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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON 00BG/LSC/2010/0344**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT  
ACT 1985**

Applicant: EAST END HOMES LIMITED

Respondent: PHILIP HILL

Premises: 29 Wentworth Mews London E3

Date of Application: 24<sup>th</sup> March 2010

Date of Hearing: 9<sup>th</sup> September 2010

Appearances for Applicant: Mr R Brayshaw accountant  
Ms J Lebile-Holo

Appearances for Respondent: Ms Jessica Gill solicitor of DH Law

Also in attendance: Mr J Vale

Leasehold Valuation Tribunal:  
Mr P Leighton LL B (Hons)  
Mr H Geddes ARIBA MRTPI

Date of Tribunal's Decision

Oral Decision: 9<sup>th</sup> September 2010

Written decision: 5<sup>th</sup> October 2010

## DECISION

- 1 By an application dated 24<sup>th</sup> March 2010 the Applicant seeks payment of service charges from the Respondent in respect of the property known as 29 Wentworth Mews London E3 4UA for the years 2008/9,2009/10 and 2010/11 in the total sum of £2962
- 2 Directions were given for the conduct of the application and the matter came before the Tribunal on 9<sup>th</sup> September 2010 . Mr R Brayshaw an accountant appeared on behalf of the Applicant and Ms J Gill a solicitor appeared on behalf of the Respondent , who did not attend in person.
- 3 At the outset of the proceedings the Tribunal raised with the parties the issue of jurisdiction. This matter is of some importance because it raises issues relating to the jurisdiction of the Tribunal in circumstances where there is a possible admission of liability

## The Facts

- 4 The Respondent holds under the terms of a lease dated 12<sup>th</sup> June 1989 originally with the London Borough of Tower Hamlets and now assigned to the Applicant for a term of 125 years at a ground rent of £10 per annum, under which he undertakes liability to pay a service charge in respect of the services provided by the landlord (Clause 4(4))
- 5 He in turn has sublet the premises to Spitalfields Housing Association who in turn have an obligation to pay service charges to him under the terms of a sub lease, which the Tribunal has not seen,
- 6 Until 2005 it appears that the Spitalfields Housing Association paid service charges directly to the landlord who was still Tower Hamlets Borough Council but since that date according to Ms Gill they have made no payments to Mr Hill and have raised various disputes, concerning the validity of the notices served demanding the service charges

- 7 The issue of service charges has also risen in connection with another property owned by Mr Hill namely 74 Ennerdale House Hamlets Way London E3 in respect of which the Applicant has taken proceedings against Mr Hill both in the County Court and in this Tribunal
- 8 On 26 July 2010 a Tribunal chaired by Mrs Hindley made a determination that the Respondent Mir Hill owed the sum of £3883.77 to the Applicant in respect of 74 Ennerdale House although they were informed on the morning of the hearing in a fax from D H Law, the solicitors for the Respondent, that the outstanding charges had been paid to Spitalfields Housing Association. This turned out not to be correct but although it was clear that there was no dispute at the hearing that the service charges were payable, it is not clear that a formal admission of liability had been made prior to the hearing and the issue of jurisdiction was not argued before the LVT on 26<sup>th</sup> July
- 9 On 28th July 2010 the Respondent consented to judgement in the Bow County Court in respect of other service charges due from 74 Ennerdale House when he was again represented by Ms Gill of D H Law
- 10 Subsequent to those proceedings there was correspondence between DH Law and the Applicant concerning the present application and on 19th August 2010 Ms Gill wrote in the following terms by letter to the Leasehold Valuation Tribunal saying "*We formally notify the Tribunal of our client's admission of liability for the service charge notices dated 2008-9, 2009 10 and 2010 -11. Our client's statement to that effect shall follow shortly. We have on 18th August informed the Claimants that our client admits liability and puts forward his offer of payment for the outstanding due charges. Please see attached the correspondence. We cannot understand the Claimant 's reasons for wanting to proceed in the matter and believe that the Claimants are being unreasonable. They wish to proceed, thus wasting costs and the Tribunal's time, in light of the fact that our client had admitted liability and offered to discharge the outstanding debt. We respectfully request that the Tribunal dispense with the application without*

*the need for a hearing. if the Claimants unreasonably refuse this course of action we do intend to make an application for costs”.*

- 11 The correspondence referred to is set out in an e-mail on page 11 of the bundle in which Ms Gill sends a letter marked “without prejudice “ in which she states: *“Our client hereby makes an offer of payment for the full amount of the claim of £788.28 for 2008/2009 (actual) £1197.81 for 2009-10 (estimate) and the first and second instalment for 2010-2011 being £635.30 (half of the year repayment of £1270.60 estimate). The full amount payable to date being £2621.39. Our client proposes to pay this in three equal monthly instalments”*
- 12 The Applicant stated at the hearing that the amount admitted of £2621.39 is not the total amount due which in fact amounts to £2962 and therefore the final figures were not agreed. They were also unhappy with the arrangements for payment by instalments bearing in mind that the amount claimed had been due for some time
- 13 Prior to Miss Gill’s letter the Respondent had been disputing the service charges on the basis that the demand did not contain sufficient notice under the summary rights and obligations necessary to validate the claim
- 14 Ms Gill says that the reason that this defence was advanced was because the subtenants themselves had raised this issue and were withholding payment on that basis
- 15 Ms Gill informed the Tribunal that she had sought the advice of counsel at that time but it appears that the opinion given by counsel has now been abandoned and it is accepted that the notices served by the Applicant were correct
- 16 The Applicant on receiving Ms Gill’s letter indicated that it wished to proceed to the Tribunal for a determination on the basis of the previous conduct of the Respondent which they maintained was designed to avoid or delay payment

17 The question now arises as to whether the Tribunal in the light of those facts has jurisdiction to entertain this application pursuant to the admission.

