LRX/67/2006

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – service charges – procedure – applicant's failure to comply with LVT's directions – power to dismiss under Regulation 11 of Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 – failure by LVT properly to consider the matter under Regulation 11.

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **MARILENA VOLOSINOVICI** **Appellant**

and

CORVAN (PROPERTIES) LIMITED **Respondent**

Re: Flat 726,
Clive Court,
Maida Vale,
London W9 1SG

Before: His Honour Judge Huskinson

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 6 July 2007

Mr Justin Bates counsel, instructed by Bar Pro Bono Unit for the Appellant
Mr Michael Buckpitt counsel, instructed by Manches for the Respondent

The following cases are referred to in this decision:

O*akfern Properties Limited v Ruddy* [2006] EWCA Civ 1389
R v Montila [2004] UK HL 50
De Campomar v Pettiward Estate (LRA/29 & 30/2004)

DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal with permission, from the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("the LVT") dated 30 March 2006 whereby the LVT struck out certain parts of the Appellant's application to the LVT "for failing to comply substantively" with certain directions which the LVT had previously given.

2. The Appellant holds the above mentioned flat on a long lease from the Respondent. The application to the LVT, part of which the LVT struck out, was an application dated 18 October 2005 whereby the Appellant applied to the LVT under section 27A of the Landlord and Tenant Act 1985 as amended for the determination of the amount of service charge payable by the Appellant to the Respondent for the years 1998 to 2005 (and also a determination was sought as to future service charges in respect of 2006 and 2007).

3. The chronology of these proceedings, so far as presently relevant, can be summarised as follows:

18 August 2005	Respondent commences proceedings in the Central London County Court against the Appellant claiming arrears of ground rent and service charge in the sum of £17,400.34.
18 October 2005	Appellant's Application to LVT
16 November 2005	Pre-Trial Review at which LVT issued directions including directions requiring the Appellant to serve a full statement of her case. The wording at the end of the order included a statement of possible consequences of non-compliance with the directions which, in the case of any non-compliance by the Appellant, could result in dismissal of the application.
16 December 2005	Further directions from LVT giving further time to the Appellant (pursuant to a request on her behalf from Mr Graham who was assisting and representing her).
January 2006	Appellant through Mr Graham seeks more time

1 February and 7 February 2006	Respondent's solicitors write to LVT complaining regarding the Appellant's delay and asking that the claim be struck out alternatively that some form of unless order be made.
9 February 2006	LVT writes to Mr Graham stating "the Tribunal wishes it to be known that it is minded to dismiss the application as vexatious unless the applicant complies with the Directions by Monday, 13 February 2006. If there is no response by that date a preliminary hearing will be listed for Monday 6 March 2006 when the Tribunal will consider dismissing the application."
6 March 2006	Hearing before LVT at which it considered the Respondent's application to strike out the application. The LVT observes that the Appellant had had more than 4½ months since making her application to particularise her case but had failed to do so. The LVT reminded itself that the Appellant was a litigant in person represented by a lay person and also that the Respondent appeared to concede that there had been some short comings regarding the management of the property during the period to 24 June 2002 (when the management was transferred to the current managing agents) and had offered a discount of 10% on service charges relating to that period to all the lessees. The LVT decided it was appropriate to allow the Appellant one final opportunity fully to particularise her case. The hearing was adjourned to 30 March 2006 at which, if a completed Scott Schedule had not been received, the Tribunal would consider dismissing the application.
29 March 2006	A Scott Schedule is served in respect of each service charge year giving, as regard certain disputed items, a figure in dispute and giving, as regards certain other items, a figure in dispute of a nominal amount of £1 or £2.

4. At the hearing on 30 March 2006 it was made clear by Mr Graham on behalf of the Appellant that as regards the items in respect of which £1 or £2 had been stated as being the amount in dispute, the Appellant did not actually intend to take to a contested hearing a dispute over only £1 or £2. Instead this had been added as a nominal amount because on the information and documents presently available to the Appellant it was not possible for the Appellant yet to particularise what if anything was in dispute as regards those items. This nominal amount was put in to keep the point alive so that further particulars could be given in due course. It may be noted that there was appended to the original application to the LVT of 18 October 2005 certain explanatory material including a complaint regarding the difficulty of dealing with the Respondent's managing agents and an allegation that they have a cavalier attitude towards the lessees they deal with and a statement that the Appellant believes she was entitled to information under the Landlord and Tenant Act and that she had made reasonable requests for information but that she had been ignored.

