5486

Ref: LON/00AH/LSC/2010/0376

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant:	**Guideaim Limited**
Respondent:	**Mr N Evangeli** **Mrs B Obeng** **Mr A S Evangeli**
Re:	**Flats 28, 35 and 42 Woburn Court, 78 -106 Wellesley Road, Croydon, Surrey, CR0 2AE**
Application received:	**27 May 2010**
Hearing date:	**14 October 2010**
Appearances for Applicant:	**Mr G Willis, solicitor**
Appearances for Respondent:	**None**

Members of the Leasehold Valuation Tribunal:

Mr P M J Casey MRICS
Mr L Jarero BSc FRICS
Mr J E Francis QPM

15/11

Preliminary

1. Guideaim Limited (the Landlord) is the owner of the freehold interest in a residential estate known as Bedford Court and Woburn Court, Wellesley Road, Croydon, Surrey.

2. By an application to the Leasehold Valuation Tribunal dated 19 May 2010 the landlord seeks determinations under the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) of the liability to pay and reasonableness of service charges in respect of three named respondents, Mr N Evangeli, the leaseholder of 28 Woburn Court, Mrs B Obeng, the leaseholder of 35 Woburn Court and Mr A S Evangeli, the leaseholder, of 42 Woburn Court.

3. On 23 June 2010 a pre trial review (PTR) was held attended by Mr G Willis for the landlord but not by any of the respondent leaseholders.

4. The PTR identified the service charge years at issue as 2007/8 and 2008/9 re No 28, 2006/7 and 2007/8 re No 35 and 2007/8 re No 42.

5. Directions for the progression and hearing of the case were issued to the parties on the same day. None of the other leaseholders have applied to be joined as parties to the proceedings.

6. At the commencement of the hearing by this Tribunal on 21 October 2010 Mr Willis for the landlord said that all outstanding monies claimed in the application from the two Evangelis re No 28 and No 42 had now been paid by them in full and only the claim against Mrs Obeng re No 35 remained to be heard, the application in respect of the two Evangelis, who played no part in these proceedings, being withdrawn.

7. Mr Willis went on to say that Mrs Obeng, who took no part in these proceedings, had made several lump sum payments to the managing agents: £1,000 in 2006, £3,000 in

2007 and £1,000 in December 2008. None of these payments matched any service charge demands sent to her nor were they accompanied by any instructions as to how they were to be allocated to the various sums shown as outstanding on her account.

8. He further explained that those various sums included ground rent, county Court interest, landlord's S146 costs and an amount for the repair of a pyro cable to a street light claimed against her directly as she was alleged to have caused the damage. These were all matters he accepted that are outside the Tribunal's jurisdiction. It is however open to the landlord to allocate these lump sum payments as he sees fit and by allocating to service charge (and ground rent) arrears more than enough had been paid to clear all such arrears to the end of the service charge year on 25 December 2007.

9. This left in his opinion only the service charge year ending 25 December 2008 to be considered by the Tribunal, a view with which we concurred. The amount demanded for that year was £1,140.41.

Description

10. We did not inspect No 35 or the estate but were told that the latter comprised 66 maisonettes in 4 storey blocks, 13 town houses and 63 lock up garages all built in the late 1960s. No 35 is a maisonette on the 2nd and 3rd floors the demise of which includes garage No 35. The estate is off Wellesley Road just north of Croydon's commercial centre.

The Lease

The lease of No 35 is dated 31 March 1967 and was transferred to Mrs Obeng on 17 December 1997.

11. By clause 4(B) of the lease the lessee covenants to pay on demand by way of service charge "the due proportion" of the expenditure from time to time incurred or to be

incurred by the landlord in respect of matters specified in the Second Schedule to the lease. "The due proportion" is defined as the proportion of such expenditure properly attributable to the maisonette as certified by the landlord's surveyor for the time being.

12. There is no provision in the lease for payments towards service charges in advance or on account nor for Reserve Fund Payments though it has long been the practice to demand both apparently by agreement with the then residents association. Mr Willis however is only seeking determinations in relation to the actual service charge expenditure in the year to 25 December 2008.

13. The Second Schedule lists the expenditures for which the landlord can claim service charge contributions including the cost of insurance, the cost of repairing, cleansing, lighting and decorating the exterior of the building and the common parts and the roadway and gardens etc of the estate. In addition the cost of doing works required by reason of the lessee breaches of covenant can be recovered along with rates, taxes etc imposed upon parts of the estate not comprised in individual dwellings and the landlord's administrative and management costs.

The Hearing

14. From the witness statements provided by Mr Willis and Mr John Grey of Galebaron Management Services, the landlord's managing agents, "the due proportion" for No 35 is and always has been certified as being 1/66th of expenditure on the maisonette blocks, 1/63rd of expenditure on the garage blocks and 1/79th of expenditure on the estate including management fees. The contribution in respect of insurance costs is calculated pro rata to reinstatement costs for the maisonettes, town houses and garages.

15. Those witness statements also addressed the various heads of expenditure included in the annual statement of service charge expenditure. The hearing bundle also contained the

invoices and/or receipts relating to each item of expenditure in that statement. Mr Willis took us through the heads of expenditure and he and Mr Gray answered the questions raised by us particularly in relation to expenditure on block repairs, block cleaning, estate maintenance cleaning and gardening, insurance, management fees and legal costs.

16. Mr Gray said that his firm did market test the cleaning both block and estate and gardening services. The present contactors who undertook all these tasks had been appointed in 2004 in place of the previous contractor and continued to provide a value for money service.

17. A further statement from a Mr Kevin Horton was put in evidence in relation to the insurance costs. Mr Horton works for St Giles Insurance and Finance Services Ltd, the landlord's insurance brokers since December 2002, and his evidence was that at each renewal he would test the market to source the most competitive quotation. It was also on his advice that the landlord maintained terrorism cover.

