

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 27 & 20C

LON/00AG/LSC/2009/0697

Premises: Flats 4 & 6, 346 Finchley Road,
Hampstead, London NW3

Applicants: (1) Ms. M Zagoritou (Flat 4)
(2) Ms. A Diyaljee (Flat 6)

Respondent: 346 Finchley Road NW3 Limited

Notice of correction issued pursuant to regulation 18 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003

1. The correct case reference is amended to "LON/OOAG/LSC/2009/0697"
2. To the heading can be added:
"Ms Apollonia Koukios & Ms. Vaso Zagoritou – observers on behalf of the Applicant".
"Mrs Barnett" as a representative of the Respondent.
3. "Ms. Zagaritou" is replaced with "Ms. Zagoritou" throughout.
4. Para 5 – for Ms. Zagoritou replace with "Ms. Diyaljee" in line 1 only.

5. Para 6 line 3 and line 8 - replace "Ms. Zagoritou" with "Ms. Diyaljee".
6. Para 6 line 14 - replace "First Applicant" with "Second Applicant".
7. Para 10 - add after (v) as issue decided by Tribunal but wrongly omitted from decision:

"Flat 6

(vi) The Tribunal finds Ms. Diyaljee paid the sum of £50 in respect of gardening, properly attributable to service charges, but as stated these charges were not demanded in accordance with the proportions set out in the terms of the lease

8. Paras 10(vi), (vii) and (vii) to be renumbered 10 (vii), (viii) and (ix).

Chairman: LM Tagliavini

Dated: 26 April 2010

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Premises: Flats 4 & 6, 346 Finchley Road,
Hampstead, London NW3

Applicants: (1) Ms. M Zagaritou (Flat 4)
(2) Ms. A Diyaljee (Flat 6)

Represented by: Ms. Diyaljee

Respondent: 346 Finchley Road NW3 Limited

Represented by: Mr. Winter (friend)

Tribunal: Ms. LM Tagliavini, LLM, Dip Law, BA Hons
Mr. P Tobin, MRICS
Ms. S Wilby

Hearing Date: 22 February 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985, seeking a determination of the Tribunal as to the reasonableness and payability of service charges in 2005, 2006, 2007 and 2008. Flat 4 is subject to a lease dated 13 July 1987 for a term of 99 years from 1 January 1987. Flat 6 is held pursuant to a lease dated 12 July 1988 for a term of 99 years with effect from 1 January 1988. The subject building of which these flats form part, is a semi-detached property built c.1904 and converted into six self-contained flats in around 1964. The Respondent company was incorporated in 1998 for the purposes of managing and administering the property, after the lessees had purchased a share of the freehold. The lessees are (or are intended to be), shareholders of the Respondent Company. Currently, Mrs Judith Sumray a Director of the Company and also acts as Company Secretary

2. Specifically the items of service charge challenged were:

Flat 4:

- (i) Whether the Applicant is liable to pay the sum of £407 showing as service charge arrears in the Company's accounts for year 2007 and if so, what item of service charge does it relate to?

- (ii) Whether the Respondent has applied the correct apportionment of 1/6 rather than 11.53% in determining liability for the service charge year 2008.

- (iii) Whether the Respondent has incurred costs in respect of building insurance in the year 2008, and if so, the amount that is recoverable as a service charge.

- (iv) Whether the Respondent is entitled to recover the cost of repairs and improvements carried out to the communal part of the front fence and roof.
- (v) Whether the lease entitles the Respondent to pay its Directors' and officers' insurance liabilities through the service charge.
- (vi) Whether the Respondent is required under the terms of the lease to reimburse the sinking fund the sum of £2,203.23 (refunded for the cancelled insurance).

Flat 6:

- (vii) Whether the service charge demand of £50 for the years 2005 and 2006 has been correctly apportioned in accordance with the terms of the lease (14.54%). The Applicant considers that it was incorrectly divided on an equal basis rather than proportionately as specified by the terms of the lease.

Flats 4 & 6:

- (viii) Whether the Tribunal should make an order under section 20C.