5. By a decision dated 30 March 2006 the LVT struck out parts of the Appellant's application. As this is the decision under appeal and is thus central to the case it is right to set out the text of the LVT's decision in full (omitting certain additional directions given at the end):

> "Respondent application to strike out Applicants' application considered.
>
> Having heard representatives for both parties, and the Applicant having complied in part with the direction (No 8) dated 6 March 2006, it is decided that those parts of the service charges recorded in the Applicant's Scott Schedule as being disputed in the normal (sic) sum of £1 or £2 are struck out for failing to comply substantively with the said directions, given so that the Respondent might know the case it had to meet. The remainder to stand as the Applicant's Statement of Case."

It is agreed the word normal is a misprint for nominal.

6. In granting permission to appeal to the Lands Tribunal the learned President made the following observations:

> "It appears to me to be doubtful that an LVT has power to strike out part of an application on the ground that an applicant has failed to comply with directions that it has given. It has power to dismiss an application in whole or in part under reg 11 of the LVTs (Procedure)(England) Regs 2003, and this power arises where it appears to the LVT that the application is frivolous or vexatious or otherwise an abuse of the process of the tribunal. While the order of the LVT may well have been justified on the merits, it was not apparently made under reg 11.
>
> The appeal will be determined by way of review. In their statement of case and reply the parties should address themselves to the two issues: (1) whether the LVT had power to strike out parts of the application; (2) whether, if it did have such power, it exercised it lawfully in making the order that it did."

7. In her statement of case the Appellant contended that the LVT had no power to strike out part of the application for failure to comply with the LVT's directions and she also contended the directions were flawed and impossible to comply with because of the Appellant's difficulties in obtaining documents from the Respondent. In its statement of case the Respondent contended that from the chronology (see above) it was apparent that the LVT members had regulation 11 at the forefront of their minds at the hearing on 30 March 2006. Neither party put in any evidence as to what actually happened at this hearing. However, at the hearing before the Lands Tribunal a point arose as to whether (despite the point being expressly raised by the President in his grant of permission to appeal) it was open to the Appellant to argue that the order of 30 March 2006 was apparently not made under regulation 11. I was not asked to receive any evidence from either side, but counsel told me, on instructions from their clients, that what occurred was as follows:

1. Mr Bates told me that as regards the Appellant, neither she nor Mr Graham can remember sufficiently clearly as to what happened.

2. As regards the Respondent, Mr Buckpitt told me that his instructions from Mr Jones (the solicitor who was present on behalf of the Respondent) was that Mr Jones' recollection was that he made submissions in general terms; that he did not personally go through the 2003 Regulations but he thinks he referred to the application being frivolous and vexatious and perhaps he also referred to it being an abuse of the process of the tribunal; and he recalls the LVT went through the regulations in more detail.

I was also told, on instructions, that an oral decision was given by the LVT on 30 March 2006 prior to the written decision being issued. However, there is no agreed note of this decision and there is nothing before me to indicate that the content of the oral decision was in any way different from the wording contained in the written decision.

8. I was told that a Miss Maha Abdel-Mamoud had been added as an applicant to the LVT and it appears that she also was represented by Mr Graham. The order of 30 March 2006 does not expressly refer to her position. She has not sought to appeal that order (insofar as she was affected by it) and Mr Bates confirmed that he was not instructed on her behalf and that the present appeal is only by the present Appellant Miss Volosinovici.

9. The hearing on 30 March 2006 was before a differently constituted tribunal as compared with the hearing on 6 March 2006. The statement in the decision of 6 March 2006 that the hearing on 30 March 2006 (if it was to take place) would be an adjourned hearing (see paragraph 8 of the earlier decision) must be seen in that light.

The statutory provisions and certain agreed legal matters

10. Section 27A of the Landlord and Tenant Act 1985 as amended entitled the Appellant to apply to the LVT for a determination of whether a service charge was payable for the various years raised in her application and, if it was, as to the amount which was payable. Procedural regulations are made by the Leasehold Valuation Tribunals (Procedure) (England) Regulations

2003. Among other matters these lay down certain basic particulars which must be given in applications. So far as concerns an application under section 27A regarding service charges the particulars are to be found in Regulation 3 and paragraph 2 of Schedule 1. There is no suggestion that these particulars were not given in the present case.

