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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

In the matter of Flats 9, 12, 22 and 30, The Cliff Apartments, Lon – Y – Don, Trearddur Bay, Angelsey, LL65 2UZ

And in the matter of an Application under section 19 and 27A of the Landlord and Tenant Act 1985

Reference: LVT/0026/09/21
LVT/0027/09/21
LVT/0028/09/21
LVT/0029/09/21

Applicants: Mr. Richard Hampson and Mrs. Louise Hampson
(9) Mr. Barry Disley and Mrs. Disley (12)
Mr. Keith Stanier and Mrs. Jane Stanier (22)
Mr. Lawrence O Toole (30)

Respondents: The Cliff Apartments Management Co Ltd
Scanlans Property Management LLP

Tribunal: Mr. A Grant (Chairman)
Mr. H Lewis (Surveyor)
Mr. E Jones (Lay member)

DECISION

The level of premiums charged for the years 2020/2021 and 2021/2022 are unreasonable. The tribunal determine a reasonable sum for such premium to be £6,972 in respect of each year.

The Lease provides for the cost of director's insurance cover to be recharged via the service charge account.

REASONS

Background

1. This is an application made by four leaseholders ("the Applicants"), in respect of service charge demands relating to the Property known as The Cliff Apartments, Lon – Y – Don, Trearddur Bay, Angelsey, LL65 2UZ ("the Property").

2. The Respondents to the application are the Cliff Apartments Management Co. Ltd ("the Landlord") and Scanlans Property Management LLP ("Scanlans"). Scanlans manage the property on behalf of the Landlord.

3. Each of the Applicants hold a leasehold interest pursuant to the terms of a long lease. The leases are drafted in identical terms.

4. By way of four separate applications to this tribunal, each of the Applicants seeks a determination of the service charges levied in respect of insurance charges for the years 20/21 and 21/22. In addition to this, a determination is also sought in relation to the Landlord's ability to charge the tenants for obtaining directors insurance.

5. The matter initially came before the tribunal for a case management conference on the 13th January 2022, when directions were given which, both consolidated all four separate applications to enable them to proceed together at the same time and also set out what the parties were required to do in advance of the final hearing. All of the directions have been complied with.

The Hearing

6. The Applicants were represented by Mr. Richard Hampson, who is one of the occupiers of Flat 9 at the Property. The Landlord was represented by Mr. Ian Marchant who is the sole director of the Landlord Company (and also an owner of one of the flats in the Property). He was assisted by Mr. Ashley Williams who is employed by Scanlans.

7. The Property is a development consisting of 26 apartments together with communal grounds. Few tenants occupy the apartments as their everyday residence, as most of the apartments are used for holiday lettings or second homes.

8. Mr. Hampson submitted on behalf of the Applicants, that they had become concerned by the level of charges that they had been asked to pay in respect of the insurance premiums for the Property which, they thought, were excessive and in consequence, unreasonable.

9. The tribunal was told that in the years up to 2019, the increases to the insurance premium had been modest and in line with normal inflationary increases.

10. However, following the appointment of Scanlans to manage the Property in 2019, the insurance premium for the year 20/21 jumped by 78% to £12,212.00 and then for the year 21/22, the Premium increased again by a further 23% to £15,138.00.

11. Mr. Hampson stated that prior to the appointment of Scanlans, the Property had been insured with Aviva and the premiums had ranged from £4,371 in 2015 to a figure of £7,143 in 2019.

12. However, following Scanlans appointment in 2020, the Applicants were informed that the Property had been incorrectly insured as the earlier insurance policies had only provided cover for residential use and not the mixed use which existed at the Property, which was mainly used for holiday lettings and second homes.

13. Set against that background, Scanlans instructed its "preferred broker" Bridge, to source alternative insurers and they advised taking a policy with AXA which was unique to customers of Bridge. Accordingly, the Landlord followed the agent's advice and insured with AXA at the increased premium.

14. However, Mr. Hampson went on to state that there is a similar development next door to the Property which historically had formed part of the same building but had been separated in recent times. He had made enquiries with the managers of that development and had been informed that the insurance premium for that development was £3,000 per year. He had subsequently approached the brokers that arranged that policy, Clear Insurance, to see if they could arrange a quote for the Property but there had not been enough time to do that before the current policy expired.

15. Subsequently, the Applicants had been provided with an alternative quote from a firm of insurance brokers called Greenfields. That quote was provided by Aviva and was in the sum of £6,972.00. That quote was provided against the background knowledge of the use to which the Property was put.

16. When the Applicants put this alternative quote to Scanlans, they were informed that the Aviva policy was inferior to the policy provided by AXA which had a much clearer unoccupancy clause which was better suited to the Property's use.

17. Mr. Hampson submitted that whilst the AXA policy may be a more thorough policy, it was more than was actually needed, and came at an unreasonably high cost.

