RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/00HN/LSC/2007/0029 & 0041

Property	:	Flats 1, 2 & 6, Chesterfield Court, 69 Manor Road, Bournemouth, Dorset BH1 3HN
Application	:	For determination of liability to pay service charges for the years 2006–07 & 2007–08 [LTA 1985, s.27A]
Applicant	:	Chesterfield Court (Management) Ltd, r/o The George Business Centre, Christchurch Road, New Milton, Hants BH25 6QJ
Respondents	1	Mrs Hannah Ludmir, of 24 Overlea Road, London E5 9BG (Flat 1)
	2	Abraham Benjamin Ludmir, of 24 Overlea Road, London E5 9BG (Flat 2)
	3	Royal Crest International Ltd, r/o New Burlington House, 1075 Finchley Road, London NW11 0PU, c/o 24 Overlea Road, E5 9BG (Flat 6)

DECISION

Handed down : 13th September 2007

Tribunal	:	G K Sinclair, Mrs S Redmond BSc (Econ) MRICS, P A Tunley
Hearing	:	Wednesday 12th September 2007, at Carrington House Hotel, Knyveton Road, Bournemouth
Attending	:	**For Applicant** A J Mellery-Pratt FRICS, managing agent, of Rebbeck Brothers Mr Tuchband, Chairman of the Applicant company (Flat 4) Mr R Hands, Secretary of the Applicant company (Flat 8) **For Respondents** No appearance

Preliminary matters

1. This hearing concerned applications for recovery of unpaid service charges involving three leasehold flats. The applications had initially been issued in the County Court and, upon the Defendants each filing a similar Defence denying the claim and asserting that the works are unnecessary and overpriced, were transferred by it to the Leasehold Valuation Tribunal in two batches, and hence given two separate application numbers. These the tribunal had directed should be heard together. In fact there is a fourth flat in this small group, the registered proprietors of which are all connected with an address at 24 Overlea Road, London E5 9BG. A County Court claim had also been issued against Deebank Ltd to recover moneys owed by it in respect of flat 3, but Mr Mellery-Pratt produced to the tribunal a letter from High Court Enforcement dated 23rd January 2007 confirming that a writ of *fi fa* had been lodged with it that day. This implies that the claim against Deebank Ltd avoided transfer to the tribunal and that judgment has been entered and is in the (slow) process of enforcement by execution against the goods and chattels of that company.

2. In respect of the owners of the three flats who are Respondents to these applications a direction was made on 2nd July 2007 that by close of business on Friday 3rd August 2007 they :
   a. confirm whether they are correctly named as Respondents and liable to pay service charges in respect of the flats in question
   b. if so, file with the Tribunal and serve on any other parties a short *Statement in Reply* to the Application and the particulars above, identifying those matters which are in dispute and setting out the facts relied upon to support their respective cases. This document will be regarded as that Respondent's case, or the joint case of all three Respondents (if applicable).

   Further directions were given regarding disclosure of documents and the filing of witness statements, the failure to comply with which could mean that the tribunal would refuse to consider any produced at the last minute.

3. None of the Respondents has complied with any of the above directions. They have not sought to advance any positive case or to justify their refusal to pay.

4. Upon issuing the above directions on 2nd July 2007 the tribunal's case officer asked that the parties please notify him of any dates of unavailability between 3rd and 14th September inclusive. They were asked to reply within 7 days, failing which it would be assumed that all dates were suitable. On 13th July, no response having been received from any of the Respondents, the case officer wrote to confirm that a hearing date had been fixed for Thursday 13th September 2007. Ten days later, on 23rd July, Mr A B Ludmir wrote :

   > We would like to bring to your attention that the date set for this tribunal for the above property is on the date of one of our high holidays – Rosh Hashanah a religious day for us **and we have a few more set in the dates around then**.
   >
   > Please would it be possible to re-consider the date set.
   >
   > *[tribunal's emphasis added]*

5. The tribunal consider that the words emphasised above are singularly unhelpful when

seeking re-consideration of the hearing date. Mr Ludmir could have been more specific. Diaries and calendars ordinarily available make no reference to Rosh Hashanah or any other such religious holidays, but upon consulting an Israeli calendar the tribunal learnt that in that country Thursday 13th September was indeed a public holiday but that the day before, Wednesday, was not. On 25th July the case officer wrote to each of the parties to inform them of the re-scheduling of the hearing to Wednesday 12th September.

6. Twelve days later, on 6th August 2007, Mr Ludmir wrote again, enclosing an extract from a Jewish calendar outlining all the Jewish holidays in September and asking for the hearing to be set at a later date. By 3rd August Mr Ludmir, and the other Respondents, should have complied with the direction quoted in paragraph 2 above. He had declined to put forward any positive case in response to the application. In his letters he had not sought to mention or explain this omission, or to ask for extra time in which to comply. Just how then did he propose to participate in any hearing? By letter dated 13th August 2007 this request was refused. Between then and the hearing date no attempt was made by Mr Ludmir, or by any other Respondent, to file and serve a Statement in Reply to the applications.

