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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AG/LSC/2010/0006

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 159(6) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

**Property:
183 Adelaide Road London NW3 3NN**

**Applicant:
Chalcots Estates Limited**

**Represented by:
Mr J. Titmus (Counsel)
J. B. Leitch & Company Solicitors**

**Present:
Mr. J. Haynes (Managing Agent of Robert Irving and Burns Management
Services Limited)**

**Respondent:
Mr. Vittaya Prachuablarb
Mrs. Jareporn Prachuablarb**

**Present:
Mrs. Jareporn Prachuablarb**

**Tribunal:
Mrs. N. Dhanani LLB (Hons)
Mr. I. B. Holdsworth BSc MSc FRICS**

**Date of Directions:
09/02/10**

**Date of Hearing and further directions:
01/04/10**

Introduction

1. The Applicant issued proceedings in the County court on the 20th July 2009 for a judgement against the Respondents for £900 plus interest, fees and legal costs. The Applicant claims the benefit of covenants contained in a Transfer dated 23rd January 1998 registered against the freehold interest in the Property. The Applicant claims that in default of the covenants contained in the Transfer the Respondents have failed to pay to the Applicant the management expenses and fees due under the Transfer. The application was transferred to the Tribunal by an order dated 27th October 2009 made by District Judge Cohen sitting at Willesden County Court. (Claim Number: 9QZ03523).

2. The Applicant pursuant to section 159(6) of the Commonhold and Leasehold Reform Act 2002 ("the Act") seeks a determination of the liability to pay and the reasonableness of the estate management charge for the periods ending:
 - i. 29th March 2007,
 - ii. 29th September 2007,
 - iii. 29th March 2008,
 - iv. 29th September 2008, and
 - v. 29th March 2009

Background

3. The Property forms part of the Chalcots Park Estate which comprises a total of 323 properties.

4. The Property is subject to a Transfer dated 23rd January 1998. The Transfer was made between (1) Comdart Limited and (2) Stewart Murray & Michelle Susan Murray ("the Transfer") is registered against the Respondents freehold title to the Property.

5. The Transfer provides that the Property is held subject to:
- i. "... the payment by the owner for the time being of the Property of a fair proportion of the expense of maintaining cleaning lighting repairing replacing and renewing the road ways and communal gardens..." and
 - ii. "...the provisions of the Scheme of Management ("the Scheme") under Section 19 of the Leasehold Reform Act 1967 approved by the High Court of Justice on the 22nd October 1990 the Purchaser on behalf of the Purchaser and the Purchaser's successors in title hereby COVENANTS with the Vendor and its successors in title being the Managers for the time being of the Scheme to be bound by the terms and conditions thereof as if the Property and each and every part thereof were an enfranchised property (as defined in the Scheme)".

Directions

6. Directions were issued on the 9th February 2010 and the case scheduled for a hearing on the 1st April 2010. Further directions were issued at the hearing on the 1st April 2010 and the Applicant was required to make further written submissions as to the reasonableness of the management fees. The directions have been followed in the main.

The Scheme

7. Clause 2 of the Scheme provides that the Scheme applies to each enfranchised property from the date of registration of the Scheme as a local land charge and is enforceable by the Scheme Manager against every owner of the Property as if they had covenanted with the Scheme Manager to be bound by the Scheme.

8. The First Schedule Part 11 Clause 13 provides as follows:

"The Owner shall pay to the Scheme Manager by two equal payments on 1st January and 1st June

- (a) An annual sum of money equal to the basic services charge such sum to be credited against the Owner's liability under sub- paragraph (b) of this paragraph; and

(b) An annual sum of money equal to the Owner's share of Estate expenditure.

9. The Estate expenditure is defined as "... the cost calculated as provided in Part 11 of the Second Schedule ...for providing the services and other things specified in part 1 of the Second Schedule". Part 11 of the Second Schedule provides that the "...cost of services and other things for each accounting period shall be the actual cost as certified by the auditors of the Scheme Manager of providing the services and other things specified in Part 1 of this Schedule".

The Statutory Provisions

10. Section 159 of the Act introduced a new provision allowing a challenge to be made to charges under estate management schemes approved by the Court or Leasehold Valuation Tribunal.

11. By Section 159(2) of the Act :

"A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and "variable estate charge" means an estate charge which is neither—

- (a) specified in the scheme, nor
- (b) calculated in accordance with a formula specified in the scheme"

12. By Section 159(6) of the Act:

"An application may be made to a leasehold valuation tribunal for a determination whether an estate charge is payable by a person and, if it is, 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) the date at or by which it is payable, and
- (e) the manner in which it is payable"

