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**HM Courts  
& Tribunals  
Service**

**Leasehold Valuation Tribunal  
Case Number: CAM/11UC/LSC/2012/0070**

**Property** : Flats 1, 2, & 3  
Astenway House,  
East Street,  
Chesham,  
Bucks  
HP5 1BP

**Applicant** : Astenway Limited ("the lessor")

**Respondent** : Amos & Jacqueline Eisenberg  
Richard Manzanero ("the lessee")

**Date of Transfer from** : 21<sup>st</sup> May 2012

**Date of Application** : 6<sup>th</sup> July 2012

**Type of Application** : Application for a determination of  
liability to pay a service charge,  
pursuant to section 27A of the Landlord  
and Tenant Act 1985

**Date of Hearing** : 4<sup>th</sup> September 2012

**Attendees** :

**Applicant**

Paul Ryan, Director of Astenway Ltd.  
Karole Levene of Highstar Property Management

**Respondent**

Amos Eisenberg (Joint Lessee of Flats 1 & 3)  
Jacqueline Eisenberg (Joint Lessee of Flats 1 & 3)  
Richard Manazero (Lessee Flat 2)  
Paul Newman, Counsel for the Lessees

**Tribunal**

Mrs. J. Oxlade  
Mr. N. Martindale FRICS  
Mr. A. K. Kapur

Lawyer Chairman  
Valuer Member  
Non-legal Member

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## DECISION

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1. For the reasons given below, we find that:
  - (i) not all of the charges incurred in 2010/11 were reasonably incurred,
  - (ii) not all service charges incurred in 2011/12 were reasonably incurred,
  - (iii) not all service charges estimated for the year 2012/13 are reasonable.
2. The Tribunal makes an Order pursuant to section 20C of the Landlord and Tenant Act 1985, that the lessor shall not add the costs of the proceedings to the service charge account.
3. The proceedings concerning Mr. and Mrs. Eisenberg shall be transferred back to the County Court.

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## REASONS

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### Background

1. Amos Eisenberg and Jacqueline Eisenberg are the lessees of the premises known respectively as flats 1 & 3 Astenway House, East Street, Chesham, Bucks ("the premises"). Richard Manzanero is the lessee of flat 2.
2. Lower Norwood Building Co-operative is the freeholder and head lessor, and Astenway Limited is the intermediate lessor, ("the lessor"). Highstar Property Management are appointed to act as the lessor's managing agents ("managing agents").
3. The lessor issued a claim in the Watford County Court for unpaid service charges in respect of flats 1 and 3; in light of the defence filed, those proceedings were transferred to the Leasehold Valuation Tribunal ("LVT") for determination of the payability and reasonableness of service charges; directions were issued by the LVT for the filing of evidence on 1<sup>st</sup> June 2012.
4. Shortly thereafter, Mr. Manzanero, the lessee of flat 2, notified the LVT that he wished to issue an application for determination of the

payability and reasonableness of service charges and he was invited to issue proceedings expeditiously, so that all matters could be considered at the same time. As he did, so directions were issued on his application 10<sup>th</sup> July 2012. For ease of reference he is referred in these proceedings to as "a Respondent", though this is not accurate.

5. Accordingly, the LVT had two applications to determine, concerning the reasonableness and payability of the service charges for the years 2010/11, 2011/12, and estimated service charges for 2012/13.

#### The Service Charge Covenants

4. The leases of all three flats are in identical terms, providing that the lessor will insure the building, undertake works of maintenance and repair, light and clean the common parts. The leases provide that the lessee of each flat would pay a service charge contribution, amounting to 1/5<sup>th</sup> of the expenditure, or forecast expenditure.

#### Inspection of the Premises

5. Immediately prior to the hearing the Tribunal inspected the premises in the presence of all those who attended the hearing.
6. The Tribunal noted that the premises were of brick construction under a tiled roof, built at the turn of the century although with a modern single storey extension, over 4 floors.
7. The exterior was generally in a fair condition though the Tribunal noted the following: the floor tiles situated outside the front door were cracked and broken, leaving an uneven surface; the pointing of the parapet wall was poor in places; the metal work of the meter cupboards was not holding fast; the wooden boundary fence was cracked, and missing in part; the cement surrounds of the drains in the car park were cracked.
8. The interior was generally in a fair condition though the Tribunal noted the following: the plasterwork around the communal front door had cracked; the paintwork in the communal hallway was scuffed and marked.

