

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

In the matter of 31 Seawalls Road, Sneyd Park, Bristol, BS9 1PG

And in the matter of a reference from Bristol County Court to determine service charges

And in the matter of an application under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager

Case No: CHI/00HB/LSC/2010/0020

Between:

**Seawalls Management
(Bristol) Limited** Applicant

And

Mr. David Johnson Respondent

Case No: CHI/00HB/LAM/2010/0003

Between:

Mr. David Johnson Applicant

And

**Seawalls Management
(Bristol) Limited** Respondent

Members of the Tribunal: Mr. J G Orme (lawyer chairman)
Mr. M J Ayres FRICS (valuer member)
Mr. M R Cook (lay member)

Date of hearing: 24 May 2010

Date of decision: 26 May 2010

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that it has no jurisdiction to determine either matter.

Reasons

Background

1. The Seawalls Estate, Seawalls Road, Sneyd Park, Bristol ("the Estate") was developed in the late 1970's. It consists of a central block of 26 flats and 2 smaller blocks, each consisting of 3 houses, set in extensive grounds. The 26 flats have been let on long leaseholds. The 6 houses have been sold freehold. The owners of the freehold and leasehold properties have rights of access over the roads and paths of the Estate and the right to use the gardens and grounds.
2. The common parts of the Estate are managed by Seawalls Management (Bristol) Limited ("the Company").
3. Mr. David Johnson is the owner of one of the freehold houses, 31 Seawalls Road ("the Property").
4. The Tribunal had before it a copy of the transfer of the Property by the developer, MEPC Housing Ltd, to Mr. and Mrs. K N Bhasker ("the Transfer"). The Transfer is dated 10 March 1978. The Transfer defines the Property as the house known as 31 Seawalls Road. Annexed to the Transfer is a plan on which the extent of the Estate is shown edged in green. The Transfer defines the "the Amenity Area" as the access roads footpaths and garden grounds forming part of the Estate including its boundary walls and fences.
5. Clause 2 of the Transfer transferred the Property to Mr. and Mrs. Bhasker as beneficial owner together with the easements rights and privileges mentioned in the first schedule. Those included the right of access to the Property and the right to use the Amenity Area for recreation. By clause 5 of the Transfer, the Company covenanted with Mr. and Mrs. Bhasker that it would maintain the Amenity Area in good order and would repair and replace the boundary walls and fences of the Estate. By clause 4 of the Transfer Mr. and Mrs. Bhasker covenanted with the Vendor and with the Company to pay to the Company a service charge in accordance with the fourth schedule. At clause 4(e), Mr. and Mrs. Bhasker also covenanted with the Company not to transfer the Property unless the transferee entered into a direct covenant with the Company in the terms of that clause. The fourth schedule sets out those items of the Company's expenditure which may be recovered by way of the service charge.
6. On 7 August 2009 the Company issued a claim in the Northampton County Court under case number 9QZ12050 against Mr. Johnson seeking payment of £685.33 for water charges and service charges. On 10 August 2009 Mr. Johnson filed a defence to the claim and a counterclaim. The claim was then transferred to the Bristol County Court. On 29 December 2009, District Judge

Daniel ordered that the counterclaim be struck out and stayed the claim so that the dispute could be referred to the leasehold valuation tribunal. The Company objected to that order by letter dated 14 January 2010 on the basis that part of the claim was for water charges which were not a matter to be determined by the leasehold valuation tribunal. The Company also stated that the Property was freehold and questioned whether the leasehold valuation tribunal had jurisdiction to deal with the service charge claim as there was no relationship of landlord and tenant between the parties. On 1 February 2010 Deputy District Judge Smith entered judgement for the Company in the sum of £271.27 being the unpaid water charges and referred the remainder of the claim to the leasehold valuation tribunal.

7. On 22 February 2010 the Tribunal gave directions for determination of the service charge claim.
8. On 17 March 2010 Mr. Johnson applied to the Tribunal under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for the appointment of a manager for the Estate. The application raised a number of issues which have been and remain in dispute between Mr. Johnson and the Company relating to maintenance of the Amenity Area, maintenance of boundary fences and hedges and management of the Company.
9. On 7 April 2010 the Tribunal gave directions for the determination of the appointment application and directed that it should be heard at the same time as the service charge claim on 24 May 2010.
10. On 8 April 2010 the chairman of the Company, Mr. John Milbourn, wrote to the Tribunal challenging the jurisdiction of the Tribunal to determine Mr. Johnson's application on the basis that he owned the freehold of his Property and was not the owner of a leasehold flat.
11. On 9 April 2010 the Tribunal issued further directions replacing those made on 22 February and 7 April. It gave directions for a hearing to be held on 24 May to determine whether the Tribunal has jurisdiction to deal with both the service charge claim and the appointment application. It gave directions for skeleton arguments to be filed. On 21 April, the Tribunal issued further directions inviting the parties to indicate whether or not they accepted that the Tribunal had jurisdiction.
12. On 15 April 2010 Mr. Johnson wrote to the Tribunal saying that the question of jurisdiction had already been determined by the Bristol County Court and that, in his view, the Tribunal had jurisdiction. The Company wrote to the Tribunal on 23 April 2010 accepting that the Tribunal did not have jurisdiction in either matter.

