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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/00HY/LSC/2013/0003

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO APPEAL

Application Section 27A of the Landlord and Tenant Act 1985 (as amended) – hereinafter referred to as 'the 1985 Act'.

Applicant/Lessor; 20/20a Bedwin Street (Salisbury) Management Limited

Respondent/Lessees: A Pritchard (Flat 1), P Osborne (Flat 2), H W Bray (Flat 3), W & J Dickinson (Flat 4); M & C Andrews (Flat 5), L Molton (Flat 6).

Building: 20/20A Bedwin Street, Salisbury, Wiltshire, SP1 3UT

Date of Original Application: 24/12/2012

Date of Directions; 04/01/2013

Date of Further Directions: 19/03/2013

Dates of substantive hearing; 12/03/2013 and 07/05/2013

Members of the Tribunal: Mrs J F Brownhill MA (Chair)

Mr K Lyons FRICS

Mr M R Cook

1 The Applicant's application for permission to appeal (as contained in the LVT PTA form dated 03/06/2013 and accompanying letters dated 02/06/2013 and 08/06/2013) is refused.

2 The Applicant's submission for leave to appeal contains no reasonable grounds for concluding that the Leasehold Valuation Tribunal erred in law or that there is any other valid ground of appeal. The Tribunal has had regard to the importance of the points raised by the Applicant to the decision itself, and in terms of its wider implications and to the proportionality of an appeal.

3 The Tribunal further notes as follows:

a. In relation to whether the works to the balustrade within the common parts were an inherent defect, and/or not within the ambit of the landlord's obligation to effect the insurance policy and/or not within the ambit of the repairing covenant:

i. The Tribunal's notes of the hearing on 12/03 specifically record that the works in question were discussed with the Applicant in detail. The Applicant was specifically asked if he classed those works as ones of 'repair'. A discussion followed between the Tribunal and the Applicant in which the Applicant's position was **not** that the items were necessary because of disrepair. When discussing the gaps in the balustrade which required infilling, the Applicant referred to them as; "a safety item. They should never have been there". The Applicant argued before the Tribunal on 12/03 that the items were recoverable as they were works the Applicant was required to do to effect the insurance policy;

ii. The Tribunal considered and rejected the argument that the costs were recoverable because of the Applicant's obligation to effect an insurance policy;

iii. The fact that the Applicant produced submissions dated 05/04/2013 (i.e. between the two hearing dates of 12/03 and 07/05) referring explicitly to "...the latent defects issue...", suggests the topic of inherent or latent defects was indeed raised and discussed at the hearing on the 12/03/2013;

iv. The Tribunal had regard to the Applicant's submissions dated 05/04/2013 in reaching its decision. The Applicant had considerable and ample opportunity to present its arguments in the form it wished during the hearing covering two days.

v. The Tribunal's view was that having had regard to the works in question they were not works of repair nor did the works amount to maintenance. The Tribunal concluded that the costs were not recoverable for the reasons given in the judgment.

b. Re: the costs of the survey and reports obtained by the Applicant in relation to the roof structures;

i. The Tribunal concluded that the obtaining of such reports was not within the ambit of the terms of the leases for the reasons given in the judgement.

ii. The Tribunal repeats paragraphs 3(a)(iii) and 3(a)(iv) above;

c. Re paragraph 12(a) of the Fifth schedule to the leases: the 'sweep up clause':

i. The Tribunal were not referred in either the Applicant's oral or written submissions to the case of Wembley National Stadium Ltd v Wembley (London) Ltd (2007) EWHC 756 (Ch) prior to giving its judgment;

ii. The Tribunal's conclusion was, as stated at paragraphs 24 and 25 of its judgment, that the 'sweep up' clause related to costs the Applicant incurred in carrying out its covenanted obligations. If the Tribunal found, as in a number of cases it did, that the costs incurred by the Applicant had not been incurred pursuant to its covenanted obligations, the 'sweep up' clause at paragraph 12(a) of the Fifth Schedule would not and could not assist the Applicant in securing the recovery of such sums.

14th June 2013

J F Brownhill (Chair)

Signed: .....