



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00AG/LSC/2009/0299**

**APPLICATIONS UNDER SECTION 27A LANDLORD AND TENANT ACT  
1985 ( AS AMENDED)**

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**Premises:** 15 Allingham Court, Haverstock Hill London NW3  
2AH

**Applicant:** Kimbleflow Limited

**Represented by:** Mr J Housby-Smith (director of the Applicant  
company)

**Respondent:** Ms S Khan

**Present:** Mr J Housby-Smith  
Ms S Khan  
Mr Khan

**Tribunal:** Mrs N Dhanani LLB(Hons)  
Mrs H C Bowers BSc (Econ) MSc MRICS  
Mrs J Clark JP

**Date of Hearing:** 22/01/10

**Date of Decision:** 26/01/10

**DECISION ON:**

- (1) **AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (as amended)**  
**and**  
(2) **SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Background**

- (a) The property which is the subject of this application is a 4<sup>th</sup> Floor flat known as 15 Allingham Court Haverstock Hill London NW3 2AH comprised in a 1930's Purpose Built Block of 24 Flats with a parade of commercial premises on the ground floor.
- (b) The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
- (c) The lease in question is dated the 5<sup>th</sup> November 1982 and was granted for a term of 125 years ( less 3 days) from 25<sup>th</sup> March 1977 and was originally between Ajayna Limited (1) and Metropolitan Property Realizations Limited (2) (the Lease).
- (d) The Respondent acquired the Lease by assignment on the 1<sup>st</sup> March 2002.
- (e) The Applicant holds the head lease of the property. This is dated 5<sup>th</sup> November 1982 and was granted for a period of 125 years from 25<sup>th</sup> March 1977 the title is registered at the H M Land Registry under title number NGL438408

### **Landlord's application**

1. The application made pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant occurred under the Respondent's lease was withdrawn by the parties at the Hearing on the 1<sup>st</sup> September 2009 as the Respondent confirmed and the Applicant accepted that the breach was no longer continuing.
  
2. The application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") remains and the Tribunal is required to determine whether the outstanding service charges for the service charge years 2005/2006, 2007/2008, 2008/2009 and 2009/2010 are payable and if so the reasonableness of the service charges and

### **Directions 17<sup>th</sup> June 2009**

3. On the 17<sup>th</sup> June 2009 an oral pre-trial review was held. Mr J Housby-Smith a director of the Applicant Company appeared on behalf of the Applicant. The Respondent did not attend and was not represented. Appropriate directions were issued and the case listed for hearing on the 1st September 2009. The Applicant followed the directions in the main but the Respondent did not comply with the directions.

### **Hearing: 1st September 2009**

#### **4. Matters agreed**

- (i) The parties confirmed that the Respondent had already paid £4000 (£2000 on the 8<sup>th</sup> September 2009 and a further £2000 on the 13<sup>th</sup> September 2009) and that the Respondent would pay a further £6700 within seven days of the hearing in respect of the outstanding balance for the service charges.

- (ii) The Respondent upon considering the report dated September 2003 produced by Durrant Consulting Limited accepted and admitted liability for the outstanding service charges for the year 2007/2008.
- (iii) The Respondent accepted and admitted liability for the outstanding service charges for the year 2008/2009.
- (iv) Upon considering the demand for payment dated 25<sup>th</sup> March 2009 the Respondent accepted and admitted liability for the outstanding service charges for the year 2009/2010.

#### **5. Matters in dispute**

The only issue remaining to be determined by the Tribunal is the reasonableness and the Respondents liability to pay the contribution in accordance with the terms of the Lease in respect of the following items:

- (i) Purchase of glazed roof tiles in the sum of £10,741, and
- (ii) Professional fees in the sum of £10,303

specified in the service charge account for the year ending 31<sup>st</sup> March 2004 and forming part of the alleged outstanding service charges for the year 2005/2006 as detailed in the Applicants application.

#### **6. Evidence**

##### **(i) Applicants Case**

- (a) Mr Housby- Smith relies on the service charge account for the year ending 31<sup>st</sup> March 2004.
- (b) He stated that in 2002/3 the leaking roof was repaired. The tiles were purchased over the Christmas period in 2003/4, and were fitted in May 2004 or thereabouts, with the final works and some redecorating being completed in 2004/5.
- (c) Mr Housby- Smith contends that the tiles used are special terracotta tiles that had to be sent to Belgium to be glazed. He claims he has the invoices for the tiles but was not able to

produce them at the hearing although he stated he would be able to produce the invoices.