#### Hearing

9. The parties listed above attended; the lessees were represented by Mr. Newman.
10. At the outset at the request of the Tribunal Mr. Ryan explained that the freeholder is Lower Norwood Building Cooperative, with Astenway Limited the inferior lessor. Ms. Levene explained that the service charges received from the lessees of Astenway are paid into a current account, which has a float of £100, so that the remainder is paid into a

deposit account. Reserves are set aside for long term works and they are held in a separate account, on which interest is payable.

11. The lessor's itemisation of costs actually incurred in the years ended 2011 and 2012 (pages J2-J3), and estimated costs for 2012/13 (J4- J5) were used as the starting point, and we invited further comment from all persons present, which points are summarised below, along with our findings.
12. At the end of the hearing, the Tribunal heard submissions on costs. The Tribunal reserved its decision.

### Jurisdiction

13. The LVT has jurisdiction by virtue of section 27A of the 1985 Act, which provides as follows:

"(1) An application may be made to a LVT for a determination whether a service charge is payable, and if so, as to –

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) date at or by which it is payable, and
- (e) the manner in which it is payable".

.....

(3) An application may also be made to a LVT for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description a service charge is payable for the costs, and if it would, as to –

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) date at or by which it is payable, and
- (e) the manner in which it is payable".

14. The following statutory provisions are also relevant to this dispute:

*Section 19 of the 1985 Act, provides:*

"Relevant costs should be taken into account in determining the amount of the service charge payable for period –

- (a) only to the extent that they are reasonably incurred and
- (b) where they are incurred on the provision of services of the carrying out of works, only if the service or the works are of a reasonable standard;

and the amount payable shall be limited accordingly”.

#### Section 20C

“(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 ... LVT...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”.

.....

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

#### Findings

15. Having carefully considered the totality of the evidence filed, and the submissions made the Tribunal makes the following findings of fact:
  - not all service charges incurred in the years 2010/11 and 2011/12 were reasonably incurred
  - not all service charges demanded as estimated expenditure for the year 2012/13 are reasonable
  - not all service charges demanded by way of reserve for the year 2012/13 are reasonable.
16. The Tribunal makes these findings for the following reasons.

#### Reasons

##### *Insurance*

17. The costs charged to the service charge account for insurance were £1589.65 (2010/11), £1612 (2011/12), and were estimated at £1700 (2012/13).
18. The Lessees did not take issue with the actual costs of insurance, but said that the estimate for 2012/13 was excessive, in light of the marginal year on year increase
19. The Tribunal explored with Mr. Ryan, the method used by the lessor of obtaining insurance. He said that in accordance with the terms of the head lease (clause 4.2 [L115]), the head lessor insures the demised premises for the risks set out therein, for which the lessor is required to pay “insurance rent”. The lessor had no “say” in how the insurance is placed.

20. To date, the lessor has passed on the insurance costs to the lessees by apportioning the costs between the 5 residential flats and the ground floor commercial units, as a 60/40 split. The lessor did so in reliance on clause 3.3 [L106] of the head lease.
21. At the hearing the Tribunal pointed out that clause 3.3 relates to the percentage of the maintenance costs, not insurance costs, and so the percentage split for insurance is not set under the terms of the head lease. Nor do the under leases make any prescription.
22. In light of the concessions which had been made in the lessee's responses, the matter was not challenged and so not strictly before us. At the hearing the Tribunal pointed out that in the absence of expert evidence, the Tribunal's task in attempting such apportionment could well be a "shot in the dark" and to date no expert assistance has been obtained to evaluate whether 60/40 is an appropriate apportionment or not. It has to be borne in mind that the risks covered by the insurance include the loss of rent to the head lessor in the event of a rebuilding of the building; such risks are irrelevant to the residential lessees.
23. In light of the way the matter was raised by the Tribunal, and in the absence of a direct challenge as to reasonableness by the lessees (who had offered £1589.65, £1612, and £1612 respectively), it is not open to us to determine other than that the reasonable sums for insurance is £1589.65 (2010/11) £1612 (2011/12) and that £1612 is a reasonable estimate for 2012/13. It of course will be open to the lessees in future service years to take issue with the method of setting the insurance premium payable by them; whether it will affect what sum if payable, is not possible for the Tribunal to say in the absence of expert evidence.

