



Residential
Property
TRIBUNAL SERVICE

Ref LON/OOAZ/OCE/2007/0299

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 OF LEASEHOLD REFORM, HOUSING
AND URBAN DEVELOPMENT ACT 1993**

Property: 16 ELSINORE ROAD, LONDON, SE23 2SL

**Applicants: Paul David Canter, Hany Dwi Susilowati Canter
Geoffrey Simon Blaber and Allana Louise Wood**

**Represented by: Armstrong & Co
Mr Lloyd Sefton-Smith**

First Respondent: Mrs Lalita Anand

Represented by: JR Jones Solicitors

Application date: 14th August 2007

Hearing date: 22nd January 2008

Members of the Leasehold Valuation Tribunal:

**Mrs Burton (Chair)
Mr Potter
Mr Powell**

**Date of Tribunal's
decision: 6th February 2008**

LIST OF ATTENDEES

RE: 16 Elsinore Road, London SW23

Applicant: Counsel: Mr Lloyd Sefton-Smith

Solicitor:

Tenants: Geoffrey Simon Blaber
Hany Dwi Susilowati Canter

Respondent:

16 ELSINORE ROAD, LONDON SE23 2SL

BACKGROUND

1. This was an application dated 7 September 2007 pursuant to s 24 of the Leasehold Housing and Urban Development Act 1993 for collective enfranchisement of the subject property, comprising 2 flats held on Leases dated respectively 20.5.1988 and 22.4.1988 for a term of 99 years from, respectively, 25.3.1988 and 25.12.1987 with all tenants participating. The Initial Notice dated 16 November 2006 proposed a purchase price of £2,500, which the Counter Notice did not accept, instead proposing a figure of £7,000 which was subsequently agreed on 2 March 2007. In the Counter Notice the freeholder also proposed that it should be a term of the transfer that on completion the Nominee Purchaser should account for all arrears of rent, insurance and service charges. On 17 April 2007 the Applicant's solicitors sent a draft transfer in Form TR1 to the solicitors to the freeholder, requesting its approval, and upon receiving no reply sent a further letter dated 15 June 2007 which has also received no response. On 26 September 2007 the Leasehold Valuation Tribunal issued its standard Directions and set the case down for hearing on 22 and 23 January 2008.

HEARING

2. At the hearing there was no attendance by or on behalf of the freeholder. On behalf of the Nominee Purchaser, Mr Lloyd Sefton-Smith of Counsel submitted that as the freeholder had ceased communicating with the Nominee Purchaser or their representatives the application had been made to the LVT in order to progress the matter. He said that, as the purchase price was agreed, the only issue before the Tribunal was approval of the Transfer and determination of the Nominee Purchaser's liability, if any, for outstanding service charges. Mr Sefton-Smith said that pursuant to s 24(1) of the Act the Tribunal had the power to make any order which was appropriate in respect of any of the terms of the transfer which were not agreed (and that this was not in any way limited by statute). As the price was agreed, the only outstanding issue was the specific condition which the freeholder had requested

should be added to the Transfer requiring that "on completion the Purchaser should account for all arrears of rent, insurance and service charges". The Nominee Purchaser opposed the inclusion of this condition since they contended that nothing was owing (except possibly the most recent insurance premium, and that that was *if* - which was doubted, as the Lessees had never succeeded in obtaining the copies of certificates of insurance to which they were entitled - the freeholder's managing agents had in fact kept the building insured).

3. Mr Sefton-Smith said that the history of the Lessees' relationship with the freeholder indicated that if the desired clause was inserted into the Transfer the Lessees would find that the freeholder used it to frustrate the completion of the transaction by claiming unreasonable amounts of outstanding service charges as a condition of transferring the property. He therefore requested the Tribunal either to exclude the clause from the terms of the Transfer and/or to determine that nothing was owing by way of service charges.

4. In support of his submissions, Mr Sefton-Smith pointed to a number of service charge demands, service charge accounts and partial details of insurance cover in the file which he said indicated the unprofessional manner in which the freeholder's managing agents had interacted with the Lessees, claiming penalty and other charges which were not allowed by the Lease, and insurance premium charges which appeared to be in excess of those actually charged by the insurers concerned (which suggested to them that the managing agents were in fact receiving a commission which should be disclosed). He added that the freeholder's managing agents had never provided an annual service charge account as required by the Lease until 31.12.2005, and that accordingly the freeholder was not entitled to payments in relation to the years up to 31.12.2004. He contended that the insurance premiums had not been established to be reasonable (and that moreover there was no evidence that they had actually been paid), that the managing agents' fees had not been reasonable and that they had actually only delivered services (in demanding service charges) worth no more than £25 p.a. He therefore submitted that they should certainly not be allowed to charge a fee on top of works effected under an insurance claim amounting to a 10% surcharge on those works.

