RESIDENTIAL PROPERTY TRIBUNAL
SOUTHERN RENT ASSESSMENT PANEL 7
LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI45UG/LDC/2007/0022

Re: 4 Stanford Terrace, Hassocks, West Sussex, BN6 8JF ("the Premises")

Between:

Ms S.J.Lewis (4b)
("the Applicant/Tenant")

And

Sarah Cox & Chris Howe (4a)
("the First Respondents/Tenants")

And

L4ST Limited
(RTM Company)
("the Second Respondent")

And

Mr D. Golding
(TPCM Limited)
("the Third Respondent/Landlord")

In the matter of Applications under Sections 20ZA and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act")

Members of the Tribunal: Mr J.B.Tarling, MCMI Lawyer/Chairman)
Lady Davies, FRICS

Date of the Decision: 7th September 2007

THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

1. **The Tribunal declines to make an Order under Section 20ZA of the 1985 Act for dispensation with the consultation provisions of Section 20 of that Act.**
2. **The Tribunal grants an Order under Section 20C of the 1985 Act that all or any of the costs that may have been incurred by the Landlord in connection with these proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenant.**

REASONS FOR THE TRIBUNAL'S DECISION

Background to the Application

1. By an Application dated 18th August 2007 the Applicant applied to the Tribunal for an Order under Section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation with the consultation requirements of Section 20 of the 1985 Act regarding the cost of certain repairs to an external wooden staircase at the rear of the property. In Box 11 of the Application Form the Applicant said that the Application was urgent as "the external stairway is collapsing and it is the only access/escape route from the first and second floor of the Building".
2. In view of the apparent urgency and possible risk to the health and safety of the occupiers the Tribunal exercised its powers under Regulation 14 (4) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 and gave Notice to the parties that it proposed to hold a Hearing of the Application on a date less than 21 days from the date of the Notice. Directions were given providing for the parties to prepare certain bundles of documents and for an Inspection to take place prior to the Hearing.

Inspection

3. The Tribunal inspected the property on 3rd September 2007 in the presence of Mr M Porterfield one of the Lessees of Flat 4b. No-one from the Landlord attended the Inspection. The property is a large victorian Building on the corner of Stanford Terrace and Stanford Avenue, Hassocks adjacent to the Hassocks Railway Station. There is a shop on part of the ground floor on the frontage to Stanford Terrace. There is one self-contained residential flat on the Ground Floor which has an access from a door at the rear of the property. At the rear of the property is a concrete yard and there is a wooden stairway leading to the First Floor Flat and Second Floor Flat. There appeared to be no access to the First Floor Flat and Second Floor Flat from within the Building, so the stairway was the only access to these two flats.
4. The Tribunal's Directions had required the Applicant to provide further documents at the Inspection. The Applicant had produced a further bundle of documents that had not been provided with the Application. Copies of further bundles of these documents were also available for the respondents, although none of them attended the Inspection. The bundles of documents included a quotation dated 8th October 2006 from Ben Duggan-Palmer who describes himself as a "carpentry and wooden window specialist". That document included a "specification" of work which had been costed at £2,960 plus VAT. Also included in the Bundle of documents was a second hand-written quotation from C.B.C. Fencing (Decking and Sheds) undated which gave a short description of the proposed works at a price of £2,750.
5. The Tribunal read through the specification of work in the Ben Duggan-Palmer quotation and inspected the stairway and decking in conjunction

with the specification. It was clear that some repair work was required and there were signs of rot in a number of parts of the structure. In particular rot was seen in the handrail on the stairs to the first floor, in the top newel post, and in the supports to the decking on the first floor. On the stairway to the second floor the floor support to the decking on the top landing was rotten. There was movement in the decking in various places and the handrails surrounding the first floor decking was also loose. In parts, the decking was not supported as the supports had rotted away. However the stairs themselves seemed solid and certainly the supports at the bottom of the stairway to the first floor were solid.

6. Following the Inspection a Hearing took place at Burgess Hill which was attended by Ms S.J.Lewis and Mr M. Porterfield the Lessees of the first floor flat. Neither of the other Lessees of the other two Flats attended the Hearing and no-one from the Landlord nor the Managing Agents attended.