#### *Electricity*

24. The actual costs for communal electricity were £234.08 (2010/11), £218.00 (2011/12) and £240 (estimated for 2012/13).
25. The lessees made the point that at one stage the communal lights were left on all of the time; now they are on sensors, but which come on as soon as the clouds pass over. The net result is huge wastage. There was concern expressed that the electricity account was in some way benefiting the commercial premises on the ground floor. Further, that there should be a tendering process undertaken to ensure competitive pricing.
26. Ms. Levene pointed out that all the bills were for actual costs, not estimates. They did obtain quotes from EDF and Southern Electric, and played one company off against the other to achieve a better rate – but this comes at the price of being locked into a fixed rate for 12 months. All the companies seem to have a standing charge, and there is

nothing that can be done about that. The electrical works were done in the spring, and so it is too early to tell how this will translate into actual costs.

27. The Tribunal was satisfied that the costs were actually incurred and reasonably incurred. Inevitably, costs are unnecessarily incurred when lights are left on, yet the costs of employing an electrician to alter the system, does cost a significant sum. It is a trade off - saving in one area, then spending in another. The Tribunal considered that Ms. Levene had a good knowledge of where the meters were located for the residential and commercial units, and were satisfied that the commercial units were not benefiting from the residential supply. The likely costs for the electricity will fall in the coming year, as the benefits of the PIR apply.
28. The Tribunal finds a reasonable sums for electricity to be £234.08 (2010/11), £218.00 (2011/12) and £100 (estimated for 2012/13).

#### *Accountant's Remuneration*

29. The actual costs for accountancy were £240 (2010/11), £240 (2011/12) and £240 (estimated for 2012/13).
30. Ms. Levene said that these were to produce audited accounts to be in a position to produced service charge accounts of actual sums spent. The invoices/receipt are all delivered and these are crossed checked. They go to tender and use two or three auditors locally, which helps to keep the costs down.
31. Mr. Manzanero was concerned that the lessor's accounts were being done as part and parcel of this, and that clause 7(7) referred to accountant's costs being part of the service charge costs, and did not cover auditor's fees.
32. Mr. Ryan said that the sides of the operation were quite distinct were not confused in any way, and that the turnover of the lessor was such that the professional fees far exceeded these sums.
33. The Tribunal considered the terms of the lease, noting that clause 7(7) of Schedule included accountant's or other "professional person's" fees, and concluded that auditors fees were recoverable under the terms of the lease.
34. The Tribunal also found that the agents had put the work out to tender, and that this is reflected in the costs, which the Tribunal using its expert knowledge and skill, found to be in accordance with industry norm.
35. The Tribunal finds a reasonable sums for auditor's fees to be £240 (2010/11), £240 (2011/12) and £240 (estimated for 2012/13).

### *Management Fees*

36. Management fees for 2011/12 were £1200 and estimated to be the same for 2012/13.
37. Ms. Levene set out the services which were offered for the annual fee, and pointed out that in 2005 the managing agents were charging £960 p.a. As this agreement was for 12 months only, it did not require consultation, as suggested by Mr. Manzanero. Mrs. Eisenberg had done some research on local costs, which were at [E158 and 159]. The lessees were concerned that the costs were inflated because the managing agents were not locally based.
38. The lessees feel a sense of grievance over the lack of consultation on the selection of an agent, but we find that there was no legal obligation to do so. The lessees expressed some concern that the building had been left without management for a number of years, and so costs were now higher as a result.
39. The Tribunal considered that Ms. Levene did display considerable knowledge about what processes she had followed in attempting to get works done, and gauging what was urgent (repair of front door) as against non-urgent, and in the latter case being a position to put work out to tender. The Tribunal considered that as the building had been left without management for several years the incoming managing agents had more to do in the first year, and at a greater time expenditure than for a building which was ticking along in an established way.
40. The Tribunal found that the costs for the first year of £1200 (2011/12) were reasonable in light of the need to bring the building up to scratch and in accordance with industry norm. The Tribunal finds that for the next year (2012/12) £1000 is a reasonable sum, save that this will not cover costs incurred in any section 20 consultation procedure, a point worth noting if works are to be done in the forthcoming year which require consultation.

