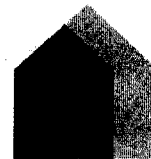


LON/00AP/LSC/2008/139  
LON/00AP/LVL/2008/003



Residential  
Property  
TRIBUNAL SERVICE

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATION UNDER THE:**

- **Landlord and Tenant Act 1985 – Sections 27A & 20C**
  - **Landlord and Tenant Act 1987 – Section 35(1)**
- **Commonhold and Leasehold Reform Act 2002 – Section 168(4)**

**Applicant:** Paranomics Limited

**Respondent:** Zeromist Limited.

**Re:** 41 Hornsey Lane Gardens, Highgate, London, N6 5NY

**Application date:** 7<sup>th</sup> February 2008

**Hearing date:** 25<sup>th</sup> September 2008

**Appearances:** Ms A Jones

For the Applicant

Mr A Walder - Counsel instructed by Bishop & Sewell Solicitors  
Mr Singh

For the Respondent

Ms N Haynes  
Ms R Bowyer  
Mr H Bryant

In attendance

**Members of the Leasehold Valuation Tribunal:**

Ms E Samupfonda LLB (Hons)  
Mrs J Davies FRICS  
Mr E Goss

1. The Applicant is the lessee of the ground floor flat in a converted house now containing five flats at 41 Hornsey Lane Gardens London N6 5NY. Dr A Morrell occupies the flat together with her mother Ms A Jones. The Respondent is a company vehicle for all the lessees to own and manage the freehold of the property and the Applicant is a shareholder. The Applicant has made three applications; one for a determination as to the payability of certain service charges under section 27A Landlord and Tenant Act 1985 (the Act), one for the variation of certain clauses of her lease under section 35 Landlord and Tenant Act 1987 and one for an order under section 20C of the Act preventing the Respondent from recovering the cost of these proceedings through the service charge account. The Respondent has made an application under section 168 Commonhold and Leasehold Reform Act 2002 for a declaration that the Applicant has breached a term of the lease. The Tribunal has been provided with a copy of the lease of the premises which is dated 1 May 1984 and is made between LPR Properties Ltd (1) and Gilbert Harrison (2) "the lease"
2. Directions for the future conduct of this case were made on 2<sup>nd</sup> May 2008. The Applicant failed to comply and the case was listed for a preliminary hearing on 7<sup>th</sup> July 2008.
3. At that hearing, the Tribunal considered the application under section 35 and adjourned the applications under s27A and 20C of the Act for this Tribunal to consider. That Tribunal determined that a leasehold valuation tribunal did not have jurisdiction to consider all but one of the proposed variations applied for.
4. The hearing took place on 3<sup>rd</sup> September 2008. Ms A Jones represented the Applicant. Mr Walder of Counsel represented the Respondent. Ms Jones renewed the application for the case to be postponed as Dr Morrell was unable to attend due to illness. The Applicant initially requested a postponement on 1<sup>st</sup> September 2008 citing five reasons for the request and this was refused by the Tribunal. Following this refusal the Applicant submitted a further application accompanied with a medical certificate on 2<sup>nd</sup> September 2008, this time citing illness as the grounds for requesting a postponement. Mr Walder vigorously opposed the application.
5. The Tribunal considered the application and concluded that in the interest of justice the case should proceed as all relevant documentary evidence was available and the issues were narrow and not complex. Furthermore Ms Jones confirmed that she had attended the preliminary hearing. Ms Jones undertook to do her best to represent the Applicant and the Tribunal advised her that it would ensure that it maintained a level playing field.
6. The Applicant challenged the reasonableness and payability of the following service charge items:
  - (i) Tree surgery £850
  - (ii) Appointment of a management company

