



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)**

Commonhold and Leasehold Reform Act 2002 section 168

Property: Flat A, 965 Finchley Road, London NW11 7PE
Applicant: G & O Investments Ltd
Respondents: (1) Mr Y Mizrahi; (2) Mr V I Walkinshawe-Browne

Tribunal Members:
Mr Adrian Jack (Chairman)
Mr D D Banfield FRICS
Mrs Clark

Ref: LON/00A/C/LBC/2007/0049

1. This is an application by the landlord under section 168 of the Commonhold and Leasehold Reform Act 2002 for a declaration of breaches of the terms of the lease of the property dated 7th September 1993.

Hearing

2. The Applicant appeared by Dr Prand of counsel. Mr Adnan, the managing agent, was in attendance. The First Respondent appeared by Ms Barton of counsel, instructed by Mr Flavel, who was also present. The First Respondent was also at the hearing. The Second Respondent appeared by Mr Fottorusso, his solicitor. The Second Respondent did not attend because he was in Spain.
3. After discussions with the Tribunal the parties agreed terms, which we recite below.

Terms of settlement

4. It is recorded between the Applicant and the Second Respondent that:
 - a. The Second Respondent at the time of sale to the First Respondent was informed by the Applicant that the sum of £20,903.26 representing service charges was due and owing.
 - b. As a result the Second Respondent agreed to a retention being made by the First Respondent in that sum to enable him to settle such matters.

- c. At this time the solicitors acting for the Second Respondent agreed a rider to the sale contract undertaking to discharge the service charge arrears of £20,903.26. In addition a solicitor's undertaking in writing was also given by the Second Respondent's solicitors to discharge the arrears.
 - d. At completion it was suggested that the seller's solicitors be discharge from the undertaking and that the buyer make a retention in the sum of £20,903.26 and that they would then deal directly with the landlords or their agents.
 - e. It is the Second Respondent's submission that this was agreed between the solicitors then action for both the Respondents.
5. It was agreed by the parties that:
- a. The Second Respondent would serve a notice of assignment in compliance with clause 4(21)(a) of the lease and enter into a deed of covenant by 21st January 2008 at 4 pm;
 - b. The Second Respondent would procure that the First Respondent entered into a deed of covenant in compliance with clause 4(21)(d) of the lease; and
 - c. The First Respondent would serve a notice of assignment in compliance with clause 4(21)(a) of the lease and enter into a deed of covenant by 21st February 2008 at 4 pm.

DETERMINATION

Upon the parties agreeing terms, the Tribunal makes no determination on the Applicant's application.



Adrian Jack, chairman

17th December 2007

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985, AS AMENDED**

SECTIONS 27A AND 20C

REFERENCE: LON/OOAC/LSC/2007/0344

Properties: Flats 2,6,7,8 and 10 St Anns Court, Sunningfields Road,
London, NW4 4QY

Applicant: Timberhill Properties Ltd.

Respondents: Mrs L Amran (Flats 2 and 6)
Ms M Kazemi-Ghavimi (Flat 7)
Mr S Mostafavi (Flat 8)
Mr C Taylour (Flat 10)

Appearances: Mr S Horns, Solicitor, Legal Department, Ringleys.
Mr A Dutta BEng, ACGI,CEng,MICE, Head of Projects and
Building Engineering, Ringleys
Mr A Kelleher MRICS MIRPM, Group Property Director,
Ringleys

For the Applicant

**Mrs L Amran,
Ms M Kazemi-Ghavimi
Mr S Mostafavi
Mr C Taylour**

For the Respondents

Date of hearing: 7 December 2007

Date of the Tribunal's Decision: 17 December 2007

Members of the Tribunal: Mrs J S L Goulden JP
Mr J C Avery BSc FRICS
Mrs J Clark JP

REFERENCE: LON/OOAC/LSC/2007/0344

PROPERTY: FLATS 2,6,7,8 and 10 ST ANN'S COURT, SUNNINGFIELDS ROAD, HENDON, LONDON NW4 4QY

Background

1. The Tribunal was dealing with the following applications, which had been transferred from Barnet County Court by an Order of District Judge Gerlis dated 27 August 2007:-

(a) an application under S 27A of the Landlord and Tenant Act 1985, as amended ("the Act") for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable and
- (e) the manner in which it is payable

(b) an application under S20C of the Act to limit landlord's costs of proceedings before the Tribunal. This application was made by the Respondents at the hearing on 7 December 2007.

