

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL
Of the
NORTHERN RENT ASSESSMENT PANEL****COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SCHEDULE 11**

Dwelling: 83, Lynwood Avenue, Accrington, Lancashire BB5 5RS

Applicant: Mr D S and Mrs K E Astley

Respondent: Merebank Limited

The Tribunal: Chairman: John R Rimmer
Valuer Member: James W Shaw
Lay Member: Carole Roberts

Date of Determination: 19th December 2006

1. Application.

- a. The Applicants apply under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for the determination of an administration charge relating to 83, Lynwood Avenue, Accrington (the "Dwelling") proposed by Arcphase Limited, the immediate predecessors in title to Merebank Limited (the Respondents).

2. Hearing

- a. On the 19th May 2006 a Vice-President gave Directions requiring the applicants and the landlord to present their evidence, documents and submissions.
- b. The Directions were augmented on 18 September 2006 by a further direction made by the Vice-President that the proceedings and original directions be served also upon Merebank Limited as the new freeholder.
- c. Written submissions were received in due course from the Applicants' solicitor and the Respondent.
- d. The parties did not agree to the determination of the application without a hearing.
- e. The Tribunal convened on the 19th December 2006 to inspect the Dwelling and thereafter conduct a hearing into the matter which was attended by the applicants' solicitor, Mr Slattery.

3. The Law

1. Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides that:-

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

- (3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither -
 - (a) Specified in his lease, nor
 - (b) Calculated in accordance with a formula specified in his lease.

Paragraph 2 provides that:-

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that:-

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.

4. Facts

a. The Applicants presently hold the leasehold interest in the Dwelling created by an underlease for 999 years, less 10 days, from 31st December 1968 and dated 26th March 1971 and made between Stopford Construction (Manchester) Limited (1) Janos Cheyte and Brenda Cheyte (2). (Current Land Registry registers suggest that there is no longer any intervening interest and the Applicants are the direct tenants of the freehold landlord).

b. Paragraph 2 of the lease provides the tenant's covenants under the lease and at sub-paragraph 2(h).

Not to make any structural alteration to the said dwellinghouse without first obtaining the written consent of the lessor's surveyor and the superior landlord or its surveyor.

c. In or about 1981 the predecessors in title to the Applicants constructed an extension to the dwelling to increase the size of the lounge/dining room for

which they did not seek or receive the consents required by paragraph 2(h) of the lease.

- d Correspondence between the parties followed the Applicants' request for retrospective approval of the said extension which they forwarded to Arcphase Limited who had acquired their interest in 1988. On 29 January 2005 Arcphase Limited responded

" we are prepared to grant retrospective Consent for the rear extension erected at the above property on receipt of £995.00"

Further correspondence from Arcphase Limited increased the amount to £1,495.00 from 31 May 2005 as the original offer had not been accepted by the Applicants by that date.

- e The Applicants made their application on the appropriate form dated 26th April 2006 under Schedule 11 Commonhold and Leasehold Reform Act 2002 to determine that such an administration charge is only recoverable to the extent that it is reasonable.
- f Arcphase Limited disposed of their interest as landlord to Merebank Limited on 9th May 2006.

- g The Respondent limited its substantive submissions to a letter dated 4 December 2006 contending that the fee requested by their predecessors is not an administration charge but a fee for retrospective consent to remedy a breach of covenant in the lease and reasonableness is only an issue for requests for consents made prior to the commencement of works and not retrospectively.

- h Mr Slattery, who attended the hearing on behalf of the applicants made a number of points to the Tribunal, in addition to outlining the history of the matter as follows:

No plans, specifications, measurements or photographs were requested in Order to give consideration to the application for retrospective consent, suggesting no professional consideration was being given to the application

The increase in the amount requested from £995 to £1495 from 31 May 2005 appeared to be entirely arbitrary.

The sale of the freehold to 83, Lynwood Avenue on 9th May 2006 appeared to be the only one affecting the estate of which it formed a part leaving 33 other freeholds in the hands of Arcphase Limited

£50 is a reasonable fee for a consent that is merely a paper exercise by the Landlord.

The Tribunal should, in the circumstances of this case consider the reimbursement of fees paid, and costs incurred, by the Applicants under paragraphs 9 and 10 of Schedule 12 Commonhold and Leasehold Reform Act 2002, making particular reference to paragraph 10(1)

"a leasehold valuation tribunal may determine that a party to proceedings shall pay the costs of another party...in any circumstances falling within sub-paragraph (2)"

and sub-paragraph (2)(b) refers to

“(that party) has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings”.

5. Tribunal's Conclusions and Reasons

- a The Tribunal considered the provisions of the lease, both in sub-paragraph 2(h) and generally and found no provision at all allowing for a charge to be made for the granting of consent for the extension . Nevertheless it is clear that work will be involved in the granting of such consent and indeed Section 19 Landlord and Tenant Act 1927 provides for a reasonable fee for such work to be recoverable
- b The Tribunal was persuaded by the argument presented on behalf of the Applicants that the manner in which both Arcphase Limited and Merebank limited had approached the issue of the consent that it was merely a paper exercise and indeed a fee of £50 is reasonable therefor.
- c Taking into account the manner in which the Applicants request for consent was considered, the extent of the fee requested, the arbitrary increase therein and thereafter the way in which the proceedings before the Tribunal have been dealt with, making particular reference to what appears to be the sale of a single freehold ground rent out of a large estate immediately upon the making of the application by the applicants, the Tribunal is satisfied that both Arcphase Limited and Merebank Limited have acted unreasonably in this matter and the costs of the Applicants and their solicitors, to include all disbursements and VAT and assessed in the sum of £200.00 be paid by the Respondents to the Applicants.
- d Similarly it is appropriate that the Applicants recover the fees paid in respect of the application from the Respondent.

Order

- 1) The administration charge relating to the Applicant's request for retrospective consent for the rear extension to the dwelling shall be £50.
- 2) The Applicants do recover the application fee of £100 from the respondent.
- 3) The Applicants do recover costs, disbursements and VAT, assessed in the sum of £200.00 from the Respondent pursuant to Schedule 12, paragraph 10, Commonhold and Leasehold Reform Act 2002.

Date

22nd Jan 2007

Signed



Chairman: J R RIMMER.