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**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : MAN/00BW/LSC/2013/0118

**Property** : Flats 1 to 9 (inclusive), Haydock Lodge, 60B, High street, Golbourne, WA3 3BH

**Applicants** : Kelvin Jones, Margaret Smith, John Barker, Christine Williams, Peter Williams and Peter Solinas

**Respondent** : Elmdon Real Estate LLP

**Type of Application** : Sections 27A and 20 (C) of the Landlord and Tenant Act 1985

**Tribunal Members** : Mr P. W. J. Millward LLB (Judge)  
Mrs A Franks FRICS

**Date of Decision** : 18<sup>th</sup> November 2013

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DECISION

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## **The Application**

1. By the Application the Applicants seek a determination as to the reasonableness of the cost of the building insurance effected by the Respondent for the year 2013 under section 27A and an order under section 20(C) of the Landlord and Tenant Act 1985 (the Act) preventing the Respondent from seeking to recover the costs of the proceedings via the service charge.
2. An Order for Directions (the Directions) was made by a Tribunal Chairman on 11 September 2013 and sent to the parties.
3. Pursuant to the Directions the Applicants provided a Statement of Case with supporting documentation to enable the Tribunal to proceed to a determination under sections 27A of the Act, as to the payability of the said insurance premium in respect of the Property.

## **The Lease**

4. The Applicants are the lessees of the 9 flats comprising the Property. All leases are in identical form. The Tribunal was provided with a specimen lease dated 5 April 2007 (the Lease). The Lease is made between Willow Tree Homes Limited (1) Willow Tree Homes (Haydock Lodge) Limited (2) and Christopher Sizer and Graham John Edgar (3) for a term of 990 years from the 22 September 1975.
5. Under the Lease management of the Property is to be undertaken by the said Willow Tree Homes (Haydock Lodge) Limited (the Company).
6. The lessor's interest in the Property was transferred to the Respondent in or about May 2013.
7. By clause 6.2.1 the Company covenants to insure and keep insured the Property against loss or damage by the insured risks, which include fire, explosion, flooding and storm as well as third party and public liabilities.
8. By clause 7.3.5 of the Lease the lessor covenants that if the Company fails to perform any of its obligations then "at the request of the tenant in writing" it will perform those obligations subject to payment to it of an amount equal to the service charge. The Lease contains no other authority for the lessor (or its successors in title) to effect insurance.
9. The Company went into liquidation approximately four and a half years ago, since when the Applicants have managed the Property on their own behalf. No alternative management company has been appointed to replace the Company.
10. Each flat owner covenants to contribute and pay "the tenant's proportion". "The tenant's proportion" is defined in the Particulars on page 10 of the Lease as a one-ninth part of the total cost of managing the Property.

## The Law

### 11. Section 18 of the Act provides:

- (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.

### 12. Section 19 provides that

- (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 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.

### 13. Section 27A provides that

- (1) an application may be made to a 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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which –
  - (a) has been agreed by the tenant.....

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

14. Section 20(C) provides that

- (1) A tenant may make an application for an order that all or any part of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ..... leasehold valuation tribunal ..... Are not to be regarded as relevant costs to taken into account in determining the amount of any service charge payable by the tenant .....
- (2) The application may be made ..... to a leasehold valuation tribunal ...
- (3) The ..... tribunal ..... may make such order on the application as it considers just and equitable in the circumstances

### **The Inspection**

15. The Tribunal inspected the Property externally and the ground floor hallway internally on the 18 November 2013 in the presence of Mr Kelvin Jones, one of the Applicants.
16. The Property is a detached house of traditional construction, built in or about 1900. The Property has been converted into 9 flats. The Property is well maintained and each flat has one allotted parking space.

### **The Submissions of the Parties**

17. The Applicants' statement includes (inter alia) the following:-
  - 17.1 The Applicants had no alternative to submitting the Application. Numerous attempts to negotiate with the Respondent had failed.
  - 17.2 The dispute is about the cost and level of cover provided by the building insurance policy effected by the Respondent.
  - 17.3 On the 26 June 2013 the Applicants received a letter from a company called Wildheart LLP ("Wildheart") that it had been instructed by the Respondent to take over management responsibilities for the Property. The company submitted a very brief summary of how it planned to spend the building management fund and asked for £873 from each flat owner for the year commencing 1 April 2013.
  - 17.4 The Applicants' first concern was that the freehold interest in the Property had not been sold and Wildheart was asking for money for the period from 1 April 2013 to 25 June 2013 during which they had done nothing to maintain or manage the Property. After further checks it was confirmed that the freehold had not been sold – only the head lease had been sold.
  - 17.5 The Applicants contacted Wildheart and confirmed that they did not want their services. Wildheart recommended that they contact the Respondent. A telephone conversation with a Mr Davies of the Respondent company ensued on 4 July 2013 who confirmed that the Respondent was happy for the Applicants to continue with the management of the Property, provided

the Applicants agreed to pay for the building insurance policy specified by the Respondent.. Mr Davies insisted that the Applicants speak directly with his insurance brokers, Ferguson Green Insurance (“FGI”). The Applicants made Mr Davies aware that they had already effected building insurance.