11. The above mentioned 2003 Regulations have been made under the Commonhold and Leasehold Reform Act 2002, Schedule 12 of which lays down procedure for LVTs. Paragraph 7 of Schedule 12 provides that procedure regulations may include provision empowering LVTs to dismiss applications in whole or in part on the grounds that they are frivolous or vexatious or otherwise an abuse of process. Paragraph 10 of Schedule 12 gives to an LVT a limited jurisdiction to award costs of proceedings before it. The jurisdiction is limited as to amount (at present £500) and in any event an award can only be made where either an application to the LVT has been dismissed in accordance with regulations made under paragraph 7 or where in the opinion of the LVT the applicant "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings".

12. Regulation 11 of the 2003 Regulations provides:

> "(1) Subject to paragraph (2), where –
>
> (a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal; or
>
> (b) the Respondent to an application makes a request to the Tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of the process of the tribunal,
>
> the tribunal may dismiss the application, in whole or in part.
>
> (2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).
>
> (3) Any notice under paragraph (2) shall state –
>
> (a) that the tribunal is minded to dismiss the application;
>
> (b) the grounds on which it is minded to dismiss the application;
>
> (c) the date (being not less than 21 days after the date that the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.
>
> (4) An application may not be dismissed unless –
>
> (a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3)(c); or
>
> (b) where the applicant makes such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application."

13. It was agreed between Mr Bates and Mr Buckpitt that there is not conferred upon an LVT any separate power to "strike out" the whole or part of an application, apart from the power under Regulation 11. Mr Buckpitt accepted that the LVT's order of 30 March 2006 needs to be justified as a valid order made under Regulation 11 – and he submits that that is exactly what it was. I drew attention to the Lands Tribunal decision in *De Campomar v Pettiward Estate* (LRA/29 & 30/2004) and the commentary on this case in the Supplement to Hague's Leasehold Enfranchisement 4th Edition at para 16-09 and asked if either counsel wished to submit that anything of relevance to the present case was to be found therein, but neither of them did so wish.

14. It was also agreed between counsel that on the facts of the present case there had been adequate compliance with the notice provisions in Regulation 11(2) and (3), having regard in particular to the LVT's letter of 9 February 2006.

Appellant's submissions

15. Mr Bates provided a helpful written skeleton argument which he developed orally. He advanced the following points:

1. That the power of dismissal under Regulation 11 was in the form of gate keeping or filter power which could not be used later in proceedings, ie once valid proceedings had been launched and continued anyhow up to the first pre-trial review they could not thereafter (save in exceptional circumstances) be the subject of dismissal under Regulation 11.

2. If his argument that Regulation 11 was a filter power was wrong, then he argued the LVT in the present case applied the wrong test and failed to address itself to the provisions of Regulation 11 and the LVT did not address its mind to the exercise of a discretion.

3. He argued that in any event the application was not frivolous or vexatious or otherwise an abuse of process of the tribunal.

16. So far as concerns his first argument that Regulation 11 contains merely a filter power so as to ensure that applications which are frivolous or vexatious or otherwise an abuse of process of the tribunal are dismissed at the outset (or soon thereafter) he advanced the following points:

1. It is the substance of the application itself rather than the conduct of the applicant in relation to that application which can give rise to dismissal. This is why the application itself must be concentrated upon. It will at an early date be apparent whether an application is frivolous or vexatious or otherwise an abuse of process of the tribunal. He accepted that little particularity was required under the regulations for the application itself, but he argued that (save in exceptional circumstances) this filter power could not be exercised once an application had got past the first pre-trial review.

2. He argued that a comparison between paragraphs 7 and 10 of Schedule 12 to the 2002 Act accentuated the distinction between the substance of the application and the conduct of the applicant – paragraph 10 made provision for certain behaviour to be capable of being dealt with by a limited costs order but made no provision for dismissing the application on the grounds of such behaviour.

3. He argued that support was to be found for his contention that a limited construction should be given to the width of Regulation 11 from the fact that Regulation 11 can work only one way, namely against an applicant. Only the application can be dismissed in whole or in part. It would be unfair for a wide power by way of sanction to be available against one side when it was not available against the other.

