

**CASE NUMBER: CHI/15UE/LIS/2007/0016**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**KIMING  
STRATTON ROAD  
BUDE  
CORNWALL  
EX23 8AW**

**KIMING RESIDENTS' ASSOCIATION  
(Applicants)**

**AND**

**MR R R STEWART  
(Respondent)**

**In The Matter Of  
Section 27a Landlord And Tenant Act 1985 (As Amended)**

**And In The Matter Of  
The Rent Assessment Committee (England And Wales)  
Leasehold Valuation Tribunal (Services Charges Etc)  
Order 1997**

**TENANTS' APPLICATION  
FOR DETERMINATION OF LIABILITY TO  
PAY SERVICE CHARGES IN RESPECT OF  
THE FINANCIAL YEAR 2005**

**TRIBUNAL  
R O Batho MA BSc LLB FRICS FCI Arb  
A J Lumby BSc FRICS**

**DETERMINATION**

## Introduction and Summary Decision

1. This case arises out of the tenants' application for a determination of liability to pay service charge costs which the respondent landlord seeks to recover in connection with an application which he made to the Tribunal for the determination of liability to pay service charges on 17<sup>th</sup> June 2005. The Tribunal confirms that costs are recoverable by the landlord, but not to the full extent which he claims.

## Background

2. On 17<sup>th</sup> June 2005 Mr R R Stewart, the landlord of Kiming Flats Stratton Road Bude Cornwall EX23 8AW, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of service charge costs incurred for the year ending on 31<sup>st</sup> December 2004 and to be incurred during the year ending on 31<sup>st</sup> December 2005 in respect of Kiming Flats. During the course of a hearing held on Wednesday 28<sup>th</sup> September 2005 the Tribunal allowed the respondent lessees to make an application under section 20c of the Landlord and Tenant Act 1985, such that the amount that Mr Stewart could recover by way of costs in relation to the application should be limited.
3. The Tribunal made its determination in respect of both of these applications on 13<sup>th</sup> December 2005. The landlord's application for leave to appeal was subsequently rejected.
4. Paragraph 57 of that determination provided that

"With regard to the lessees' application under section 20c of the Landlord and Tenant Act 1985, the Tribunal concludes that, as the lessees do not appear to have had all the relevant information, it was reasonable for them to challenge whether payments were properly due. That full disclosure might have avoided the necessity for the application which the Tribunal has considered, and accordingly the Tribunal determines that the landlord is not entitled to recover more than 50% of his costs in connection with this application from the lessees as part of the service charge, and that that sum should not include any of the secretarial costs which have been disallowed on the basis that they amount to management fees."

5. The reference to management fees arose from the lease provision that

"If the lessor does not employ managing agents in respect of the common property he shall be entitled to add a sum not exceeding 15% to any of the items in parts 1 and 2 of this (the Fourth) Schedule for administration expenses"

and the Tribunal's determination of the amount so recoverable at that time.

## The Present Application

6. In making their present application, on 8<sup>th</sup> May 2007, the lessees referred to a letter of 2<sup>nd</sup> May 2007 written by their accountants, Messrs Potter Baker, to the Tribunal which, they said, set out their query in detail. That letter had been expressed in terms that

"the residents accept that Mr R R Stewart should be entitled to 50% of the LVT fees and exceptional costs of £535.53 (referred to in the accounts for the year ending 31<sup>st</sup> December 2005) but from the wording in paragraph 57 of the determination dated 13<sup>th</sup> December 2005 they do not consider that it was intended he should be entitled to

claim for the time which he claims was expended by himself and his wife as he made the original application. The amounts claimed are as follows

R R Stewart 169 hours at £17.00 per hour	£2,873.
Mrs P Stewart (his wife) 163.5 hours at £12.00 per hour	£1,962
Total	£4,835
50% claimed	£2,417.50."

The residents who did not instigate the application received no payment or reward for the time which they expended in preparing for and attending the Tribunal and feel very aggrieved that Mr Stewart is seeking to be rewarded with a sum for his wife and himself of £2,417.50. They find it very difficult to believe that this was the intention of the Tribunal's decision contained in paragraph 57."

### **Procedural Matters**

7. The Tribunal issued Provisional Directions on 23<sup>rd</sup> May 2007 and Further Directions on 29<sup>th</sup> May 2007, with the latter directions providing that the matter should be determined by paper consideration without an oral hearing.
8. Preliminary consideration was given to the parties' submissions on 13<sup>th</sup> August 2007, as a result of which the Tribunal determined that it had insufficient information on which to base a determination, and following which it issued Further Directions requiring the parties to make additional submissions. This determination is made in accordance with those directions and in the light of the sum of submissions so made.

