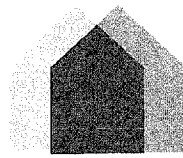


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Residential  
Property  
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**Commonhold and Leasehold Reform Act 2002 – Schedule 11  
LON/00BE/LSC/2009/0585**

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**Property** : **54 The Anchor Brewhouse, Shad Thames,  
London SE1 2LY**

**Applicant** : **Edward Tony Schmidt** **Tenant**  
**Represented by** : **Mr E T Schmidt** **In Person**

**Respondent** : **The Anchor Brewhouse Management Company  
Limited** **Management Company**

**Represented by** : **Mr J D Thornton**  
**Hurford Salvi Carr** **Managing Agents**

**Date of Application:** **30 June 2009**  
**Date of Hearing** : **1 March 2010**  
**Date of Decision** : **30 March 2010**

**Tribunal** : **Mr John Hewitt** **Chairman**  
**Mr Mel Cairns** **MCIEH**  
**Mr Leslie Packer**

**Decision**

1. The decision of the Tribunal is that:
  - 1.1 Administration charges are payable by the Applicant to the Respondent in the sum of £4,354.77 as shown in columns 6 and 7 in Appendix 1 attached to this Decision;
  - 1.2 The said sum of £4,354.77 is payable forthwith;
  - 1.3 The said sum of £4,354.77 shall be paid by the Applicant to the Respondent's new managing agents, Hurford Salvi Carr upon formal notice of their appointment being furnished to the Applicant together with details of their address and the relevant bank account;
  - 1.4 The said sum of £4,354.77 shall be paid by cheque or bank transfer as shall be most convenient to the Applicant;
  - 1.5 The Applicant's application for an order pursuant to s20C of the Landlord and Tenant Act 1985 (the 1985 Act) be dismissed; and
  - 1.6 The Respondent shall pay to the Applicant the sum of £100 by way of costs. The said sum of £100 shall be credited to the cash account as between the Applicant and the Respondent by no later than 4pm Friday 23 April 2010.
  
2. The findings of the Tribunal and the reasons for its decision are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the section of the hearing file provided to us for use at the hearing.

### **The Lease**

3. The relevant lease [3] is dated 4 June 1986 and was made between:
  - (1) Clarke London Limited, as landlord;
  - (2) The Anchor Brewhouse Management Company limited, as the management company; and
  - (3) Edward Tony Schmidt, as tenant.

4. The lease demised the premises for a term of 125 years from 25 March 1986 at a ground rent of £50 per annum (and rising) and on other terms and conditions therein set out.
5. The lease recites that the management company – the members of which are lessees of flats within the development – was incorporated for the purpose providing certain services to and for lessees of the development and to manage the development as set out in the lease.
6. Clause 4 of the lease comprises a covenant on the part of the management company to perform and observe the obligations set out in the Sixth Schedule to the lease. In essence the Sixth Schedule imposes obligations to insure and repair and decorate the building and to provide other services.
7. Clause 2(a) of the lease is a covenant on the part of the tenant with the management company to pay to the management company 0.55% of costs incurred by it in performing and observing the obligations set out in the Sixth Schedule to the lease.
8. Clause 3(39) of the lease is a covenant on the part of the tenant with the landlord:

*“to pay to the Landlord or the Management Company all expenses they may incur in enforcing any obligations of the Tenant whether or not proceedings are taken and whatever the outcome of such proceedings”*

It was not in dispute that any sums payable pursuant to this provision are variable administration charges within the meaning of paragraph 1 of Schedule 11 to the Act.

### **The Application**

9. On 30 June 2009 the Applicant (Mr Schmidt) made an application [1] pursuant to paragraph 5 of Schedule 11 to the Act in respect of 4

invoices relating to legal costs and expenses. The 4 invoices are listed and detailed in columns 2-4 of Appendix 1 to this Decision.

10. Directions were given on 14 October 2009 [4]. Direction 3 required the Respondent to serve a statement of case on Mr Schmidt by 26 November 2009. It was not disputed that the Respondent did not do so by that date or at all.

Direction 4 required the parties to attempt to agree the contents of the trial bundle and for the Respondent to deliver 3 copies of it to the Tribunal by 10 December 2009. It was not disputed that the Respondent failed to attempt to agree the content of the trial bundle, failed to deliver 3 copies of a trial bundle to the Tribunal and that by reason of this default Mr Schmidt was required to prepare and supply copies of the trial bundle and that he incurred costs and expenses in doing so.