5. Mr Sefton-Smith then took the Tribunal to a number of copy documents submitted with the application including an Allianz Cornhill insurance certificate in respect of the building for the year ending 8 January 2007, service charge demands in respect of the years ending 31.12.03-31.12.07, a document dated 14.2.06 addressed to Flat 2 and claiming arrears of £12,829.27, and a breakdown of arrears including substantial charges for interest and reminders. He also drew the Tribunal's attention to a letter from the Nominee Purchaser's solicitors to the managing agents enclosing a cheque for £2,784.84 for back ground rent (£400) and estimated insurance premiums (£2,384.84) for the years 2002-2005. The letter also queried the managing agents' right to receive these sums without further substantiation. It appeared that no answer had been received to this letter.

6. Mr Sefton-Smith said that most of these bills had been paid already, although he conceded that there might be a further insurance premium outstanding for the year 2008, assuming the insurance was renewed again during the current month of January as appeared to be the case in the previous years. He said that the matter was only relatively complex as no proper statements had been provided in all the years of occupation by the Lessees (Mrs Canter, previously known as Evans, of Flat 2, had arrived to live in the building in 2002). He asked the Tribunal to determine that no further service charge costs were owing. He further requested a costs order against the freeholder in the amount of the statutory maximum of £500 permitted by Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002, on the grounds that the freeholder had behaved unreasonably in not attending the hearing, not sending any representative or even a message notifying non-attendance, not observing Directions and not answering correspondence (which had prevented the Nominee Purchaser from completing the enfranchisement for some 9 months).

DECISION

7. This application arises due to the failure on the part of the Respondent freeholder to approve and/or complete the Transfer to effect the enfranchisement of the subject property for the agreed price or to attend the LVT (or submit written evidence) to establish the quantum of outstanding service charges, if any. This appeared to the Tribunal to be an attempt to frustrate the enfranchisement which

would only be prolonged if the clause which the freeholder requested to be included in the Transfer were upheld by the Tribunal. On the basis of the evidence before it on the application under s 24 of the 1993 Act, the Tribunal therefore had some difficulty in determining more than that the agreed figure of £7,000 be the price for enfranchisement, although it was on balance also determined that the clause requested by the freeholder should, in accordance with the Respondent Nominee Purchaser's submissions, *not* be inserted into the Transfer.

8. Had there been sufficient evidence before it, even in the absence of the Respondent the Tribunal might have determined the amount of outstanding service charges and made payment up to date of this figure a term of the Transfer, however the slender evidence presented does not lead to more than general conclusions as to what the freeholder's managing agents might legitimately charge under the terms of the Lease. It does not assist in determining an outstanding figure.

9. It goes without saying that service charges must inevitably be settled up on an enfranchisement but in what manner this is to be achieved is not for the LVT to decide in this case on the basis of the flimsy evidence so far before it. No statements of amounts paid or outstanding were presented in order to establish the state of account between the parties, and the Tribunal is not able to carry out its statutory duty of determining the payability of service charges without adequate evidence of the respective sums that have or have not been paid. Moreover the Tribunal is of the view that whether the clause in the Transfer suggested by the freeholder is inserted or not there will remain a dispute in the present case as to what sums remain outstanding in respect of service charges. The Nominee Purchaser is therefore likely either to have to settle the outstanding sums owed, if any, in negotiation with the Respondent freeholder, or to go to the County Court to request assistance in executing the Transfer, in which case either the County Court, whose service charge jurisdiction is concurrent with the LVT's, will probably wish to determine the amount of outstanding service charges if this cannot be agreed, or to refer the case back to the LVT to do so, in which case the LVT will require the evidence set out above in order to reach a figure. In the present state of the evidence it is not possible even to estimate what that figure should be or this sum could have been ordered to be paid into court. It would have been quicker for the Applicant Nominee Purchaser to have

made a parallel application under s 27A of the Landlord and Tenant Act 1985 at the time that the referral to the LVT was made and to have supported it by adequate evidence, served on the freeholder, who might then have been minded to attend to put their side of the story.

10. In general terms it appears to the Tribunal that the Leases (which are not identical) permit that interest may be charged on unpaid service charges (clause 7 (c)) at the rate of 4% above Lloyds Bank base rate. The employment of a managing agent is permitted (in which case all expenses are allowable, subject only to their being able to be determined as "reasonable" within the meaning of s 27A of the 1985 Act) and if none is employed 10% may be added "for administration expenses" to all "costs, expenses, outgoings and matters referred to" in the performance of the Landlord's obligations under the Fourth Schedule of the Lease. This right to charge 10% on top of insurance premiums does not appear to apply to the clause in respect of the obligation to insure the premises imposed by clause 5(5) of both Leases. Whether the penalty charges levied in the arrears breakdown presented to the Tribunal are reasonable would depend on to what extent the managing agents had answered the Lessees' requests for details of such grey areas of service charges levied eg for insurance, in respect of which they would (if they observed the industry good practice, as for example set out in the RICS Residential Management Code) be under an obligation to provide more explanation than to permit the inspection of vouchers (a notice of which does appear on their service charge demands). Equally it is by no means sure that the managing agents were entitled to charge a percentage of the insurance funded works for supervision, of which no details were provided to the Tribunal: this is because (i) from the information before the Tribunal, these were not necessarily works undertaken by the managing agents but by insurers' contractors and (ii) even if they were undertaken by the managing agents, it is not regarded as good practice to charge percentages on top of percentages; and the Tribunal was not informed as to whether professional supervision fees were already levied within the very substantial bill for the works referred to (in excess of £52,000). On the other hand the amounts actually charged in these percentages for management must be taken into account since it is unusual to find managing agents willing to undertake management of small properties at the *minimum* fee quoted by the managing agents in