### *Cleaning*

41. The cleaning costs were £650.10 (2011/12) and estimated at £1000 (2012/13).
42. These costs were calculated on the basis of one clean per month at £29 per hour, plus vat, for one hour's work. The cleaner is contracted to vacuum, dust high and low, clean the front door, minimise marks on the walls; the cleaner uses her own equipment, and they arrange for water to be there as there is no communally available water. In addition there was also a one-off deep clean in July 2011, when the agent first took over, which included the inside and outside, the latter of which had rubbish liberally strewn and vegetation growing in the court yard. They

have recently changed the contractor, and within his hour's work he includes cleaning the courtyard and removing all the cigarette butts.

43. The lessees did not dispute that an hour was a reasonable period of time needed to do a clean each month, but considered that the hourly rate excessive. Mrs. Eisenberg had obtained quotes [L215] from local companies, which quoted £15 per hour, with no VAT charged. The Lessee did not dispute that a one-off clean was necessary, but said that the costs were excessive and that this was done poorly; Mr. Manzanero thought that the deep clean of the carpet had damaged it, as there were distinct areas where the carpet had yellowed.
44. Mr. Newman pointed out that the invoice for the one off deep clean made no reference to clearing the car park and courtyard. Ms. Levene said that they had numerous photographs on file of the condition of the courtyard prior to this one off deep clean. The tenant of the top flat is a builder, who does not take his boots off as he gets through the front door, and inevitably leaves a trail of building mess behind him.
45. Whilst acknowledging that the communal hallway is a small space all agreed that an hour is a reasonable time to spend cleaning each month. The Tribunal finds that the monthly cost is excessive, and that an hourly rate of £15 is reasonable, and that VAT should not be charged. Further, that a one off clean in 2011/12 was reasonable, at a rate of £100 (amounting to approximately 6 ½ hours at £15 per hour), and that it would be reasonable to repeat this annually.

#### *Window Cleaning*

46. The annual window cleaning costs were £330 (2011/12) and estimated as £350 (2012/13), which includes external cleaning of all windows, including 5 velux windows in the roof space, and internal cleaning of the two windows in the communal hallway. As the windows on the street side are located over shops, this has to be done out of hours. They competitively tender, and the contractor they have used is from Watford.
47. The lessees considered that £165 per visit was excessive, and were not satisfied with the quality of what had been done. Mrs. Eisenberg had obtained local quotes of £104 per visit (L217), but which did not include the velux windows.
48. Whilst reminding ourselves that the lessor is not bound to chose the cheapest supplier, and noting that the quote obtained by Mrs. Eisenberg is not on a like for like basis, the Tribunal is not satisfied that £165 is a reasonable charge for window cleaning, and concludes that £120 per visit is reasonable, with an element of inflation for future years.

### *Health and Safety Report*

49. The managing agents arranged for a report to be done in 2011/12 at a cost of £354, and which gave rise to electrical issues which were estimated at £300.
50. The lessees were concerned that such costs had arisen, bearing in mind that the works were done in 2004 – so only 7 years previously. They were also concerned to learn if this was a one off charge, or when the next one would be anticipated.
51. Ms. Levene said that the managing agents were in the hands of the Health and Safety inspectorate, and would follow whatever guidance was given as to when the next report was needed – unless anything arose in the building which dictated the timeframe.
52. The Tribunal is satisfied that the costs incurred were reasonable, noting that it is at the lower end of the industry norm; that the costs estimated for doing works to electrics in accordance with those recommendations is also reasonable.