- (iii) Lawyers fees of £176.26 to Henry Boustred
  - (iv) Lawyers fees £1500 to Bishop and Sewell
  - (v) Roof repairs
7. Set out below is the relevant law, facts and our findings in respect of each item.
- (i) Tree surgery
8. Mr Walder explained that a meeting was held on 6<sup>th</sup> February 2007 to discuss matters including tree pruning. Dr Morrell was present. At that meeting it was agreed that the Respondent would maintain the trees if a quote of £800 or under was received. A quote in the region of £850 was received from Woodland Tree Surgery and Dr Morrell was notified of this by email dated 12<sup>th</sup> February 2007. She did not make any objections at that stage. The work was carried out and Dr Morrell's contribution at 27.62% of the total of £850 was deducted from the monies received in advance of the service charge.
9. Mr Walder submitted that the responsibility for pruning the trees lay with the Applicant pursuant to the first schedule of the lease and that the trees fall within the Applicant's demised premises. He relied on clause 2(5). He added that clause 2(9) permitted the Respondent to carryout the work in default. He conceded that the Respondent had not served prior notice as was required; the Applicant could not object since Dr Morrell was present at the relevant meeting and did not raise any objections thus giving her implicit approval.
10. Ms Jones stated that she did not have any comment to make about the cost of the treework. However, she did not know whether Dr Morrell had remained throughout the whole duration of the 6<sup>th</sup> February 2007 meeting. She added that Dr Morrell did not object to contributing towards the cost but that her main objections were to the manner in which the money was collected, how the work was carried out without prior notice and the time of year when it was done.
11. The Tribunal's jurisdiction to determine payability is set out under section 27A of the Act. This provides:
12. The Tribunal's jurisdiction to determine the reasonableness and liability to pay service charges is set out under section 27A of the Act. This provides
13. An application may be made to a leasehold valuation tribunal for a determination whether a service 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

the manner in which it is payable.

14. Section 18 of the Act defines the meaning of “service charge” and “relevant cost.” Section 18 (1) provides service charge means “an amount payable by a tenant of a dwelling as part of or in addition to the rent-  
(a) which is payable, directly or indirectly, for services, repairs, maintenance [improvements] or insurance or the landlord’s costs of management and  
(b) the whole or part of which varies or may vary according to the relevant cost.”

15. Section 18 (2) provides “the relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or superior landlord, in connection with matters for which the service charge is payable.”

16. Relevant costs are only recoverable to the extent that they have been reasonably incurred and where they have been incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard. See Section 19 of the Act.

17. The Tribunal finds that the cost incurred in respect of pruning the trees was reasonable. Under the terms of the lease, the trees fall within the Applicant’s demised premises and the Applicant is obliged to maintain them and to pay the full costs of any necessary work. Alternatively, to provide the Respondent access to undertake the work in default. The Applicant’s liability is to contribute at 27.62% towards the cost of service charges and is therefore liable to pay £234.77 being 27.62% of the total cost of £850.

18. With regards to the Applicant’s objection as to the manner in which the money was collected from the sinking fund, the Tribunal did not have jurisdiction to determine this issue. Mr Walder conceded that there was no provision for it within the lease but the leaseholders had previously agreed to accumulate funds for future expenditure which was collected on a monthly basis. The Applicant had made payments into the sinking fund since May 2006 but ceased payment into the sinking fund since May 2007.

(ii) Appointment of the management company

19. Mr Walder said that on 23<sup>rd</sup> October 2007, the Respondent sent out a Notice of Intention in accordance with the statutory obligations under s20 of the Act notifying all the leaseholders of its intention to enter into a long term agreement by appointing managing agents. The services to be provided were attached. Dr Morrell responded to the Notice by a letter dated 26<sup>th</sup> October 2007 and supported the proposal to appoint a manager. However, she said that it would be appropriate to resolve 6 outstanding issues in the first instance. By a letter dated 16<sup>th</sup> December 2007, Dr Morrell asked for the consultation period to be extended even though the statutory time frame for consultation under the Notice had already expired. The Respondent appointed Ringleys as its managing agent in

January 2008. Mr Walder submitted that the appointment was reasonable. However the process had stalled because of these applications. No monies have been requested or paid by the Applicant as of this date. He added that the Respondent had discharged its duties and obligations to consult whilst the Applicant had given her approval and then withdrawn from the process due to disputes over other issues.

20. Ms Jones stated that the basis of Dr Morrell's objections related to the ongoing dispute over the damaged kitchen in her daughter's flat and the failed insurance claim associated with the damage. Dr Morrell wanted these issues resolved before the appointment of a manager.

21. The Tribunal was not informed of any costs incurred in connection with the appointment of the managing agent. Mr Walder said no deductions or demands have been made as yet. In the circumstances the Tribunal could only consider that the appointment was reasonable in accordance with clause 3(1) of the lease. It was unable to determine the reasonableness of any costs.

(iii) Lawyers fees of £176,25

22. Mr Walder submitted that the Respondent is entitled to recover its legal costs pursuant to clause 5(3)(ii) of the lease. This provides the landlord "is entitled to charge.....a reasonable charge to cover its administrative expenses in complying with its obligations hereunder". He said that although precedent is not helpful as it is a matter of construction of the terms of the lease, he referred the Tribunal to the case of Imperion Investments v Broadwalk House Residents [1995] 2 EGLR 47 where the landlord was able to recover the costs of a forfeiture claim through a service charge provision allowing "the proper cost of management of [the building]. He concluded that it was the Respondent's responsibility to ensure that the Applicant has complied with its obligations under the terms of the lease and as such the legal costs were also recoverable under clause 4(c).

