

**SOUTHERN RENT ASSESSMENT PANEL AND
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/40/UC/LSC/2007/0085

Premises: 9 Duke Street, Wembdon, Bridgwater, Somerset TA6 3TG

Between

Mr Paul C Britton ("The Applicant/ Lessee")

and

Carnival Walk Management Co Limited
("The Respondent/Lessor")

and

**In the matter of an application under Section 27A and Section 20C of the
Landlord & Tenant Act 1985 (Liability to Pay Service Charges)**

DECISION AND STATEMENT OF REASONS

Panel: Mr A D McCallum Gregg (Chairman)
Mr T E Dickinson, BSc, FRICS
Mr I R Perry, BSc(Est Man), FRICS

PRELIMINARY MATTERS

1. This application involved the following:-
 - 1.1 An application dated the 30th of August 2007 under Section 27A of the Landlord & Tenant Act 1985 for the determination of liability to pay certain items of service charges for the years 2005, 2006 and 2007.
 - 1.2 An application under section 20C of the Landlord & Tenant Act 1985 for an order that all or any of the costs incurred should not be regarded as relevant costs.
 - 1.3 Directions were given in this matter on the 17th of September 2007.
 - 1.4 An external inspection of the premises together with an inspection of common parts took place prior to the hearing on the 27th of February 2008. An internal inspection of the premises was not possible due to the fact that the Applicant was not available on that date and he had previously notified the Tribunal of this fact.

THE HEARING

- 2.1 The hearing of this matter took place in the Kelting Room, The Bridgwater Arts Centre, 11-13 Castle Street, Bridgwater, TA6 3TD at 11.00 a.m. on the 27th of February 2008. At that hearing the Applicant was not present, having previously indicated his unavailability on the hearing date. The respondent was represented by Mr Nicholas Faulkner, BSc (Hons), FRICS and Ms Helen Macrae, both from Labyrinth Properties Limited who are the managing agents appointed by the Respondent, Carnival Walk Management Co Limited.
- 2.2 Prior to the hearing the Tribunal had received:-
- (a) A copy of the Application itself together with a paginated bundle of documents from the Applicant (Documents 1 to 64).
 - (b) A further paginated bundle of documents from the Applicant setting out his reasons for disputing the payment of service charges and exhibiting various relevant documents pertaining to this application (Documents 1 to 45).
 - (c) From Labyrinth Properties Limited a letter dated the 20th of November 2007 to which was attached the Respondent's summary and answer to the Applicant's case together with accompanying paginated documents (Documents 1 to 76 inclusive).
- 2.3 At the hearing of this application the Respondent produced certain further documents by way of a more detailed explanation of the service charges involved and these were numbered 77 to 81 inclusive.

SUMMARY OF FACTS:

- 3.1 No 9 Duke Street, Wembdon ("The Premises") was constructed by Barratt Homes Limited in or about 2002. The original tenants and predecessors in title to the Applicant were Mr Alistair Edward Nott and Georgina Anne Nott and their lease of the premises commenced on the 29th day of November 2002.
- 3.2 The covenants relating to the payment of service charges and the obligations of the parties are set out in that lease under Paragraphs 1 and Schedules 4 and 5 to the lease (see Pages 7 to 51 of the Applicant's bundle).
- 3.3 The Applicant however did not become a tenant of the property until the 22nd day of September 2006 (see Page 56 of the Respondent's bundle).
- 3.4 Labyrinth Properties Limited managed the entire area of this development on behalf of the Respondents, Carnival Walk Management Co Limited and for this purpose they maintain 16 separate accounts.
- 3.5 14 of the accounts are for the various blocks of flats/individual properties within this development and one of those 14 accounts is exclusively used for

the expenditure incurred and monies received in connection with this block of flats comprising Flats 8 to 13 (6 flats in all) of this development.

3.6 A further account is maintained for the entire estate, namely all the external communal areas surrounding all the blocks of flats and houses. The final account is for the coach houses on the estate.

3.7 The amount of the service charges for which the Applicant is liable under the terms of his lease is calculated as follows:-

Firstly for one sixth of the budgeted and actual expenditure for the block of flats itself. The block of flats comprises flats 8-13.

Secondly, one seventy fourth of the budgeted and actual expenditure for the service charges pertaining to the maintenance and upkeep of the external communal areas of the entire development.