7. Twenty-five days later, on Friday 7th September 2007, the firm of Bude Nathan Iwanier, solicitors purportedly acting for the Respondents, again requested an adjournment. By regulation 15(2) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 it is provided that :

> Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –
>
> (a) the grounds for the request;
>
> (b) the time at which the request is made; and
>
> (c) the convenience of the other parties

8. Taking into account that :

a. The Respondents had yet to advance any positive case

b. They were in breach of every relevant direction requiring action from them

c. The request was made only days before the hearing

d. The Applicants had prepared for the hearing and objected strongly to what they regarded as a last-minute, time-wasting request for an adjournment

the tribunal again refused the request.

9. By a further letter dated and faxed on Tuesday 11th September the firm of Bude Nathan Iwanier again complained :

> Whilst we note our client may not have complied with previous Directions, if our client is unable to attend for religious reasons and has asked you for the adjournment as early as 6 August 2007, our client feels that he is being discriminated against and this matter is so serious that we would be grateful if the President of the Eastern Rent Assessment Panel would refer this matter immediately to the Department for Communities and Local Government.

Despite the grudging admission that the directions had not been complied with, no explanation or expression of regret was offered, and the firm simply ignored the question of how in these circumstances the Respondents could or would be allowed to participate

in the hearing in any meaningful way. The hearing therefore proceeded without them.

Issues for determination

10. The Applicant seeks the tribunal's determination :
    a. That in respect of major works undertaken or to be undertaken it has properly complied with the statutory consultation procedure
    b. That insofar as the regular quarterly service charge demands and the demand in respect of the exterior painting contract are concerned the amounts sought are reasonable and are payable by the Respondents.

The service charge provisions

11. The service charge provisions governing this building are unnecessarily complex. From the documents disclosed and explanations given at the hearing the position would appear to be this. The building was developed in about 1950–51 and was let by Sir George Meyrick on a headlease dated 22nd November 1951 to Star Properties (Bournemouth) Ltd for a term of 99 years from the 29th September 1951 at the rent and subject to the covenants and conditions therein contained. No copy of this lease has been seen by the tribunal or by the Applicant company and its managing agents.

12. Underleases of individual flats were then granted by Star Properties (Bournemouth) Ltd. That produced to the tribunal concerns flat 2, the current lessee of which is Mr Ludmir, and is dated 15th June 1959. It is expressed to be for a term of 92 years (less the last ten days thereof) from 29th September 1958; ie it was intended to expire 10 days before the head or superior lease.

13. By clause 2 of the underlease the lessee thereby covenants to observe and perform the obligations on his part set out in the Sixth Schedule. These include payment of the rent of one peppercorn (if demanded) but make no mention of any service charges. By clause 3 the lessee further covenants with the lessor to observe and perform the covenants on the part of the lessor and the conditions contained in the head lease so far as the same affect the premises demised. What these covenants and conditions may be is not known.

14. In 1965 the current Applicant company was formed by the then lessees of the flats and it acquired the head lease from Star Properties. A draft deed was produced to the tribunal. Apart from the year 1965 it is undated, and the Schedule (in which the flat owners joining in the deed are supposedly recorded) is blank. The deed states, wrongly, that the Applicant company had acquired the freehold reversion to the property expectant on the individual leases, but that is untrue. The purpose of the deed, however, was to clarify the liability for maintenance repair and decoration of the windows of the flats, and it contains covenants on the part of the Applicant and the individual lessees to that effect. The deed was expressed to be supplemental to the individual leases and to individual maintenance agreements. The latter have not been seen by the tribunal.

15. In 1986 the Applicant company and the individual lessees entered into a further deed, an undated and blank copy of which was produced to the tribunal. Again this was expressed to be supplemental to the individual leases with Star Properties. This time, however, the

deed set out in detail the maintenance and service responsibilities of the Applicant, in consideration for which the individual lessees would make regular payment on account on 31st March, 30th June, 30th September and 31st December in each year. Immediately following the 31st March the Applicant would then take an account which, when audited and certified, would state the balance (if any) due or refundable. Clause 1 also provides that :

(l) The Management Company shall be entitled to carry out its obligations hereunder or any one or more of them by its employees servants or by a general delegation to professional managing agents or by independent contractors with all necessary provision for remuneration of such employees servants agents and contractors.