#### **The law**

11. The relevant legal principles we have taken into account in arriving at our decision are set out in the Schedule to this Decision.

#### **Background and the administration charges claimed**

12. In 2008 the Respondent made an application to the Leasehold Valuation Tribunal for a determination of certain sums of service charges and administration charges alleged to be payable by Mr Schmidt – Case Reference LON/00BE/LSC/2008/0081. The Decision of the Tribunal on that application is at [7].
13. The Decision records that at a late stage Mr Schmidt did not contest the amount of the service charges claimed and he did not oppose the making of a declaration as to the payability of those charges. What was in issue was 6 invoices issued by Rooks Rider, the then solicitors to the Respondent, in connection with costs incurred by the Respondent in endeavouring to recover service charge arrears from Mr Schmidt. The

6 invoices in issue covered the period 20 May 2007 to 22 November 2007 and the total sum claimed amounted to £3,701.64.

14. The hearing took place on 30 June 2008 and the Decision was issued on 17 July 2008. It is clear from the Decision that the Tribunal looked carefully at each invoice, noted that city solicitors were employed and that the fee earner was charged out at a rate of £215 per hour. The Tribunal was critical of the limited evidence to support the sums claimed and considered that only specialised legal work should have been carried at such high cost; the more mundane and routine work being carried out more cost effectively by lower cost legal staff or perhaps by the professional managing agents employed by the Respondent. The Tribunal determined that of the claim for £3,701.64 only £2,526.25 was payable by Mr Schmidt.
15. The administration charges now claimed relate to further work carried out by Rooks Rider in the service charge claims against Mr Schmidt and the costs of the Tribunal hearing in June 2008 referred to above.
16. The Tribunal notes that of the four invoices now in issue, three of them are dated 31 March, 9 May and 29 May 2008 and which predate the June 2008 hearing. It seems to us that these invoices could and should have been brought to the attention of the previous Tribunal which would have been better positioned to consider the reasonableness of them. No satisfactory explanation was given to us as to why these invoices were not put before the previous Tribunal.

### **The hearing**

17. At the hearing Mr Schmidt represented himself. The Respondent was represented by Mr Thornton of Hurford Salvi Carr, a firm with considerable experience of residential property management. Mr Thornton told us that his firm had only recently taken over from Douglas & Gordon responsibility for the management of the subject development. Not all of the records and papers had been passed over

to him. Mr Thornton had only recently learned of the subject application. Mr Thornton said that he had not time to prepare fully, but he did not wish to seek an adjournment.

18. Mr Schmidt drew to our attention the background described above and his long running service charge dispute with the previous managing agents of whom he was highly critical. Mr Schmidt also took us to the 4 invoices in question and the extremely limited information showing how the sums claimed had been arrived at. Mr Schmidt told us that he received all four invoices together with a demand to pay them under cover of a letter dated 12 June 2009.
19. Mr Thornton sought to put in evidence a document printed out on 31 March 2008 by Rooks Rider which purported to be a computer record showing in detail how the time of 2 hours 36 minutes claimed in the invoice dated 31 March 2008 had been arrived at. Mr Schmidt objected to the document being put in at such a late stage and submitted that he would suffer prejudice because it is not a document he readily understands and he had not had the opportunity to take advice on it. We studied the document carefully. Mr Thornton was unable to explain why it had not been served on Mr Schmidt prior to the hearing. We took into account that at all material times the Respondent has been professionally advised and represented and that it has had every opportunity to supply documents to support its case but chose not to do so and chose not to seek an adjournment in order to better prepare its case. In these circumstances we concluded that it would be an unfair injustice to Mr Schmidt to allow the Respondent to rely on the breakdown in support of its case.
20. Mr Thornton was unable to provide any information to support the invoices issued. Mr Thornton was unable to say why a representative of Rooks Rider had not been asked to attend the hearing to explain and support the invoices. Evidently Rooks Rider has now been dis-instructed. Mr Thornton told us that he has seen some correspondence

by Douglas & Gordon to Rooks Rider challenging the subject invoices but all that was received was an anodyne reply.

21. Mr Thornton submitted that it was reasonable for the Respondent to have engaged solicitors to pursue Mr Schmidt for arrears of service charges and that Mr Schmidt was always in arrears. The Respondent is owned by the lessees and its only source of income is the service charge account. He said that in effect Mr Schmidt has been taking unauthorised loans from the company by failing to pay service charges as they fall due.
22. Mr Schmidt was critical of the sparse information provided in the subject invoices and he considers that he is being penalised for challenging service charge expenditure and that he being forced to pay costs on costs.

