

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE SOUTHERN RESIDENTIAL PROPERTY TRIBUNAL ON
A TRANSFER OF AN APPLICATION UNDER
SCHEDULE 12 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT
2002**

55 EMPIRE WALK, GREENHITHE, DARTFORD, DA9 9FU

Claimant: Ingress Park Greenhithe (DWH) Management Co Ltd

Defendant: Lola Sokunbi

Date of hearing: 2 December 2008

Appearances: Miss L Lanson (counsel) for the Claimant
The Defendant in person

Members of the Leasehold Valuation Tribunal:

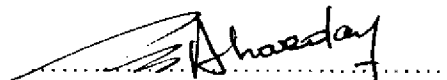
Mr M Loveday BA(Hons) MCI Arb
Mr C White FRICS

INTRODUCTION

1. This is a matter which was transferred to the Leasehold Valuation Tribunal by an order of District Judge Blunsdon sitting at Dartford County Court on 2 October 2008. On 15 October 2008, the Tribunal directed that a preliminary hearing should be held to determine whether the Tribunal had jurisdiction. At a hearing on 2 December 2008 the Claimant was represented by Miss Lanson of counsel and the Defendant appeared in person. At the end of the hearing the Tribunal gave its decision orally under paragraph 18(2) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003. It found that the Tribunal did not have jurisdiction to deal with the matter. These are the reasons for that decision.
2. The matter relates to a property at 55 Empire Walk, Greenhithe, Dartford DA9 9FU. The Defendant is the registered freehold proprietor. The Claimant is the management company for the estate on which the property is situated. A transfer dated 30 November 2004 in relation to the property was produced to the Tribunal. Paragraph 8 included an obligation for the owner of the property to pay a rentcharge to the Claimant. By claim number 8H101573 (originally issued in Hitchin County Court) on 23 April 2008, the Claimant sought payment from the Defendant of the sum of £669.08 plus fees and solicitors' costs. The claim form described these charges as "*outstanding service charge\ground rent arrears*". The Particulars of Claim described the charges as "*estate rentcharges*". It was common ground that these charges relate to above charges payable under the deed of transfer. On 5 May 2008, the Defendant filed a Defence disputing liability on various grounds including assertions that costs were not reasonably incurred. The matter was subsequently transferred to Dartford County Court. As stated above, the County Court transferred the claim to the Leasehold Valuation Tribunal by an order made on 2 October 2008.
3. On behalf of the Claimant, Miss Lensen stated that the Claimant was happy for the claim to be dealt with by the Leasehold Valuation Tribunal but that the LVT did not have jurisdiction to determine liability for rentcharges. The sums claimed were not a service charge within the meaning of s.18 of the Landlord and Tenant Act 1985. The sums were not charges which the Tribunal had jurisdiction to determine under s.159 of the Commonhold and Leasehold Reform Act 2002. The Tribunal only had jurisdiction to deal with matters prescribed by Parliament. It appeared that the court had transferred the claim to the Tribunal by mistake on the assumption that this was a service charge dispute relating to a lease.
4. The Defendant said that the Claimant had described this as a "service charge" and she referred to an arrears statement from the Claimant dated 15 January 2008 attached to the Particulars of Claim which referred to service charges in several places. Furthermore, the Tribunal

would be a more convenient forum for deciding the claim. If the court transferred the matter to the LVT, the Tribunal must have jurisdiction.

5. The Tribunal considers that the starting point is paragraph 3 of Schedule 12 to the 2002 Act. This states that the Court may transfer proceedings to the Leasehold Valuation Tribunal where "*there falls for determination a question falling within the jurisdiction of a Leasehold Valuation Tribunal*". It follows that the Tribunal can only deal with a question transferred by the Court where it otherwise has jurisdiction. Jurisdiction is not given by the mere act of transfer by the Court, nor indeed by any agreement between the parties (the LVT is not an arbitral tribunal). As to jurisdiction, the charges which are the subject matter of the claim are rentcharges or estate management charges in respect of a freehold property. The charges are not "*an amount payable by a tenant of a dwelling as part of or in addition to the rent*" within the meaning of s.18 of the Landlord and Tenant Act 1985. The Tribunal does not therefore have jurisdiction to determine these charges under s27A of the 1985 Act. Furthermore, the charges are not payable under a scheme under s.19 of the Leasehold Reform Act 1967, under Chapter 4 of Part 1 of the Leasehold Reform Housing and Urban development Act 1993, or under s.94(6) of the 1993 Act. It follows that the Tribunal does not have jurisdiction under s.159(6) of the 2002 Act. It appears that the Court erred in ordering the claim to be dealt with by the LVT. However, the error may well be explained by the erroneous description of the charges in the claim form and the arrears statement of 15 January 2008.
6. The provisions of Schedule 12 paragraph 10(4) of the 2002 Act apply to this matter from the transfer of the claim to the Leasehold Valuation Tribunal until the claim is referred back to the Court.
7. The Tribunal determines that it does not have jurisdiction to deal with the claim and that it should be referred back to Dartford County Court for further directions to be given in relation to the conduct of the claim.



Mark Loveday BA(Hons) MCI Arb

Chairman

3 December 2008