

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. CH/00ML/LIS/2008/0124**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 27A of the LANDLORD AND TENANT ACT 1985**

**Property:** 42 Marina, St Leonards-on-Sea, East Sussex TN38 0BU

**Applicant:** 42 Marina Management Ltd (landlords)  
Represented by Arko Property Management

**Respondents:**

Mr & Mrs Smith	Flat 1
Mrs Land	Flat 2
Mr Davey	Flat 3
Mrs Barker	Flat 4
Mrs Ferreira	Flats 5 & 6
Mr Harrod-Edwards	Flats 7 & 8

**Appearances:** For the Applicant:  
Mr G Okines of Arko Property Management  
Ms E Barton (assistant to Mr Okines)  
Mr R Smart, accountant

Mrs Land, Miss Barker, tenants and directors of the  
Applicant company

**Application:** 09 February 2008

**Pre-Trial Review:** 22 December 2008

**Hearing:** 25 March 2009

**Decision:** 30 April 2009

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr C White FRICS  
Mr P Gammon

Ref: CHI/21UD/LSC/2008/0124

42 Marina, St Leonards-on-Sea, East Sussex TN38 0BU

#### Application

1. This was an Application made on 05/11/2008 by the landlord, 42 Marina Management Ltd, pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination in relation to payability of service charges by the tenants of flats 1-8 for the years 2006 & 2007.

#### Background

2. A Pre-Trial Review was held on 22/12/2008 attended by Mr Okines of Arko Property Management. It was directed (para 3) that "the subject matter of the application shall be limited to those items of service charge which any of the respondents wish to challenge and which are listed in the service charge annual accounts for the years ended 24 June 2005, 2006 and 2007".
3. It was recorded (para 4) that "the applicants agree that matters relating to the deficiency in the service charge balance held by SPMC in trust for the lessees (under section 42 of the Landlord and Tenant Act 1987) at the time it went into liquidation are outside the jurisdiction of the tribunal. The applicants agree that by virtue of section 52 of the Landlord and Tenant Act 1987, those matters fall within the jurisdiction of the County Court".
4. The Directions further provided for all the tenants to be listed as respondents and for the tenants of the ground floor commercial premises to be removed as the tribunal only has jurisdiction over residential premises. The applicant was directed to produce copies of the service charge accounts, following which the respondents were to produce a statement of case stating which items were disputed and why. The applicant was then to provide a statement stating why such sums were payable and the respondents were then to provide a further statement in reply. None of the respondents complied with the Directions or objected to any items of expenditure. Mr Okines of Arko provided the accounts, a brief undated "note of case" on behalf of the applicant, and a letter from accountant Mr R Smart dated 10/03/2009 .
5. Mr Okines wrote to the tribunal office on 10/01/2009 asking for the accounts for 2008 to be included in the application. At the hearing on 25/03/2009 the tribunal refused this request on grounds of procedural fairness. Its reasons were as follows: (a) the year to 24 June 2008 had not been included in the original application and had been not mentioned at the PTR which Mr Okines attended; and (b) the PTR chairman had specifically restricted the issues in dispute to the years 2005, 2006 and 2007. The respondents were directed to identify any service charge items in dispute for these years only. They therefore were not aware that the applicant later wished to include the 2008 and had not had the opportunity to address any issues arising from that year. In the absence of the respondents it would not be fair to increase the scope of the application at the hearing.

### Jurisdiction

6. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.1B LTA 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

### Lease

7. The Tribunal had a copy of the lease of the Flat 4. The lease is dated 14 August 2000 and is for a term of 125 years from 24 June 2000 at a peppercorn rent.
5. The provisions relating to the calculation and payment of the service charge are to be found at Clause 4. The tenant's proportion of annual maintenance cost is one eighth (or 12.5%) of costs relating to the common areas and 12% of costs relating to the building. The tenant is to pay to the landlord on 24 June and 25 December each year an interim payment on account "as the lessor or its agents shall reasonably deem appropriate", the balance to be paid after service of accounts by the lessor "as soon as practicable after 24 June" each year, showing costs and expenses incurred and contributions received.
6. All flats contribute 12.5% of the common areas costs. The respective building costs proportions for the flats are: Flat 1, 10%; Flats 2, 3 & 4, 12%; Flats 5 & 6, 8%; Flat 7, 6%; and Flat 8, 7%. The remaining 25% is payable by the commercial unit.