18. The Applicants submitted that this was borne out by the fact that the Landlord had subsequently cancelled the insurance policy with AXA. In that regard, Mr. Hampson took the tribunal to page 219 of the bundle which was an e mail from Mr. Marchant to Bridge cancelling the policy. The e mail contained a strong criticism of the circumstances in which the renewal had been carried out.

19. Mr. Hampson also submitted that premium had been adversely affected by the submission of a fraudulent claim for replacement of two doors at the Property which, it was alleged, had suffered storm damage. He said that neither door had been damaged and neither had required replacing. He said that this had affected the premium and pointed to the letter from Bridge at page 219 of the bundle.

20. His position was simply that the premium was unreasonably high. He felt that the Aviva premium was reasonable and that the previous year's premium should have been around about the same amount.

21. As to the issue of directors' insurance which was included within the terms of the policy and which had been charged to the tenants, Mr. Hampson submitted that it was not permitted to be charged to the tenants under the terms of the lease. The lease made no such provision.

22. In addition, the tribunal was informed that the tenants had also been charged separately for the provision of director's insurance so, in effect, the tenants had been "double" charged.

The Respondents' case

23. The Respondents' case was presented by Mr. Ian Marchant. He explained that he was also the owner of one of the apartments situated in the Property. He said that he was the sole director of the Landlord company which owned the freehold of the building.

24. He explained that he was not a professional in these matters and had always sought to deal with matters as best he could and had always tried to do what he thought was best for the Property. He said that no one else was interested in the role and therefore it had fallen on him to deal with the management issues arising at the Property.

25. He submitted that prior to 2020 not enough interest had really been taken as regards the management of the Property.

26. He went on to say that following the appointment of Scanlans in 2020, the issue of insurance was considered more carefully. He stated that the investigation indicated that the previous cover had been based upon incorrect information and in consequence the cover had been inadequate. In that regard he took the tribunal to page 290/291 in the bundle which was an e mail from Bridge to Scanlans dated the 28th July 2021.

27. The e mail indicated that the broker had approached seven separate insurers and had received six declines as the Property was perceived to be too high a risk due to the percentage of holiday lets at the Property. One insurer quoted a premium of £11,116.16. Seemingly, the Property had a high - risk profile.

28. In light of the other apartment owners concerns at the level of premium, he also approached Greenfield insurance which had been suggested by the other occupiers. Their response can be seen at page 312 of the bundle. They received nine declines from insurers and three offers. The best offer was from Aviva in the sum of £6,972.00. They recommended the Aviva offer as it would provide "*the best cover and terms available for your needs"*.

29. However, Mr. Marchant had concerns surrounding the occupancy clause and sought assurances from them that cover was appropriate. He said that this was mainly for the benefit of the Applicants. Ideally, he wanted a letter of assurance from the insurer. However, the broker suggested that as a way forward, a letter to the tenants outlining their obligations would be sufficient to protect the Landlord in the event of any claim. See page 321 of the bundle.

30. Mr. Marchant also approached a further broker called Clear Insurance Management, but they could not assist due to the shortage of time available before renewal.

31. In any event, Mr. Marchant informed the tribunal that he was concerned that the Aviva offer was insufficient for the Properties needs as he had been informed by Scanlans/Bridge that the AXA offer was superior as it had clearer and seemingly better suited cover for periods when parts of the building were unoccupied.

32. Because of his concerns, Mr. Marchant approached another resident who had experience of these matters, Mr. Chris Purcell. He put Mr. Marchant in touch with another broker who reported back on the two possible policies. The Report is at pages 316-317 of the bundle. The upshot of the advice was that he considered the AXA policy to be superior to the Aviva policy and recommended staying with AXA.

33. He indicated that he did try to secure a reduction of the premium with AXA and sent an e mail seemingly cancelling the policy. The e mail appears at page 219 of the bundle. However, in his evidence Mr. Marchant confirmed that he had not, in fact, cancelled the AXA Policy and that it was simply a ruse to try to secure a reduction on the premium.

34. In conclusion, he said that he had investigated the issue thoroughly and had tested the market. Additionally, he had sought the advice of a neutral third party and that while the AXA policy was "slightly more expensive" than the Aviva policy, the AXA policy and premium were appropriate.

35. On the issue of the doors, Mr. Marchant confirmed that the back door at the property had been damaged in consequence of constantly being left open. However, he said he did not have a great deal of involvement as Scanlans recommended it be referred to insurers and once that happened, the insurer took over the situation. They sent their own contractors to site to assess the position and the contractor reported back to the insurer directly and based on that, the doors were replaced. There was nothing underhand involved.

36. Finally, on the issue of directors' insurance, Mr. Marchant said that such cover was standard in these situations and recovery of the same was provided for in the lease.

Deliberations

37. In this application, the tenants seek a determination on the reasonableness of the insurance premium charged for the year 2020/2021 in the sum of £12,212 and 2021/2022 in the sum of £15,138.00. They also seek a finding on whether the Landlord can recover the cost of obtaining directors insurance cover from the tenants via the service charge.

38. Section 19 of the Landlord and Tenant Act 1985 ("the Act") states that "relevant costs shall be taken into account in determining the amount of 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.