The law

13. The Tribunal's jurisdiction to determine service charge disputes arises from the Landlord and Tenant Act 1985 ("the 1985 Act"). Section 27A(1) says "*an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to ...*".
14. Section 18(1) of the 1985 Act defines "*service charge*" as "*an amount payable by a tenant of a dwelling as part of or in addition to the rent ...*".
15. The jurisdiction of the County Court to transfer matters to the Tribunal for determination arises from paragraph 3 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). Paragraph 3(1) reads "*where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court (a) may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question, and ...*".
16. The jurisdiction of the Tribunal to appoint a manager to manage leasehold property arises from part II of the 1987 Act. Section 21(1) says "*the tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.*" Section 21(2) states that Part II "*applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.*" Where a tenant makes an application, the Tribunal may appoint a manager under Section 24 if certain conditions are satisfied.

Inspection.

17. The Tribunal inspected the Estate on 24 May 2010 in the presence of Mr. Deakin, the estate manager and Mr. Rowell, counsel for Mr. Johnson.

The hearing.

18. A hearing was held at the Holiday Inn, Filton, Bristol on 24 May 2010. The Company was represented by Mr. Milbourn and by Mr. Norman, a director. Mr. Johnson was represented by Mr. Rowell of counsel.

The submissions.

19. At the outset of the hearing, Mr. Milbourn confirmed that the Company's position remained as set out in its letter dated 23 April, namely that the Tribunal had no jurisdiction in either matter. He said that there existed no relationship of landlord and tenant between Mr. Johnson and either the Company or the Freehold owner of the Estate.

20. Prior to the hearing, Mr. Johnson had filed a skeleton argument in which he set out his arguments as to why the Tribunal had jurisdiction. At the hearing, Mr. Rowell did not adopt those submissions but made further oral submissions. He accepted that on the basis of the Transfer, the Tribunal had no jurisdiction to determine the service charge claim because the service charge referred to in the Transfer was not a service charge within the meaning of section 18(1) of the 1985 Act. He also accepted that, on the basis of the Transfer, the Tribunal had no jurisdiction to determine Mr. Johnson's application for the appointment of a manager as he was not the tenant of a flat.
21. However, Mr. Rowell had not seen a copy of the transfer of the Property to Mr. Johnson and did not know the terms of the personal covenants between Mr. Johnson and the Company. He wished to reserve his position until he saw that document, as it could not be certain that the relationship had not changed so as to bring the disputes within the jurisdiction of the Tribunal. He suggested that the Tribunal might have jurisdiction if the service charge was now reserved as a rent charge or if other provisions of the Leasehold Reform Act 1967 applied.
22. Mr. Rowell asked for an adjournment so that a copy of the transfer to Mr. Johnson could be produced or, alternatively, he asked for a reasonable period of time in which to make further written submissions once he had inspected that transfer.
23. Mr. Rowell accepted that the County Court could not give the Tribunal any jurisdiction over and above that which it has by virtue of statute.

Conclusions

24. The Tribunal was not prepared to adjourn the application or to allow Mr. Rowell further time in which to produce written submissions. The transfer to Mr. Johnson is a document which is in Mr. Johnson's control. He has had plenty of time in which to produce that document if he wishes to rely on it. The Tribunal considers that it is highly unlikely that the relationship between Mr. Johnson and the Company has been changed from that set out in the Transfer. The Tribunal proceeded to determine the matter on the basis of the evidence before it.
25. The Transfer clearly provides that Mr. Johnson is the freeholder of the Property. He has easements and rights over the Estate. There is no suggestion that he has a lease of any part of the Estate.
26. The Tribunal's jurisdiction to determine service charges arises from section 27A of the 1985 Act. "*Service charge*" is defined by section 18(1) of that Act.

It requires the service charge to be payable by a tenant of a dwelling as part of or in addition to the rent. Mr. Johnson is not a tenant of a dwelling and he does not pay rent. The Tribunal's jurisdiction is to determine service charge disputes between those who are in the relationship of landlord and tenant. It is not uncommon for freeholders to be required to contribute towards the cost of maintenance of common parts but the Tribunal has no jurisdiction in relation to such contributions.

27. It is also clear from schedule 12 of the 2002 Act that the court may only transfer matters to the Tribunal where an issue arises which falls within the jurisdiction of the Tribunal. The court cannot give the Tribunal any extra jurisdiction which it does not already have. The court had no power to transfer this dispute to the Tribunal as the dispute is not within the jurisdiction of the Tribunal.
28. Section 21 of the 1987 Act provides that the right to apply for the appointment of a manager is given only to the tenant of a flat contained in premises to which Part II of the 1987 Act applies. Mr. Johnson is not the tenant of such a flat. He has no right to apply for the appointment of a manager to manage the Estate. The Tribunal has no jurisdiction to consider such an application.
29. There are clearly issues between Mr. Johnson and the Company which need to be determined but the Tribunal has no jurisdiction to deal with those issues. The parties must return to the County Court to seek a resolution of their disputes.
30. Mr. Johnson has asked the Tribunal to make orders for the Company to disclose certain documents to him. As the Tribunal has no jurisdiction in these matters, it can make no such orders.



Mr. J G Orme
Chairman
26 May 2010