

2019

LON/00AT/LIS/2005/0102

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER SECTIONS 27A AND 20C OF THE  
LANDLORD AND TENANT ACT 1985 as amended**

**Premises:** Flats A and B, 65 Chiswick High Road, London, W4 2LT

**Applicants:** Mr. A and Mrs. E. Cruz (Flat A)  
Mr. P and Mrs S. Watson (Flat B)

**Respondent:** Aorangi Limited

**Date of Hearing:** 6 January 2006

**Date of the Tribunal's Decision:**

**Tribunal:** Mr. J. M. Deaner LLB M.Phil  
Mr. J. M. Power MSc FRICS FCIArb  
Mrs. S. E. Baum JP

In the Leasehold Valuation Tribunal in the matter of the Application under Section 27(a) Landlord and Tenant Act 1985 and in the matter of 65 Chiswick High Road, W4.

BETWEEN:            Mr and Mrs Watson  
                         Mr and Mrs Cruz     Applicants

                         And

                         Aorangi Limited

                         Respondents

TRIBUNAL:         Mr J M Deaner LLB M Phil  
                         Mr J Power MSc FRICS FCIArb  
                         Mrs S E Baum JP

### **BACKGROUND**

1.     The Applicants Mr and Mrs Cruz and Mr and Mrs Watson are the lessees of Flats A and B, 65 Chiswick High Road, W4 2LT, a house converted into five flats. The leases are for terms of 99 years from 24 June 1983, subject to commencing ground rent of £25 per annum. The leases provided for the lessors inter alia to maintain and keep in good and substantial repair the main structure of the building and common parts. The lessees are to contribute twenty per cent per annum each towards the costs incurred by the lessors.
2.     On 23 May 2000 an order was made by the Leasehold Valuation Tribunal appointing Mr W Delaney of London and Orient Properties Ltd Managers of the property for a period of 3 years with effect from 1 June 2000.
3.     On 26 October 2005 the Applicant applied for a determination of liability to pay service charges for the past years June 2003 to December 2003 and January 2004 to December 2004 and for current years January 2005 to December 2006.
4.     A hearing was arranged to take place on 6 January 2006. The Respondents in a written request dated 3 January 2006 applied for an adjournment on the grounds that the Applicants had failed to support their arguments relating to the costs of abortive sale negotiations, had not consulted other lessees and had not referred a quotation relating to management to the Respondents. The Tribunal did not consider that there were sufficient grounds to justify an adjournment, noted that the Respondents had failed to attend and proceeded with the hearing.

### **THE APPLICANT'S SUBMISSIONS**

5.     The Applicant at the hearing and in written submissions provided details of the disputed items. Management and accountancy charges had risen steeply in the 1990s and in 23 May 2000 the Leasehold Valuation Tribunal appointed a

manager, London and Orient who managed the property until June 2003 when management reverted to the Respondents. Demands were then made for high service and accountancy fees but apart from one remedial repair no work was carried out. Abortive negotiations took place for the purchase of the freehold in 2003 and the Respondents demanded payment of legal fees even though they had withdrawn from the proposed transaction.

6. The items in dispute were as follows:
  - a) Flat B had paid £543.18 in advanced charges in December 1999 but these had not been carried forward.
  - b) Arrears were claimed for £809.75 for Flat B and £1,214 for Flat A. These were disputed since all bills had been settled before a manager was appointed in 1999.
  - c) Management and accountancy fees from 15 July 2003 were unacceptable. The Applicants listed substantial works carried out by London and Orient and pointed out that they had charged over a thousand pounds less than the Respondents.
  - d) Entitlement to advanced maintenance charges was disputed. The Applicants produced a letter from TPS Estates (Management) Ltd stating that their management fees would be £200 plus VAT per flat per annum and 5% plus VAT of the cost of any works exceeding £1,000 and £150 plus VAT for service charge accounts (which would not satisfy Company Law but would satisfy Housing Law requirements )
  - e) Costs relating to abortive negotiations were not their responsibility.

#### **THE RESPONDENT'S SUBMISSIONS**

1. Management and Accountants Fees
2. They claimed that any comparison with fees charged by London & Orient was misleading as no audited accounts were produced and the property was left uninsured.
3. The Landlords were unable to carry out substantial maintenance because of service charge arrears. However the current charges were likely to be increased following authorisation of a roof repair at an estimated cost of £400 plus VAT.
4. Advance payments related almost entirely to the insurance premium paid.
5. Costs relating to abortive sale negotiations. The Respondents accepted that these were not service charges.

## DECISION

1. No explanation was provided by either party for the apparent failure of the Respondents to allow for the payment of £543.18 in December 1999. In view of the time which had elapsed and that it did not relate to any of the relevant years the Tribunal were unable to make a determination on this matter. They were unable to determine whether the arrears claimed as at 6 August 2003 were properly due as they related to the period when London and Orient managed the property and not to any of the years in question.
2. Management and Accountancy Fees

The Applicants stated that only one visit had been made by or on behalf of the Respondents since they took over the management in 2003 and obtained a quotation of £200 plus VAT per flat and other fees as referred to above. The Respondent's schedule of expenditure showed charges of £1,375 for the year ended 24 June 2004, £1,220 for the year ended 24 June 2005 and an estimated £1,450 for the year ended 24 May 2006. The Tribunal took the view that the management of the building would involve a minimal amount of time and the amount of £500 for the building per annum plus VAT was adequate.

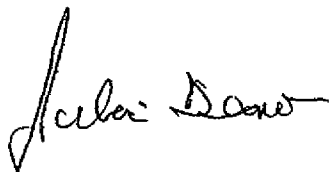
The estimate for preparing accounts which did not comply with all statutory requirements was not considered acceptable and the accountancy charge of F W Stephen, ie £1,000 for the year ended 24 June 2004, 24 June 2005, and £1,092.75 (estimated for the year ended 24 June 2006) unreasonably high. The Panel consider a figure of £500 per annum plus VAT was adequate.

The leases did not specifically state that the lessors could levy an advanced charge except in respect of insurance of the building in respect of which payment was to be made on demand. The lessors were entitled to the insurance contributions, the amounts not being in dispute.

The costs incurred in respect of the abortive sale of the freehold were admitted by the Respondents to be other than service charges and were not within the Tribunal's jurisdiction.

The Tribunal considered it just and equitable in the circumstances to make an order under Section 20(c) of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Chairman



Date 6-3-06