### Inspection

7. The Tribunal members inspected the property before the hearing accompanied by Mr Okines. It comprised 2 combined substantial mid-terrace period houses situated on the seafront in St Leonards, converted into flats arranged over 5 floors including commercial premises on the ground floor and a basement. The flats were accessed from the rear of the building with 2 separate entrances, one for flats 1&2 and one for flats 3-8. The external decorations and window frames were in poor condition both to the front and rear of the property. There were some superficial cracks above the first floor window at the front.
8. Internally the common parts leading to flats 3-8 were in poor decorative order and the carpets were not clean. The tribunal members were given access to flats 7&8 by Ms Selby of Oakfield letting agency on behalf of the lessee Mr Harrod Edwards. These flats were normally sub-let but unoccupied at the time of the inspection due to penetrating damp which was evident to the external north-facing walls.
9. The common parts leading to flats 1&2 were in good condition and well maintained. There was a void area at the rear once used by the public house and now used for storage by the residential tenants.

### Hearing

10. The hearing took place in Hastings on 25/03/2009. It was attended by Mr Okines accompanied by Ms Barton and accountant Mr Smart. Mrs Land and Miss Barker also attended as members and directors of 42 Marina Management Ltd. Although named as respondents they did not oppose the application.

### Facts

11. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:

- (a) The leases were granted by Mortgage Guarantees Limited. It is not known whether this company originally converted the property into flats. By the time Miss Barker and Mrs Land bought their flats, in 2006 and 2007 respectively, the freeholder was 42 Marina Management Limited. This was a tenant-owned company of which the lessees of the 8 flats and the commercial premises were equal shareholders. Mr Okines was the company secretary and the current managing agent, instructed by the company directors. He became involved with the property during 2006 at the request of some of the lessees, but was not formally instructed until around January 2007. He had a management contract but did not know when it was entered into and did not have a copy.
- (b) The previous managing agents were Seaford Property Management Company, which went into liquidation on 12/10/2006. The directors of SPMC were Mr & Mrs Harrod-Edwards, who were also the lessees of Flats 7 & 8. Mr Harrod-Edwards did not comply with the Directions, but he did write to the tribunal office before the PTR. He complained about Arko's management, stating that Mr Okines had failed to carry out necessary works or respond to complaints about damp, as a result of which he had lost rental income and withheld service charges. Rather surprisingly, he did not comment on the application or his company's role in the previous management of the property and the service charge account.
- (c) SPMC had produced accounts, prepared by accountant Mr D Evans, for the years 2005, and 2006, showing communal and building expenditure on electricity, cleaning, fire alarm maintenance, insurance, audit fees, management fees, and some minor repairs. Arko produced accounts for 2007 with similar headings of expenditure. The total actual expenditure for those years was £3,297.82, £4,845.45 and £4,054.09 respectively. None of the respondents had objected to any items of expenditure in these accounts, so effectively, none of these service charges were in dispute.
- (d) The complicating factor was that during 2006 SPMC had apparently intended to carry out major works at the property at an estimated cost of £24,112.23. These works were never commenced. Apparently there was a first stage consultation notice under Section 20 of the Landlord & Tenant Act 1985 dated 10/03/2004, but the tribunal did not see this notice and was not told of the exact nature and scope of these proposed works.

