

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**S.27A Landlord & Tenant Act 1985 as amended**

**DIRECTIONS**

Case Number: CHI/29UK/LIS/2008/0049

In the matter of 1 Pursey Close, West Kingsdown, Kent, TN15 6AZ

Applicant: Pursey Close Management Company Ltd

Respondent: Mr. and Mrs. Wilson

**TRIBUNAL**

Mr. S. Lal LIM ( Chairman)

Mr. J. Tarling MCMl

**REPRESENTATION**

**Applicant**

Mr. Karl Amos, Director, Pursey Close Management Company Ltd

**Respondent**

Mr. Christian Kelly, Solicitor, Cozen O'Connor

Mr. Wilson (In person)

**Preliminary**

1. The matter comes before the Tribunal pursuant to a transfer from Dartford County Court (District Judge Smith) on 2<sup>nd</sup> October 2008 in Case Number 7QT37792. The transfer was made pursuant to Paragraph 3 (1)(a) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
2. The Tribunal made Provisional Directions (14<sup>th</sup> November 2008) where it was proposed that the issue of the Tribunal's jurisdiction would be determined at a Preliminary oral hearing.

3. The Applicant was directed to say which Act of Parliament gives the Tribunal jurisdiction to hear the matter in the situation where the Respondent is a Freeholder. The Respondent was given liberty to reply. Either party was given liberty to submit skeleton arguments 14 days prior to today's hearing. Neither party has done so; instead the Applicant seeks to rely on the Particulars of Case dated 28<sup>th</sup> November 2008 and the Respondent relies on the signed Statement of Reply submitted by way of covering letter dated 5<sup>th</sup> January 2009. Neither party had any additional material that they wished to refer to.

#### **The Case for the Applicant**

4. Mr. Amos for the Applicant accepted that all 14 of the houses in Pursey Close are Freehold properties and that the Applicant Company is owned by all 14 of the Freeholders. He explained that it was a not for profit company and existed purely for the maintenance of the common parts. He described Pursey Close as "unique" and detailed the history of the development and how each Freeholder or prospective Freeholder would sign the Transfer of Title document agreeing to pay expenses to the Applicant, effectively agreeing to abide with contractual covenants relating to the Applicant.
5. He was unable to point to any section of the Landlord and Tenant Act 1985 ("the 1985 Act") that dealt specifically with the issue of jurisdiction but invited the Tribunal to do so. He agreed that the matter had started in the County Court as a breach of contract claim.

#### **The Case for the Respondent**

6. Mr. Kelly submitted that the Tribunal did not have jurisdiction to hear the matter. He agreed that section 18 of the Act defined "service charge" and that referred to an amount payable by a tenant. He observed that his Client was Freeholder and therefore not a tenant and that this was actually a breach of contract case. In the alternative he invited the Tribunal to still hear the matter so that it could be resolved but was unable to point to any statutory or other provision as to where this power maybe derived from.

## **The Law**

7. The opening words of Section 27A(1) of Section 27A of the 1985 Act (which was inserted by Section 155 of the 2002 Act) say that “An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable...”

8. The meaning of “service charge” is defined in the 1985 Act as :

“18.

Meaning of “service charge” and “relevant costs”.

— (1) In the following provisions of this Act “service charge” means 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 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) “costs” includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.”

9. The above Section refers to an amount payable by a tenant. The position in the instant case is that the Respondent is a Freeholder and as such he cannot be described in law as a “tenant”. There is no lease and the Transfer document is a contractual arrangement. The Claim is therefore a claim for breach of contract and not one that can be determined by this Tribunal within its statutory duty as contained in s.27A of the 1985 Act to determine the reasonableness of the service charge. Although Mr. Kelly raised the prospect that we should do so anyway so as to resolve the matter, this Tribunal are satisfied that were it to do so it would be acting outside of the jurisdiction given to it by Act of Parliament.

10. In the circumstances and for the reasons set out above, this Tribunal does not have jurisdiction to hear the matter within the provisions of Section 27A of the 1985 Act and the matter is returned to the County Court to be determined as a claim in contract.

11. In passing, the tribunal notes that Parliament had the opportunity to introduce jurisdiction for the tribunal to determine Freehold service charges when it passed the 2002 Act, but failed to do so. In view of the recent increase in private and gated communities and other Freehold developments where the access roads, footpaths and communal areas are often not taken over or adopted by the local authority it remains to be seen if Parliament will at some time in the future take the opportunity to extend this jurisdiction to the tribunal or indeed any other body. Until it does, the jurisdiction for determinations of such matters remains with the County Court.

Dated 22/11 2009.

  
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