(c) an application for reimbursement of fees by the Respondents to the Applicant. This application was made on behalf of the Applicant at the hearing on 7 December 2007.

2. The issue in dispute related to proposed major works to be carried out to St Ann's Court, Sunningfields Road, Hendon, NW4 4QY ("the property") in respect of which an estimated cost had been assessed and estimated contributions demanded from the tenants.

3. The Applicant is Timberhill Properties Ltd. and the Respondents are Mrs L Amram (Flats 2 and 6), Ms M Kazemi-Ghavimi (Flat 7), Mr S Mostafavi (Flat 8) and Mr C Taylaur (Flat 10). The tenants of Flats 2,6, 8 and 10 at the property were joined as Applicants by the Leasehold Valuation Tribunal (" the Tribunal") on 24 October 2007 following a transfer from Willesden County Court by an Order of District Judge Cohen dated 16 October 2007..

4. The property was described as two blocks comprising ten flats in each block. There were four flats on the ground floor of each block, two flats on each of the first and second floors and two penthouses on the top floor.

5. The Tribunal was provided with a copy of the lease of Flat 7 at the property which was dated 28 June 1993 and made between the Applicant (1) and Amy Chung Man Ha (2). This lease was for a term of 99 years from 25 March 1993 at the rents and subject to the terms and conditions therein contained.

Hearing

6. The hearing took place on Friday 7 December 2007.

7. The Applicant was represented by Mr S Horne, Solicitor, Mr A Dutta, Head of Projects and Building Engineering and Mr A Kelleher, Group Property Director, all of Ringley, Chartered Surveyors, the Applicant's managing agents. The Respondents appeared in person.

8. Having discussed the issues with the parties at length, the Tribunal granted a number of adjournments in order that the parties could discuss the issues between themselves.

9. As a result of those discussions, it became clear that the Respondents wished to make complaint as to the major works which had been carried out by the Applicant in 2005. The Tribunal explained that its remit flowed from the county court and if they wished to raise issues in respect of past works, this would have to be by way of a fresh application to the Tribunal. After some consideration, the Respondents said that they did not wish to lodge such an application at this stage. The Respondents also raised the issue of their wish to form a Right to Manage company in order that they could manage the property themselves. Again, the Tribunal advised that this was not a matter before the Tribunal.

10. After discussion with the representatives from the Applicant, it also became clear that the Applicant had not complied with full consultation requirements under S20 in respect of the proposed new works, and indeed the application to the county court against the Respondents for non payment of service charges had been lodged before any consultation had been embarked on. Mr Horne, who had recently taken over this case from a colleague who had left the firm, accepted that if the Applicant proceeded with its case, the failure to comply with full consultation requirements would mean, unless such requirements were dispensed with under S20ZA by the Tribunal, that any payments by the tenants would be capped at £250 per flat. Initially, Mr Horne requested an adjournment (in order that compliance with S20 consultation could take place) but this was opposed by the Respondents. After further discussion with Mr Dutta and Mr Kelleher, Mr Horne formally withdrew the present application under S27A.

11. The issues which remained outstanding were in respect of the S20C costs (which Mr Horne estimated at £1,800 plus VAT) and reimbursement of fees. The parties were invited to send any written representations on these issues within seven days and Mr Horne was asked for a breakdown of estimated costs.

