

LON/00BH/LSC/2006/0083

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS
UNDER SECTIONS 27A & S20C OF THE LANDLORD & TENANT ACT 1985
(AS AMENDED)**

Applicant: Mr. James Gallagher

Representative: Mr. James Gallagher

Respondents: London Borough of Waltham Forest

Representative: Judge&Priestley Solicitors

Re: 6 Wyatts Lane, Walthamstow, London E17 3JD

Hearing dates: 27th April 2006

Appearances: For the Applicant: Mr. James Gallagher

For the Respondent: Mr. Oakley

Members of the Residential Property Tribunal Service:

Miss L M Tagliavini BA (Hons) DipLaw LLM

Mr. J C Avery BSc FRICS

Mrs G V Barrett JP

The Tribunal's Decision

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985 by Mr. and Mrs. Gallagher concerning service charge payments in the sum of £6,891.68 for the subject premises at 6 Wyatt's Lane, London E17 3JD pursuant to a lease effective from 10/10/88 for a term of 125 years. The Respondent, the London Borough of Waltham Forest, is the local authority freehold owner. The Tribunal was asked to decide (i) whether the Applicants are liable for the payment of service charges incurred in respect of works of external decoration in 1998, before the assignment of the lease to them in August 1999 and (ii) if so whether these charges have been demanded within the 18 months period from when they became due in accordance with section 20B Landlord and Tenant Act 1985. The Applicants conceded that that they no longer wished to raise any issue as to the cost or standard of the works.

2. At the hearing of this application Mr Gallagher appeared in person and gave evidence to the Tribunal. The Respondent was represented by Mr Oakley and the Tribunal also heard evidence from Ms K. Morgan.

The Applicant's Case

3. At the hearing Mr. Gallagher presented his case in person. He told the Tribunal that the service charges in question were not made known to him until after his purchase of the lease assignment on 27/8/99 when he received a demand for payment in December 2003. At the time of purchase of the lease and in answer to questions asked by the Applicants' conveyancer Mr Ball, of T.J. Ball & Company dated 14/07/99 as to whether there were service charges outstanding or likely to be significant increases in the service charge amounts demanded, the Respondent stated they were unable to confirm this point. However, the Respondent included in its reply to Mr Ball a schedule of service charges dated 20/7/99 showing that there were none owing for the service charge year 1998/99. In reliance on those answers the Applicants went ahead with their lease purchase. Consequently, Mr Gallagher sought to submit that the Respondent should be "estopped" from claiming such sum, as it was not "fair" to the Applicants.

4. A letter dated 2/12/03 demanded the sum of £6,891.68 demanded by the Respondent in respect of external refurbishment works. This figure represented the adjusted sum originally claimed by the Respondent in the sum of £11,180.00 for the subject major works in a Schedule dated 23/9/99. It was said by Mr Gallagher that this letter of 2003, was the first notification he had received of such service

charges. He told the Tribunal that he had received the service charge notification dated 13/9/99 requesting payment of £148.70, which he had paid but not the Schedule of Charges setting out the claim for major works said to have accompanied it. Mr Gallagher referred the Tribunal to the letters he accepted he had received from the Respondent since August 1999, and accepted that he had received all other demands for payment and accompanying Service Charges Schedules, including one dated 19/9/00 in which the sum of £283.69 was demanded for service charges for the period 1/10/00 to 31/12/00 . To this was attached a Schedule of Service Charges for the year 1/4/99 to 31/3/00 reflecting adjusted costs to the cost of the major works in the sum of £727. A sum Mr Gallagher believed he had paid. Mr Gallagher, was however, sure he had not received the Service Charge Schedule claiming £11,180.00 in December 1999, a figure subsequently adjusted to £6,891.00 in a letter/invoice dated 2/12/2003.

5. Mr Gallagher accepted that under the terms of the lease he is liable for payment of service charges but did not accept he should be liable for the costs of the major works as they had arisen before the assignment of the lease and in any event had not received any demand for payment until over 18 months after they had arisen. The Applicants also sought to rely on section 23(1) of the Landlord and Tenant (Covenants) Act

1995 the effect of which would, if applicable, make these charges non-payable by the assignee Applicants.

6. Mr Gallagher also referred the conduct of Mr Ball in acting for both the buyer and seller in this transaction to the Council for Licensed Conveyancers. By a letter dated 16/2/06 it was stated by the Council that Mr Ball provided a service of a reasonable standard although had failed to get consent to act for both but had otherwise not acted materially incorrectly. Further, it was said that Mr Ball had been entitled to rely on the response received from the Respondent, namely that the vendor was not aware of any large service charge and that the lessor was unable to confirm whether there would be any large increase.