### **Lease Provisions and Basis of Earlier Determination**

9. It has been accepted by the parties at all stages that there are slight variations in the terms of the leases between the three blocks which together form Kiming Flats, but the respondent tenants have provided a copy of a lease which they say is typical and the Tribunal's determination is made on the basis that, in effect, all leases contain the same provision. Each of them, therefore, provides that the landlord may recover the 15% management fee referred to above, and in their determination of 13<sup>th</sup> December 2005 the Tribunal explained that the normal expectation of what a managing agent would do is set down in the provisions of the Service Charge Residential Management Code ("The Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
10. In the case the lease also provides that the landlord may recover by way of service charge  

"All other expenses (if any) incurred by the lessor in and about the maintenance and proper convenient management and running (of the block) including in particular but without prejudice to the generality of the foregoing ..... any legal or other costs bona fide incurred by the lessor in taking or defending proceedings (including any arbitration) arising out of any lease of any part (of the block) or any claim by or against any lessee or tenant thereof (other than a claim for rent alone) or by any third party against the lessor as occupier of any part of (the) block."
11. The lease therefore envisages that costs such as these and, in particular, costs associated with legal proceedings, should be recoverable in addition to the management fee. It is the Tribunal's reading of the Code provision referred to above that that lease provision is consistent with the Code in seeing such legal costs as

going beyond normal management costs, and it was on this basis that, in their determination of 13<sup>th</sup> December 2005, the Tribunal ruled that the lessor might recover 50% of his costs associated with the application which was then under consideration.

12. The applicants now claim that that opportunity to recover costs is unfair, and that the amount which the lessor seeks to recover is excessive.
13. It is not for the Tribunal to comment on whether the lessor's right to recover is fair or not. It is sufficient that the lease specifically allows him to do so and the Tribunal has no right or authority to vary that provision. Section 19 of the Landlord and Tenant Act 1985 provides that costs are recoverable only to the extent that they are reasonable. All that is in issue, therefore, is whether the costs which the landlord now seeks to recover are reasonable.

### **The Landlord's Case**

14. In his letter of 19<sup>th</sup> June 2007, Mr Stewart explained that in arriving at the amount claimed

"I totalled the hours spent on the Tribunal application and associated matters and on the work involved in my efforts to obtain maintenance dues from those who did not pay on behalf of those who did from my day to day office records and diaries and I reduced them to a minimum".

15. By their Further Directions of 13<sup>th</sup> August 2007 the Tribunal provided that

"The respondent shall, by not later than Friday 14<sup>th</sup> September 2007, provide to the applicants and to the Tribunal a detailed breakdown of the work done in the 169 hours for which he seeks recompense. He shall, in particular, make a distinction between 'the hours spent on the Tribunal application and associated matters' and 'the work involved in his efforts to obtain maintenance dues from those who did not pay.' In relation to the hours spent on 'the Tribunal application and associated matters' he is to distinguish, on the basis of hours spent, and shall particularise what 'the associated matters' for which he seeks payment may have been."

16. In his response of 11<sup>th</sup> September 2007 Mr Stewart says that, despite what he had said previously, "there were no other associated costs" and he has produced a detailed breakdown of the hours expended by himself and his wife and in respect of which he seeks recompense, together with a detailed breakdown of postage, photocopying and other disbursements, although these are said to amount to £650.59 rather than the £535.53 referred to in the accounts.

### **The Tenants' Response**

17. In their letter of 1<sup>st</sup> October 2007, Messrs Potter Baker respond that

"the time claimed by Mr Stewart for himself and his wife appears to the lessees to be excessive and/or the rate charged to be inappropriately high"

and they go on

"We are (therefore) without any documentary evidence of the expenditure in 2005 for stationery and postage amounting to £650.59 referred to in his response."

## Consideration

18. In their determination of 13<sup>th</sup> December 2005 at paragraph 48 the Tribunal said that

“Much of what Mrs Stewart has been doing had been the work which a managing agent would normally expect to do, and the costs of telephone calls, postages and photocopying are costs which a managing agent would normally be expected to include in his management fee. The Tribunal accepts that where only one property is being managed then those costs may seem disproportionate, and that where a number of properties are being managed then the overhead costs may be spread, but that is nonetheless a choice which the landlord must make.”

