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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
case no. CAM/00KF/LSC/2012/0074

Property	:	**Ground Floor Flat, 40 Stromness Road, Southend-on-Sea, Essex SS2 4JQ**
Applicant	:	**Hamid Mashoudi**
Respondent	:	**Regisport Ltd.**
Date of Application	:	**4th June 2012**
Type of Application	:	**To determine reasonableness and payability of service charges (Ss. 19 and 27A Landlord and Tenant Act 1985 ("the 1985 Act"))**
The Tribunal	:	**Bruce Edgington (lawyer chair) Marina Krisko BA BSc(Est Man) FRICS Lorraine Hart BA**
Date of hearing	:	**10th September 2012**
Venue	:	**The Court House, 80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU**

DECISION

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1. The Tribunal finds that reasonable insurance premiums for the years commencing on 1st July in the year 2009 is £139, in 2010 is £153, in 2011 is £168 and in 2012 is £185.

2. The Tribunal has no jurisdiction to determine the insurance premiums for 2005, 2006, 2007 and 2008 because they have either been agreed and admitted and paid at the time or, in the case of the 2008 premium, it has been determined by a Leasehold Valuation Tribunal under case references CAM/00KF/LSC/2009/0136 and CAM/00KF/LSC/2010/0061

3. The Tribunal makes an Order pursuant to Section 20C of the Act preventing the Respondent from claiming any cost of representation before this Tribunal as part of any future service charge demand.

Reasons

Introduction

4. The Applicant is the long leaseholder of the property and the Respondent is the freeholder. A previous and differently constituted Tribunal heard a case on the 3rd August 2010 ("the 2010 decision") which determined service charges, including an insurance premium for the year commencing 30th June 2008. This decision is to be read in conjunction with the 2010 decision which set out details of the property, the lease and the law which will not be repeated here.

5. In this application, the Applicant seeks a determination of the insurance premiums for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012. The 2010 decision dealt with service charges for 2007 and 2008 but there was no suggestion in the decision that the Applicant was complaining about previous years.

6. The Applicant also asks that an Order be made by the Tribunal under Section 20C of the 1985 Act preventing the Respondents from recovering any costs incurred by them in these proceedings from being included in any future service charge claim.

7. In dealing with the complaint about the cost of insurance, the Tribunal directed the Respondent to file and serve a statement of reply to the application setting out (a) the claims record for this building (b) the methods by which the landlord achieves a competitive premium for insurance and (c) full details of any commission or repayment or other benefit out of the insurance premium paid or given to the landlord, the landlord's agent or any associated individual or company. This was to enable the Applicants to obtain 'like for like' quotations for insurance and to inform the Tribunal (a) as to whether it tested the market properly when obtaining insurance and (b) as to which part of the insurance premium was actually used for insurance.

8. The statement filed by the Respondent dated 13th July 2012 fails to deal with any of these points. It simply says that as no comparable quotes have been submitted, the Tribunal will not be able to take the matter any further. It also re-affirms the law as stated below. It does not explain why no claims record was given to the Applicant to enable him to get the alternative quotes.

The Inspection

9. The members of the Tribunal inspected the property in the presence of the Applicant. Also present outside the property were Mr. David Bland LLB(Hons) MIRPM ("Mr. Bland") and his colleague Mr. Colley from the Respondent's managing agent, Pier Management Ltd..

10. The property is described in the 2010 decision. Of relevance to today's hearing is the estimate of floor area made by the Tribunal members i.e. just under 50 square metres for the lower flat and slightly less than that for the upper flat. There would appear to be a party wall dividing this property from the semi-detached property adjoining which goes up to the apex of the roof i.e. the roof void would appear from an outside look to be separated by this wall. This is relevant for insurance purposes because it would tend to reduce the spread of any fire from this property to the adjoining one through the roof void.

The Lease

11. The relevant lease terms are set out in the 2010 decision which includes the covenant on the part of the landlord to insure and the covenant on the part of the lessee to pay half the premium.

12. Of relevance to the application for an Order under Section 20C of the 1985 Act, the Sixth Schedule, paragraph 6(a) allows the landlord to recover expenses incurred "*...in the running and management of the Building and the collection of the rents and Maintenance Contributions in respect of the flats and in the enforcement of the covenants conditions and regulations contained in the Leases*" which is not defined further. This would cover any legal or other fees in any representation before this Tribunal.

