

**CHI/29UC/LSC/2008/0001**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATION UNDER SECTION 27A OF THE  
LANDLORD & TENANT ACT 1985 AND SCHEDULE 11 OF  
THE COMMONHOLD & LEASEHOLD REFORM ACT 2002**

Address: Greencroft, Oxenden Square, Herne Bay, CT6  
8TN

Applicant: Miss Hickman

Respondent: Mr Purdy

Applications: 3 and 9 January 2008

Inspection: 24 April 2008

Hearing: 24 July 2008

**Appearances:**

**Landlord**

Mr Pocock Solicitor of Pockock's, Solicitors  
Mr Subtle Pockock's, Solicitors  
Mr Way Accountant  
Miss Hickman Leaseholder

For the Applicant

**Tenant**

Mr Paine Managing Agent of Circle Residential  
Management Ltd

For the Respondent

**Members of the Tribunal**

Mr I Mohabir LLB (Hons)  
Mr R Athow FRICS MRIPM

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/29UC/LSC/2008/0001**

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT  
1985**

**AND IN THE MATTER OF SCHEDULE 11 OF THE COMMONHOLD &  
LEASEHOLD REFORM ACT 2002**

**AND IN THE MATTER OF GREENCROFT, OXENDEN SQAURE, HERNE  
BAY, CT6 8TN**

**BETWEEN:**

**WENDY HICKMAN**

**Applicant**

**-and-**

**JOHN WILLIAM PURDY**

**Respondent**

---

**THE TRIBUNAL'S DECISION**

---

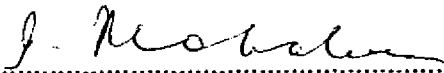
***Introduction***

1. The Applicant had made two applications in this matter. In the first application, she sought a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of her liability to pay and/or the reasonableness of various service charges arising in the 2006/07 and 2007/08 service charge years. In the second application, the Applicant sought a determination pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 of the reasonableness of administration charges claimed by the Respondent.

2. This matter was originally set down for hearing on 24 April 2008. However, the Tribunal granted an application made by the Applicant to adjourn the hearing on the basis that she had not received the Respondent's trial bundles. The adjournment would also give her the opportunity to instruct an accountant to examine the relevant service charge documentation and to seek independent legal advice regarding the anomalies in her lease and to obtain representation at the next hearing.
3. The adjourned hearing took place on 24 July 2008. On that occasion, the Applicant was represented by Mr Pocock, a solicitor. The Respondent was represented by Mr Paine, the managing agent.
4. The parties were able to reach a compromise in the terms of the consent agreement annexed to this Decision and on that basis, the Applicant withdrew both applications in this matter.
5. Mr Paine then made an application for costs against the Applicant pursuant to Schedule 12 paragraph 10(2)(b) of the Commonhold and Leasehold Reform Act 2002 on the basis that she had acted frivolously, vexatiously, abusively, is rapidly or otherwise unreasonably in connection with the proceedings. Mr Paine contended that the landlord had been put to the expense of having to prepare and attend the hearing and sought the maximum award of £500 against the Applicant. He said that he had been abroad on holiday since 16 July 2008 and had to return from his holiday to attend the hearing at considerable personal inconvenience. He submitted that if the Applicant had been better prepared, the cost of attending the hearing could have been avoided.
6. The Applicant told the Tribunal that, since the last hearing on 24 April 2008, she had instructed a firm of solicitors, Russell-Cooke, to conduct this litigation on her behalf. However, the costs they required to do so were too high. The Applicant said she then conducted a search of other firms who might undertake this litigation on her behalf and, eventually, on 13 June 2008 she instructed Mr Pocock. Unfortunately, the case papers she had provided to Russell-Cooke were not forwarded to the Applicant until 7 July 2008.

7. Mr Pocock said that he had not received the case papers until some 10 days prior to the hearing and, given their extensive nature, it had taken him some time to become familiar with them. It was for this reason he had not been in a position to withdraw the applications until the hearing. Moreover, he had also not been in a position to speak to Mr Paine about this matter because he was abroad on holiday. There was little he could do given Mr Paine's absence. Had he been able to communicate with Mr Paine, it might have been possible to negotiate further and attendance at the hearing might have been avoided. He submitted, in the circumstances, no costs should be awarded against the Applicant.
  
8. On balance, the Tribunal was satisfied that the Applicant had not deliberately acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably since the last hearing on 24 April 2008. The Tribunal accepted the explanation given by the Applicants and Mr Pocock as to her conduct since this hearing. It was clear that the Applicant had made real efforts to seek legal representation in this matter, initially, without success. The Tribunal also accepted Mr Pocock's explanation that, in practical terms, he had not been in a position to advise the Applicant about the possibility of withdrawing the applications because he had only had a period of approximately 10 days in which to consider the extensive papers in this matter. It was also clear to the Tribunal that Mr Pocock's difficulties were compounded by the absence of Mr Paine being abroad. Even if Mr Pocock had been in a position to advise the Applicant to withdraw her applications, he would not have been able to communicate that decision to Mr Paine until the day of the hearing, given his absence. Indeed, Mr Paine had returned specifically to attend the hearing. Having regard to all of these matters, the Tribunal dismissed Mr Paine's application for costs and make no award against the Applicant.

Dated the 19 day of September 2008

CHAIRMAN.....  
Mr I Mohabir LLB (Hons) 