

CHI/00HP/LIS/2007/0028

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: Flat 17, Cedar Grange, 22 Lindsay Road,
Branksome Park, Poole, BH13 6BD

Applicant: Cedar Grange (Poole) Management Ltd

Respondent: Mr J A Ewin

Application: 16 August 2007

Inspection: 25 October 2007

Hearing: 25 October 2007

Appearances:

Landlord

Mr Defty
Mrs Waller
Mr Heasman

Chairman
Treasurer
Company Secretary & Managing Agent (Foxes)

For the Applicant

Tenant

Mr J A Ewin

Leaseholder
For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr B H R Simms FRICS MCI Arb
Mr P E Smith FRICS

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/OOHP/LIS/2007/0028

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF FLAT 17, CEDAR GRANGE, 22 LINDSAY
ROAD, BRANKSOME PARK, POOLE, BH13 6BD**

BETWEEN:

CEDAR GRANGE (POOLE) MANAGEMENT Co LIMITED

Applicant

-and-

MR J A EWIN

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This matter was initially commenced by the Applicant in the Poole County Court against the Respondent as a claim for service charge arrears in the sum of £1,088.13. The claim was for the sum of £1,000, being the estimated service charge contribution payable by the Respondent for the cost of various proposed works and a further sum of £88.13 as an administration fee. The relevant demand to the Respondent is dated 25 March 2004 and his liability to pay arises in the service charge year ending 2004/05. The Respondent filed a Defence to the claim and on 16 August 2007, District Judge Freeman made an order transferring the proceedings to the Tribunal for a determination of the Respondent's liability to pay and/or the reasonableness of the sum claimed against him.

2. The property known as Cedar Grange, 22 Lindsay Road, Branksome Park, Poole, BH13 6BD is comprised of 25 flats in total. The Respondent is the lessee of Flat 17. The Applicant is the freeholder, of which each of the lessees has an equal share. Foxes Property Management is the managing agent instructed by the Applicant.

3. For reasons that will become apparent below, it is not necessary to set out the terms of the relevant service charge provisions in the Respondent's lease. He did not dispute his contractual liability to pay a service charge contribution at a rate of 1/25 of the total service charge expenditure incurred by the Applicant. This was payable in advance and in equal amounts on 25 March and 29 September in each year. The annual service charge year commenced on 25 March in each year and ended on 24 March of the following year. It seems that the £1,000 service charge contribution demanded from the Respondent represented his contribution, as a special levy, for the estimated total cost of carrying out the following works:

<u>Item</u>	<u>Cost</u>
(a) New water pumps	8,400
(b) Balcony and brickwork repairs to Flats 6 and 7	4,000
(c) Balcony repairs to Flat 19	5,500
(d) Balcony repairs to Flats 21 and 23	2,500
(e) Balcony soffit repairs to Flat 17	1,000
(f) Repairs to main roof	1,700
(g) New soakaway (to front)	1,750
Total	24,850

Inspection

4. The Tribunal externally inspected the block of flats and also internally inspected the subject premises on 26 October 2007. Again, for the reasons set out below it is not necessary to set out here those matters noted by the Tribunal.

Decision

5. The hearing in this matter also took place on 26 October 2007. The Applicant was represented by Mr Defty, Mrs Waller and Mr Heasman. The Respondent appeared in person.

6. In the course of these proceedings a great many documents had been produced or disclosed by both parties. It was indicative of the breakdown of the relationship between the Applicant and the Respondent. The basis upon which the Respondent sought to defend the claim was essentially set out in his chronology of events that had taken place since 20 March 2000 and in his statement of case dated 24 September 2007¹. These documents exclusively set out at some length the various alleged management failures complained of by the Respondent on the part of the Applicant.

7. When asked by the Tribunal, the Respondent confirmed that he was mainly concerned about these management failures and was seeking a determination from the Tribunal on these matters. The Tribunal explained to the Respondent that it could not make any determination in relation to alleged management failures on the part of the Applicant in this application because it did not have jurisdiction to do so under s.27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”). The Tribunal went on to explain to the Respondent that, as a statutory body, its jurisdiction was entirely statutory and application specific. In this application, the only issue was the service charge arrears being claimed by the Applicant and nothing else. The allegations of management failures by the Applicant did not fall within the meaning of a “service charge” under s.18 of the Act. As such, the Tribunal, even if it wanted to do so, could not make any determination on these matters under s.27A of the Act. The relevance of these allegation could only be made in support of perhaps an application under s.24 of the Landlord and Tenant Act 1987 for the appointment of a manager by the Tribunal. The Respondent said he, wrongly, believed that he could bring the entire “basket” of issues to the Tribunal.

¹ see pp.86 & 97 of the bundle

8. The Tribunal then turned to the costs in issue set out in paragraph 3 above. It explained to the Respondent that its determination in this application was only in relation to those estimated costs as claimed in the 2004/05 service charge year. In other words, the Tribunal was dealing with his historic liability to pay and/or the reasonableness of those costs. It was also not concerned with the actual cost of the works in this application. The Respondent accepted that the proposed works were necessary. The only individual item of cost he wanted to complain about was the sum of £1,000 claimed for the soffit repairs to Flat 17. In fact, the works had since been completed and this sum only appeared to be the cost of paint. The Respondent initially stated that the cost was high just for paint. However, upon reflection, he withdrew this challenge. The Respondent also accepted that the work had been carried out to a satisfactory standard. Accordingly, the Tribunal determined that the estimated cost of £24,850 for the proposed works set out at paragraph 3 above was reasonable. It follows from this that the Respondent's estimated service charge contribution of £1,000 was also reasonable.

9. The Tribunal was told that, of the original sum of £1,000 claimed, only a balance of £576.72 remained payable by the Respondent. He agreed to pay this sum. The Tribunal explained to the Applicant that it had no jurisdiction to award any statutory interest on the service charge arrears. It was accepted by the Applicant that the sum of £88.13 claimed as an administration fee for issuing the County Court proceedings was not recoverable under the lease terms.

Costs & Fees

10. It was also accepted by the Applicant that under the terms of the Respondent's lease, it could not recover the costs it had incurred in dealing with the litigation. It was, therefore, not necessary for the Tribunal to consider any application under s.20C of the Act.

11. As to the issue of fees paid to the Tribunal, the Respondent said that he should not be required to reimburse the Applicant because he had incurred far greater costs and it would not be fair to do so. It was submitted on behalf of the Applicant that the Respondent's continued defence to the claim was misconceived and he had not withdrawn his challenge until the hearing. It was, therefore, obliged to pay the relevant fees to the Tribunal and a hearing was required. The Tribunal accepted that submission and for the stated reasons. Accordingly, it directs the Respondent to reimburse the Applicant the fees paid to the Tribunal in these proceedings pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Dated the 23 day of November 2007

CHAIRMAN.....*J. Mohabir*.....
Mr I Mohabir LLB (Hons)