3. The Tribunal was provided with an Applicant's bundle and a Respondent's bundle, as the parties were unable to agree and

produce a single bundle as directed by the Tribunal. A Statement of Case for the First Applicant referred the Tribunal to the relevant clauses of the lease in respect of service charge provisions and insurance. It was explained to the Tribunal in the Respondent's documentation, that in 1998 the lessees had purchased a share of the freehold of the property and formed a limited company to manage and administer the property. Due to disagreements among the lessees, as to how the company should be run, collection of service charges and payment of insurance have fallen into abeyance and disagreements among individual lessees have escalated. However, the Tribunal does not consider it necessary to rehearse here the differences that have arisen, as It can see from the copious documentation provided, that the problems continue.

4. What is of particular relevance to these proceedings is the lack of service charge accounts. It was admitted by Mr. Winter that no service charge accounts had been prepared and the Respondent had routinely relied on the preparation of company accounts as satisfying any requirements to record income and expenditure.

5. Ms. Zagaritou told the Tribunal that the company accounts wrongly recorded her as being £50 in arrears; that she had paid her contribution to the insurance premiums for 2006 and 2007; that her proportion of service charges was wrongly calculated being divided equally rather than by reference to the rateable value; and queried a repayment of her contribution to the insurance premium for 2008/09, as the insurance was cancelled and the sums paid refunded to the Respondent via Mrs. Sumray. Ms. Zagaritou stated that she did not believe she was liable for the costs of repairs to Mrs. Sumray's roof and that the

insurance for Directors' and Officers' liabilities should not be paid out of the service charges

6. Mr. Winter for the Respondent and as a friend of Mrs. Sumray, challenged whether the £50, which actually totaled £55 from invoices provided, had been paid out by Ms. Zagiritou for genuine company service charge expenditure. He asserted that the invoices provided lacked credibility as they did not bear any resemblance to the usual receipts received in respect of gardening services, to which these invoices related. He asserted that Ms. Zagaritou had consistently paid her insurance contributions late and in 2008 had paid her contribution directly to the insurance company. As the total premium demanded was not paid, the brokers Ferndales had refunded the amount paid to the Respondent company and had now been paid into the bank. Cheques refunding the actual proportion paid by the Applicants had been drawn by Mrs. Sumray but because the First Applicant had not provided details of how she wanted the money refunded, the cheque had not been sent.

7. Mr. Winter told the Tribunal there were no service charge accounts and the service charges had been divided equally among the lessees and had never been proportioned in accordance with the terms of the lease. Although it had been agreed by the lessees to establish a sinking fund, allowed for by the lease, no contributions had been paid by any of the lessees.

8. He stated that the repairs to the roof over flat 1 and repairs to the fence were paid for by Mrs. Sumray and were not sought to be recovered by way of service charges. Historically the

directors Indemnity Insurance had been met through the service charges.

Section 20C

9. The First Applicant asserted that the costs of these proceedings should not be added to the service charge as the Applicants were forced to come to the Tribunal to resolve these matters. Mr. Winter opposed that application and informed the Tribunal that Mrs. Sumray had incurred expenses on behalf of the company and wished to recover them.

Findings:

10. The Tribunal found that the lack of insight on the part of all parties in respect of their obligations as joint freeholders and members of the Respondent Company to be of some concern. Specifically, the failure to maintain the buildings insurance was of particular importance, and an issue that should be addressed immediately.

Flat 4:

- (i) £407 – parties agreed the sum had been paid. The proportion has been calculated incorrectly and not in accordance with the terms of the lease and a recalculation should be carried out.
- (ii) The Respondent has incorrectly calculated the proportion of the service charges payable for 2008, and these should be recalculated.

- (iii) The building insurance has been allowed to lapse in apparent breach of the terms of the lease. As yet no sum for insurance for 2008 has been demanded and therefore no sum is payable.
- (iv) Mrs. Sumray did not seek to claim the costs of the works to front roof or fence from her co-freeholders through the Respondent company. Therefore, the Tribunal was not required to determine this issue.
- (v) The Fourth Schedule permits Director's liability insurance to be claimed as a service charge. However, in light of the breach to insure, the Tribunal finds this item unreasonable for 2008/09 and should not be recovered as a service charge item.
- (vi) The Respondent is required to account for the £2,203.23 refunded as a result of the cancelled insurances and credit the Applicants ' service charge accounts accordingly, if the refund is still outstanding.
- (vii) The Tribunal finds that in all the circumstances of this case it is not reasonable to permit the costs of this litigation to be added to the service charge, and each party must bear their own costs.
- (viii) The Tribunal does not consider it reasonable to direct that the Respondent reimburse the Applicant's application and hearing fees.

Chairman: LM Tagliavini

Dated: 17/3/10