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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

SUPPLEMENTAL DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference
LON/00AW/LSC/2011/346

Premises:
81-83 CADOGAN GARDENS LONDON SW32RB

Applicants	**81-83 CADOGAN GARDENS (RTM) COMPANY LIMITED (1)** **MR KEITH HUGHES (2)** **MR NICOLA BERNARDI & MRS FIORIBELLO BERNARDI(3)** **MR ALDO BERNARDI (4)**
Representative:	Fosters LLP
Respondent:	**ROBERT JAMES SECURITIES LIMITED**
Representative:	Dale and Dale
Date of paper determination	**19th December 2012**

Leasehold Valuation Tribunal:	**Mrs T Rabin** **Mrs S Redmond MRICS** **Mr P Clabburn**

Only the caretaker costs are shared as both buildings benefit from the caretaker's services.

6. The First Applicants have had responsibility for the management of the Building since 31st January 2005. The 2004 accounts for each of the buildings are dated 4th February 2005. The application for the Right to Manage was made in October 2004 and there would have been a period of handover from the Respondents to the First Applicants between October 2004 and January 2005.

7. The Tribunal notes that Mr Nicola Bernardi wrote to Hill Shand on 26th October 2004 as director of the First Applicant with a copy to another director instructing Hill Shand not to undertake any further work to the Building as the First Applicants would be undertaking this shortly. This clearly indicates the involvement of the First Applicants prior to the accounts being prepared and it follows there must have been discussion between the parties prior to the handover. Accordingly the First Applicants should have been fully aware of the 2004 accounts.

8. The Second, Third and Fourth Applicants are all long leaseholders of flats at 81 Cadogan Gardens aforesaid. None of them have any interest in the service charges relating to 83 Cadogan Gardens aforesaid except insofar as they relate to the caretaker's expenses. The First Applicants would have been aware of the costs raised since, even though technically not appointed until 31st January 2005, they had instructed Hill Shand in October 2004 that they would be taking over responsibility "shortly. The accounts were finalised on 4th February 2005, after the First Applicants had taken over responsibility for the Building and there is no evidence that they raised any queries over the sums demanded until 2012. The costs relate entirely to 83 Cadogan Gardens aforesaid and none of the long leaseholders are party to these proceedings.

9. Based on the evidence produced the Tribunal is entitled to conclude that the First Applicants were aware of the major works costs but did not challenge the necessity of the works or the costs at the time or during the following six years. No evidence has been produced to demonstrate that any of the long leaseholders of 83 Cadogan Gardens aforesaid have objected to the cost or necessity of the works.

10. For the reasons stated in Paragraphs 8 and 9 above and the apparent acceptance by the First Applicants and the lack of challenge by any of the long leaseholders of 83 Cadogan Gardens aforesaid the Tribunal has concluded that there is no relevant application before it. Accordingly, the Tribunal has no jurisdiction.

11. The two representatives in their submissions appear to have misunderstood the issue of the Limitation Act 1980. It was the Tribunal's understanding at the first hearing that both Counsel, Mr Heather and Mr Cowen, agreed that the issue of limitation would be decided by the County Court.

12. Although the application form asked that the Tribunal consider the question of an order under Section 20C of the Landlord and Tenant Act 1985, no submissions were made by either party. Since the First Applicants have taken over the responsibility of managing the Building under the terms of the leases, a Section 20C order would not be appropriate.

Tamara Rabin – Chair

19th December 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.