Hearing

7. Ms S.J.Lewis, the Applicant addressed the Hearing and explained the reasons for the Application. In answer to some questions from the Tribunal, she explained that all three Lessees agreed with the proposed works. She handed the Tribunal a letter from the Lessees of the Second Floor Flat, Sarah Cox and Chris Howe supporting the Application. The Lessee of the Ground Floor Flat, Judy Martin, did not attend the Hearing. The Tribunal reminded the Applicant that in its Directions it had made it clear that if the Respondents wished to consent to the Application they should either attend the Hearing or give their written consent. Judy Martin had done neither. The Applicant also confirmed that the Ground Floor Flat was on the market for sale.

8. The Tribunal pointed out that the Landlord's Managing Agents had already served a Section 20 Notice in September 2006 and that gave Notice of Intention to carry out works to the rear staircase. Ms Lewis said she had never received the Section 20 Notice. She said she had received the letter dated 15th September 2006, but the Notice was not enclosed with the letter. When asked why she had not contacted the Managing Agents and asked for another copy, she said she had not done so. When asked how a copy of the Notice had been included in the Bundle when she said she had not received it, she said she had obtained a copy from another Lessee.

9. In the Bundle of documents was a report from the Landlord's Building Surveyor Douglas A.H. Barley F.F.B A.B. Eng, A.C.I.O.B. dated 19th July 2006. This confirmed that repairs were needed to the stairway and that he had considered whether or not the staircase was a fire hazard. It also said "I will contact the fire prevention officer in this respect". When asked if anyone from the fire prevention department had called to inspect the staircase, Ms Lewis said she was unaware if any such inspection had taken place. She said someone from the Local Authority had called to inspect but that had been with regard to some sewage problems. When asked if she had referred the stairway to the representative from the Local Authority, she said he did not seem interested in the stairway. She confirmed that he had been shown the stairway but he did nothing about it.

10. In answer to a question from the Tribunal, Ms Lewis said that she had taken advice and had enquired about the possibility of taking the Landlord

to the County Court to get an order for him to carry out the repairs. When asked by the Tribunal how much that would have cost, she replied that an estimate of legal costs had been about £1,000.

11. Ms Lewis said that her Application was not intended to be for a "financial decision". When asked what she meant, she said that the Lessees of the First Floor and Second Floor Flats were going to have to do the work and pay for it anyway as they considered the existing condition of the stairway to be dangerous. When it was pointed out to her that the Lease of the Ground floor flat provided for the Lessees of the Ground Floor to contribute one third of the cost of the repairs, she said that the Lessee of the Ground Floor Flat had agreed to the works.

12. In respect of the Application under Section 20C of the 1985 Act, there had previously been other LVT proceedings in respect of a Service Charge Application and the Applicant felt vulnerable to the Landlord charging legal costs to the service charge account. Although the Landlord had apparently not participated in the proceedings, the Applicant thought there was a risk that the Landlord could claim that he had taken legal advice and decided to put a Bill through the service charge account.

13. The Applicant was reminded that the Right to Manage Company, L4ST Limited, of which she was a Director, would take over the right to manage on 27th October 2007. The Applicant appeared to be confused about the suggested sale of the Freehold reversion. She appeared to think there was some requirement of the RTM Company to buy the Freehold. Whilst the Tribunal was unable to give any advice on the matter, it pointed out that there was nothing in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which required the RTM Company to purchase the Freehold reversion. The Applicant was advised to take legal advice if she was in any way uncertain as to the powers of a RTM Company.

The Tribunal's Consideration

14. Following the conclusion of the Hearing the Tribunal retired to consider its decision. This was a rather unusual case. The Applicant was one of the Lessees. Normally Applications under Section 20ZA of the 1985 Act are made by the Landlord. However there appeared to be nothing in the legislation to prevent an Application being made by a Lessee. The Landlord had been named as a Respondent in the Application and notice of the proceedings had been given to him through his Managing Agents. The Landlord had chosen not to participate in the proceedings.

15. The matter was further complicated by the fact that a RTM Company had made a claim for right to manage and no Counter-Notice had been served within the time specified in the Claim Notice. This meant that the RTM Company would be taking over the right to manage on 27th October 2007. When this happened the RTM Company would stand in the shoes of the Landlord and would be responsible for the performance of all the Landlord's obligation to repair, insure, collect service charges etc. This would mean that the RTM Company could serve another Section 20 Notice if it wished. It also meant it could endeavour to agree matters with the Lessees of all the flats in the Building.