- (d) Mr Housby- Smith explained that works were required to the external stacks and walls and as the pipes in the walls were leaking the decorating was held up but the decorator started preparing the pipes and the bitumastic paint had to be sandblasted. The works to the roof continued from 2004/5 to 2005/6. The roof is now fully boarded with the horse hair removed and a breathable felt in place. Unfortunately some of the glazed tiles had to be cut to size.
- (e) Mr Housby- Smith stated that he was heavily involved with property when the works were carried out and he had endless meetings with the Leaseholders. Once these works had been completed he left London to live in Wales and at this point R D& D Associates were appointed as Managing Agents of the Allingham Court.
- (f) He accepted that the section 20 consultation notices may not have been fully compliant with the requirements of the regulations but as he had not anticipated having to deal with this as an issue at this hearing he requested an adjournment in order to seek advice on the matter.

(ii) The Respondents Case

- (a) The Respondent contends that the tiles are not glazed tiles but are terracotta tiles that have been painted. She claims she saw Mr Housby- Smith with a pot of paint, painting the tiles.
- (b) She has asked for the receipt in respect of the tiles and has yet to receive copies of the receipts. Her email of the 17<sup>th</sup> September 2007 to Mr Fattel documents one of her many requests.
- (c) The Respondent stated she would like to be satisfied about the costs incurred for the tiles and would like to see the receipts.

(iii) The Lease

(a) The Lease defines the Buildings as:-

*"...consisting of the blocks of flats known as Allingham Court Haverstock Hill Hampstead in the London Borough of Camden comprising Number 1 to 24 Allingham Court..."*

(b) The Lessee under the provisions of Clause 2(2) of the Lease covenants to:

*"To pay and contribute to the Lessor by way of further rent a service charge equal to 3.94% of the expenses of:-*

*.....*

*(ii)The cost of maintaining repairing redecorating and renewing:-*

*-a. the structure of the said Buildings including the main drains foundations roofs chimney stacks ...rainwater pipes.....*

*(xi)The fees of the Lessor's Auditors and the fees of the Lessor's Managing Agents for the collection of rents of the flats in the said Buildings and for the general management thereof"*

(c) Clause 2(i) provides a condition precedent that must be satisfied in respect of the service charges as follows:-

(i) *" The amount of service charge and other charges .....covenanted to be paid shall be ascertained and certified by a certificate ...signed by the Lessor's Auditors...annually and so soon after the Lessor's financial year as may be practicable..... "*

(d) The Lessor covenants with the Lessee under clause 5 as follows:-

*".....to maintain repair redecorate and renew(a)the structure and in particular the main drains roofs foundations chimney stacks....of the said Building ...."*

(e) Clause 2(b)(vi) and (vii) of the Lease respectively provide:

*"(vi) The Lessee shall with every half yearly payment of rent reserved hereunder pay to the Lessor such sum as the Lessor or its Managing Agents may reasonably determine in advance and on account of the service charge...."*

*(vii)....the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the lessee in respect of the said year and upon furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable ....."*

#### **7. Applicant's request for an Adjournment and Further Directions**

The Tribunal granted the request for an adjournment, appropriate further directions were issued and the case listed for a hearing on the 23<sup>rd</sup> November 2009.

#### **8. Inspection 1st September 2009**

- (i) Directions issued by the LVT on 17<sup>th</sup> June 2009 did not provide for an inspection of the property. At the hearing the parties agreed that an inspection would assist the Tribunal. The Tribunal inspected the property on 1<sup>st</sup> September 2009 in the presence of the Parties.
- (ii) The Property is situated on the 4<sup>th</sup> Floor of a well maintained 1930's purpose built block with commercial premises on the ground floor. The

Property can be accessed by stairs and a lift. The Tribunal was able to access the rear roof from the balcony via the Kitchen door in the Respondents Property.

- (iii) The Tribunal was satisfied that the tiles were terracotta tiles which had been glazed green to match the tiles on the front roof of the building.

#### **9. Respondents request for a postponement**

- (i) On the 19<sup>th</sup> November 2009 the Tribunal received a faxed request from the Respondent for a postponement of the hearing scheduled for the 23<sup>rd</sup> November as the Respondent claimed that she was abroad with her daughter who was “ ....not well and in difficult circumstances”. The Respondent requested a postponement until she returned to England in the New Year.
- (ii) The Tribunal having regard to the exceptional circumstances made out under the Respondents grounds for the request, the time at which the request was made and the convenience of the other party granted the postponement and the case was rescheduled for a hearing on the 22<sup>nd</sup> January 2010.
- (iii) On the 21<sup>st</sup> January 2010 the Tribunal received a fax from the Respondent’s brother Mr Imran Khan informing the Tribunal that the Respondent has not returned to the UK due to illness and is expected to return soon after mid February 2010 and requesting a further postponement.
- (iv) The Tribunal having regard to the grounds for the request, the time at which the request was made and the convenience of the other parties refused the request for postponement but informed the Respondents brother that he or any other person may attend the hearing on behalf of the Respondent.

