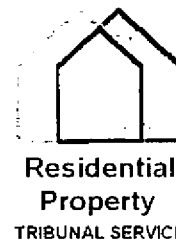


LON/00AG/LSC/2009/0518



LANDLORD AND TENANT ACT 1985 SECTION 27A & 20C

**LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND)
REGULATIONS 2003.**

Correction Certificate under Regulation 18(7) of the above Regulations:

Flat 13 & 14 Blair Court, 2 Boundary Road, NW8 6NT

As Chairman of the Leasehold Valuation Tribunal which decided the above mentioned case, I hereby correct a clerical mistake in the decision of the Tribunal:

At paragraph 8, second line, the word "Respondent" should be substituted for "Applicant."

Chairman: S SHAW

A handwritten signature in black ink, appearing to read "S. Shaw".

Date: 16th March 2010



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTIONS 27A & 20C

Ref: LON/00AG/LSC/2009/0518

Property: Flats 13 & 14 Blair Court
2 Boundary Road
London
NW8 6NT

Applicant: Blair Court Freehold Limited

Respondents: (1) Mr Andrew Parissis
(2) Blair Court (St. John's Wood)
Management Limited

Appearances: Mr E Denehan (of Counsel)
Miss J Howe (Messrs Vanderpump & Sykes,
Solicitors)
Ms Edelle Carr (Red Carpet, Managing Agents)
Mr A G Noubar (Director of Applicant)

For the Applicant

Mr Andrew Parissis (in person)

Date of Tribunal Directions: 16 September 2009

Date of Hearing: 25 January 2010

Date of Decision: 15 February 2010

Members Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr R Potter FRICS
Mr L Packer

DECISION

INTRODUCTION

1. This case involves an application made by Blair Court Freehold Limited ("the Applicant") in respect of Flats 13 & 14 Blair Court, 2 Boundary Road, London NW8 6NT ("the Property"). The Applicant as its title suggests, is the freehold owner of the property which forms part of a block of flats in St. John's Wood, London comprising 78 flats in all, including one caretaker's flat, spread over 12 floors including the ground floor. The two flats comprising the property are owned on long leases by Mr Andrew Parissis ("the Respondent"). The company Blair Court (St John's Wood) Management Limited ("the Second Respondent") was joined as a party to these proceedings at the Pre-Trial Review, on the application of solicitors then acting for the Respondent. In fact however the Second Respondent has played no part in these proceedings, about which mention will be made later on in this Decision.

2. This matter came before the Tribunal for a hearing on 25 January 2010. Mr E Denehan appeared for the Applicant and Mr Parissis appeared unrepresented and in person. As mentioned, the Second Respondent made no appearance and was not represented. At the inception of the hearing, the Tribunal established with the parties the issues to be resolved. It transpired that there were two issues:
 - (i) The establishment of the correct party to whom service charges should be paid. The rival contentions were, so far as the Applicant was concerned, that the service charges should be paid to the Applicant; the Respondent contended that the service charges were payable to the Second Respondent. It was this issue which prompted the application and which was highlighted in the application as the issue to be determined so far as the Applicant was concerned.

- (ii) The second issue to be determined was a challenge by the Respondent as to the reasonableness of a service charge made based on estimated or proposed expenditure for the period 1 October 2008 – 30 September 2009. That budgeted expenditure appears at page 37 in the bundle prepared by the Applicant for the hearing and the specific items challenged by the Respondent appear in his statement of case in this regard at page 36 in the bundle.

It is proposed to deal with these two issues in turn and to give a summary of the respective submissions by the parties in respect of each issue, and then to give the Tribunal's determination in respect of each individual issue.

THE CORRECT PARTY TO WHOM THESE CHARGES SHOULD BE PAID

3. At page 4 in the bundle the Applicant states in the application that: "*Mr Parissis is refusing to pay service charge for the current year on the grounds that the freehold company is not entitled to collect the service charge*". There was no issue that this indeed had been the Respondent's position throughout until, the concession the Respondent made during the course of the hearing before the Tribunal.
4. The background to the matter is, as observed in the Pre-Trial Directions "complicated". Happily, for the purposes of this Decision, it is not necessary to go into detail about that background. Suffice it to say that a very full and helpful history of that background is set out in the Applicant's statement of case which runs from page 16 – 29 in the bundle. Until November 2008 the chain of title relating to Blair Court (and thus the property) involved the freehold being owned by Heritage Land Plc which company also owned a head lease of Blair Court. There was an under-lease granted to the Second Respondent out of which occupational leases for various flats were granted to the various long leaseholders – with the Respondent, at the time of the hearing, being the long leaseholder of the two flats representing the property in this case. There was also an air space lease owned by Heritage Land Bank (Properties) Limited upon which nothing turns for the purposes of these proceedings.

