serve the Second Stage Notice, the Tribunal has considered whether to make a dispensation for the requirement to have a consultation under Section 20 ZA of the Act. The Tribunal determines, in order to clarify the position, that in all the circumstances, it was reasonable to dispense with the service of the Second Stage Section 20 Notice on the First Respondent.

CONCLUSION

43. The estimated costs for the major works are reasonable and, since they are overdue, are payable immediately. The sum due from the First Respondent is **£10,250.42** and that due from the Second Respondent is **£5,202.87.**

44. Having regard to the submissions made the Tribunal is satisfied that it is reasonable to dispense with the Stage 2 consultation requirements in accordance with Section 20ZA of the Act.

SECTION 20C OF THE ACT

45. An application was made by the Respondents for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. In view of its findings, the Tribunal determines that it is not appropriate for an order under Section 20C to be made.

.....
Mrs T Rabin JP
Chairman

3.3.2010