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**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Property:** 50 Birnam Road, Wallasey, CH44 9AY

**Applicant:** Mr R W Webster

**Respondent:** Fee Simple Investments

**Case Number:** MAN/00CB/LVA/2012/0001

**Date of Application:** 23 April 2012

**Type of Application:** Determination as to liability to pay and reasonableness of a variable administration charge under schedule 11 to the Commonhold and Leasehold Reform Act 2002

**Tribunal:** Mr WMS Tildesley OBE (Lawyer Chair)  
Mr P Mountain FRICS

**Date of Determination:** 15 August 2012

**APPLICATION DETERMINED WITHOUT AN ORAL HEARING  
REGULATION 13 OF LEASEHOLD VALUATION TRIBUNALS (PROCEDURE)  
(ENGLAND) REGULATIONS 2003**

## DECISION

### The Application

1. The application concerns the reasonableness of a charge for the Respondent's consent to sub-let the subject property. The amount of charge in question is £250 plus VAT.

2. The property is subject to a lease for a term of 999 years from 26 June 1987. Under the terms of the lease the Applicant is required to pay a ground rent of £15 per annum. The respective interests in the lease are vested in the Respondent and Applicant respectively. The copy counterpart lease supplied does not contain the name of the tenant. The Tribunal notes at a hearing on 16 December 2011 involving an application for breach of covenant, the parties did not dispute the validity of the copy lease produced.

3. Paragraph 5(g) of the lease provides that

“the lessee hereby covenants with the lessor as follows ... (g) Not to assign underlet charge or part with possession of the said property without the previous consent in writing of the lessor at the cost of the lessee such consent not to be unreasonably withheld”.

4. Under paragraph 5(g) of the lease the Respondent is entitled to charge the Applicant for giving consent to the sub-letting of the property. Paragraph 1(1) of schedule 11 to the Commonhold and Leasehold Reform Act 2002 classifies an amount payable by a tenant of a dwelling for or in connection with the grant of approvals under his lease, or applications for such approvals as an administration charge.

5. Paragraph 5(g) of the lease does not specify the amount of the charge or calculate it in accordance with a formula. The charge is, therefore, a variable administration charge within the meaning of paragraph 1(3) of schedule 11 to 2002 Act.

6. Under paragraph 2 of schedule 11 a variable administration charge is payable only to the extent that the amount of the charge is reasonable. Under paragraph 5(1) the Tribunal has jurisdiction to determine the reasonableness of any such charge.

7. The Applicant in this case wished the Tribunal to determine the reasonableness of the charge of £250 plus VAT which he was required to pay with the *Application for Consent to sub-let Property* issued by the Respondent's agent, Alton Property Management Limited. The fact that there has been no formal demand for the charge by the Respondent does not oust the Tribunal's jurisdiction to determine the reasonableness of the charge. His Honour Judge Huskinson in *Drewett v Bold* LRX/90/2005 stated at paragraph 36:

“Turning to Schedule 11 of the 2002 Act, I am unable to accept Mr Heather's argument that the word “payable” in paragraph 1 means “due” such that unless an administration charge is due there exists no administration charge at all which the LVT has any jurisdiction to deal with. I reach this view for the following reasons:

(1) The administration charge is stated to be an amount payable by a tenant "as part of or in addition to the rent". It is not a misuse of the English language to say that rent is payable under a lease even though, at the date of so stating, no rent is due because the last instalment has been paid and the next instalment has not yet fallen due. Similarly the Tenants' lease is one under which an administration charge is payable (ie payable if certain events occur) even though nothing may yet be due for payment.

(2) It may be noted that paragraph 3 of the Schedule enables a party to a lease to apply to an LVT for an order varying the lease on the grounds that any administration charge specified is unreasonable or the formula specified is unreasonable. This contemplates the ability to make such an application in advance of some dispute arising and in advance of there therefore being some administration charge which is actually payable in the sense of being due.

(3) Also it cannot be right that there is no jurisdiction at all under paragraph 11 unless some administration charge is actually payable in the sense of being due, because paragraph 5 expressly recognises that one answer the LVT may give when determining whether an administration charge is payable is that the answer is no and that nothing is payable".

8. At paragraph 39 of the judgment His Honour Judge Huskinson also rejected the argument that the lack of a formal demand meant that nothing was actually due by way of administration charge from the Tenants such that the entire extent of the Tribunal's jurisdiction would be merely to rule that nothing was payable and to do no more.

9. Thus the issue to be determined is whether the application fee of £250 plus VAT for consent to the sub-letting of the property is reasonable.

10. On 16 May 2012 the Tribunal directed that the application be resolved by the submission of documentary and other written evidence unless either party requested an oral hearing within 28 days from the date of the directions. No such request was made. The Tribunal also directed the Respondent to produce a full detailed response to the Application by 11 June 2012. The Applicant was given the right of reply by the 25 June 2012.

11. The Respondent did not submit its evidence by the due date. On 11 June 2012 the Tribunal wrote to the Respondent reminding it of its responsibility to provide evidence and that failure to provide such evidence may result in prejudice to the Respondent's case. The Tribunal received no response to its letter.

12. On 19 June 2012 the Tribunal spoke to the Respondent's agent, Alton Property Management Limited, which provided the following response:

"We write to advise that our clients do not wish to present any evidence at this stage in respect of this application, and we will therefore leave it to the Tribunal to make its determination based on the information which it has

been given so far. Our clients are doing this not because they have no representations to make but simply because it is not economic for them to do so on this occasion.

### **Consideration**

13. The Tribunal did not understand the Respondent's reluctance to provide a response to the Application. In the Tribunal's view, the Respondent did not require expert help in explaining the work involved in considering a consent application, and the reasons for imposing a charge of £250 plus VAT.

14. The Applicant supplied the Tribunal with a copy of the consent application. The form in effect comprised two pages. The first page requested details of the property and of the owner including contact details. The second page asked for the name of a mortgage lender, if any, the present property insurers, the names of the sub-tenants and proposed tenancy terms (tenancy type, length of term, proposed use of property and rent). The form did not require the Applicant to supply documentation to corroborate the statements on the application form. The Tribunal holds that the structure of the form and the basic information requested were indicative that the Respondent would not require specific expertise and significant time to consider an application for consent to sub-let the property.

15. The Tribunal also considers that the term of the lease being 999 years was a relevant consideration in determining the reasonableness of the charge. In essence the value of the Respondent's freehold interest in the property was minimal and not compromised by the sub-letting of the property.

16. The Tribunal having regard to the nature of the application, the 999 year term of the lease, and its general knowledge derived from its status as an expert Tribunal considers that the Respondent would treat the application as a routine matter. Given those findings the Tribunal decides that **an application fee of £75 plus VAT for consent to sub-letting of the property would be reasonable.**

17. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985. The lease did not permit the Respondent to recover its legal costs in connection with proceedings before the Tribunal and to charge for services. Thus the provisions of section 20C had no bearing on the circumstances of this Application.

18. The Applicant has been successful with his application. The Tribunal orders the Respondent to reimburse the Applicant with the fee of £50 which he has paid to the Tribunal for making the application.

**MICHAEL TILDESLEY OBE  
MEMBER OF LEASEHOLD VALUATION TRIBUNAL  
RELEASE DATE**