- (e) A document headed "funds due on transfer of management 24 June 2006", apparently produced by Mr Evans as an addition to the 2006 accounts, included a list headed "major works demanded not yet commenced" with a breakdown of costs due from each flat totalling £24,112.23. It appeared that all the flats had paid their contribution except £2,893.47 for Flat 3, and that flats 7 & 8 still owed £108.71 and £124.67 respectively. The contribution of the commercial premises was stated to be £7,454.22.
- (f) The tribunal saw no service charge demands so it was not clear if or how these sums were demanded. Miss Barker and Mrs Land were not the lessees of their flats at the material time but thought their vendors had paid all sums due before they purchased. In his letter dated 19/03/2009 to the tribunal, Mr Davey, the current owner of Flat 3, stated that the previous owners of his flat had paid money to SPCM which was not used to carry out the major works, and therefore he was withholding service charges. He thought Mr Harrod-Edwards should reimburse the maintenance fund whereupon he would pay his contribution.
- (g) Mr Okines case, for the applicant, was that SPCM had collected some service charges in relation to the proposed major works, but not sent out demands in relation to the expenditure as shown in the accounts. He surmised that SPCM had used any sums collected to defray actual maintenance costs incurred, rather than starting the major works. When he took over management he sent out interim demands in January and June 2007, but there were historic arrears for Mr Davey and Mr Harrod-Edwards which he was seeking to recover.
- (h) According to Mr Smart's analysis, SPCM owed £5,596.89 when Arko took over management. However, no funds were received until October 2008 when the liquidators for SPCM paid £1,889.79 to the applicant as an unsecured creditor, which was credited to the service charge account. Mr Okines sought to recover that deficit from the lessees. He also sought in 2008 to demand service charges for the major works, and sent out a second stage consultation notice, apparently relying on the first stage notice served by SPCM in 2004. Again the tribunal saw no specification or details of the proposed works, but Mr Okines said he had reduced the cost to an estimated £12,455 by changing and reducing the nature and scope of the works to cover just the front of the property.

### Decision

12. The Tribunal reminded itself, as it had reminded the parties, that its jurisdiction was to determine whether service charges were payable and reasonably incurred, and if so, the amount that was payable. It could not adjudicate on funds which arguably should have been transferred by a former managing agent now in liquidation. This had been agreed by Mr Okines on behalf of the applicant at the PTR, and his agreement recorded in those Directions, as set out above (see para 3).
13. As explained in the findings of fact, none of the respondents had objected to any items of service charge expenditure for the years in issue. The dispute centred around the deficiency in the maintenance fund when it was transferred to Arko, and for the reasons stated, this was not something the tribunal could resolve. It would comment, however, that as SPCM went into liquidation and some money had later been distributed to the applicant by the liquidator, it appears unlikely that any further

money could be recovered from SPCM. This is to be distinguished from any service charges payable by Mr Harrod-Edwards in his personal capacity as lessee.

14. In relation to the proposed major works, and the alleged sum of £24,112.23 on which all the applicant's subsequent calculations relied, the tribunal had no evidence that any sums had been validly demanded or collected under the terms of the lease by SPMC, or indeed that the first stage of the statutory consultation procedure had been properly carried out in 2004 to justify any demands that might have been made. This sum was therefore not lawfully due or payable as service charges.
15. In addition, although the year ending 24 June 2008 was not within scope of the application, the tribunal would comment that the second stage notice relied on by Mr Okines would not be valid either, as not only had the nature and scope of the works had changed, but there had also been a significant delay of about 4 years between the two notices, such that they could not be said to be part of the same consultation process. The applicant may therefore consider it prudent to start afresh, for example with a surveyor's report, specification of works, and estimates from reputable contractors, to enable the statutory consultation procedure to be followed and service charges demanded in accordance with the lease terms.
16. The tribunal therefore concluded that the service charges incurred as set out in the accounts for the years ending 24 June 2005, 2006 and 2007 were payable and reasonably incurred.

#### Determination

17. The tribunal therefore determines in accordance with its powers under Section 27A of the Landlord and Tenant Act 1985, that the sums payable by the respondents to the applicant within 14 days of the date of this Decision are as follows:

	2005	2006	2007
Flat 1	£355.85	£486.81	£409.21
Flat 2	£400.96	£561.87	£487.26
Flat 3	£400.96	£561.87	£487.26
Flat 4	£400.96	£561.87	£487.26
Flat 5	£310.72	£411.35	£331.16
Flat 6	£310.72	£411.35	£331.16
Flat 7	£265.62	£336.10	£253.11
Flat 8	£288.17	£373.73	£292.13

Dated 30 April 2009

Ms J A Talbot  
Chairman