5. That chain of title changed on 28 November 2008 because on that date the Applicant purchased the freehold of the property. The purchase took place under the provisions of the Leasehold Reform, Housing & Urban Development Act 1993, the Applicant being the nominee purchaser created for that purpose by the 43 participating leaseholders in the acquisition. (43 leaseholders from an original 47 ultimately contributed to the purchase – the Respondent being one of the four who did not in the event join in the purchase). The effect of the agreement to purchase the freehold was, by operation of the doctrine of merger, to merge the three other leasehold interests mentioned above effectively into the freehold title, since all interests were owned by the same party. This being so, as argued by the Applicant, by operation of section 139 of the Law of Property Act 1925, as against the leaseholders of the individual flats, the estate or interest which conferred the next vested right to the respective flats was the freehold. There were no longer any intermediate leaseholder interests and so effectively the Applicant was substituted for the Second Respondent as the lessor in the under-leases and entitled to receive the service charges.

6. In fact the position was rather more complex than this because at about the same time as the acquisition of the freehold the Applicant granted overriding leases of each of the 30 flats of those qualifying tenants who from the start did not participate in the collective enfranchisement to a company called Greyclyde Investments Limited and took assignments of the rights and obligations of Greyclyde under those overriding leases to collect the service charges and to perform Greyclyde's covenants in the overriding leases. Those leaseholders who did contribute in the purchase of the freehold and the other interests in Blair Court were granted new occupational leases for terms of 999 years The Applicant's contention is that against this background the Respondent, one of the non-participating leaseholders, pays his service charges directly to the Applicant. Moreover, the Second Respondent no longer has any function in respect of collection of service charges and its sole function now is that it happens to own the lease of the caretaker's flat at Blair Court.

7. The Respondent did not accept this analysis of the situation. His position was that he retained his original lease, that lease had never been varied and his service charges were payable to the Second Respondent. There was a background to this contention concerning who had effective control of the service charge accounts which the Tribunal need not go in to for the purposes of this Decision. However, as the Respondent candidly conceded at the hearing, he had begun to have doubts about this analysis prior to the hearing. This doubt, it appears, came about following his consideration of the detailed statement of case dated 22 October 2009, prepared on behalf of the Applicant and sent to the Respondent, and the subsequent gradual evolution of his thoughts upon the matter. At the hearing he formally withdrew his contention to the effect that the Second Respondent should receive his service charges and accepted the charges were payable to the Applicant. However he had a residual contention that this situation only came about because the Applicant had failed properly to explain the position to him and other leaseholders. He told the Tribunal that had not there been proper communication, and had there been a clear explanation of the position at a much earlier stage, it was unlikely that he would ever have contested this point to the extent of having to come before the Tribunal. This residual point goes more to the question of costs than the substantive issue, as considered below.
8. Suffice it to say for present purposes, that this first issue was conceded by the Applicant. Even if it had not been conceded, the Tribunal was wholly persuaded by the exposition of the law given on behalf of the Applicant by Mr Denchan, and is satisfied that the Respondent's service charges are indeed payable to the Applicant. This issue is therefore determined in favour of the Applicant, insofar as it may be necessary to make any such determination.

THE REASONABLENESS OF THE SERVICE CHARGE BUDGET

9. As mentioned above, the Respondent took various points concerning the budgeted expenditure for the period 1 October 2008 to 30 September 2009. It is proposed to take these points in turn.