The Law

13. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent which is payable for, amongst other things, insurance, and which varies 'according to the relevant costs'. Clearly, the subject of this application comes within that definition.

14. Section 19 states that relevant costs are payable 'only to the extent that they are reasonably incurred'.

15. A tenant may apply to a Leasehold Valuation Tribunal pursuant to Section 27A of the 1985 Act, for a determination as to whether a service charge is reasonable and, if it is, as to the amount which is payable. This includes a payment on account for insurance to be obtained if that is permitted in the lease.

16. Section 27A also states that a Tribunal has no jurisdiction where service charges have been agreed or admitted or they have been determined by a court or Tribunal. If a service charge has been paid, this does not necessarily mean that it is agreed or admitted but is merely a circumstance to be taken into account.

17. The question of insurance premiums claimed by landlords under long leases has vexed Leasehold Valuation Tribunals for some time. This is a fairly typical application where a tenant is charged an insurance

premium and, when asking for alternative quotations from other insurers, he or she finds that the alternative quotations are much lower.

18. Tenants are not happy when the premium claimed is substantially more than quotes they can obtain. The issue has been before the court on a number of occasions. In the case of **Berrycroft Management Co. Ltd. and others v Sinclair Gardens Investments (Kensington) Ltd. [1997] 22 EG 141**, a management company acting for tenants thought that premiums were excessive and applied to the county court for, amongst other things, a declaration that there was an implied term in the lease that such premiums would be reasonable.

19. The county court and the Court of Appeal found no difficulty in deciding that, on a true construction of the lease, this could not be implied. In **Berrycroft** the court said that provided the insurance was arranged in the normal course of business with an insurance company of repute, the landlord was entitled, under the strict terms of the lease, to insist on insurance through its nominated company.

20. On the question of the discrepancy between premiums claimed and alternative quotations obtained by tenants, a well established line of cases has developed a rule which successive Tribunals have found themselves obliged to follow. As Evans LJ said in **Havenridge Ltd. v Boston Dyers Ltd [1994] 49 EG 111**:-

> *"....the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to 'shop around'. If he approaches only one insurer, being one insurer 'of repute', and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed"*

21. In recent years, the problem seems to have worsened with premiums claimed seeming to be much higher than normal market rates. This has become such a common circumstance that one is almost driven to conclude that either (a) the landlords or their agents are not negotiating strongly enough in the market place or (b) the premiums claimed are so burdened with commissions that they are simply too high. Whatever the cause, it is felt that this issue needs re-visiting.

22. Finally, in connection with commissions paid out of insurance premiums, the case of **Akorite v Marine Heights (St. Leonards) Ltd** [2011] UKUT 255 (LC) has relevance. The Upper Tribunal, concurring with the Leasehold Valuation Tribunal, commented that where insurance was arranged with a commission paid to the managing agent, that commission

was not payable by lessees because that cost was incurred not in insuring the building but in covering the commission.

23. Section 20C of the 1985 Act gives a Tribunal the ability to make an order preventing a landlord from recovering the cost of representation before an LVT as part of a future service charge demand.

The Hearing

24. The hearing was attended by those who had attended the inspection. At the outset, the Tribunal chair asked the Applicant whether he had paid his insurance premiums without protest prior to the 2008 premium which was dealt with in the 2010 decision. Without any disrespect to him, the Tribunal was not entirely sure, because of language difficulties, that he fully understood what was being asked of him. However, it seems clear from the 2010 decision that he had not at that stage complained to that Tribunal about previous years.

25. Mr. Bland was asked why he had not given any of the information that his client was directed to give. He apologised and said that he could not now answer the questions. He was able to say, however, that no claim had been made against the insurance in relation to this property. It was put to him that the reason for the question about insurance commissions was that the Tribunal would make an inference if that question was not answered. Mr. Bland said that he understood this point.

26. In answering questions about the various insurance certificates, he said that the 2008 certificate was for the subject flat only but since then, they were all for the property as a whole. It was pointed out to him from page 8 of the 2010 decision that the Tribunal had clearly understood that the 2008 premium they were looking at was for the whole building. He accepted that there appeared to have been an error.

27. It was then put to him that the sum insured was excessive. He answered by saying that he was not a surveyor but he thought that the current figure of around £250,000 was about right. This answer was a little worrying because he had clearly not understood the difference between value and sum insured. The current premium was based on a value of £259,745 but the sum insured was £337,669. He confirmed that there had been no recent revaluation of the property and acknowledged that one is indeed due.