### *General Repairs*

53. The costs incurred in making general repairs was £120 (2011/12) and estimated at £1000 (2012/13).
54. Ms. Levene said that in 2012/13 £120 was incurred in fixing the locking mechanism on the front door. The contractor reported that it appeared that the door had dropped on its hinges, the lock had been forced, and so he had to re-hang the door, removed the locking mechanism (which was not broken) and then refitted it. He put mastic around frame where the plaster was cracked. He took a look at the cracked tiles outside the front door, and reported that there was no quick-fix and it would require a thoughtful look. His call out cost was £80 for the first ½ hour, then £45 per hour after that – so he was there for 1- 1 ½ hours.
55. Mr. Manzanero questioned why the managing agents had not tried to find someone local, which could have reduced costs. Ms. Levene said that the managing agents sent a trusted contractor, as it was not appropriate to ring around to find quotes (being that it was the front door, and so a security issue), so leaving the communal entrance insecure during that time.
56. In light of the evidence as to the urgency with which the matter was treated, we do accept that the managing agents approach was reasonable, as are the costs for the works done.
57. In 2012/13, the managing agents estimated repairs to be £1000, with a list of works provided at 55, footnote “E”. Ms. Levene said that of all items listed the £1000 was mainly to deal with the poor meter cupboard

doors; they had several verbal quotes to deal with this. Also for weeding around the car park area at £40 per month.

58. It is not for the Tribunal to direct the lessor or managing agents as to how to spend funds, although as the Tribunal is being invited to find that the budget of £1000 is reasonable, inevitably that leads to some consideration of what works are proposed. Clearly with any development, there is a priority of jobs, and one might reasonably consider that the cracked cement around the car park drains is a low priority over resolving the cracked and broken tiles situated immediately outside the front door which could be a trip hazard, and which coincide with a drain hole. The lessees were concerned that the tiles were cracked (when only installed in 2004), and that there may be a problem with the "fall" of the surface. Mr. Ryan said that he was involved with the original works, that the falls were accurate, and passed building control. Further, that the commercial premises below had not complained of a leak. His theory was that someone dropped something heavy (i.e. a washing machine) as they were moving in/out of the flat. At the hearing, no one suggested that this was not something which needed attention, or that the solution was clear.
59. In light of this item of repair alone, the Tribunal considers that setting aside £1000 for repairs is reasonable. It goes without saying that the section 20 consultation procedure will apply to any item of expenditure which involves a service charge demand exceeding £250.

#### *Reserve Fund*

60. The managing agents included within the budget for 2012/13, £3758.33 as a major repairs reserve.
61. At the hearing no one suggested that funds should not be set aside, the question was what for, and how much. The lessor's estimate was set out at J4:
- £3000 for internal redecoration every 5 years
  - £10,000 for external decoration every 5 years
  - £1000 for carpet replacement every 8 years
  - £30,000 for roof overhaul every 60 years
  - £8,000 car park resurfacing every 15 years.
62. Ms. Levene said that the figures were based on a formula given by a surveyor, but this is not specific to the building and by no means written in stone.
63. Mr. Manzanero expressed concern that though the estimates are "ball park figures" the demand made for payment of service charges is final and non-negotiable. Mrs. Eisenberg had obtained alternative quotes for the costs of replacing the carpet.

64. The Tribunal using its knowledge and skill as an expert Tribunal, and having inspected the premises, concludes that it is not necessary to set aside money for *roof repairs* for 60 years hence – this being too speculative an event and too speculative as to cost. Further, the Tribunal was told that the main roof was checked in 2004 when the extension was built, and this was newly roofed, battened and felted, and so we discount this item.
65. The inspection of the car park revealed maintenance issues only, and did not at this stage suggest that resurfacing was needed, and so we discount this item.
66. The Tribunal considered that the estimated costs for internal and external decoration, and carpet replacement were excessive, and considered the following as in accordance with current industry prices: internal redecoration £900 on the assumption that it is done every 3 years (so £300 p.a.); external decoration (including scaffolding) of £5000 on the assumption that it is done every 5 years (so £1000 p.a.); the carpet at £500 assuming replacement every 4 years (so £125 p.a.).
67. However, the Tribunal considered that £1000 estimated for general repairs in 2012/13, was insufficient to address the items listed, together with the works needed to address the poor tiling outside the front door, (and with the potential for exploratory works). The Tribunal found as reasonable that an additional £1500 be set aside under the heading “major repair reserve” to address this problem for 2012/13.
68. Accordingly, the Tribunal considers as reasonable the sum of £2925 for the general reserve for major works 2012/13, with £1500 p.a. for all other years.