10. His first contention was that the sum of £30,000 set aside or estimated for major projects during that year was excessive. He told the Tribunal that he believed that there was already a sum of about £100,000 held in reserve at the time of the acquisition of the freehold by the Applicant and that therefore this further £30,000 was either unnecessary in its entirety, or at the least was excessive. The matter was put rather more vaguely in his Statement of Case at page 36 to the effect that "*adequate funds are already being held*". It should be stated that the Respondent has not made his own cross application for a Determination of Reasonableness before the Tribunal. However, the fact that he was challenging the reasonableness of certain service charges was identified at the Pre-Trial Review and, for the sake of completion, the Applicant consented to have these matters dealt with at the same time as the main application. Nonetheless, the allegation of retention of £100,000 in reserve was not articulated in the Respondents' Statement of Case and the relevant bank statements or other documentary evidence were not before the Tribunal at the time of the hearing. It is fair to say that certain requests had been made by the Respondent for production of relevant documents, but without some particularity as to the allegation, and it would not have been entirely straightforward to the Applicant to judge what documents were relevant or irrelevant.
11. The evidence from the Applicant in this regard came from Ms Edelle Carr as a joint proprietor of the firm trading as "Red Carpet" which has been appointed as managing agents by the Applicant. She told the Tribunal that there were some five separate bank accounts operated by her on behalf of the Applicant and that the funds on account were more in the order of £50,000 than £100,000. It appeared to be common ground that Blair Court is a highly desirable block in an affluent area of London, for which a high standard of upkeep is appropriate. Given that there are a total of 78 flats, and some specific items of upkeep identified, the sum claimed for appears modest. Indeed Ms Carr implied that she may, if anything, have under-estimated the appropriate sums to be claimed under this head. In this regard the Tribunal is in agreement with the Applicant for that reason. No evidence was put before the Tribunal on behalf of the Respondent to suggest an alternative figure or how one should be calculated

and, on the basis of the material before the Tribunal, the Tribunal sees no reason to interfere with this estimate.

12. The second item challenged was the figure claimed for management fees. The Respondent's intention in this regard was that the managing agents concerned were effectively a small "one man band" and that any small personal difficulty such as illness would affect the management of the whole block. The management fee concerned in fact works out at £200 plus VAT per flat. As understood by the Tribunal this was not contended by the Respondent to be in principle excessive, in that the going rate for such flats, if the management were provided by a well established and reputable company, would be in the order of £225 plus VAT. However the Respondent's contention was that it would be wrong to apply a similar rate to Red Carpet.

13. It seems to the Tribunal that the real issue is that whether or not value for money is being supplied for this management fee. Asked whether he was alleging that the property was badly managed, the Respondent told the Tribunal that this was his allegation and he gave three examples of bad management. The first was that he had had some difficulty with his Japanese tenants in the property in arranging appropriate reception to Japanese TV. It was not clear to the Tribunal how or why he alleged this to be a fault on the part of the managers. He also made some point about the height of the railings at the property but this point too was not as it seemed to the Tribunal well developed. The third point was that inappropriate statutory notices had been served. However on the evidence before the Tribunal this allegation was relevant in respect of agents who preceded Red Carpet, rather than Red Carpet itself. All in all, the assertions of bad management seemed not to be of great seriousness nor well established on the evidence. Moreover the Tribunal had no evidence from anyone else in this very substantial block complaining about or challenging the level of management charges. No adjustment is made by the Tribunal in this regard, and so far as the Tribunal is concerned this charge is reasonable within the provisions of the Act.

14. The third challenge made was in respect of an estimated £12,000 expenditure for legal and professional fees over and above the ordinary management fees. This does on the face of it appear to be a high figure and when asked how the figure had been arrived at Ms Carr told the Tribunal that she looked at expenditure for the preceding year, which was £11,214, and that she had budgeted for a similar figure. In fact she had now discovered that that expenditure came about as a result of an earlier application to the Tribunal relating to a service charge dispute and which had generated significant legal costs. That level of expenditure was not in line with previous years' expenditure, which was of a much lower order. She told the Tribunal that had she known the true position at the time, it is very possible that she would only have included an estimate for about half the figure set aside, that is to say £6,000. However that figure too seems somewhat arbitrary as far as the Tribunal is concerned.

15. There was a more fundamental issue, as it seemed to the Tribunal, in respect of this demand for budgeted service charge. That was the question of whether or not there was any entitlement under the relevant lease to make a claim by way of service charge for legal and professional costs. When asked to be directed to the provision in the lease entitling such a charge to be raised, Mr Denehan took the Tribunal to page 51 of the second hearing bundle which is the second page of the lease and which provides at clause 2:

"The service charge referred to in clause 1 hereof shall be 1.62% part of the costs of expenses expected to be incurred in the ensuing year

2.1 In providing the services set out in the Fourth Schedule hereto and

2.2 Of the costs and expenses of administration and running of the company and the landlord.

2.3 Of creating such reasonable reserves against future liabilities as the landlord in its absolute discretion may deem prudent or desirable."