23. In response, Ms Jones agreed that the amount was reasonable but she was concerned about the Respondent regularly consulting possibly expensive lawyers on small points of disputes which might arise in the future. She gave an example that in so far as the dispute about the garage was concerned, people only needed to look at the lease and should not have consulted lawyers. She contended that having consulted lawyers on this, the issue has yet to be resolved. She concluded that in her view the lease did not entitle to Respondent to recover its legal costs through the service charge.

24. In these circumstances, the Tribunal considers that in order to recover the legal fees it must demonstrate that costs were incurred in complying with its obligations. The invoice produced shows professional fees of £150 + VAT (£26,25) total amount payable £176,25. The work carried out related to; three meetings with the company secretary Ms N Haynes, legal

advice regarding Dr Morrell's directorship, legal advice regarding the status of the garage, letter to Paranomics regarding access and advice on how to respond to legal threats from Paranomics.

25. It is the Tribunal's view that the Respondent is entitled to recover the legal fees pursuant to clause 5(2)(ii) of the lease. The Tribunal noted that at the relevant time when the disputes arose, there was no managing agent in place and therefore it was reasonable and appropriate for the Respondent to seek independent legal advice. Clearly the work related to issues concerning the management and compliance with obligations under the terms of the lease. Therefore the costs incurred are reasonable and payable.

(iv) **Lawyers fees £1,500**

26. A letter from Bishop and Sewell solicitors dated 24 January 2008 was produced at the hearing. This informed the Applicant that the Respondent had instructed Bishop and Sewell LLP in relation to the dispute and that the costs incurred as at that date amounted to £1,500. Mr Walder said that as the dispute was ongoing, the £1500 was growing and had only been quoted to the applicant as a guide figure to that date. The final figure is currently unquantified. He added that in his view all legal costs can be recovered via the service charge but no decision has yet been made regarding possible county court action where all legal costs might be recovered against one party or another.
27. Ms Jones said that the Respondent was looking for an open ended agreement with regards to legal fees. She reiterated that in her view, the lease does not permit the Respondent to recover legal costs through the service charge.
28. As the final amount is not yet known and no demands or deductions have been, the Tribunal cannot determine the reasonableness of an unknown amount. However, for the reasons set out above in 7(iii), the Tribunal considered that legal costs are recoverable through the service charge.

(v) **The roof repairs**

29. A Notice of Intention to carry out repairs to the roof was sent out on 6<sup>th</sup> December 2007. The Applicant did not make any observations or objections within the statutory time frame of 30 days.
30. Mr Walder submitted that the Applicant is obliged to contribute at 27.62% towards the cost of repairs to the roof. The Respondent's surveyor's report indicated that the repairs did not include the roof area now known as the roof terrace. He explained that the roof terrace is known to have existed since 1988 and that the Applicant's objections were based on the fact that it was used exclusively by one leaseholder and as a consequence the Applicant considered that it should not pay such a high percentage.

31. Ms Jones confirmed that the contribution level was agreed. She explained that the Applicant's objections were based upon the fact that no planning permission had been sought and that as the terrace was used exclusively by one leaseholder, the Applicant should not be liable to contribute towards any costs relating to the repair of the roof terrace.
32. Mr Walder informed the Tribunal that Ms Haynes, the Lessee of the flat using the roof terrace, had been advised to apply for retrospective planning consent for the roof terrace, which in his view would be granted as a matter of law since it has been in existence since 1988. He summarised the issue for this Tribunal as being whether the Applicant is liable to contribute towards the cost of repairs to the roof terrace but the question of future costs or work to the roof terrace was not a matter that the Tribunal could consider as it was speculative. So far no roof repairs had been carried out and the proposed repair does not relate to the roof area contained within the roof terrace but to the pitched roof. He added that a determination is sought on the reasonableness and payability of the outstanding work through the service charge account.
33. The Tribunal noted that the Notice of Intention referred to repairs to the pitched roof. The Tribunal holds that under the terms of the lease, the Applicant is liable to contribute towards the cost of roof repairs in accordance with the proportions set out under the lease. The fact that there is no planning permission for the roof terrace and that it is used exclusively by one leaseholder is not a matter that this Tribunal has jurisdiction to consider. The Tribunal noted that the Respondent does not intend to demand any payment in respect of any future repairs to the roof terrace until the maintenance responsibilities have been determined and agreed by the parties. Part of the process will be a determination by a surveyor of maintenance responsibility for the roof terrace.