- 17.6 That same day a telephone call was made to a Mr Green at FGI to request a copy of the insurance policy and a breakdown of the costs. The Applicants wished to check the level of insurance before any payment was made. The insurance policy had been effected by the Respondent prior to any contact with the Applicants. Furthermore, the Respondent is only in the position of lessor and may not have an insurable interest.
- 17.7 On receipt of the insurance schedule it was found that
- 17.7.1 the Property had been added to an existing multi-property policy
  - 17.7.2 the total annual premium was £2,771.55 and the Respondent was asking for £1,624.96 until the end of the year (8 months)
  - 17.7.3 the gross premium was £1,448.08 more expensive than the Applicants’ own policy
  - 17.7.4 the policy did not list each flat owner individually. Should they wish to make a claim none were listed under the interested party clause
  - 17.7.5 the policy stated only 8 flats whereas there are 9
  - 17.7.6 the policy did not include employers’ liability
  - 17.7.7 the policy stated that any loss of rent was payable for 12 months but did not state who the loss was payable to
- 17.8 The Applicants contacted both the Respondent and FGI over their concerns and to state that the Applicants wanted a policy which included at least the same cover as the Applicants’ existing policy and as an alternative to add the Respondent to the existing policy. The Respondent’s response was short – that they had an agreement that the Applicants would manage and the Respondent would insure the Property, that the Applicants should correspond with FGI to arrange for the insurance terms to be agreed and for payment to be made and that if this was not done then the Respondent could not come to an agreement with the Applicants.
- 17.9 The Applicants had further contact with FGI but could not reach an agreement. Four days later the Respondent threatened to to pass the matter to its debt collectors.
- 17.10 The Applicants provided copies of many emails, a copy of a specimen lease and both insurance policies.
- 17.11 The Company had gone into liquidation over 4 years ago since which the owners of the flats at the Property had worked together to manage and insure the Property. The insurance policy effected by the Respondent is an unreasonable expense to the Applicants.
- 17.12 The Applicants have now commenced the process of applying for the right to manage

18. The Respondent did not provide any statement or evidence to the Tribunal.

## **The Hearing**

19. Neither party requested a hearing and the matter was determined on written Evidence pursuant to the aforementioned inspection.

## **The Tribunal's Determination**

20. The Tribunal considered very carefully the written submissions of the Applicant and the documents provided, in particular the terms of the Lease.
21. The issues to be determined by the Tribunal are:-
  - 21.1 is the demand for the insurance premium/service charge valid and if so
  - 21.2 to what extent is the demand reasonable and if so
  - 21.3 to what extent (if any) the Applicants should pay towards the same
22. The Lease stipulates in clause 6.2.1 that the management company will insure the Property, but that the lessor may insure (and undertake other obligations of the management company) if requested to do so in writing by the flat owners. No such request was made by the Applicant and accordingly the Respondent has no authority under the Lease to effect insurance at the Applicants' expense.
23. However, the Respondent had no information at the time of its purchase relating to the insurance effected by the Applicant. This is because no information had been supplied by the Applicant to the liquidators of the Company. The Respondent therefore effected its own insurance. This is not unreasonable as the Respondent must protect its own interests. The insurance effected was substantially more expensive than that effected by the Applicants.
24. The Tribunal determined that although it was not unreasonable for the Respondent to insure the Property at the time of its purchase, that insurance should have been cancelled as and when the Respondent ascertained that insurance had already been effected by the Applicants at a much lower premium and that that alternative insurance was adequate. Discussions had taken place over a number of months, but the Respondent was fully aware that the alternative insurance was adequate by the beginning of August, at the latest.
25. The Tribunal therefore determined that it was unreasonable for the Respondent to continue its own insurance policy for more than 3 months, and furthermore that the premium payable by the Respondent was excessive. Three months insurance premium at the annual rate of £1,323.47 equates to £331.16. This is the sum that the Applicants must pay to the Respondent in settlement of its service charge claim.

## **Costs**

26. The Applicant requested that the Tribunal make an order under s.20(C) of the Act. As the Respondent has made little or no attempt to settle the question of the service charges the Tribunal felt that the Applicant had no option but to bring these proceedings and accordingly that it would be unfair to allow the Respondent to recover its costs by way of any subsequent service charge demand. The Tribunal

therefore determined to make the order requested by the Applicant.