19. The Tribunal concludes that that approach to charging must be taken in this case. The Tribunal accepts that the respondent is entitled to recover costs associated with the original Tribunal application and that, following the Code provisions referred to above, those costs go beyond a normal management function.

20. The Tribunal would expect that managing agents would charge separately for such work, and do so on an hourly rate basis, but they would then expect that the hourly rate so charged should include normal office overhead costs including secretarial assistance, photocopying, postage and the like, although they accept that a separate charge for photocopying might be appropriate in circumstances such as this, where the amount of such work is high, if appropriate vouchers were produced.

21. Following this approach, the Tribunal concludes that it is wrong for the respondent to expect to charge separately for both his own time and the secretarial assistance which his wife provides, but it concludes that it would be reasonable for him to charge at a rate which includes overhead costs.

22. In his letter and submissions of 11<sup>th</sup> September 2007 the respondent says, in relation to the Tribunal’s Further Direction number 6, that

“The basis of R R Stewart’s cost of £17.00 per hour followed advice from professionals that a charge of £35.00 to £40.00 per hour was reasonable, so £17.00 per hour must be even more reasonable. Local tradesmen, by the way, charge £20.00 per hour plus VAT.”

23. The Tribunal accepts that evidence, and does so in the knowledge that a professional surveyor carrying out a similar function might be expected to charge a figure of the order of £90.00 to £100.00 per hour. It therefore concludes that it would be reasonable to cost the respondent’s time at the lower figure which he says he was advised would be reasonable, that is to say £35.00 per hour, but on the basis that that figure would include overheads.

24. The Tribunal has then considered the detailed breakdown of time expended by the respondent as set down in his statement of 11<sup>th</sup> September 2007.

25. The respondent is entitled to recover those costs necessarily associated with his original application to the Tribunal, but the terms of the lease provision and of the Tribunal’s previous determination do not allow him to go beyond that. The Tribunal has concluded, however, on examination of the detail given, that some of the items claimed do appear to go beyond that (e.g., 26<sup>th</sup> July 2005 “going back over history of KRA, its objectives, possible enfranchisement, consider options”) and that in some instances the hours expended appear disproportionate to the work described.

26. The Tribunal accepts that proper preparation for presentation to a Tribunal is a time consuming exercise, but on the basis of the information provided by the respondent cannot conclude that it would be reasonable to allow more than 90 hours of the 169 hours which the respondent actually claims.
27. With regard to the overhead costs of stationery, postage and fees, the Tribunal concludes that the fees paid to the Tribunal should be seen as recoverable costs but, subject to what is said above, it would normally treat the photocopying and postal charges as normal overheads incorporated in the respondent's hourly rate charge. In these terms, and in the absence of any supporting vouchers, it is not satisfied that the total of £650.59 is fully justified. Further, it notes that the figure entered in the accounts was not £650.59 but £530.53, a figure which it must conclude is made up of fees payable to the Tribunal and what might be seen as excess overhead costs associated with large amounts of photocopying and the like.
28. By their letter of 2<sup>nd</sup> May 2007, Potter Baker say that

"the residents accept that Mr R R Stewart should be entitled to 50% of the LVT fees and exceptional costs of £530.53"

and accordingly they allow the whole of that sum as having been conceded by the applicants.

### **Summary Decision**

29. In summary, therefore, the Tribunal confirms that the respondent is entitled to recover 50% of the costs associated with the application which he made to the Tribunal on 17<sup>th</sup> June 2005, in accordance with the Tribunal's determination of 13<sup>th</sup> December 2005.
30. It concludes that the amount of those costs should be based upon an hourly rate attributable to the respondent's time, that rate being one which includes an allowance for normal overhead costs including secretarial work and normal office expenses. It has then concluded that the hourly rate cost so recoverable should be for 90 hours at £35.00 per hour, or a total of £3,150, to which should be added the £530.53 conceded by the applicants.
31. This produces a total cost deemed associated with the original application amounting to £3,680.53 and, in accordance with the Tribunal's determination of 14<sup>th</sup> December 2005, the respondent is entitled to recover one half of this sum, or £1,840.26, by way of service charge for the year ending 31<sup>st</sup> December 2005.



**Robert Batho (Chairman)**  
**A member of the Southern Leasehold Valuation Tribunal**  
**Appointed by the Lord Chancellor**

**Date 23rd October 2007**