Hearing

13. The Applicant's case

- iii. The Applicant relies on its County Court Particulars of Claim and its Statement of Case, as well as the oral submissions made by Mr Titmus and Mr Haynes of Robert Irving and Burns Management Services Limited (RIB). The Applicant's submissions are summarised below.
- iv. The Applicant contends that despite invoices to the Respondent for service charges on a six – monthly basis since 2007, no payments of service charge has been made by the Respondent.
- v. The Applicant issued to the Respondent service charges demands in respect of the Respondent's contribution towards the overall Estate Expenditure as follows:
 - (a) £180 in March 2007
 - (b) £180 in September 2007
 - (c) £180 in March 2008
 - (d) £180 in September 2008
 - (e) £180 in March 2009
 - (f) £180 in September 2009.
- vi. The Applicant contends that the Respondent's last payment in respect of service charge was received on the 11th January 2007.
- vii. The Applicant produced copies of audited accounts and confirmed that it has on an annual basis obtained audited accounts which have been duly certified by Chartered Accountants, Kleinman Graham.
- viii. The Applicant seeks an Order that the Respondent pay the sum of £1080.00 being the balance of service charges due for the period 29th March 2007 – 24th March 2010.
- ix. Mr Haynes explained that the costs are charged at a flat rate although he accepts the actual expenditure fluctuates from year to year. He contends that it is not unreasonable to apportion the service charge costs equally between the properties on the estate as there are a large number of properties on the estate and it would be impossible to

apportion the cost individually. He stated that the flat rate has not been increased for some time and any surplus is transferred to a reserve fund. The Estate comprises of 323 properties in total, and the Property shares a part of the Estate with 57 other properties and so the service charges relating to this part of the Estate are split equally between the 58 properties. The Property is therefore liable for 1/58th of the overall expenditure incurred.

- x. Mr Titmus commented that the Respondent had not claimed that the amounts charged are too high or unreasonable but claims that they do not receive any benefit from the services provided so they should not be required to pay. Mr Titmus stated that this is analogous to a ground floor tenant having to contribute to the upkeep of a lift or the roof. Although a ground floor tenant may not receive any direct benefit from a lift or the roof they are nevertheless required to contribute to cost of these items. Mr Titmus stated that although the Respondent is of the view that they do not have access to the communal gardens in fact access to the gardens is available to all residents of the Estate.
- xi. Mr Haynes stated that the Estate comprises of 323 dwellings and approximately three quarters of the properties on the Estate are leasehold properties and the remainder are freehold. He confirmed that no major works have been undertaken.
- xii. He stated that he is not aware of any problem with the standard of service provided, he inspects the Estate every Friday morning. He stated he was unaware of any fly-tipping on the Estate. He stated that any matter reported to the Estate Manager is notified to the gardening contractors who attend to the matters.
- xiii. Mr Haynes provided a detailed explanation of the services provided for the items shown on the audited accounts, as follows:
 - (a) Garden cultivation, Building Maintenance and general repairs and maintenance: These items relate to the general maintenance of the common parts. The gardens in total are equivalent in size to half a football pitch. The Applicant employs Thames Maintenance to undertake the upkeep and

maintenance of the gardens including cutting the grass, weeding the beds, clearing leaves, replacing plants, maintaining the trees, sweeping the roads and salting the roads in the winter months. They will deal with a broken paving slab or kerb stone that may be out of place or a problem with the gate etc in addition to the normal garden maintenance. The weekly or regular tasks fall within the fixed price contract and any odd jobs are charged for separately. Mr Haynes attends the site weekly and walks around the Estate with an employee from Thames Maintenance. Thames Maintenance attends the site twice a week on a Tuesday and a Friday. Mr Haynes considers that an annual charge of around £12000 for this level of service provided is not unreasonable. He confirmed that in the 5 years that he has been employed by the Applicant the contract for this service has not been market tested.

- (b) Electricity for street lighting: This is a fixed charge levied by the Electricity companies for lighting of the un-adopted internal estate roads, and is an unmetered supply.
- (c) Repairs and maintenance of lighting: The contractor attends twice a year to change the time clocks and make sure the bulbs are working
- (d) Cleansing and repair of street drains: The contractors attend twice a year to cleanout and inspect gulleys and deal with any blocked drains. Any slight fluctuation in cost from year to year is due to any repairs to gulleys.
- (e) Professional fees: Mr Haynes explained that the fluctuation in the professional fees between 07 to 08/09 is due to the change in the VAT rate. Taking the VAT element out of the charges the management fees amount to £60 per property. Mr Haynes accepted that as a percentage of the total disbursements the management fees seemed high but he contends that the charge is reasonable for this type of management as it covers a weekly inspection of the site, all book keeping, any notices

for major works, any complaints, queries and enquiries. He estimates he spends around two hours per week dealing with the Estate.