Limitation of landlords' costs of proceedings

12. In written representations dated 10 December 2007, it was stated on behalf of the Applicant, inter alia *"the Respondents refused to pay service charge demanded by the Applicant not because the works of repair, whose cost made up most of the demand, were unnecessary but because they claimed that repairs undertaken in 2005, for which they had paid, had been incompetently executed and that if they had been competently*

executed the repairs now planned would have not been necessary". Since the Tribunal had declined to consider the quality of the 2005 repairs, but only the repairs presently proposed "it follows these proceedings were the product of a procedural misconception on the part of the Respondents and the Applicant should not be obliged to bear their cost". No breakdown of the suggested £1,800 plus VAT as requested (see paragraph 11) was produced.

13. In written representations dated 10 December 2007, it was stated by the Respondents, inter alia, that the Applicant had been aware before the hearing on 7 December that there had been non compliance with the S20 Notice and therefore the Respondents should not have been required to attend the Tribunal hearing and *"Ringley, who are a firm of Chartered Surveyors together with their legal representative should have been more efficient than to have brought this matter before the Tribunal without following correct procedures. This wasted an entire day for all Defendants".* The Respondents complained that all those who attended the Tribunal had lost a day's holiday entitlement and had taken responsibility for all their own costs.

14. The relevant clauses in the lease of Flat 7 (the only lease which was provided to the Tribunal) are 7 and 8 under Part II the Fourth Schedule (which relate to expenses incurred by the landlord to be reimbursed by the maintenance contribution) and state that the tenant must pay a contribution to, inter alia:

"7. all legal and other costs incurred by the lessor(a) in the running and management of the building"

" 8. all costs incurred by the lessor (not hereinbefore specifically referred to) relating or incidental to the general administration and management of the lessor's property....."

15. In the view of the Tribunal these clauses are wide enough to permit the landlord's costs of proceedings to be placed to the service charge account. The question for the Tribunal is whether it is reasonable to do so, this being discretionary

16. S20C of the Act states:-

"(1) a tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made;

(a) in the case of court proceedings, to the court before the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (c) in the case of proceedings before the Lands Tribunal, to the tribunal.
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

17. In the judgement of His Honour Judge Rich in a Lands Tribunal Decision dated 5 March 2001 (**The Tenants of Langford Court v Doren**), it was stated, inter alia, *"where, as in the case of the LVT, there is no power to award costs, there is no automatic expectation of an order under Section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct. In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under Section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that makes its use unjust"*.

18. Under new legislation, there is now a limited power for the Tribunal to order costs, but Judge Rich's comments are still valid.

19. In accordance with Section 20C(3), the applicable principle is to be the consideration of what is just and equitable in the circumstances. Of course, excessive costs unreasonably incurred would not be recoverable by the landlord in any event (because of Section 19 of the 1985 Act) so the Section 20C power should be used only to avoid the unjust payment of otherwise recoverable costs.

20. The Tribunal considers that the Applicant's case was ill founded, resulting in the withdrawal of their application.

21. The Tribunal determines that it is just and equitable that the costs incurred by the Applicant in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

Reimbursement of fees

22. The fees under this head amounted to £150 hearing fee. The Tribunal has no jurisdiction in respect of matters at the county court. The arguments from both sides were similar to those in respect of the application under S20C.

23. In accordance with paragraph 5 of Directions issued by the Leasehold Valuation Tribunal on 27 September 2007, the Tribunal considered whether to exercise its discretion

under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

24. The Tribunal acknowledges that both sides have incurred costs which are irrecoverable, the Tribunal having no power to order costs, save in a limited manner in respect of penal costs (if considered appropriate). It is felt that, in the particular circumstances of this case, to make an order for the Respondents to reimburse any part of the hearing fees where an Applicant has withdrawn its application would be wholly unjust.

25. The Tribunal does not intend to exercise its discretion under this head and declines to make an order for reimbursement by the Respondents to the Applicants of the hearing fees.

CHAIRMAN..........

DATE.....17 December 2007.....