

## MIDLAND RENT ASSESSMENT PANEL

CASE NO: BIR/41UF/LSC/2006/0023

Landlord and Tenant Act 1985Commonhold and Leasehold Reform Act 2002Leasehold Valuation Tribunals (Fees)(England) Regulations 2003DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Mr G M Thompson and 7 Others (the Applicants)

and

SM Properties (21) Limited (the Respondent)

on the Applicants' applications

- (1) under section 27A 1985 Act for a determination of liability to pay service charges on and after 7 April 2005
- (2) for an order, under section 20C 1985 Act, that the Respondent's costs in connection with these proceedings shall not be part of any service charge
- (3) under Regulation 9. *Leasehold Valuation Tribunals (Fees)(England) Regulations 2003* for a requirement that the Respondent shall reimburse the Applicants with the whole of the fees paid by the Applicants in the proceedings
- (4) under para 10 Schedule 12 Commonhold and Leasehold Reform Act 2002 for a determination that the Respondent shall pay to the Applicants their costs incurred in connection with the proceedings

Property: Enville Manor, Bridgnorth Road, Enville, South Staffordshire DY7 5JA

Heard at: The Panel OfficeOn: 1 March 2007

## APPEARANCES:

For the Applicant: Mr G M ThompsonFor the Respondent: No appearanceTribunal members:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)

Mr A P Bell MA LLB, Solicitor

Mrs C L Smith

Date of determination: 16 MAR 2007

## **The Applications:**

### *The section 27A Application:*

- 1 By an application dated 31 October 2006 Mr G M Thompson (Flat 3), Mr S Morley and Mrs S Morley (Flat 1), Mr R Bernard (Flat 2), Mr K James (Flat 4), Mr R Tait (Flat 5), Ms C Emery (Flat 7) and Mr J Evans (Flat 8) (the '**Applicants**' and '**Tenants**') apply to us to determine their liability to SM Properties (21) Limited (the '**Respondent**' and '**Landlord**') to service charges on and after 7 April 2005 for Enville Manor, Bridgnorth Road, Enville, South Staffordshire DY7 5JA (the '**Property**') under section 27A Landlord and Tenant Act 1985 (the '**1985 Act**'), inserted by section 155 Commonhold and Leasehold Reform Act 2002 (the '**2002 Act**').

### *The section 20C Application:*

- 2 The Applicants also apply for an order that the costs in connection with these proceedings shall not be part of any service charge under section 20C of the 1985 Act.

### *The Regulation 9. Application:*

- 3 The Applicants also apply under Regulation 9. *Leasehold Valuation Tribunals (Fees)(England) Regulations 2003* for a requirement that the Respondent shall reimburse the Applicants with the whole of the fees paid by the Applicants in the proceedings.

### *The Schedule 12 Application:*

- 4 The Applicants also apply under para 10 Schedule 12 Commonhold and Leasehold Reform Act 2002 for a determination that the Respondent shall pay to the Applicants the costs incurred by the Applicants in connection with the proceedings.

## **The Property:**

- 5 The Property is a three storey period building converted into 8 Flats, garages and grounds.

## **Directions:**

- 6 Directions were issued, without a pre-trial review, on 9 November 2006 including a direction that the Respondent shall provide a written reply to the Applicants' written Statement (of its case). **Mr GM Thompson**, for the Applicants has provided a Statement. Despite a reminder on 15 February 2007 from the Panel office to the Respondent it has not provided a Reply.

## **No inspection and the hearing:**

- 7 No application has been made to inspect the Property and we do not deem an inspection necessary. After due notice to the parties, a Hearing was held on 1 March 2007 at which Mr Thompson appeared in person. There was no appearance for the Respondent and no sufficient cause has been given for non-appearance. The hearing was held concurrently with case no BIR/41UF/LUS/2006/0001 - a s.94 2002 Act application with the same parties. We advised Mr Thompson that, despite no appearance for the Respondent, if his evidence and submissions fell short of establishing the contention in support of which they are made we would be minded to reject them to the effect that our determination may not be wholly consistent with his contentions; pointing out to him our duty to seek to achieve a fair and just result.

## **Jurisdiction:**

- 8 Our jurisdiction is not contested and we are satisfied that we have the jurisdiction to determine the Applications.