16. For the sake of completeness it should be recorded that by agreements with nine of the ten lessees made in about December 1999 (that produced, for flat 4, being dated 16th December 1999) the Applicant company agreed that in consideration for the lessees providing their specified contribution towards the acquisition price for the freehold of the building and property known as Chesterfield Court, and the Applicant being able to acquire the freehold title from the Meyrick estate, then each contributor would be granted by it, by way of variation of the existing Star Properties underlease, a lease of 999 years from the same commencement date and at a peppercorn rent.

17. It is unfortunate that the opportunity was not then taken to provide new, modern leases incorporating within them all necessary service charge provisions instead of continuing to rely upon the 1958 underleases and 1986 maintenance agreements. However, it is open to the Applicant (if so advised) to apply to the tribunal for variation of the service charge provisions of the underleases under Part IV of the Landlord and Tenant Act 1987.

Applicable law

18. The overall amount payable for works of repair and management costs by way of service charge is governed by section 19 of the Landlord and Tenant Act 1985, which limits relevant costs :

a. only to the extent that they are reasonably incurred, and

b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

The amount payable may be determined by the tribunal under section 27A.

19. Section 20 of the Act, as amended, requires the freeholder to consult with those liable to pay prior to the carrying out of any qualifying works. The consultation requirements and definition of "qualifying works" are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003.[1]

Evidence, discussion and findings

20. The tribunal inspected the property at 10:00 on the morning of the hearing. At the time the weather was warm, dry and sunny. Escorted by Mr Mellery-Pratt, Mr Tuchband and Mr Hands, the tribunal inspected the property externally, noting the existing decorative

[1] SI 2003/1987

order of the building, the new lintel above the window to flat 4, the doors to garages 1 & 3, and the condition of the roof of the whole garage block. Internally, the tribunal noted the new lift and emergency lighting and, from inside flat 8, was able to inspect closely the external cracking around the window. It also noted, with some concern, that the lowest part of the large opening window was at knee height and was unprotected by a safety rail – a clear health and safety hazard of which the lessee, Mr Hands, was aware.

21. Mr Mellery-Pratt produced to the tribunal :
    a. A list of current lessees
    b. A schedule prepared by Mr Hands showing the income and expenditure for the years 1997–2006 and the budget for 2007
    c. Copies of service charge demands sent to the Respondents (and to Deebank Ltd) from December 2005 until June 2007
    d. Tenant account summaries showing sums demanded and paid for each of flats 1, 2, 3 and 6
    e. The section 20 consultation letters, tenders and specifications for the external decorating contract and for essential electrical repairs and emergency lighting
    f. Insurance policy schedules for 2005–06 and 2006–07
    g. Minutes of annual general meetings of the Applicant company held on 4th August 2003, 6th August 2004, 30th August 2005, and 28th July 2006
    h. Correspondence with a Mr Schreiber dated 16th August 2006 (addressed to Flat 2 Chesterfield Court) and 9th September 2006 (addressed to 24 Overlea Road, Clapton Common, London E5 9BG).

22. The tribunal was puzzled by references to "Mr Schreiber" in connection with flats 1, 2, 3 & 6. The Minutes for the AGM in 2003 refer to a Mrs Schreiber attending, whereas Mr Schreiber attended in 2004 and 2005. Mr Mellery-Pratt and the two representatives of the company present at the hearing were equally puzzled. The tribunal was told that the company has had letters and calls from "Mr Schreiber". Mr Hands has met someone calling himself Mr Schreiber, who said that his wife owned flat 1. Others have heard her referred to as Hannah, suggesting that Schreiber/Ludmir are one and the same person.

23. The tribunal heard evidence that the section 20 procedure had been followed concerning the painting etc; and it is this for which the money is being sought. Mr Mellery-Pratt said that without an assurance that funds would be in place he could not, and would not, sign a contract on the company's behalf. He agreed that there had now been a delay of nearly a year since tenders were received but, as his firm provided a lot of regular work for local contractors (which the latter bore in mind when pricing tenders), he thought that current prices should be within a reasonable margin of those quoted. Mr Hands informed the tribunal that, having demanded a redecorating levy, the company had been obliged to use part of the money already collected to fund the rewiring works, in respect of which a separate section 20 consultation had also been undertaken. The remaining cost of this would have to be recovered *ex post facto* by a supplemental levy.

24. Asked if anything was known about the Respondents' attitude to the redecorating, Mr Mellery-Pratt said that Mr Ludmir had telephoned him and he (Mr Mellery-Pratt) had called him back. Mr Ludmir told him that he did not want to proceed to the tribunal, that he wanted to settle up the moneys owed, and had only wanted to delay the redecoration

works for a year.

25. According to Mr Hands Mr Ludmir/Schreiber had spoken to his wife earlier about how drab the building was looking, and how it needed repainting. He commented that each August Mr Ludmir/Schreiber and his family come down and stay in the flat, and spend a lot of time cleaning the place up before they come – "so he appears to care".