The Respondent's Case

7. Ms K Morgan gave written and oral evidence to the Tribunal as to the way in which the demands for service charges and their accompanying schedules were sent out. She stated that this was a manual task and would have been subject to checking by at least two separate stages. The first, where the information was entered into the log book and secondly, where the relevant demands and papers were lined up, collated and put into envelopes. Ms Morgan stated that there was nothing to suggest that this had not been done in this case and it was

her opinion that the Schedule of Service Charges for 1998/99 had gone out with the service charge demand in 23/9/99. On questioning, Ms Morgan accepted that the Respondent had not received any earlier query from the Applicants in respect of the charge for major works before December 2003 and had paid other service charges when demanded on time.

8. It was suggested by Mr Oakley that it was not until August 2005, when the Applicants realised the effect of the operation of section 20B that they began to deny having received any earlier demand for payment of the major works charges. This allegation was denied by Mr Gallagher when put to him and he referred the Tribunal to earlier correspondence, specifically a letter dated 16/2/04 in which it was said the Applicants had no knowledge of the alleged debt until 2003. Mr Oakley also submitted that section 23 of the 1995 (Covenants) Act did not apply as this was a lease granted pre- January 1996. Mr. Oakley also stated that the liability to pay arose during the period of the Applicant's tenancy i.e. when the invoice was sent in December 1999, and was therefore within the 18 months period allowed pursuant to section 20B L&T 1985. He conceded that the payability centred on whether the demand for payment had been received by Mr Gallagher in 1999 or 2003 as if the latter had accepted the sum was not payable.

Mr Oakley stated that this was a factual matter to be decided by the Tribunal.

9. Mr Oakley submitted to the Tribunal that no estoppel operated in this case as it was not known to the Respondent that Mr Ball was acting for the buyers at the time the questions were asked and therefore there was no representation made to the Applicants in respect of the service charges due for major works. In any event, he submitted that the Tribunal did not have jurisdiction to decide this issue.

The Tribunal's Decision

10. The Tribunal finds as a fact that the Applicants did not receive the Schedule of Service Charges said to have been sent with the service charge demand dated 23/9/99. The Tribunal finds Mr Gallagher to be a truthful and credible witness; that he had kept all other documentation received from the Respondent; that he admitted, against his interest, to receiving a document dated 19/9/00 which included a Schedule of Service Charges for major works/improvements in the sum of £727.00, and that he expressly and impliedly had in his correspondence routinely raised the issue of his lack of knowledge of these major works service charges and their non-notification. The Tribunal rejects the allegation made by Mr Oakley

that the claimant not to have received notification of the Service Charge Schedule in question was concocted to take advantage of the provisions of section 20B. Consequently, in light of the Tribunal's findings and the concession made by Mr Oakley on behalf of the Respondent, the Tribunal finds that the sum of £6,891.68 is not payable by the Applicants in respect of the major works carried out prior to the acquisition by the Applicants of the subject lease.

11. Mr Gallagher accepted that he received the demand for £727 in respect of the earlier major works/improvements carried out in 1999. The Tribunal finds that section 23 of the 1995 (Covenants) Act does not apply to this lease, as it was granted pre-January 1996. However, in considering the issue of payability pursuant to section 19 L&T 1985, the Tribunal considers that it does have jurisdiction to consider the issue of estoppel and determines that on the facts of this case the Respondent is estopped from demanding the remaining amount of £727 from the Applicant said to be in respect of the subject major works. It is the Tribunal's opinion that the Respondent were made aware that the answers given would be relied upon by the Applicant purchasers (letter dated 14/7/99). The knowledge that major works had been done and were in fact complete (save for snagging) at the time of Mr Ball's enquiry was entirely within the knowledge of the Respondent and could have easily been checked by a simple in-house

enquiry. The Tribunal finds that the Respondent's supply of a Statement of Charges showing a nil balance for the relevant year, with no proviso to indicate a large sum would be due shortly, is a representation to the Applicants that there were no outstanding service charges for which he would be liable. As a result of this representation, on which the Applicants were entitled to rely, they incurred a detriment by entering into the purchase of the property without having the knowledge required to negotiate a lower price to take into account the outstanding service charges. Therefore, the Tribunal determines that the sum of £727 is not payable by the Applicants. If already paid by the Applicants, this sum should be refunded to them by the Respondent.

12. In conclusion, the Tribunal finds that no service charges are payable by the Applicant in respect of the major works in the sums demanded of £6,891.68 and £727. As the Respondent has indicated that no charges will be added to the service charge account in any event, section 20C does not need to be considered.

Chairman: 

Dated: 26/6/06