4. In response to any suggestion that his construction of regulation 11 would leave the LVT unfortunately powerless to deal satisfactorily with an application which was subsequently revealed to be frivolous or vexatious or otherwise an abuse of process of the tribunal, he argued that this could adequately be dealt with not merely by the costs jurisdiction but also by the LVT listing the application for a full hearing and reaching a robust and early decision against the applicant.

5. He drew attention to the distinction between Regulation 11 on the one hand and the Civil Procedure Rules especially Rule 3.1.3 and 3.8 (whereby relief from sanctions can be sought) on the other hand.

6. On the basis that Regulation 11 was merely a filter power to prevent applications which were frivolous or vexatious or otherwise an abuse of process of the tribunal getting launched or making any significant progress, he argued that the present application had made sufficient progress for it to be too late for it to be subject to Regulation 11.

17. If he were wrong on his argument that Regulation 11 is merely an initial filter power, then he accepted that an application which, although initially not frivolous or vexatious or otherwise an abuse of process of the tribunal, could subsequently become frivolous or vexatious or otherwise an abuse of process of the tribunal either in whole or in part. However he argued that this would not occur automatically as a result of a failure to comply with some case management order. He argued that in the present case the LVT had not addressed its mind to the correct matters. What it should have done was to consider whether the application in whole or in part was frivolous or vexatious or otherwise an abuse of process of the tribunal and should have considered whether it should exercise its discretionary power to dismiss the application in whole or in part and should have given clear reasons for its conclusions.

18. As regards his argument that in any event the application was not frivolous or vexatious or otherwise an abuse of process of the tribunal he argued that it was common ground that there had been significant problems regarding the management of this building (see the offer by the landlords of a 10% reduction in service charges over a substantial period) and he referred to the difficulties that the Appellant had had in obtaining information and documentation. He submitted there was an underlying dispute which needed to be decided and

that it was permissible for the Appellant, as regards those items on which she had as yet insufficient information, to seek to keep her position alive by putting in a nominal figure and indicating that she would give further particulars as soon as she could on those points.

Respondent's submissions

19. Mr Buckpitt had also provided a helpful written skeleton argument which he developed in oral submissions. He advanced the following points:

1. Regulation 11 was not some form of initial filter power as argued by Mr Bates. It was subject to no such limitation.

2. The hearing on 30 March 2006 must be viewed as an adjourned hearing specifically to consider whether the Appellant's application should be dismissed under Regulation 11 and that in consequence:

   (a) it was not open to the Appellant to argue that the LVT did not consider whether the application was frivolous or vexatious or otherwise an abuse of process of the tribunal within Regulation 11; and

   (b) it must in any event be inferred that the LVT concluded that the application was frivolous or vexatious or otherwise an abuse of process of the tribunal as regards the parts that were struck out.

3. He argued that in any event the application was, as to the parts struck out by the LVT, frivolous or vexatious or otherwise an abuse of process of the tribunal and that the Lands Tribunal cannot conclude that this decision was wrong and should not interfere with it.

4. He accepted (as already recorded above) that the only power to dismiss the Appellant's application in part was under Regulation 11 and that there was no separate power to "strike out" the application in whole or in part. He argued that the order of 30 March 2006 was properly made under Regulation 11 and that Tribunal should look at the substance rather than the precise words used in the LVT's decision and should not allow the appeal merely on the basis that the LVT used the word "strike out" rather than "dismiss".

20. So far as concerns his first argument as to the width of Regulation 11 Mr Buckpitt advance the following points:

1. He referred to the Court of Appeal decision in O*akfern Properties Limited v Ruddy* [2006] EWCA Civ 1389 especially at paragraph 83 where it stated:

   > "As to possible abuses of process, the Leasehold Valuation Tribunal has ample powers to regulate its own procedures, including power to strike out vexatious or abusive applications".

He accepted that this was a reference to the powers under Regulation 11 rather than to some separate powers. However, he argued that this analysis by the Court of Appeal of the ambit of Regulation 11 weighed against the argument that it was some form of initial filter power only.