Conclusions

28. The Applicant alleges that the Respondent landlord or the managing agents have been dishonest and the Tribunal is asked to '*nominate a new insurer*'. Unfortunately, this is not possible as the Tribunal has no jurisdiction to do so.

29. As far as the premiums before 2008 are concerned, the Tribunal finds, on the balance of probabilities, that they were paid without protest and without any thought at the time that they were to be challenged at some

future date. In other words, they were accepted. The 2008 premium is difficult because it is the Respondent's case that the Tribunal made an error. Why the Respondent, an experienced professional landlord, or the experienced managing agent did not contact the Tribunal at the time is difficult to understand.

30. The bundle of documents provided for the Tribunal does not include many of the relevant documents as specified in the order. There are insurance certificates for the years commencing 1st July 2009, 2010, 2011 and 2012.

31. The insured sum, declared value and premiums for the years 2009 2010, 2011 and 2012 are:-

	Insured sum	declared value	premium
2009	£204,087	£156,990	£531.47
2010	£306,800	£236,000	£798.95
2011	£321,864	£247,588	£846.16
2012	£337,669	£259,745	£887.70

32. The Applicant has obtained insurance quotations and the relevant figures are:-

NIG			
2012	£130,000	not given	£204.26
Amtrust Europe			
2012	£105,000	not given	£220.46
Towergate			
2012	£170,000	not given	£223.04
Griffin			
2012	£105,000	not given	£166.95

33. It is clear that the landlord's insurance is for the whole building. It seems that the Applicant's quotes are just for his flat. Only the NIG and Towergate quotes refer to landlord's insurance but it seems clear that this is just for the Applicant to sublet his flat rather than being complete landlord's policies covering common parts etc.

34. The Tribunal has had to ask itself whether the Respondent has obtained its insurance in the normal course of business on the basis that it is either a block policy or a portfolio policy. It bears in mind the exemplary claims record. It concludes that in view of the lack of revaluation of the property, the huge increases in insured sums and premiums in the last 4 years without any evidence to support them and the complete lack of any evidence to suggest that the market is tested on a regular basis, the Respondent has failed in its responsibilities. No commercial organisation obtaining insurance in the normal course of business would place insurance on this basis.

35. In this Tribunal's opinion, the insured sum is grossly excessive and there is also the well known position in the building industry over this period that costs have barely increased in the recession. Using the normal methods of calculation of rebuilding costs, to include demolition, rebuilding and dealing with 3rd party claims, one comes to the conservative position that a floor area of under 100 square metres with costs of £1,000 per square metre produce a rebuild cost of something under £100,000. This would have been correct in 2008. The 2010 Tribunal decision was that a premium of £253.07 was correct for the building with the sum insured being £97,184 i.e. about right.

36. This Tribunal therefore adopts that figure. The insurance market has seen premiums rising greater than the rate of inflation recently because of such things as substantial claims arising out of flood damage. The Tribunal therefore concludes that premiums would have risen about 10% per year since 2008 and therefore assesses reasonable premiums at £278 (2009), £306 (2010), £336 (2011) and £370 (2012). These figures are for the whole building and have therefore been halved for the subject property in the decision above.

37. The Tribunal also makes the inference referred to above i.e. that the premiums charged include substantial commissions over and above that which would be justified to deal with, for example, claims handling. These have been substantially boosted by the excessive amounts for, and steep unjustified increases in, the sums insured.

38. There are a number of comments in the hearing bundle complaining about the alleged failure of the Respondent to maintain this building. These allegations are, in essence, claims for specific performance of the lease contract which is not part of this Tribunal's jurisdiction. They are matters for a claim in the county court. Furthermore, they are not mentioned in the application form, are dated 21st August 2012 and call upon the Tribunal to '*nominate a service provider as the landlord refused to provide maintenance and service for the last 7 years*'. Once again, the Tribunal has no power to do what the Applicant asks.

39. As far as the costs of representation are concerned, the Applicant has succeeded in respect of premiums charged since 2009. The managing agents have used their in house team and failed substantially to deal with the Tribunal's directions. The Tribunal therefore has no hesitation in making an order pursuant to Section 20C of the 1985 Act.

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Bruce Edgington
Chair
12th September 2012