26. The tribunal is satisfied that the Applicant company assesses its budget carefully each year, and after full discussion at annual general meetings. In 2006 the discovery of a problem with the lintel above flat 4 and the essential work required following a statutory electrical inspection necessitated a further directors' meeting in October 2006, to which all were invited in the hope of achieving a consensus on the carrying out of the work and collection of additional funds.

27. It is also satisfied that the external redecoration work is and was, at the time the section 20 process was initiated, reasonably required. This building is situate on the coast, just behind the Overcliff Road. With such exposure regular external repainting is required in order to preserve the main structure as well as enhance its appearance. The tribunal is satisfied that tenders were invited and the lowest tender was accepted. The allegation in paragraph 4 of the Defence filed by each Respondent in the County Court that "the works are unnecessary and overpriced" is rejected.

28. The tribunal therefore determines that insofar as major works are concerned the proper consultation has in each case been undertaken by the Applicant company. The tribunal has not been shown any correspondence from all or any of the Respondents commenting adversely on the proposed works or suggesting other contractors who should be invited to tender. The Respondents have not sought, in the course of the applications to this tribunal, to advance any such argument.

29. The amounts claimed by the Applicant include certain managing agents' reminder fees, solicitors' and court fees. Court fees are fixed, were legitimately incurred, and are recoverable. Solicitors tend to charge according to locally agreed scale rates and those claimed here are reasonable. Having examined the amounts claimed and questioned Mr Mellery-Pratt the tribunal is also satisfied that the fees levied by Lebbeck Brothers are a genuine pre-estimate of the expense involved and are not mere penalties. They too are recoverable.

30. The total amounts claimed are therefore payable in full by the Respondents.

31. The tribunal notes the observations attributed to Mr Ludmir. If they are correct (and, as he was not present and able to respond, the tribunal makes no such finding) then this would indeed be a most cynical attempt to hinder essential maintenance works by starving the Applicant of necessary funds.

Costs, etc

32. As the Applicant is the freeholder a consideration of section 20C of the Landlord and Tenant Act 1985 is irrelevant.

33. The Applicant invites the tribunal to order that the Respondents reimburse its application and hearing fees.[2] As these two applications were transferred from the County Court for determination of the issues no such fees were paid in addition to those already paid to the County Court upon issuing the three relevant claims. The Applicant is at liberty to submit a copy of this decision to the Clerkenwell & Shoreditch County Court for enforcement purposes, whereupon it may also seek an order for payment of its costs above and beyond the normal issue fees (already claimed and allowed by the tribunal). As claims falling within the Small Claims Track procedure this is a matter entirely for the District Judge to decide in accordance with CPR Rule 27.14(2).

34. The Applicant also seeks an order that the Respondents pay to the Applicant its costs incurred of an amount not exceeding £500 (per application) on the grounds that they "have acted frivolously, vexatiously, ...or otherwise unreasonably in connection with the proceedings."[3] Mr Mellery-Pratt informed the tribunal that his preparation time was 3 hours, with a further 2 for attendance at the hearing; a total of 5 hours at £150. His secretary had devoted 5 hours to compiling documents and copying hearing bundles, at £50 per hour. In addition, £24 had been incurred in despatching the documents to the tribunal office. The total claim is therefore £200 x 5 = £1,000 plus disbursements of £24.

35. The tribunal is satisfied that by failing to respond to the directions made in July 2007 the Respondents have declined, save for repeated requests made by Mr Ludmir alone that the hearing be adjourned, properly to participate in these proceedings. The Defences advanced in the County Court were unsubstantiated, and by the Respondents' conduct they have obliged the Applicant company – their fellow lessees – to incur the time and expense of litigation in recovering perfectly legitimate service charges. In the opinion of the leasehold valuation tribunal the Respondents have therefore acted frivolously, vexatiously, or otherwise unreasonably in connection with the proceedings.

36. In respect of application CAM/00HN/LSC/2007/0029 the Respondents Mr Ludmir and Royal Crest International Ltd shall jointly and severally be responsible for payment of the Applicant's costs limited to the sum of £500.

37. In respect of application CAM/00HN/LSC/2007/0041 the Respondent Mrs Ludmir shall be solely responsible for payment of the Applicant's costs limited to the sum of £500.

38. The total sum of £1,000 is therefore recoverable by the Applicant, but requests to the County Court for enforcement must be directed to the proper Respondents/Defendants.

Dated 13th September 2007

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

[2] Leasehold Valuation Tribunal (England)(Fees) Regulations 2003, reg 9

[3] Commonhold and Leasehold Reform Act 2002, Sch 12, para 10