2. He drew attention to Regulation 12 of the 2003 Regulations and the ability to give directions which appear to an LVT necessary or desirable for securing "the just expeditious and economical disposal of proceedings". He argued that it would work contrary to the achievement of this aim if Regulation 11 was construed as being a limited filter power only.

3. He argued that the Tribunal was entitled to look at the explanatory notes to the 2002 Act, see *R v Montila* [2004] UKHL 50 at paragraph 35. He referred to these explanatory notes including at paragraph 43 which states in relation to the provisions concerning Leasehold Valuation Tribunals:

> "It provides a power to make regulations which will enable LVTs to exclude the whole or parts of cases of parties who fail to comply with directions ...."

(In response to this point Mr Bates drew attention the opening words in paragraph 1 of the explanatory notes, namely that they do not form part of the Act and have not been endorsed by Parliament, and also to paragraph 414 which, he submitted, sets out a more accurate description of the width of the dismissal power as compared with the broader language of paragraph 43).

4. He argued that therefore an application which, when initially made raised serious questions to be decided, could subsequently become frivolous or vexatious or otherwise an abuse of process of the tribunal by virtue of supervening events including the conduct of the applicant in relation to his/her application.

5. As regards the comparison with the Civil Procedure Rules he argued that the LVT is an informal tribunal and it was unsurprising that it had not been burdened with heavy procedural rules.

6. As regards the argument that Regulation 11 should be read so as to have a narrow construction because it can only work against one side (namely the applicant) he argued that as it is only the application which is before the LVT it is, of course, only the application which can be dismissed in whole or in part. However the rules regarding LVTs were not unacceptably one sided in that there were other sanctions against parties (including against a respondent), see for instance Schedule 12 paragraph 4 of the 2002 Act and Regulation 16. There was therefore no reason to read down Regulation 11 as being merely some form of initial filter.

21. As regards his second argument Mr Buckpitt advanced the following points:

1. He drew attention to the fact that the Appellant's statement of case did not develop further the point raised by the President in his grant of permission to

appeal (namely that the LVT's order was apparently not made under Regulation 11) and he argued that therefore the Appellant should not be allowed to argue this point.

2. He also drew attention to what had previously happened including in particular the LVT's letter of 9 February 2006 and the hearing of 6 March 2006 (including paragraphs 7 and 8 and the wording at the end) and he also referred to what he had been able to say, on instructions, as to what happened at the 30 March 2006 hearing. In the light of the foregoing he argued that it must be inferred that the LVT had firmly in mind the extent of its powers under Regulation 11 and that it duly considered whether the relevant parts of the Appellant's application were frivolous or vexatious or otherwise an abuse of process of the tribunal and reached a decision contrary to the Appellant.

22. As regards his third argument Mr Buckpitt argued that, even if the Tribunal were against him on the foregoing points, the Lands Tribunal should only allow the appeal if satisfied that the LVT's decision was wrong. He argued that the Appellant was using this application to fish for information, that the Respondent was entitled to know how much was being disputed, that the Appellant's application was not a focused challenged to service charges, and that it would be a waste of everyone's time and money for the application to be allowed to continue as regards those parts which had been dismissed.

Conclusions

23. I accept that the fact that the word "strike out" rather than "dismiss" was used in the LVT's decision on 30 March 2006 is not determinative. It is necessary to look at the substance of the decision. I note that the totality of the reasons for the 30 March 2006 decision are contained within that document. No further reasons were given by the LVT in any subsequent document nor is there any material before me indicating that any oral decision given on 30 March 2006 was in terms in any way different from those recorded in the written decision.

24. I reject Mr Bates's first argument that Regulation 11 should be read as some form of limited initial filter jurisdiction to prevent applications which are in whole or in part frivolous or vexatious or otherwise an abuse of process of the tribunal becoming launched. I reach this conclusion for the following reasons:

1. There is nothing in Schedule 12 paragraph 7 or in Regulation 11 to indicate that the power is only to apply to applications as originally made or is only to apply within some limited initial time frame.

2. Bearing in mind the limited particulars which are required under the Regulations for an application to the LVT, it may often be difficult to see whether an application is in whole or in part frivolous or vexatious or otherwise an abuse of process of the tribunal when it is originally made. A decision on this point may only become possible once further information is provided pursuant to directions given by the LVT. Mr Bates's suggestion that some subsequent

information can be taken into account but there must be a time cut off namely the first pre-trial review (save in exceptional circumstances) is in my judgment far too imprecise to be workable. Also I see no justification for this limitation on Regulation 11.

