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Property Lee Cliff Park
Dawlish Warren
Devon
EX7 0NE

Applicant: Carr & Madge Ltd

Respondents: Lee Cliff Park Residents Association

Case Number: CHI/18UH/LSC/2006/0044

Application: Permission to Appeal the Decision of this Tribunal dated 1st November 2006

The Application

This is an application to Appeal the Decision of the Tribunal dated 01.11.06. The Applicant puts its request for permission in the following manner:

- a. The Tribunal was not fully informed of full justification for expenses included within the service charge
- b. There appears to have been considerable mis-understanding with regard to the proceedings and particularly that no response was given to the statement of case set out by the Lee Cliff Residents Association forwarded to the Tribunal on 13th July 2006.
- c. It was not clear, before hearing on 28th September 2006, that the case was to be determined, on a paper track, without a hearing. This meant that no full response had been entered and there was no opportunity to give a full response at the site meeting.
- d. The directors failed to understand the implications between a formal hearing and a paper determination due to the fact that they were in the midst of a matrimonial dispute leading to divorce proceedings and were also in the course of selling their business. As a result no instructions were given to their accountants or solicitors to respond to the points in the case
- e. There is a specific appeal against the amounts dis-allowed in the computation of the service charge in the 6 years to the 30th September 2005.

Respondent's Reply

In a letter to the Tribunal Ms O'Connor makes the following reply, opposing the Appeal

- i. All parties were informed at the initial stages that the application would be dealt with on a paper track basis. There was the opportunity to object at the very beginning. Ms O'Connor said that she, as a lay person, understood the proceedings and, therefore, cannot accept that the respondents, along with their Accountants, failed to understand.

ii. The argument that the Landlords were in the midst of divorce proceedings should not be taken into account as, despite these divorce proceedings, they were able to finalise the sale of their house, business, and the freehold of our flats and to issue service charge bills to the residents on time.

iii. The respondents paid to the new landlord a sum of £6,401 which amounted to a proportionate amount of the ground rent and service charges e.g. 72 days for the period 21st July to 30th September. This indicates that no proper accounting has ever been carried out that they simply charge an amount each year and keep whatever is left, regardless of what has been spent out. The new landlord has stated that she will now have to find income from another source to finance the rental part of the site.

iv. The Applicant's Accountants had also written to the Respondent's Solicitors stating that they do not accept any liability for these charges. The company, Carr & Madge Ltd is no longer actively trading. If the Tribunal can make provision to state that the directors of Carr & Madge Ltd should be held liable for any amounts owed to the residents, this would be appreciated.

v. If an appeal is allowed to go ahead, the Respondents' ask that a full inspection of the accounts is carried out as they suspect that many more items that have been allowed by the Tribunal could be shown to be excessive and not applicable to the buildings e.g. roofing in 2000.

Decision

As to Point a.

The Tribunal had the following papers:

- i. Application
- ii. Lease (2 others handed to us on the day)
- iii. Directions Order dated 26 May 06
- iv. Letter 25 May 06 from Ms O'Connor (Secretary of Residents' Association)
- v. Letter 05 June 06 from Thomas Westcott (Applicant's Accountants). This enclosed "Notes on Service Charge Account", "Copy Site Plan" Certified Accounts for years 2000-2005.
- vi. Letter 18.09.06 from Ms O'Connor
- vii. Copy of letter to Ms Parmigiani dated 26 June 06 from Ms O'Connor
- viii. Copy letter to the Applicant's dated 26th June 06 from Ms O'Connor
- ix. Copy letter to Tribunal from Ms O'Connor dated 13 July 2006
- x. Copy letter Ms O'Connor to Carr and Madge with Statement of Case dated 13 July 06
- xi. Further Directions Order 29th June 06.

At the Inspection the Applicant was represented by Mrs Carr who was accompanied by her Accountant, Mr Moore. All the parties were given ample

time to show us around the site and to point out any matters to us. At the end of the Inspection, Mr Moore was given ample opportunity to make representations for the Appellant, which he did; the important parts of those submissions are recorded in our Decision.

The Chairman asked both parties if they required an oral hearing, indeed, unusually she asked if anyone wanted evidence given on oath, as Mr Moore had given so much information. The Lessees were given the opportunity to ask Mr Moore questions. Both parties declined the offer of an oral hearing.

It is not a valid point of Appeal that the Hearing was conducted on the basis of written representations because

- a. The Directions Order of 26th May 2006 clearly stated it would be unless either party objects (they did not)
- b. In the circumstances it is not for the Tribunal to insist upon an Oral Hearing especially when, given the opportunity of such a hearing, even on the day of the Inspection, neither Party requested the same.
- c. It is clear that the Applicants were advised both by their Accountants and Solicitors at the time of the Directions Order. (see Point b below)

Point b.

It is clear that the Residents' Association had written to the Solicitors acting for the Applicants (See their Statement of Case 13th July 2006). The letter was dated 08.05.06.

It is also clear that the Accountant for the Applicant set out their view of the Service Charge Account in their enclosure to their letter of 05.06.06.

It is not a valid point of Appeal that the Applicant did not understand the difference between paper determination and hearing. They were, according to the evidence before us at the time, advised by both Accountant and Solicitor. It was open to them to take advice.

Point c.

This point cannot be made out on the evidence before the Tribunal. See Points a and b above.

Point d.

This is not a valid point of Appeal. There is clear evidence that the Applicants had both Solicitors and Accountants at some stage during the Application.

Point e.

The Applicants do not specify against what items they appeal and so a proper determination cannot be made. However it is noted that the Applicants had

been breaching the terms of the Lease throughout the period in respect of charging to the service charge account

- a. The Bank interest
- b. Management charges

This was specifically admitted by the Applicant's accountant at the site inspection when they said that because initially only a few flats had been sold they assessed the service charges and apportioned the charges not in accordance with the lease. As the Applicants has had the leases drawn up in order to sell the units this mode of charging seemed to the Tribunal extraordinary. In fact these charges were the principle ones disallowed by the Tribunal.

Permission to Appeal is not allowed

Kay Firth-Butterfield
Chairman

24.11.06