#### **Hearing: 22<sup>nd</sup> January 2010**

- 10. The Applicant was represented at the hearing by Mr Housby- Smith. The Respondent did not appear and was not represented.

## 11. Evidence

### Applicants Case

- (a) Mr Housby- Smith produced a copy of the invoices relating to the professional fees and the glazed roof tiles as well as the manufacturers information for the Sandtoft Double Roman glazed clay pantiles colour green reference L3336/00-19. He confirmed that the invoices and information had been sent to the Respondent in accordance with the Tribunals Directions albeit that they were sent a day late.
- (b) He further stated that he has been unable to contact the Respondent and has had no communication from the Respondent. The Respondent has failed to comply with the Tribunal's Directions. He confirmed he had spoken with the Respondent's brother on the 21<sup>st</sup> January who stated that he was no longer on speaking terms with the respondent.
- (c) He admits that although the Lease requires the amount of the service charge be certified by a certificate signed by the Lessor's Auditors the account for the year ending 31<sup>st</sup> March 2004 has not been certified. He requested and was granted a short adjournment so that he could contact the Lessor's Auditor to ascertain whether they could certify the account.
- (d) He admitted that the consultation in respect of the renovation works to the rear of the building did not comply fully with the requirements of either the original Section 20 under the Landlord and Tenant Act 1985 or as amended. He relies on the case of Camden LBC v The leaseholders of 37 Flats at 30-40 Grafton Way LRX/185/2006 in support of his argument that fundamentally the consultation process was followed, the leaseholders were provided with information relating to the works and documents were available for inspection by the Leaseholders who accepted that the works were necessary. No observations were received from the Leaseholders. The lowest

quote was chosen. He contends that any omission in compliance with the consultation procedure has not resulted in the Leaseholders suffering any significant prejudice.

### The Law

12. **Section 18(1)** of the Act provides that, for the purposes of the relevant parts of the 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.

13. **Section 19(1)** of the Act provides that 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 provision 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.

14. **Section 19(2)** of the Act provides that, 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.

15. **Section 20** of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as they are in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have been either complied with or dispensed with.

16. Section 27A(1) of the Act provides that that 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.

### **The Tribunal's decision**

17. The Tribunal determines that the outstanding service charges for the service charge years, 2007/2008, 2008/2009 and 2009/2010 are payable by the Respondent to the applicant as they have been admitted and accepted by the Respondent.

18. The Applicant having admitted failure to comply with the requirements of section 20 of the Landlord and Tenant Act and there being no application under Section 20ZA for a dispensation of the consultation requirements. The Tribunal determined that only £250 can be recovered from the Respondent in respect of the cost of the works unless the Applicant submits an application under Section 20ZA and the consultation requirements dispensed with.

19. The Tribunal determines that subject to paragraph 19 above the following costs were reasonably incurred

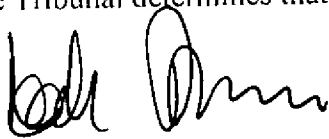
- (i) Purchase of glazed roof tiles in the sum of £10,741, and
  - (ii) Professional fees in the sum of £10,303
- and that the works, undertaken were of a reasonable standard.

20. Subject to the proviso in paragraph 19 above and the Applicant producing to the Respondent a copy of the service charge account for the year ending 31<sup>st</sup> March 2004 be certified by a certificate signed by the Lessor's Auditors and the amount stated above are shown on the certified account, the Tribunal further determines that Respondent is liable to 3.94% of the cost of the tiles and the professional fees i.e. the sum of £829.00.

**Section 20C of the Act (limitation of service charges relating to the costs of the proceedings)**

The Respondent has not applied under Section 20C of the Act for an order that all or any of the costs incurred, or to be incurred, by the Applicant in connection with proceedings before a leasehold valuation Tribunal, are not to be regarded as relevant costs in determining the amount of any service charge payable by the Respondent.

The Tribunal determines that no such order made.



**CHAIRMAN Mrs N Dhanani**

**DATE 26<sup>th</sup> January 2010**