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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD & TENANT ACT 1985: SECTION 27A & 20C**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No:** CHI/23UB/LSC/2005/0092

**Property:** Cambray Court  
Cheltenham  
GL50 1JU

**Parties**

**Applicants:** Mr D Gibbs (Flat 4)  
Mr Farrell (Flat 9)  
Carol Lincoln (Flat 21)  
Mr Wright (Flat 20)

**Respondent:** Cromwell Business Centre Management Company Ltd  
(Countrywide Property Management)  
Represented by Mr E Rutledge of Messrs Lawrence and  
Whiteman, Chartered Surveyors; Messrs Barzey and Arnold  
and Mrs Harvey all of Countrywide Property Management.

**Date of Application:** 13 October 2005

**Pre-trial direction:** 21 October 2005

**Hearing:** 9 January 2006

**Members of the  
Tribunal:** I R Perry BSc FRICS (Chairman)  
A Gregg (Solicitor)  
Mrs J Playfair

Clerk: Miss N Bennett

**Date decision issued:** 27 February 2006

The hearing followed an inspection of the property by the Tribunal which was accompanied by Mr Gibbs.

1      **The Issues**

- a)      This was an Application made by Mr D Gibbs of Flat 4 Cambray Court, Rodney Road, Cheltenham, GL50 1JU as to the payability of a "levy" imposed by the landlord in the service charge year April 2005 to March 2006.
- b)      Within his written application, the applicant had asked the Tribunal to rule under Section 20C of the Landlord & Tenant Act 1985 as to whether the landlord was entitled to recover the costs of the Tribunal as part of the service charge.

2      The Tribunal had received forms from Mr Farrell, Flat 9, Carol Lincoln, Flat 21 and Mr Wright, Flat 20, joining them as parties to the case. Mrs Averies, Flat 7, had asked to be provided with a copy of the Decision.

3      The Tribunal Service had issued provisional directions on 21 October 2005 limiting the jurisdiction of the Tribunal to the determination of the "levy".

The Tribunal had a bundle of papers to consider prior to the hearing including the application from Mr Gibbs, together with a two page typed attachment clearly setting out his case. The tribunal had also been provided with a copy of the lease relating to Flat 4 and other copy correspondence including letters from Countrywide Property Management acting on behalf of the freeholders to Mr Gibbs.

The issue in hand related to the validity of an additional "levy" raised by Countrywide Property Management in addition to the budgeted service charge which was due to be paid, under the Lease, by two equal instalments in April and October of each year.

4      Mr Edward Rutledge FRICS had written to the Panel Office on 4 January 2006. A copy of his letter had been made available to the Tribunal members and also to Mr Gibbs.

5      At the outset of the hearing (after the preliminary matters had been dealt with by the Chairman) it was agreed that the agents acting on behalf of the freeholders conceded the point at issue and agreed that repairs incurred during the year should be funded by the freeholder and the cost thereof collected in arrears as specified in clauses 4(2)(a) and 4(2)(b) of the lease (pages 22 and 23 of the original bundle).

The Tribunal indicated that they, having considered the papers, would rule to this effect and it was agreed that no further discussion or evidence was necessary.

6      Mr Gibbs raised further peripheral issues regarding the exact trading name of the Freeholder and its superior or inferior companies and that he had not received copies of credit notes which were said to have been raised by Countywide Property Management.

Mr Rutledge, on behalf of the Freeholders, requested clarification of Mr Gibbs' assertion (para 7 of the original bundle) that the managing agents were not complying with Section 21b of the Commonhold and Leasehold Reform Act 2002.

These issues were not part of the jurisdiction of the Tribunal and it was noted that the Tribunal is unable to offer advice to parties before it.

- 7 At that stage, approximately 11.25 am, all the persons present indicated that they had nothing further to add. The Tribunal therefore concluded to consider its findings.
- 8 Following the conclusion of the Tribunal hearing, Mr Gibbs raised the question of costs, but the agents acting on behalf of the Freeholders had already departed.
- 9 Neither party made any submission to the Tribunal with regard to the s20C application. Subsequently, by letter on the 19<sup>th</sup> Jan 2006, both parties were invited to make written submission to the Tribunal in this regard.
- 10 Mr Gibbs replied on the 23<sup>rd</sup> January and Mr Rutledge on the 30<sup>th</sup> January. Copies were sent to both parties and Mr Gibbs wrote again on the 1<sup>st</sup> February

### Findings and Decision

- 1 The unanimous view of the Tribunal was that there was no liability on the tenants to pay any additional levies and that the appropriate balance of any expenditure properly incurred in connection with the service charge account could only be recovered upon production of the relevant certificate, whereafter lessees would be required to pay the relevant proportion share according to their individual leases within 28 days.
- 2 The unanimous view of the Tribunal was that there should be no order made under s.20C which would prevent the Freeholder from recovering his proper costs for the case.
- 3 No submissions or evidence had been submitted by either party, within the formal hearing, as to costs and therefore no order as to costs would be made.

### Summary and Reasons

Having reviewed all the papers and the evidence given at the hearing, the Tribunal was of the unanimous view that:

- a) The papers were well prepared by the applicant whose case had been well summarised in the attachment to his application form.
- b) The submission from Mr Rutledge dated 4 January accepted Mr Gibbs' position regarding the validity of the additional levy charged. It was unfortunate that this paper had not been produced at an earlier date, which may have allowed the matter to be resolved without the necessity of the Tribunal hearing at public expense.
- c) There were additional associated matters relating to the ongoing management of the block which could probably be resolved by improved communication between the residents and the managing agents.

Dated 27/2/06 .....

Signed  .....

I R Perry (Chairman)