It was clause 2.2 upon which Mr Denehan relied (the Fourth Schedule having no provision for such costs as a service charge). He told the Tribunal that his submission in this regard was effectively within a narrow compass, in that these projected legal costs were properly regarded as "*costs and expenses of administration and running of the company and the landlord*" in that it was reasonable to expect some legal cost expenditure, and that that expenditure did indeed arise out of the appropriate administration of the property and that such charges were accordingly recoverable as a service charge.

16. As discussed at the hearing, it is usual, if such a charge is to be raised, for there to be a clear and unambiguous provision entitling the landlord to recover legal fees as part of the service charge (see *Sella House v Mears* [1989] 1EGLR65 per Taylor LJ at 68E). Examples of lease provisions analogous to, and in some cases arguably stronger than, those in the instant case are listed at paragraph 7.171 of the current addition of Woodfall on Landlord and Tenant, and have been found by the Courts to be inadequate for the purposes of raising such a legal or professional charge by way of service charge. So far as the Tribunal is concerned, this particular provision in this case falls far short of that "*clear and unambiguous*" provision to be expected if a legal expense of this kind is to be claimed as a service charge. The precise service charge items are listed in the Fourth Schedule to the lease and it would have been perfectly possible for the draughtsman of the lease to include a provision for the recovery of legal costs in certain circumstances as a head of service charge expenditure. Equally such a provision could have been provided for at some other provision in the lease made in a clear and unambiguous manner. The mere reference to "*costs and expenses of administration and the running of the company and the landlord*" does not, in the view of the Tribunal represent that clear and unambiguous provision, and so far as there is any ambiguity is to be construed, so far as the Tribunal is concerned *contra proferentem* against the Applicant. For these reasons, it seems to the Tribunal that there should be no such provision within the service charge account for legal and professional fees and the Tribunal disallows this sum in its entirety.

17. The Respondent did endeavour at the hearing to raise another challenge in respect of the estimated audit and accountancy costs. However, this challenge had never previously been raised, took both the Applicant and the Tribunal by surprise, and there were no documents brought by either party and particularly the Applicant, to deal with this allegation. The Tribunal disallowed the raising of this further issue at a late stage of the hearing and no determination is made on this point.

COSTS

18. The Respondent invited the Tribunal to make an order under section 20C of the Landlord and Tenant Act 1985 to the effect that all or part of the costs generated by this application should be disallowed as a service charge. The thrust of his contention, as alluded to above, was that better communication by the Applicant of its case would have obviated the need for this hearing. In response to this allegation, Mr Denehan submitted to the Tribunal that there was no statutory obligation to give the Respondent any explanation at all of the legal consequences of the acquisition of the freehold under the 1993 Act. He was entitled to no more by way of statutory notice than the notice under sections 47 and 48 of the Landlord and Tenant Act 1987 informing him of the name and address of his new landlord (the Applicant) and the name and address of the receivers of the rent as their agents, namely Red Carpet. He was also entitled to be told under section 48 of that Act of the address to which all notices be directed. The appropriate notice was indeed given under the Act on 16 February 2009 and appears at page 7 in the bundle.
19. However in the event, the Applicant went beyond any statutory duty and Red Carpet as agents wrote a letter to all leaseholders which appears at page 120 in the first bundle dated 16 February 2009, explaining in more detail about the acquisition of the freehold and completion of the various contracts on 28 November 2008. That letter states among other matters *"as a result of this Blair Court Freehold Limited will now manage the building and the service charges are to be paid to the freehold company"*.