#### **The application to vary the lease under s35 Landlord and Tenant Act 1987**

34. Section 35 allows any party to make an application to the tribunal for an order varying the terms of the lease where the lease fails to make satisfactory provisions with respect to one or more criteria as set out under s35(a) to (c). A preliminary hearing held on 7<sup>th</sup> July 2008 considered the Applicant's application under s35 to vary certain terms under the lease. It determined that the Tribunal had jurisdiction to consider the application in relation to the garage only. The Applicant's proposed variation was to provide for the Respondent to be responsible for the maintenance and repair of the garage roof. Ms Jones confirmed that the garage was part of the Applicant's demised premises and that it is situated at the north end of the rear garden.
35. Mr Walder stated that the purpose of s35 was to make provisions in the circumstances where the lease does not make satisfactory provisions. He

submitted that in this instance, the application is without merit because the lease, under clause 2(5) provides that the lessees obligations are “ to repair support, cleanse, maintain, drain and renew where necessary the demised premises and all new buildings.....”. Under the terms of the lease the garage is part of the Applicant’s demised premises.

36. In the circumstances the Tribunal holds that the lease already makes satisfactory provisions in respect of the repair and maintenance of the garage as set out under clause 2(5) and therefore the application fails.

**Respondent’s application for declaration under s168 CLARA.**

37. The Respondent seeks a declaration under s168 of the Commonhold and Leasehold Reform Act 2002 that there has been a breach of the terms of the lease. This is based upon the Applicant’s admission that she has undertaken alterations to the premises without the Respondent’s consent.

38. At the hearing, a certificate of completion from the London Borough of Haringey dated 3<sup>rd</sup> September 2008 was produced on behalf of the Applicant. This detailed the alterations work as being “installation of new bathroom and kitchen to flat and new door opening in rear wall leading to garden.”

39. Ms Jones did not dispute that the work had been carried out without requesting written prior permission from the Respondent.

40. The Tribunal considered clauses 2(17) and (18) of the lease. Clause 2(17) provides that the Applicant should “not erect upon the demised premises or any part thereof any division wall or other similar structure without the lessors prior consent in writing” and 2(18) “not to cut, maim alter or injure any of the principle timbers or walls of the demised premises or to make any structural alterations or structural additions to the demised premises nor to remove any of the lessors fixtures without the previous consent in writing of the lessor.”

41. In the circumstances the Tribunal declares that the Applicant has breached a term of the lease by carrying out alterations to the premises without the Respondent’s prior approval.

**Application under s20C of the Act**

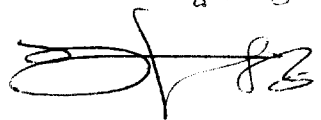
42. The Applicant’s application under s20C of the Act that the Respondent should not be permitted to recover the costs of these proceedings through the service charge account was vigorously opposed by Mr Walder. He submitted that the Respondent had gone to a great deal of trouble to justify matters which could probably be better dealt with in other ways. He regarded the application under s27A as speculative and under s35 as mischievous. He added that furthermore Dr Morrell had not attended the PTR hearing or this hearing despite both parties being aware of the dates

long in advance. He concluded that there was no question to answer that the Respondent should be entitled to recover the cost of these proceedings through the service charge account.

43. In reply, Ms Jones said that the Tribunal is designed to be used by lay people. The Respondent did not need to use counsel and the directors could have dealt with these matters personally. The applications were not mischievous and were reasonable to bring before the Tribunal. Dr Morrell could not attend due to ill health.

44. The Tribunal's jurisdiction under s20C is to make an order where it considers that it is just and equitable to do so. It is right to say that aggrieved parties should be entitled to bring their complaints to the tribunal for determination. It is not sufficient for an aggrieved party to simply make allegations against another. In order to succeed the allegations must be substantiated and supported by independent evidence. In this case, the applications were wholly unsupported by any relevant evidence and these proceedings appeared to be used as a vehicle to air other grievances. Furthermore in the majority of the issues under s27A of the Act, no deductions or demands have been made.

45. Therefore, the Tribunal declines to make an order under s20C of the Act and the Respondent, Zeromist Ltd, can recover the reasonable costs of these proceedings through the service charge.

Chairman  
  
Dated 24.9.08