**The section 27A Application:**

- 9 Mr Thompson says the Property is managed by Enville Manor RTM Company Limited (the 'Company'), a right to manage company under Chapter 1 Part 2 2002 Act which acquired the right to manage the Property effective from 7 April 2005 pursuant to a contested application on which a Leasehold Valuation Tribunal determined the Company was, on 13 July 2004, entitled to acquire the right to manage the Property. Under s.96 2002 Act, the Company has, from 7 April 2005, the 'management functions' including services, not the Respondent. We confirm the Company acquired the right to manage and accept it has, and has had from 7 April 2005, the management functions. Accordingly, any service charge payments made by Applicants to the Respondent after 6 April 2005 were not payable to the Respondent (which includes its agent). In any event, says Mr Thompson, no demands for a service charge have been made to the Tenants by the Respondent nor its agent(s) which we accept.
- 10 We find and hold that no service charge is payable by the Tenants to the Respondent after 6 April 2006. It is accepted that the Tenants may have a liability to pay a service charge to the Company on and after 7 April 2007.

**The section 20C Application:**

- 11 Mr Thompson points out this application was dated 31 October 2006 (after the Company acquired the right to manage the Property from 7 April 2005); and the landlord should not be able to recover its costs before this Tribunal as a service charge. Our discretion to make the order sought is what we consider to be just and equitable in the circumstances. We find that it is just and equitable to make the order and order that the costs incurred, or to be incurred, by the landlord in connection with these proceedings shall not be part of any service charge. In any event we hold the terms of the Applicants' leases do not clearly provide for the landlord to recover its costs as a service charge and such costs would not be payable under s.27A 1985 Act.

**The Regulation 9. Application:**

- 12 Regulation 9. is made pursuant to para 9 Schedule 12 2002 Act. It reads:  
'Subject to paragraph (2) [no reimbursement if the party is in receipt of benefits], in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.'
- 13 The Regulations do not provide for circumstances to be taken into account in the exercise of our discretion. While we accept it may be argued that the 'event' (namely, which party has been successful in the Determination) is the basis, we hold that what is just and equitable in the circumstances is the overriding consideration. Just and equitable includes whether the landlord had an arguable case. We also take account of Mr Thompson's submission that the Respondent has not complied with para 4.3 the RICS *Service Charge Residential Management Code* approved by the Secretary of State under the provisions of s.87 Leasehold Reform, Housing and Urban Development Act 1993. Para 4.3 says the Respondent should respond promptly and suitably to the Applicants' reasonable requests for information relevant to the management of the Property which, we accept, the Respondent has not done. We find and hold the landlord does not have an arguable case. We allow the Applicants' application for fees; to the effect that we require the Respondent to reimburse the Applicants the whole of any fees paid by them under the Applicants' s.27A 1985 Act Application in respect of these proceedings.

**The Schedule 12 application:**

14 Para 10 Schedule 12 2002 Act reads:

'A LVT may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances ... where ... [in the LVT's opinion, the Respondent has] acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.'

15 Mr Thompson says the Respondent has acted unreasonably in the proceedings by, without reasonable cause, not complying with the Tribunal's directions as to production of documents and a written Reply to the Applicants' written Statement. We recognise it might be argued the Respondent has, by its failures, not 'acted in the proceedings' but we hold that an unreasonable failure to act is within the meaning of 'acted', as a failure to act is within the meaning of 'otherwise unreasonably'.

16 We accept Mr Thompson's contention and find and hold the Respondent has acted unreasonably. We determine that the Respondent shall pay the costs incurred by the Applicants in connection with the proceedings.

As to the amount of the costs incurred by the Applicants:

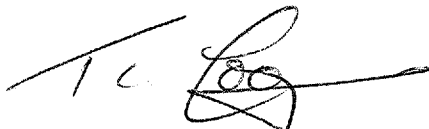
17 On Mr Thompson's evidence we find the Applicants have incurred costs in connection with the proceedings.

18 Under para. 10(3) Schedule 12 the maximum amount we can determine is £500. Mr Thompson says he has prepared and presented the case for the Applicants; he is a lay-person and is self employed and has spent about 34 hours engaged in connection with the proceedings which, at £20 per hour, is very reasonable. We accept his evidence and, having regard to the principle that his costs should represent some reasonable discount from what would otherwise have been paid to an outside contractor, we find the Applicants' costs incurred exceed £500 but we must determine an amount no greater than £500.

19 We determine that the Respondent shall pay to the Applicants £500 costs incurred by the Applicants in connection with this LVT's proceedings.

DATE: 16 MAR 2007

T F Cooper  
Chairman



**Distribution:** Mr G M Thompson, 3, Enville Manor, Bridgnorth Road, Enville, Stourbridge, West Midlands DY7 5JA (for the Applicants)  
SM Properties (21) Limited, 152, Halesowen Road, Cradley Heath, West Midlands B64 5LP (the Respondent)