The Respondents Case

14. Mrs. Prachuablarb appeared at the hearing and presented the Respondents case. She relies on the defence filed in response to the Applicant's statement of case.
15. The Respondents deny they are bound by the terms of the Transfer and deny liability to pay the Service charges on the basis that the Applicant has not provided any services.
16. Mrs. Prachuablarb is of the view that she receives no benefit from the services and so she should not have to pay.
17. The Respondents paid the service charges from the date of their purchase of the property in 2002 until 2006 and then stopped paying as they felt they received no benefit from the services. Mrs. Prachuablarb stated that the drain in front of the Property had been blocked for some time and over the years she has had to arrange and pay for the unblocking of the drain. She claimed that on unblocking the drains the contractor removed 6 bags of leaves. She claimed that she did report the problem with the drain to the estate management but was told that as a freeholder she was responsible. She claims that over the years she has had to have the drains cleared on a regular basis approximately every two years or so. Mrs. Prachuablarb explained that although she has produced an email in support of some of the drain works she has not been able to obtain copies of the all the receipts from the various contactors used as they no longer answer their phones.
18. Mrs. Prachuablarb stated that she was unaware she could use the communal gardens and she stated that in fact despite walking around the Estate she had not seen the gardens. She claimed that there is a locked gate which prevents access from Adelaide Road to the back of Hawtry road.
19. The Respondent accepts that works have been undertaken to other parts of the Estate but contends that the area outside her property has not benefited from the works. Mrs. Prachuablarb stated that the Applicant had renewed the street lighting, the road surface and footpaths to the rear of the Property but

not to the area around the Property. Mrs. Prachuablarb stated that the fence along the alleyway is in need of replacement but this has not been attended to.

20. Mrs. Prachuablarb claimed that rubbish is dumped in the alleyway such as a broken chair, there was a damaged street light which was repaired only after she complained and stopped paying.

The Applicant's further submissions

21. The Applicant confirmed that in excess of twelve firms were approached out of which four firms' submitted formal tenders. One of the four firms quoted a fee at a rate of a £100 per unit whereas RIB and one other quoted a fee of £60 per unit. The Scheme manager chose RIB because of their competitive quote and their solid record of dealing with the management of such properties in the area.

Decision

22. The Tribunal having heard from the parties and considered the evidence determines that the estate management charge is reasonable. In addition the Tribunal determines that under the provisions of the Transfer the Respondent is liable to pay the charge.

Reasons

23. The Tribunal considered the type of services provided and the cost incurred in the provision of these services. In addition the Tribunal considered whether the costs charged were properly due and incurred through the efficient and economical operation of the Estate Management Scheme.
24. The Tribunal had reservations as to the management fee being calculated on a charge per unit of accommodation and sought further information on their appointment from the Applicant. They advised that:
- Twelve firms were approached by the Applicant, four tendered and Robert Irving and Burns Management(RIB) were successful through this selective tendering exercise ; and that,

- RIB was told by the Applicant that they were appointed because of the competitive per unit price charged, at £60.00 per unit and their previous record of good management service.

25. The Tribunal acknowledges that the method used to select the managing agent “tested the market” and for that reason it is reasonable to conclude the rate charged by the appointed agent is competitive for the service. The details of the service confirmed by the managing agent as provided are sufficient to satisfy the requirements under the section 2 of the RICS Residential Management Code (2nd Edition). Also the charging method conforms with the guidance provided by the Code which states “where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered preferable so tenants can budget for their annual expenditure.” For these reasons the Tribunal is satisfied that there is sufficient justification for finding the charges reasonable.
26. The Tribunal considered the costs charged for the garden cultivation, building maintenance and general repairs and maintenance to be reasonable bearing in mind the size of the estate and the nature of the work undertaken.
27. The Tribunal considered the Respondents complaints were largely due to the fact that the Respondent did not appreciate that she was entitled to use the communal garden areas and that it was the Applicant’s responsibility to maintain the drains and the un-adopted roads and surrounding areas. As a result the Respondent was not able to access the services of the managing agent in order to address any concerns about the estate and incurred unnecessary expenditure in arranging for the drains to be unblocked.
28. The Tribunal noted that although the Scheme requires the Estate Charge to be an annual sum of money equal to the Owner’s share of Estate expenditure based on the actual cost as certified by the auditors the Applicant in fact charges a flat rate of £360 per annum per property. The Tribunal accepts the explanation and reasoning given by Mr. Haynes for a flat rate fee and is of the view in the light of the Tribunals findings set out under paragraph 25 above that under the circumstances this is fair and reasonable and does not prejudice the Respondent.

29. The Tribunal notes that although the Scheme requires the charges are paid on the 1st January and 1st June in each year the Applicant does not produce the demands until the end of March and September in each year. Since the Respondent has not objected to the demands being issued in March and September of each year the Tribunal did not consider it necessary to insist that the demands be issued in January and June.
30. The Tribunal considered the costs incurred to be reasonable in the context of the management of an estate of this size and type.

Conclusion

31. Accordingly in view of the above the Tribunal determines the total service charges payable are as follows:

- (a) £180 in March 2007
- (b) £180 in September 2007
- (c) £180 in March 2008
- (d) £180 in September 2008
- (e) £180 in March 2009
- (f) £180 in September 2009.

32. The Tribunal makes no determinations as to the service charge for the period 30th September 2009 – 29th September 2010 as the accounts relating to this period have yet to be audited and certified.

Costs

33. Neither party submitted any application as to costs so each party is to bear their own costs.

Chairman: Mrs N Dhanani

Date.....6th July 2010.....