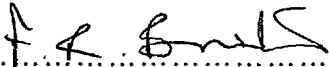
this case of £85 per unit. A minimum fee around £200 is now usual owing to the disproportionate inconvenience of management of such properties.

COSTS

11. With regard to the Applicant's application for costs, the Tribunal's power to make such a costs order is statutorily limited to £500 and is exercisable on the basis of inappropriate behaviour of the party against whom such an order is made which is set out in Schedule 12 paragraph 10 of the 2002 Act. The Tribunal is satisfied that the freeholder has in the present context behaved unreasonably within the context of this provision, and such an order is made in the amount of the statutory maximum (£500). The Tribunal directs that this sum be paid to the Nominee Purchaser within 14 days of this Decision. No order is made limiting the application of any costs of the freeholder to any service charge since the freeholder has not been before the Tribunal in relation to determination of the payability of service charges pursuant to the 1985 Act, but in so far as the freeholder has participated at all this has been in relation to enfranchisement under the 1993 Act for which a separate regime of statutory costs is applicable and will no doubt be accessed by the freeholder in due course. However should any such sum be also charged to the service charge by the freeholder the Lessees are always at liberty to apply to the LVT under s 27A of the 1995 Act for determination of the payability of any outstanding service charges, so have adequate protection in this regard and could at that stage obviously request a s 20C order limiting any potential for the freeholder's application of costs of those proceedings to the service charge in the usual way in such proceedings.

DETERMINATION

12. The Tribunal determines that the price payable for the collective enfranchisement is as agreed £7,000 and the terms of the Transfer are approved in accordance with the attached draft which is annexed at Appendix 1.

Chairman..... 

Date..... 6.2.08

**Transfer of whole
of registered title(s)**

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title Number(s) of the Property *Leave blank if not yet registered.*
453428

3. Property
16 ELSINORE ROAD FOREST HILL LONDON SE23 2SL

4. Date 2008

5. Transferor *Give full names and company's registered number if any.*
LALITA ANAND

6. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

- (A) PAUL DAVID CANTER (B) HENY DWI SUSILOWATI CANTER
- (C) GEOFFREY SIMON BLABER (D) ALLANA LOUISE WOOD

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

7. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

Respectively (a) and (b) - First Floor Flat Flat 2 16 Elsinore Road Forest Hill London SE23 2SL and
(c) and (d) - Ground Floor Flat Flat 1 16 Elsinore Road Forest Hill London SE23 2SL

8. The Transferor transfers the property to the Transferee.

9. Consideration *Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert appropriate memorandum in the additional provisions panel.*

- The Transferor has received from the Transferee for the Property the sum of *In words and figures.*
Seven thousand pounds £ 7,000.00
- Insert other receipt as appropriate*
- The transfer is not for money or anything which has a monetary value

10. The Transferor transfers with Place "X" in the box which applies and add any modifications.

full title guarantee limited title guarantee

11. Declaration of trust *Where there is more than one Transferee, place "X" in the appropriate box.*

- The Transferees are to hold the Property on trust for themselves as joint tenants.
 The Transferees are to hold the property on trust for themselves as tenants in common in equal shares
 The Transferees are to hold the Property *Complete as necessary.*

As tenants in common as to one half thereof for PAUL DAVID CANTER and HENY DWI SUSILOWATI CANTER (or the survivor of them) and as to one half thereof for GEOFFREY SIMON BLABER and ALLANA LOUISE WOOD (or the survivor of them)

12. Additional Provision(s) *Insert here any required or permitted statements, certificates or applications and any agreed covenants, declarations, etc.*

The Transferees hereby jointly and severally covenant with the Transferor to observe and perform the covenants and conditions on the part of the Transferor contained or referred to in the charges register of the title and the registered leases and to indemnify the Transferor against any future breaches thereof.

The Transfer is executed pursuant to Section 24 Chapter 1 of Part 1 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

13. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

SIGNED AND DELIVERED AS A DEED BY THE
said LALITA ANAND in the presence of

Witness sign here

Print name

Address

Occupation