3.8 The one sixth share for the block includes the maintenance of the entry phone, the cleaning of the common parts and the maintenance of the facilities for those common parts.

3.9 The Applicant is the owner of one share in the Carnival Walk Management Company Limited and is the holder of share certificate number 60 (Exhibit 3) of the Respondent's bundle.

3.10 In his application the Applicant queried the service charges for the years ending 2005, 2006 and for the budgeted figures for 2007 and in particular he disputed the "adjustments" for previous years as well as expressing dissatisfaction for the lack of maintenance during the past 2 years. Details relating to his dissatisfaction are set out on Pages 3 and 6 of his application and expanded upon in the questions he raises at Page 63 of his bundle.

3.11 It was accepted on behalf of the Respondent that there had been cash flow difficulties due to non-payment of charges by some tenants with the result that a number of the services e.g. grass cutting, had not been provided throughout the years concerned and also the cleaning of the communal areas had at one stage been suspended but this had now been restored.

3.12 The Tribunal were taken through the accounts for the years in question (see Respondent's documents Pages 65 to 76 inclusive and also Documents 77 to 81 which had been produced at the hearing).

3.13 It was noted that on a number of occasions credits had been given on both the block account and the estate account due either to an under-spend against budget or a lack of services altogether.

THE LAW

- 4.1 The Landlord & Tenant Act 1985 (as amended) is the applicable law. For the purposes of the 1985 Act a service charge is defined in Section 19(1) as "an amount payable by a tenant of a dwelling as part of or in addition to the rent (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management and (b) the whole or part of which varies or may vary according to the relevant costs (including overheads)"
- 4.2 "Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable.
- 4.3 The question of any sum payable by a tenant is a "service charge" turns on the definition in Section 18(1) of the 1985 Act as amended by CLARA 2002.
- 4.4 Section 19(1) of the Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that (a) are reasonably incurred and (b) where they are incurred on the provision of services or carrying out works if those services or works are of a reasonable standard.
- 4.5 The Tribunal's jurisdiction has been extended by CLARA 2002 and now covers all aspects of the service charge including liability and reasonableness (Section 27(a)(1)(3) of the 1985 Act.

THE ISSUES TO BE DECIDED BY THE TRIBUNAL

- 5.1 Firstly, the Tribunal had to decide whether the service charges had been (a) reasonably incurred and (b) whether they were of a reasonable standard.
- 5.2 The Tribunal found that by and large the service charges for those services that had been provided were reasonably incurred and of a reasonable standard.
- 5.3 However the Tribunal were concerned with regard to two maintenance charges, both referred to in the Property Expenditure Account for the period from the 1st April 2006 to the 31st March 2007 (Document 80 provided at the hearing).

Both of those service charges had been entered on to the account on the 1st June 2006 and both were in the same sum, namely £439.36. No invoices in respect of these amounts were produced.

- 5.4 The second issue to be considered is whether if the charges were reasonable should they be paid by the Applicant.

On this issue and whilst having concluded that the services charges were reasonable in quantum the Tribunal felt that it was unreasonable to make

adjustments some 26 months and 14 months after the end of the relevant accounting year particularly as the Applicant had not been a tenant when the charges were incurred.

The Tribunal therefore decided that it was unjust and inequitable to approve those items amounting to £51.30 for 2005 and £151.55 for 2006 and they are accordingly disallowed and those sums should be credited to the Applicant's account.

- 5.5 With regard to the budget for 2007 (Document 76), the Tribunal, taking into account the budgets for previous years and the expenditure actually incurred, felt that the figures were reasonable and did not compare unfavourably with the historic charges for earlier years.
- 5.6 The final issue to be decided by the Tribunal was with regard to the Respondent's costs in dealing with this matter, namely the application under Section 20C of the Landlord & Tenant Act 1985.
- 5.7 Mr Faulkner on behalf of the Respondent confirmed that the costs incurred would not be charged to the service accounts for either the block or the account for the entire estate as there was in place a separate insurance policy covering legal expenses insurance.

The Tribunal were told that the costs incurred by the Respondent were in the order of £6,000. Whilst no breakdown was provided this figure appeared to the Tribunal to be on the high side bearing in mind that the Applicant's complaint concerned a few minor items that had arisen as a result of poor or slow book keeping.

Accordingly the Tribunal did not make any award in this respect.

Signed..........
Andrew D McCallum Gregg (Chairman)

Dated: 13th March 2008