18. Mr Gray's firm has managed the estate since 1985 when the fee charged was about £4,500. Shortly afterwards he agreed with the then chairman of the residents association that the fee would only increase in line with inflation which had resulted in the present fee of £10,898. The witness statement sets out in some detail the tasks undertaken by Galebaron as part and parcel of the management of the estate. VAT is not charged and the fee does not cover all aspects of the manager's duties. A separate sum of £1,750 was charged in the year to December 2008 in respect of a matter referred to below.

19. Mr Willis addressed the legal costs charged to the account. Although different firms were involved he personally had conduct of the matters involved. The bill from Property & Commercial Solicitors amounted to £1,275 which he said represented some 8 hours 40 minutes of his chargeable time at a rate of £150 per hour. Some 5½ hours related to

advising Mr Gray and/or the landlord on data protection issues and in relation to notices and information to be given to lessees under Service Charge Summary of Rights and Obligations Regulations. The rest of the time was spent advising on insurance obligations under the lease and a possible breach of covenant in respect of a garage used for grilling fish over a makeshift coal oven which had damaged foundations.

20. The larger bill for £8,280 including VAT from C L Clemo & Co arose out of a major problem that had affected the estate. No 58 Woburn Court had been sub let to a young woman who had allowed visitors to turn the property into what was described as a "crack house" with dealing and use of class A drugs. This caused severe disruption, upset and mental anguish to the other residents. Very properly the landlord through the managing agents and Mr Willis sought to put an end to this problem in conjunction with the police. Eventually after some 2 years or more the police caused the premises to be vacated and sealed off apparently under a Court Order. Mr Willis had also successfully applied to the LVT under S168 Commonhold and Leasehold Reform Act 2002 to establish there had been a breach of covenant by the lessee. The premises had been empty and sealed for some 2 years now though possession proceedings have not yet been instituted in the County Court by the landlord.

21. Mr Willis called a Mr Edwin Robert Wigley, the lessee occupier of No 52 Woburn Court. He had provided a written witness statement about general management matters which he was mostly satisfied with though he said lessees were reluctant to spend money on the estate because of various redevelopment proposals which had been made or rumoured over the years. In his oral evidence he gave a graphic description of the problems residents faced during the time No 58 was being misused. These included danger to children from careless driving on the estate roads, the general squalor of the premises, the constant presence of young drunks and drug users with their rows and fights, discarded

syringes, threats made to residents and in particular the gauntlet of abuse many young women residents constantly faced. There were also day and night police drug raids though the police had been very helpful. It had been, he said, a nightmare.

22. When asked where in the lease there was provision to charge legal costs to the service charge account Mr Willis said he relied on paragraph 5 of the Second Schedule to the lease which allowed the landlord to recover "the cost from time to time of performing any works required to be done by reason of any breach by the lessee of any of the provisions hereof". In his view "works" would encompass the works done by a solicitor, Paragraph 7 also helped. This provided for "the administrative or management costs of the landlord in respect of any of the matters aforesaid" to be recovered through the service charge. He accepted however that this provision was probably too narrowly drawn to allow such costs.

Decision

23. The lease does not give a fixed percentage or a formula to determine the lessee's share of service charge expenditure. We are satisfied that the landlord's method of apportioning expenditure is fair and reasonable and accords with Clause 4(B) of the lease.

24. The costs incurred in respect of the block and garages are also reasonable and reasonably incurred and Mrs Obeng's contribution to these costs has been fairly and reasonably calculated.

25. Save for the legal costs the estate charges are reasonable and have been reasonably incurred. The Management charge which equates to approximately £138 per dwelling is indeed modest and it is right that Mr Gray should charge the additional £1,750 for his firm's considerable involvement in the efforts to end the nuisance of No 58 including his

involvement in the S168 LVT proceedings. These costs have also been fairly and reasonably apportioned to the lessee.

26. The smaller legal costs bill from Property and Commercial Solicitors mainly relates to advice to the landlord and managing agents of a generic type. It is the sort of advice they would seek in the course of their ordinary business. It is not estate specific and is not rechargeable to the service charge of the estate.

27. The larger bill related to the problems of No 58. The landlord and his agents are to be commended for taking such a proactive stance in co-operation with the police to end this problem and the sum involved does not of itself appear unreasonable given what had to be done. The problem is whether or not such sums can be recovered under the lease.

28. The lease at clause 2 (xiii) contains the usual provisions "to pay all costs charges and expenses (including legal costs and fees payable to a surveyor)" in connection with proceedings under S146/147 Law of Property Act 1925. It also at 4(A) (5) has provision for the landlord to enforce at the lessee's request the service charge provisions against other lessees but only if indemnified against in respect of "costs and expenses".

29. The provision Mr Willis mainly relies on, paragraph 5 of the Second Schedule, clearly refers to physical works. It is simply not possible to construe this as allowing recovery of a solicitor's fees for professional work done. Again the provision at paragraph 7 of that schedule which allows the landlord to recover his administrative and management cost is too narrowly drawn to allow the inclusion of solicitors or other legal costs.

30. Neither of these sums for legal advice are recoverable through the service charge under the terms of the lease. It is of course still open to the landlord to recover these costs

against the individual lessee responsible for the breach of covenant in possession proceedings.

31. As mentioned above we do not know Mrs Obeng's precise indebtedness against the demand for service charges for the year to 25 December 2008. She is liable to pay a sum calculated in accordance with this decision to the landlord through its managing agent. The landlord lawfully demanded her contribution on 26 January 2009 though the amount demanded needs to be recalculated.

Chairman: P M J Casey

Dated: 15.11.10