20. There were other indications, argued the Applicant, from which the Respondent knew or should have known the true position at an early stage. First, he had signed a Participation Agreement dated 7 June 2004, pursuant to which he was originally to be one of the participating leaseholders in the acquisition of the freehold. At clause 7 of that agreement (page 155 of the second bundle) there is an explanation of the mechanics, as referred to earlier in this decision, of what would happen upon completion of the purchase of the freehold. Further, on 16 September 2009 the Applicant's solicitors sent the Respondent a letter which set out in very full terms the legal and factual background to the acquisition and summarising the completed position. That itself is to be supplemented by Mr Denehan's very full statement of case in the context of these proceedings which came the following month at the end of October 2009.
21. Yet further, at the hearing, as mentioned earlier in this decision, the Respondent conceded to the Tribunal that he began to realise that the point that he had taken about the identity of the correct recipient for the service charges was not well founded, but he took the view that he would allow the application to proceed and effectively see what became of it. This of course is a decision he was entitled to take, but it seems to the Tribunal that this decision coupled with each of the other matters referred to do not put the Respondent in a strong position to suggest that it was the Applicant's fault that he did not understand the situation, and needed to bring the matter to the Tribunal for a determination.
22. Accordingly, insofar as the decision as to whether or not to give a section 20C direction turns upon the merits of the case, the Tribunal would have exercised its discretion against the Respondent and in favour of the Applicant and would not have made any section 20C direction. However, the Tribunal has found that on a proper construction of this lease, there is no power on the part of the Applicant to raise by way of service charge a claim for legal and professional expenditure. This being said, it follows that the Tribunal's decision is that no such costs are recoverable in any event and, in so far as is necessary, and for the avoidance of doubt, the Tribunal does indeed give a section 20C direction based, not on the merits, but on the simple fact that there is no proper provision in this lease for the recovery of such costs.

23. The only other matter remaining outstanding is that on the day of the hearing the Tribunal received a letter dated 25 January 2010 from a firm of solicitors called M M Patel & Co acting on behalf of the Second Respondent. In that letter it is contended that the Second Respondent was unreasonably joined by or on behalf of the Respondents as a party in the proceedings and as a result of his actions the Second Respondent has incurred costs exceeding £500 in having to deal with these proceedings. A request is made by those solicitors on behalf of the Second Respondent to make an order for costs in that sum against the Respondents, this being the maximum costs order open to the Tribunal under the Commonhold and Leasehold Reform Act 2002.
24. The question of whether or not the Second Respondent was correctly joined in these proceedings is not entirely straightforward. At the time of the joinder, at the Pre-Trial hearing, the Respondent was a director of the Second Respondent. He told the Tribunal that he was acting with the agreement of the other officers of the company and that he was fully entitled, and it was the Second Respondent's desire, to be a party in the proceedings. Whether or not this is the case, it seems to the Tribunal may turn upon whether or not he did indeed have such authority, either by way of resolution made by the Second Respondent or by authority vested in him in some other way. There is no evidence before the Tribunal either way in this regard other than assertion and cross-assertion made in the context of the letter referred to making the application, and by the Respondent before the Tribunal. There is another letter put before the Tribunal dated 22 January 2010 from that same firm of solicitors to the Respondent to the effect that there was indeed a resolution on 22 June 2009 to the effect that the Second Respondent's then solicitors should be appointed to challenge the right of the Applicant to manage Blair Court but the second main paragraph of that letter asserts that the Respondent's other co-directors thought, for reasons touched upon in that letter, that the firm concerned was at the LVT proceedings representing the Respondent personally as a shareholder of the management company, rather than the Second Respondent itself.

25. It does not seem to the Tribunal that it can deal with these allegations on the basis of these mere assertions either way. No such order is accordingly made for costs against the Respondent. If and insofar as it is desired by the Second Respondent to pursue this cost application then it seems to the Tribunal that it would have to be on the basis of witness statements, details of company resolutions and possibly even some oral evidence. This material is not before the Tribunal and no doubt the cost to be incurred in preparing this material would itself be disproportionate to the very limited jurisdiction the Tribunal has to make a cost order in this regard. For these reasons, as indicated, the Tribunal makes no further order in relation to costs.

CONCLUSION

26. For reasons indicated above, the Tribunal determines the first issue identified at paragraph 2 above in favour of the Applicant. As to the second issue, the Tribunal makes no deductions or variations in the service charge budget for the period 1 October 2008 to 30 September 2009 save that the claim for legal and professional costs in the sum of £12,000 is disallowed. A direction is given under section 20C of the Landlord and Tenant Act 1985 to the effect that the costs incurred in connection with these proceedings are not recoverable as part of the service charge because there is no appropriate provision to this effect in the lease. No further orders as to costs are made.

Legal Chairman: S. Shaw



Dated: 15 February 2010