18 Section 27A of the Landlord and Tenant Act 1985 provides as follows

*(4) No application made under subsection (1) or (3) may be made in respect of a matter which*

*(a) has been agreed or admitted by the tenant .*

Subsection (5) provides that a tenant is not to be taken to have agreed or admitted a matter by reason only of having made any payment

19 Mr Brayshaw submitted that at the time when the application was issued the claim had not been admitted and the Tribunal therefore had jurisdiction at that time and that the admission made was not sufficiently full and complete as to enable the Applicant to obtain a judgement in the County Court

20 Ms Gill submits that the sections should be read literally and that once an admission is made by the Respondent the jurisdiction of the Tribunal then ceases and that the Tribunal should no longer continue to hear the application

21 Mr Brayshaw refers to the decision in Ennerdale House but it appears to the Tribunal that this does not assist him because the issue of jurisdiction was not considered or debated at that hearing .

22 It appears therefore that the Tribunal must consider afresh whether it has jurisdiction in the light of the letter of admission sent by Ms Gill on 19 August 2010

23 In considering the question of jurisdiction the Tribunal has to bear in mind that it has no powers of enforcement and that the enforcement of the claim lies with the County Court. The court will only enforce an agreement or a determination if it is sufficiently clear on its face so that it is not capable of misinterpretation

- 24 It appears to the Tribunal that where, as in the facts of this case, an admission of liability is made the Tribunal may have a residual jurisdiction to clarify that admission and to put it in the form of a determination which would enable the claim to be enforced through the County Court
- 25 The letter from Miss Gill is not immediately capable of enforcement since in the first instance it is claimed to be without prejudice and secondly it appears that although liability in principle is admitted the final figures have not been agreed. Whilst it could be said that the Applicants could have presented the Respondent with a formal document of admission and invited him to sign they did not do so but chose the route of seeking the Tribunal's determination so that the matter could be put beyond doubt.
- 26 In those circumstances the Tribunal considers that it does have a limited jurisdiction to formalise the admission and to put it in a form which is capable of enforcement through the County Court
- 27 In addition the Applicants stated that they wished the matter to come before the Tribunal in order that it could entertain an application for costs under schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002.
- 28 The Tribunal had some doubt in the first instance as to whether if it had no jurisdiction to deal with his claim whether it could entertain an application for costs under Schedule 12 Paragraph 10
- 29 The Schedule provides as follows: (1) *A Leasehold Valuation Tribunal may determine that the party in proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within subparagraph (2)*
- 30 Sub Paragraph 2 provides (2) *The circumstances are*  
*(a) he has made an application to the Leasehold Valuation Tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7*  
*or*

*(b) he has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

- 31 The section does not say that the Tribunal must in all circumstances have reached a determination on the merits of the case in order to entertain an application for costs. That would appear to the Tribunal to be correct because there may well be circumstances where a party in the course of proceedings misconducts himself or acts in a frivolous or vexatious manner in which it is right that the other party can bring the matter before the Tribunal for a determination on costs even though the substantive issue may have been disposed of by agreement
- 32 The Tribunal therefore holds that it is entitled to consider an application for costs under Schedule 12 paragraph 10 irrespective of the earlier finding that it has jurisdiction to deal with this application
- 33 However the Tribunal has decided on the facts of this case that it will not make a determination under Schedule 12 paragraph 10 for the reason that whilst it has some suspicions that the Respondent may have taken steps to avoid payment. It also concludes that it was open to the Applicant to obtain a proper admission in writing from the Respondent and should have attempted to do so before bringing the matter before the Tribunal for hearing
- 34 One can quite understand why Mrs Lebile- Holo had some reluctance to adopt that course in the light of previous proceedings but nonetheless the whole policy of the law must be based on the desire and the necessity of settling proceedings rather than bringing them on for hearing
- 35 Therefore the Tribunal has concluded that this is not a case where it will make an award against the Respondent under schedule 12 Paragraph 10. The Tribunal will however make the declaration which is sought by the Applicant namely that the Respondent is fully liable for the service charges incurred for the period 2008/9, 2009 /10 and the interim charges for 2010/11 in the sum of £2621.39

36 The Tribunal was prepared to give the Applicant the opportunity to seek a determination for the years 2007/8 and invited Ms Gill to obtain instructions as to whether the additional figure for these years was admitted. Subsequently in a statement dated 22<sup>nd</sup> September 2010 Ms Gill wrote indicating that the figures for 2007/8 were disputed on th3 grounds of non service of demands and that no sum in excess of the admitted figure of £2621.39 were admitted. . There is a reply to that statement from the Applicant stating that numerous attempts have been made to evade service and a contention that the service charges for 2007/8 are payable.. However since these figures are not admitted and did not fall within the remit of the county court transfer the Tribunal declines to make any findings in respect of those figures without there being another application with full evidence to determine whether or not they are payable.

37 Accordingly the Tribunal determines that the sum of £2621.39 is due and payable by the Respondent.

38 In the view of the Tribunal this determination will in the event of non-payment by the Respondent enable the Applicant to obtain a judgement for this amount in the County Court.

Chairman            Peter Leighton



Date                    5<sup>th</sup> October 2010