#### Costs

69. Mr. Newman made an application that the lessor’s costs not be added to the service charge account. Despite the lessees making reasonable enquires to establish information about the charges the lessor went ahead and issued County Court proceedings, despite knowing that the lessee just wanted answers. Whilst there is an element of catch up in costs caused by neglect, the history has resulted in a lack of trust and communication. He placed reliance on the witness statement of Mrs. Eisenberg concerning the lack of contact with the lessees for a period in 2008/9 -11, and that a demand was then made for payment, without explanation.
70. Mr. Newman did not press the other costs application or reimbursement of fees.
71. Mrs. Eisenberg added that they were left in the dark for a long time, and left to make their own enquiries. When the managing agents took

over, they asked questions, and did not feel that they got fair answers. There was no meaningful communication.

72. Ms. Levene said that when her firm took over management of the premises, they did write [D34] to introduce themselves, explained what they intended to do [D34-35] and sought en mass to answer the lessees various questions [D44-46]. In short, they had work to do and no lessee was paying, and having answered the queries raised, the lessor passed the papers to Brethertons [D51]. No meeting was suggested by anyone. The lessees wanted an account for September, but they did not have one, and so they could not give the lessees what they wanted. They could not properly assess costs without starting the business of managing.
73. The Tribunal has jurisdiction to prevent the lessor's costs of the proceedings from being added to the service charge account where it is just and equitable to do so. The Tribunal exercises its' discretion and makes such an order, for the following reasons. The history of the matter shows that the lessor failed to manage the premises or to communicate with the lessees from 2008 to 2011. The statement of Mrs. Eisenberg reveals the efforts that she made to find out if the building was insured [L58], and general concerns as to the lack of maintenance. When Highstar Management were appointed in 2011 Ms. Levene set about the task of trying to bring things up to scratch – but met lessees who were by then desperate for some answers. Ms. Levene had done her best to answer questions on the information that she had. However, understandably the lessees wanted to know about the major repairs, which had the effect of doubling the service charge annual bills. As the Tribunal has found, these estimates were excessive, and were demanded after insufficient consideration had been given to what this building needed. Hindsight is a wonderful thing, but had a meeting been convened at that time, perhaps Ms. Levene's drive to get the building up to scratch would have better been conveyed to the Lessees, and their collective co-operation been secured.
74. Considering all that the Tribunal has heard and in light of the findings made, the Tribunal makes an order pursuant to section 20C of the 985 Act.
75. The Order transferring this case to the LVT required that it be transferred back at the end of the hearing, which Order we so make.

## Conclusion

76. For the ease of all concerned, the Tribunal have set out in tabular form the actual and estimated costs, which the Tribunal has been found as reasonable or which the parties have agreed as payable.

Jøanne Oxlade

Chairman

28<sup>th</sup> September 2012

Astenway House

Service Charge costs 2011/12/13

	2010/11 (actual costs)	2011/12 (actual costs)	2012/13 (estimated costs)
<b>Insurance</b>	<b>1589.65</b>	<b>1612</b>	<b>1612</b>
<b>M. Agent's Fees</b>		<b>1200</b>	<b>1000</b>
<b>W. Cleaning</b>		<b>240</b>	<b>280</b>
<b>Cleaning</b>		<b>280</b>	<b>280</b>
<b>Electricity</b>	<b>234.08</b>	<b>218</b>	<b>100</b>
<b>Auditor's fees</b>	<b>240</b>	<b>240</b>	<b>240</b>
<b>General Repairs</b>		<b>120</b>	<b>1000</b>
<b>HSS/electrical</b>		<b>354</b>	<b>300</b>
<b>Bank Charges</b>		<b>15</b>	
<b>Reserves</b>		<b>1425</b>	<b>2925</b>
<b>Total</b>	<b>2063.73</b>	<b>5794</b>	<b>7807</b>