

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number CHI/43UD/LIS/2009/0059

In the matter of 17 Henderson Avenue Guildford Surrey

(“the property”)

BETWEEN

QE Park Residents Management Company Limited

Applicant

and

Darren Cartwright

Respondent

Decision upon the question of the jurisdiction of the Tribunal

The matter was considered upon the basis of written representations but without a hearing on 15th September 2009

Date of Issue: September 2009

Tribunal:
Mr R P Long LLB

Application

1. This is a matter transferred to the Tribunal by an Order of the Guildford County Court dated 28th April 2009. It arises from a claim brought by QE Park Residents Management Company Limited against Mr Darren Cartwright, which is described as a claim for payment of unpaid service charges in respect of 17 Henderson Avenue Guildford (“the property”) amounting to £932-80. The Court transferred the matter to the Tribunal for determination of the amount of the service charges that were payable.

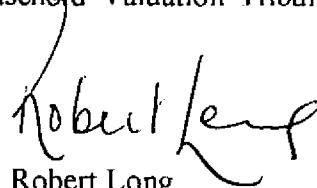
Issue

2. The issue that has arisen is one of the Tribunal’s jurisdiction. It is apparent from paragraph 2 of the preliminary directions that were issued on 12th June 2009 that no copy of the title documents to the property had at that time been supplied to the Tribunal, and the directions require the production of a copy of the lease relating to the property.
3. In response to those directions Messrs Hazelvine Limited, who appear from such documents as are before me to be the managing agents acting on behalf of the Applicant, wrote to the Tribunal on 18th June 2009 sending a copy of the entries on the Land Register relating to the property. They pointed out that the entries showed that the property is freehold, and that the service charges claimed arose in the form of rent charges reserved out of the freehold.
4. Further directions were issued by the Tribunal on 22nd July 2009 that indicate that the Tribunal propose to deal with the matter of jurisdiction as a preliminary matter on the basis of written representations and without an oral hearing on 15th September 2009. The Applicant was directed to provide a written skeleton argument for consideration on that occasion if the Respondent had not provided a letter conceding that the Tribunal did not have jurisdiction within fourteen days (that is to say by 5th August 2009).
5. No such letter had been received by that date, and the Applicant has provided a skeleton argument with a letter from Hazelvine Limited dated 10th August 2009 in support of its contention that the Tribunal has no jurisdiction to deal with the matter. The Respondent has written to the Tribunal explaining that he had been out of the country, and accepting that his property is freehold so that the question of jurisdiction may be an issue.

Determination

6. In its skeleton argument, the Applicant states that the title to the property is freehold, and is registered at HM Land Registry under title number SY723367. A copy of the entries upon the register and of the transfer (“the Transfer”) to the Respondent and Victoria Jane Anderson dated 11th July 2003 has been produced. Victoria Jane Anderson is no longer shown upon the register as a registered proprietor.

7. The Applicant points out that clause 8 of the Transfer grants to the Applicant both a fixed rent charge of £1 and a variable rent charge, whose amount is to be calculated in accordance with the terms of the Transfer. Clause 12 of the Transfer provides that the amount of the variable rent charge is to be the proportion payable by the Respondent of the costs incurred in carrying out the works that are specified in clause 13 of the Transfer. Whilst the skeleton argument does not expressly say so, it clearly implies that the amount of the claim in this matter is for a sum said to be payable for the variable rent charge, and described as a “freehold service charge”.
8. There is nothing before me to suggest that the charge in this case arises as part of an estate management scheme of the sort envisaged in section 159 of the Commonhold & Leasehold Reform Act 2002, which confers a jurisdiction upon the Tribunal to deal with estate charges of the sort described there arising out of freehold property.
9. As the skeleton argument points out, the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2098) contains a convenient list of the jurisdictions conferred upon Leasehold Valuation Tribunals. That jurisdiction is of course conferred by the relevant provisions of the various Acts of Parliament there mentioned rather than by those regulations themselves.
10. A service charge is defined in section 18 of the Landlord & Tenant Act 1985 (as amended) as being “an amount payable by a tenant of a dwelling as part of or in addition to the rent” for various heads of expenditure that it lists that are incurred by that tenant’s landlord. As such it clearly envisages from the terminology that it uses that the service charges in question are payable for leasehold property rather than for freehold property.
11. I am aware of no provision (and certainly have been referred to none) other than that referred to in paragraph 8 above that confers any jurisdiction upon a Leasehold Valuation Tribunal to deal with the reasonableness and payability of a rent charge issuing out of freehold property of the sort referred to in this case. Similarly I am aware of no authority for the proposition that the fact that such an application as this has been referred to the Leasehold Valuation Tribunal by the County Court thereby confers any sort of jurisdiction upon the Leasehold Valuation Tribunal that it would not otherwise possess.
12. For these reasons I conclude that the Leasehold Valuation Tribunal has no jurisdiction to deal with this application.



Robert Long

A member of the Southern Rent
Assessment Panel appointed by
the Lord Chancellor
15th September 2009