

Hearing

3. The Preliminary Hearing was held on 15th May 2006. At the start of the hearing the Tribunal was informed that the Applicant's final appeal to the High Court to overturn the consent order dated 9th July 2001 had not yet been heard.
4. The parties were asked to address the Tribunal on each of the above issues in turn.
5. The Applicant made oral submissions by reference to his written statements dated 18th April, 8th May and 12th May 2006, and other documents. On behalf of the Respondent, Mr Warwick made oral submissions by reference to his skeleton argument for the Pre-Trial Review held on 9th November 2005, his Response dated 8th May 2006, and other documents.
6. The Applicant's submissions were at times slightly difficult to follow. His case is summarised as follows:
 - a) He was appealing against the Court's refusal to rescind the consent order on the basis that his signature had been obtained under duress from his Counsel. Regardless of any court orders made in the case the Leasehold Valuation Tribunal could go back into the admissibility and reasonableness of the service charges. The Tribunal's remit was very different to that of the court. It should look into the whole matter, not the technicalities of the case. He was, however, unable to offer any authority for this proposition. He considered that the papers demonstrated that the Respondent had been harassing him since 1995. There were many problems with the flat, which had not been dealt with by the Landlord, despite frequent complaints.
 - b) Notwithstanding the registration of World Environmental Foundation Ltd as the registered proprietor at the Land Registry between 7th November 2001 and 7th July 2005, the de facto lease continued to remain in his name. He had always accepted the liability under the lease. He was the founder of the World Environment Foundation Limited, and had remained in occupation of the property. The Respondent had continued to write to him during that period. The Respondent had refused to recognise the assignment to the Foundation, and it could not now say that he was not the tenant.
 - c) He denied that he had failed to reveal the ongoing court proceedings relating to the property to the Tribunal. He had revealed them in December 2005.
 - d) He had been unable to serve a full statement of his case as required by the Tribunal Direction dated 5th April 2006 because the Respondent had failed to provide him with the necessary details of the service charges over many years, despite requests. Without the details he could not challenge the charges being demanded. The Respondent had never sent details of the charges demanded.
7. The Respondent's submission is summarised as follows:

- a) The Particulars of Claim dated 14th April 1998 made in the proceedings in the County Court included claims for service charges demanded up to that date. The County Court was seized of that claim, the court order was clear and remained in effect. The Applicant's application to the High Court to appeal against the consent order dated 9th July 2001 (i.e. made 4 years later) had been refused on the papers by Mr Justice Eady on 10th February 2006. The Applicant had applied for an oral hearing of the appeal, but the case had been adjourned on a number of occasions at the request of the Applicant. In response to a question from the Tribunal, Mr Warwick stated that despite the fact that the claim had been for payment of provisional service charges, it was not open to either party to reopen service charges demanded before 14th April 1998, in view of the terms of paragraph 1 of the consent order. No money had been paid since 1995.
- b) The Respondent had refused to accept the notice of assignment to World Environment Foundation Ltd because the Applicant was in breach of his lease on account of outstanding service charges. Nevertheless registration as Registered Proprietor at the Land Registry was effective. The Applicant could not validly claim that "the de facto lease remained in my name", as stated in his statement. World Environment Foundation Limited was the legal owner of the property once it became the Registered Proprietor. He referred to the case of Old Grovebury Manor Farm Ltd v W Seymour Plant Sales and Hire Ltd (No 2) CA 1976 WLR 7.12.1979. The case decided that even when an assignment in breach of covenant had taken place, process had to be served upon the assignee.
- c) Court proceedings were ongoing relating to an action for forfeiture of the lease, which had not been disclosed to the Tribunal on the application form. The Respondent considered the application to the Tribunal was a delaying tactic.
- d) The Applicant had failed to provide a full statement of his claim as required by the Directions of 5th April 2006. In particular, no outline of the Applicants case had been provided on the application form for the years 1997 – 2000, or for the years 2005-6. It was Kafkaesque to ask the Respondent to reply to a claim when it had no details of the matters complained of, or to ask it to provide details of service charges so that the charges could be challenged, when it had not asked for the money. Until the status of the lease had been decided, he suggested that these proceedings should be "parked". In reply to questions from the Tribunal, Mr Warwick stated that his client had in fact made no demands for payment of service charges since 14th April 1998. There was nothing in the papers to indicate that it had, and the Applicant had not been able to find anything either.

Decision

8. The Tribunal decided that it had no jurisdiction to consider matters covered by the consent order dated 9th July 2001, unless and until requested to do so by the Court. Section 27A(4) states that "*No application may be made in respect of a matter which-*
- c) *has been the subject of a determination by a court*"

Thus those claims relating to the period prior to 14th April 1998 cannot be reopened unless the Court rules otherwise. While it is open to a Court reopening the matter to order that those matters be referred to the Tribunal, that is a decision exclusively for the Court. The Tribunal has no other right to interfere.

9. While the parties made extensive submissions on the other issues, the crux of the matter seems quite simple. Nothing in the evidence before us indicated that an enforceable demand for payment of service charges had been made since 14th April 1998. Mr Warwick on behalf of the Respondent agreed that this was correct. The Applicant was also quite firmly of the view that he had not received sufficient details of any of the service charges demanded to be able to challenge them. The Tribunal carefully considered the terms of Section 27A(1) and (3). In the Tribunal's view, the application was premature. If and when the Respondent makes any sufficiently particularised demands relating to the periods in question, the Applicant, or any other person concerned, would be entitled to make a further application to this Tribunal.

10. Since the matter was referred to briefly at the hearing, for the avoidance of doubt, the Tribunal wishes to make it clear that it has no power in the present application to make a determination under Section 168 of the Commonhold and Leasehold Reform Act 2002. That matter would have to be decided in a separate application, if appropriate.

Signed:

Lancelot Robson

Dated:

24th May 2006