3. The fact that there are two separate bases on which an award of costs may be justifiable (one being if the application is dismissed under Regulation 11 and another being on the basis of the conduct of the applicant) does not indicate that the conduct of the applicant cannot be a relevant consideration which informs a decision as to whether an application is or has become frivolous or vexatious or otherwise an abuse of process of the tribunal.

4. It would substantially weaken the case management powers of the LVT if Regulation 11 was read as being subject to some restriction that it only applied as an initial filter power. I accept Mr Buckpitt's arguments that the explanatory notes can be looked at. Even if the position is overstated in paragraph 43 as compared with paragraph 414 of the explanatory notes, it is clear from these notes (and it is also clear from the Court of Appeal decision in *Oakfern v Ruddy*) that the LVT was intended to have and does have case management powers which may, if ignored, ultimately result in an application being dismissed in whole or in part. However, such an order can only be made if the LVT is satisfied that the application in whole or in part is, in all the circumstances which have occurred including any failure to comply with case management orders, frivolous or vexatious or otherwise an abuse of process of the tribunal.

5. The fact that it is only an applicant who is at risk of having the application dismissed is not a reason for reading down Regulation 11 in the manner contended for. As it is only the applicant's application which is before the LVT it is, of necessity, only the applicant's application which can be made susceptible to such a power of dismissal. There are other sanctions, including Schedule 12 paragraph 4, available against a Respondent. Also if a Respondent was failing to comply with directions the LVT could consider listing the application for hearing and deciding the case of the material then available (which might bring a justifiable adverse consequence to a recalcitrant Respondent).

25. In summary therefore I conclude that Regulation 11 is not to be read as being a limited filter power to prevent applications which are in whole or in part frivolous or vexatious or otherwise an abuse of process of the tribunal becoming launched. If an LVT concludes that, in the light of the all the circumstances including failure to comply with case management directions, an applicant's application or part of it is frivolous or vexatious or otherwise an abuse of process of the tribunal, then it is open to an LVT to dismiss the application in whole or in part under Regulation 11 notwithstanding that the application may have been progressing before the LVT for some time.

26. However, in order to dismiss an application or part of it as frivolous or vexatious or otherwise an abuse of process of the tribunal the LVT must properly consider the matter under Regulation 11 and give a decision which is adequate in law. This in my judgment requires an LVT:

1. To remind itself of the provisions of Regulation 11 and to ensure that proper notice has been given under Regulation 11(2) and (3) to the applicant and to ensure that any hearing required under Regulation 11 is held.

2. To analyse the facts relating to the application under consideration and to reach a conclusion as to whether the application (or some identified part of it) can properly be described as one or more of frivolous or vexatious or an abuse of the process of the tribunal.

3. To consider whether, if the application can in whole or in part properly be described as frivolous or vexatious or otherwise an abuse of process of the tribunal, the facts are such that the LVT should exercise its discretion to dismiss the application in whole or in part under Regulation 11.

4. To give clear and sufficient reasons for its conclusions.

27. Bearing in mind the terms of the President's permission to appeal, I reject the argument that it is not open to the Appellant to contend that the LVT failed to make its decision under Regulation 11. This point is squarely raised in the grant of permission. The fact that this point is not further developed in the statement of case (submitted by an advisor who is neither a lawyer nor a surveyor) should not debar the Appellant.

28. The LVT's decision is, with respect, unfortunately brief. Bearing in mind the terms of the previous documents (including in particular the LVT's letter of 9 February 2006 and the decision of 6 March 2006 including paragraphs 7 and 8 and the warning at the end) and bearing also in mind the information I was given, on instructions, by Mr Buckpitt as to what occurred on 30 March 2006, I am prepared to assume in the Respondent's favour that, despite this not being made clear on the face of the written decision, the LVT was aware that it was being asked to act under Regulation 11 rather than being asked to exercise some other strike out power.