### **Decision and findings**

23. We have already commented that it was most unfortunate that the 3 pre June 2008 invoices were not raised before the previous Tribunal. At that hearing both parties were represented by counsel and doubtless Rooks Rider would have been in a position to give further and supporting information.
24. Given the issues and the history we are satisfied that it was reasonable in principle for the Respondent to have instructed solicitors and counsel to advise in relation to the recovery of arrears from Mr Schmidt.
25. We echo the comments of the previous Tribunal about expensive lawyers undertaking routine work which can and should be carried out in a more cost effective way. We bear in mind that Douglas & Gordon have challenged Rooks Rider on the amount of the subject invoices and did not receive a satisfactory response. We bear in mind that the print out dated 31 March 2008 which Mr Thornton sought to rely upon includes charges for considering routine incoming correspondence.

Such charges have to be disallowed because the time spent on considering incoming correspondence is allowed for in preparing the reply. For all of these reasons we conclude that it is more likely than not that the Rooks Rider costs claimed are unreasonable in amount. There are imperfect materials before us and this is due to the failure of the Respondent to supply information to support the sums claimed. Doing the best we can on a rough and ready basis and drawing on the accumulated expertise and experience of the members of the Tribunal we reduce Rooks Riders' costs by 50%. We find that counsel's fees and the modest expenses claimed were reasonable in amount.

26. Accordingly we determine that Mr Schmidt is liable to pay to the Respondent administration charges in the sum of £4,354.77 as shown in columns 6 and 7 of Appendix 1 to this Decision.

#### **The s20C application**

27. We decline to make an order under s20C of the 1985 Act in relation to any costs which the Respondent might incur in connection with the subject proceedings. Mr Thornton said that this was a new instruction and he was still getting to grips with it. He did not know what costs may have been incurred. He said that no decision had been taken as to whether such costs as have been incurred are services charges payable by the lessees as a group or further administration charges payable by Mr Schmidt. Mr Thornton reminded us that the Respondent was made up of lessees and the only source of income was the service charge account. Any costs incurred had to be paid from somewhere.
28. Mr Schmidt submitted that an order should be made because the hearing was unnecessary and the Respondent should have provided more information to support the sums claimed.
29. We have decided not to make an order because we prefer the submissions made by Mr Thornton. We bear in mind that Mr Schmidt will not be prejudiced because the costs might not go through the



service charge account. But, if they do Mr Schmidt (and/or any other lessee) will have an opportunity to challenge them in the usual way.

### **Reimbursement of fees**

30. It was not necessary for us to consider reimbursement of fees because none were paid by Mr Schmidt due to his entitlement to an exemption.

### **Costs**

31. Mr Schmidt sought to recover costs. He said that he had been put to cost and expense due to the Respondent's failure to provide the trial bundles.
32. Mr Thornton opposed the application.
33. There is no explanation before us as to why the Respondent failed to comply with the directions and provide the trial bundles. We find its failure to do so unreasonable conduct in the proceedings which has directly caused Mr Schmidt to incur costs and expenses. Those costs and expenses include postage, copying charges and telephone calls. We assess them at £100. However given that there are sums due and payable by Mr Schmidt to the Respondent we find that the most appropriate course is for a credit in the sum of £100 to be entered on the cash account as between Mr Schmidt and the Respondent. We have therefore so ordered.

### **Post hearing**

34. Subsequent to the hearing the Tribunal received further correspondence from Mr Thornton. We have not taken it into account because it would not have been proper for us to do so and because it was not directly relevant to the issues before us.

**The Schedule  
The Relevant Law  
Landlord and Tenant Act 1985**

**Section 20C(1)** of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

**Section 20C(3)** of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

### **Commonhold and Leasehold Reform Act 2002 Schedule 11**

**Paragraph 1** sets out a definition of a 'variable administration charge'.

**Paragraph 2** provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Paragraph 5** provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration charge is payable and, if it is, as to :

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable.
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

No application may be made in respect of a matter which:

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court. Or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

#### **Schedule 12**

**Paragraph 10** provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in circumstances where he has made an application which dismissed by virtue of paragraph 7 or he has, in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount which a party may be ordered to pay is currently limited to £500.

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John Hewitt  
Chairman  
30 March 2010