16. What concerned the Tribunal most was the position of the Lessee of the Ground Floor Flat. She had been given notice of the proceedings and had chosen not to apply to be joined as a party, nor attend the Hearing, nor participate in the proceedings. Whilst the Tribunal noted that the Applicant had told the Tribunal that the Lessee of the Ground Floor flat had apparently agreed with the proposed works, this had not been confirmed in writing as suggested by the Tribunal's Directions. There was also evidence to say that the ownership of the Lease of the Ground Floor Flat was about to change hands. It was not known if the liability to pay towards the costs of the repairs was to be that of the existing Lessee, or her Purchaser. It was possible that the Purchaser might object to making payment. This was quite possible as the Lessee of the Ground Floor Flat did not need to use the stairway to the first floor or the second floor, and even though the Lease provided for such legal liability to contribute towards the costs of repair, the Tribunal could understand if such an objection was made.

17. The Tribunal was unhappy with the evidence of the Applicant in a number of respects. On the one hand there was evidence of considerable hostility between the Applicant and the Landlords Managing Agents in the correspondence and the previous LVT proceedings. On the other hand the Applicant failed to convince the Tribunal that she had not received the Section 20 Notice that was said to have been enclosed with the letter she had received. The Tribunal were surprised that she had failed to follow up the alleged omission to enclose the Section20 Notice, considering the correspondence she had written to the Managing Agents in the past.

18. There appeared to have been other options that had been open to the Applicant. She could have made an Application to the County Court for an order that the Landlord performs his repairing covenants. The Applicants reply to questions from the Tribunal were not convincing. Even if the costs of going to the County Court had been in the region of £1,000, this was likely to have been divided between two if not three of the Leseees. In proportion to the seriousness of the failure to repair which the Applicant claims was urgent, it is surprising that such action had not been taken.

19. The Applicant had agreed that the RTM Company, of which she is a Director, will acquire the right to manage on 27th October 2007. On that date the RTM Company will be able to carry out the repairs either before or after it serves another section 20 Notice on the Three Lessees. It occurs to the Tribunal that if all Three Lessees agree to the extent of the works and the cost of it, then there seems to be little point in going to the time, trouble and expense of such consultation. If, however one or more of the Lessees does not agree, or changes their minds, then a Section 20 Notice will presumably become necessary.

20. The Tribunal is concerned to do nothing to enfringe the rights of the Lessee of the Ground Floor Flat regarding the dispensation of her statutory rights as to consultation. This is particularly so where it appears that the person who may be asked to contribute, may not be the current Lessee, but a Purchaser of the Lease of that flat. The Tribunal reviewed its powers under Section 20ZA of the 1985 Act and this provided that the Tribunal "may make the determination *to dispense with the consultation*

requirements if satisfied that it is reasonable to dispense with the *consultation* requirements."

21. The Tribunal had a number of concerns about the present case. The Application had not been brought by the Landlord, but by one of the Lessees. The evidence produced regarding the consent of the Lessee of the Ground Floor Flat was insufficient to convince the Tribunal that it was reasonable to dispense with the consultation requirements. So far as the repair works were concerned, the Applicant had indicated that she and the Lessees of the Second Floor flat would be undertaking the works at their expense anyway. This may indicate some doubt as to the consent and agreement of the Lessee of the Ground Floor Flat.

22. For the above reasons the Tribunal felt unhappy about granting dispensation. The stairway appeared to have been in the current state of disrepair for over a year. An inspection by a representative from the Local authority had failed to result in the service of any Statutory Repair Notice or other similar statutory requirement. The Applicant said she was going to repair it anyway. The RTM Company would be taking over the Landlords responsibility for repairs in a few weeks anyway when it took over the right to manage. In all the circumstances the Tribunal hereby declines to make an Order under Section 20ZA of the 1985 Act to dispense with the consultation requirements of Section 20 of the 1985 Act.

Section 20C Application

23. The Tribunal had listened to the fears of the Applicant regarding the possibility of the Landlord raising an Invoice for legal costs of advice regarding the current proceedings. On balance, although this might at first sight seem unlikely, in view of the hostility between the Applicant and the Landlord's Managing Agents the Tribunal did consider that this was a risk which the Applicant should not have to take. This was particularly relevant as there was evidence that the current Landlord may be selling the Freehold reversion and the matter of service charges may become an issue as between Vendor and Purchaser of the Freehold. For that reason the Tribunal hereby makes an Order under Section 20C of the 1985 Act that all or any costs incurred by the Landlord in connection with these proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

Dated this 7th day of September 2007

J.B.Tarling

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J.B.Tarling, MCMI (Lawyer/Chairman)