39. Section 27 A(1) of the Act provides that any application can be made to the 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.

40. There is no issue between the parties that the AXA Policy is appropriate as regards the extent of cover which it offers, and in that regard, it is also agreed that it is superior to the alternative policy offered by Aviva, but the crux of the dispute lies at the cost of the respective policies.

41. The Landlord's obligation to insure the Property arises by virtue of clause 4 (2) of the lease which says that "the Company hereby covenants with the Lessee.

    "To insure and keep insured in the name of the Company and the lessor at full rebuilding or replacement cost the Demised Premises and the Building and the Property during the term hereby granted against the insured risks and such other risks as it shall consider necessary, and which are normally covered by a comprehensive policy in an insurance office of repute…."

42. The service charge provision in the Lease and the tenant's obligations to contribute towards such charges arise from clauses 3(b) and the Fourth Schedule of the Lease. At clause 3(b) the Tenants agree "to pay the Service Charge by way of additional rent (whether formally demanded or not) and calculated as provided in clause 2 and the Fourth Schedule hereto…"

43. This includes an obligation pursuant to clause 2 of Part 1 of the Fourth Schedule to contribute towards "the cost of insurance against third party risks and third-party liability in respect of the Property to the extent that such insurance shall in fact be taken out by the Company."

44. When considering this matter, the tribunal have regard to the approach adopted by the court in Forcelux Limited v Sweetman and Parker ((2001) LRX/14/2000, LT) which advocated a two-stage approach to be adopted to the issue. Firstly, a consideration must be given to the landlord's decision-making process to ensure that it was reasonable and in accordance with the terms of the lease and, secondly, a consideration of whether the amount incurred, to which the tenants will be required to contribute, is reasonable.

The Landlord's decision making process

45. The evidence produced to the tribunal by the Respondent landlord shows that the broker, Bridge, does appear to have carried out an examination of the policies which would have been available on the open market. The email dated the 28th July 2021 and referred to at paragraphs 26 and 27 of this decision, taken together with the other steps taken by Mr. Marchant as explained in his evidence, lead the tribunal to conclude that an approach was made to cast the net as wide as possible.

46. However, the fact that the policy which was ultimately placed with AXA was pursuant to a specific arrangement with Bridge, could have given rise to a suggestion that the ultimate decision to place the policy was taken on the basis of the ongoing relationship between AXA and Bridge, rather than on the policy being the most appropriate policy for the Property. However, having heard the evidence given by Mr. Marchant and on the balance of probability, the tribunal find as a matter of fact that the policy that was taken out was done so following a full market appraisal and in good faith.

Was the amount incurred reasonable?

47. The evidence shows that the premium for 2020/2021 increased by a figure of 78% from the previous year and the premium for the year 2021/2022 increased by a further 23%.

48. Having considered the evidence, the tribunal can see no reasonable explanation for such a large increase in premium. The small claim made in respect of the doors cannot reasonably have accounted for such a leap in price.

49. The other aspect which is noteworthy is the fact that Aviva offered to renew the policy for a price of £6,972.00. That offer was made with the full knowledge of the uses to which the Property was put. This offer also sits much more comfortably, and is in line, with what the Applicants had been paying in previous years.

50. In the circumstances, where the tribunal was presented with no evidence to explain the increase in the level of premium, the tribunal finds that the premium charged was unreasonable in amount. It also determines that a reasonable amount to have paid in both years was the sum of £6,972.00 which reflects the quote provided by Aviva. In that regard, it

accepts the Applicants' submissions on this point that the quote provided by Aviva was reasonable and the earlier years premium would have been at a similar level.

51. In reaching this determination the tribunal also makes it clear that it does not find any evidence of impropriety by Mr. Marchant as was suggested by the Applicants in their evidence. He correctly followed the advice that he was given by those whom he appointed.

52. As regards the claim for the two doors which were alleged to have been damaged, this investigation was conducted by the insurer who appointed its own contractors and acted in accordance with the contractor's recommendation. We do not see that Mr. Marchant was at fault in any way as regards that issue.

Directors Insurance

53. The Applicants also allege that the lease does not make provision for recovery of director's insurance charges via the service charge.

54. Clause 9 of Part 1 of the Fourth Schedule to the lease requires the Tenants to contribute towards "<u>all costs and expenses (other than those specified above) of whatsoever kind incurred by the Company……."</u>

55. The tribunal are of the view that such a "sweeping up clause" is sufficient to enable the Landlord to charge for the costs of providing directors' insurance and it so finds. Indeed, given the history of disputes at this development, it would seem that such insurance would be sensible.

<u>Conclusion</u>

56. The tribunal determine that the premiums charged for the years 2020/2021 and 2021/2022 are not reasonable. A reasonable sum is £6,972.00 in respect of each year.

57. The tribunal determine that the lease makes provision for the Landlord to recover the costs of landlord's insurance cover via the service charge account.

Dated this 25th day of May 2022.

A Grant
Chairman