29. However, even making this assumption in the Respondent's favour, the fact remains that on the face of the LVT's decision of 30 March 2006 the LVT makes no reference to giving any consideration as to whether:

1. the failure to comply with the directions had such an effect on the Appellant's case as to cause parts of the Appellant's application to be frivolous or vexatious or otherwise an abuse of process of the tribunal; or
2. the discretionary power to dismiss should be exercised (supposing that subparagraph 1 above was satisfied and parts of the application were frivolous or vexatious or otherwise an abuse of process of the tribunal).

Each of these points (1) and (2) would have required consideration of the facts of the case, including the claimed difficulty for the Appellant in obtaining documents and the prejudice to the Appellant of the dismissal of part of her case as compared to the prejudice to the Respondent in allowing the Appellant to have inspection of documents before giving these particulars.

30. The LVT was under an obligation to give reasons for its decision of 30 March 2006, see Regulation 18. Having regard to the very limited reasons that were given by the LVT in its decision of 30 March 2006, I am driven to the conclusion that either the LVT did not consider points 1 and 2 in paragraph 29 above, or (if the LVT did so) it moved automatically (and without further analysis) from the conclusion that the Appellant had failed to comply with the directions regarding the provision of a fully particularised Scott Schedule to a conclusion that part of the Appellant's application was frivolous or vexatious or otherwise an abuse of process of the tribunal. The LVT has failed to give any consideration to the reasons for the Appellant's claimed inability to give the missing particulars (including difficulties regarding getting information from the Respondent's managing agent) or to the comparative prejudice to the Appellant and Respondent of dismissing or not dismissing the application, nor has the LVT given any consideration as to whether the discretion to dismiss should be exercised. Also the LVT has not given any legally sustainable reasons for its conclusions. Thus the LVT failed to comply with subparagraphs 2, 3 and 4 of paragraph 26 above. It would in my judgment be entirely wrong to assume or infer that the LVT must have addressed its mind to the points in subparagraphs 2 and 3 of paragraph 26 and must have reached clear conclusions (adverse to the Appellant) thereon and must have had legally clear and sustainable reasons for such conclusions despite the failure to give these reasons in its decisions.

31. For the foregoing reasons I therefore conclude that the LVT's decision of 30 March 2006 is legally flawed and cannot be allowed to stand.

32. The present appeal comes to the Lands Tribunal for hearing by way of review. I do not have all of the material that was before the LVT nor has any evidence been put before me regarding the matters mentioned above (including regarding the claimed difficulty of obtaining information for the Appellant and the extent of the prejudice to either party of a decision unfavourable to them). I have not been asked to take afresh a decision under Regulation 11 and I do not consider I am able to do so on present information.

33. If the Appellant's position had truly been that she wished to dispute the amount of service charge payable as literally stated in the Scott Schedule, such that on each item where she had recorded the amount in dispute as being £1 or £2, she intended to litigate that item so as to obtain a decision from the LVT as to whether her payment of service charge was to be reduced for that item by her share (apparently 0.55%) of the £1 or £2 then I would indeed conclude that such a course was frivolous or vexatious or an abuse of the process of the tribunal and that the application should be dismissed regarding these items.

34. However it was made clear at the hearing of 30 March 2006 that each nominal item of £1 or £2 in fact meant: the Appellant is unable on present information to give the required particulars and will give them after she has obtained disclosure of documents which she seeks. The entries of nominal sums in the Scott Schedule should be interpreted as bearing the foregoing meaning.

35. Accordingly I allow the Appellant's appeal. As a result the whole of the Appellant's application remains outstanding before the LVT. It would be open to the Respondent, if so advised, to raise before the LVT the question of whether some parts of the Appellant's application should be dismissed as frivolous or vexatious or otherwise an abuse of process of the tribunal. If this did occur then the LVT would have to comply with Regulation 11 and reach a clear and properly reasoned decision under that provision.

36. Neither party made any application for costs of the hearing before the Tribunal. If the Appellant wishes to make an application under section 20C of the Landlord and Tenant Act 1985 as amended she should make that application (with a copy to the Respondent) within 14 days of the date of this decision. The Respondent can then respond (with copy to the Appellant) within 14 days thereafter.

37. Finally I should record that, at the end of the hearing, Mr Buckpitt graciously and properly expressed thanks to Mr Bates for appearing in this matter on instructions from the Bar Pro Bono Unit. I echoed those thanks and I repeat them again here.

Dated 16 July 2007

His Honour Judge Huskinson