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HM Courts
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Service

LEASEHOLD VALUATION TRIBUNAL

Case Number: CAM/34UF/LAC/2011/0007

Property : Flats 10 and 11, 21 Henry Bird Way, Southbridge,
Northampton, NN4 8GE

Applicant : Ivor Fernandes

Respondent(s) : Hayne Securities Ltd

Type of Applications : Application for
(1) an Order under s20C of the Landlord and Tenant Act 1985
(2) an Order requiring the Respondent to reimburse to the Applicant the application fee under paragraph 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003.

Tribunal : David S Brown FRICS MCI Arb (Chair)
Bruce M Edgington

DECISION

- (1) The Respondent is ordered to reimburse to the Applicant the application fee of £70
- (2) The Tribunal orders that all of the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

REASONS

1. On 30th November 2011, the Applicant submitted an application to the Tribunal under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to the payability of Administration Charges, namely charges made in respect of late payments of ground rent. Prior to the application there had been lengthy correspondence between the Applicant and the Respondent.
2. Directions were issued on 19th December, with a view to a determination being made on the papers, without a hearing, subject to either party's right to request a hearing.
3. On 11th January 2012, C George, a Director of the Respondent, wrote to the Applicant stating that they had undertaken an internal audit and it had been brought

to his attention that the interest charges applied to both of his properties had been done so incorrectly and will be waived "as a gesture of goodwill".

4. As a result, the application under Schedule 11 has been withdrawn and the Applicant has now made the applications outlined above.
5. On 1st February, the Tribunal notified the Respondent of these applications and gave notice that it intended to determine them without a hearing, on or after 5th March, subject to the proviso that if before that date either party requested an oral hearing one will be arranged. The Tribunal directed that if the Respondent wished to make a statement in reply to these two applications it must do so in writing by 4pm on 17th February, (subsequently extended to 21st February), the statement to be accompanied by all relevant documents. No such statement has been received and neither party has requested a hearing.
6. The Tribunal finds it surprising that during correspondence over a period of more than six months regarding these late payment charges, the Respondent did not check the position and ascertain that they had been wrongly applied. Had it done so, the original application would not have been necessary. It is therefore equitable that the application fee which the Applicant has had to incur should be reimbursed. Under the circumstances, it would not be equitable for any costs incurred by the landlord to be recovered through the service charge (if the lease so permits - as to which we make no determination) and so an order under section 20C is appropriate.

Signed:

Date: 5th March 2012


D S Brown FRICS MCI Arb (Chair)