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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT  
ASSESSMENT PANEL**

Case number CAM/11UF/LSC/2007/0020

In the matter of 4 Bevelwood Gardens, High Wycombe, Bucks HP12 3EZ

Landlord and Tenant Act 1985 section 27A  
And the Commonhold and Leasehold Reform Act 2002 s158 and schedule 11  
("the Act")

Parties:

Mrs B R Pitter Applicant

Leasehold Management Services Limited for  
Bevelwood Management Limited Respondents

Application date: 12<sup>th</sup> March 2007

Determination date: 4<sup>th</sup> June 2007

Tribunal members: Mr A A Dutton Chair  
Mrs H C Bowers MRICS

Decision date: 8<sup>th</sup> June 2007

## Reasons and decision

### A. Background

1. This application was made by Mrs B R Pitter purportedly under section 27A of the Landlord and Tenant Act 1985. In fact the application is to challenge the administration charge collected by Leasehold Management Services Limited ("LMS") for the transfer and registration of the shareholding in the management company, Bevelwood Management Limited ("Bevelwood"). As such it should in our view be made under the Commonhold and Leasehold reform Act 2002 section 158 and the 11<sup>th</sup> Schedule thereof. At the directions stage it was ordered that the application should proceed on that basis.
2. Mrs Pitter in her application sought to challenge the fee charged by LMS of £41.12, inclusive of VAT for the years 2003 to 2007 inclusive.
3. She raised 4 questions set out for each year in question. They were
  - (a) Is the administration fee payable?
  - (b) Should the agent be entitled to collect this fee for his own benefit?
  - (c) Should the agent have collected the £6 fee for the residents Company's benefit? (Lease clause 5(a))
  - (d) If the tribunal decide that the fee was not payable should the agent be obliged to refund residents affected, if requested, without the necessity of individual tribunal rulings which is what the agent is demanding. All 56 leases are identical and have clause 5(a)
4. Clause 5(a) of the lease states as follows:

*"5. The lessee hereby covenants with the Lessor and as a separate covenant with the Company:*

  - (a) Upon the sale of the Demise Premises to hand over to the Purchaser thereof a duly stamped transfer for his ordinary share in the Company and each successive purchase will within one month of completion of his purchase produce to the Company for Registration a transfer duly stamped and pay to the Company its registration fee of Six pounds (£6.00) together*

*with Value Added Tax at the then current rate or such greater sum as the Company shall in general meeting resolve"*

For the terms of the lease the "Company" is Bevelwood.

## **B The parties submissions**

5. Mrs Pitter set out the basis of her complaint in the application. In an undated statement she confirmed that she was a director of Bevelwood, having been appointed to that role on 26<sup>th</sup> July 2005. In her statement she said that LMS had acting for Bevelwood since, it would appear, at least June 2002. During that time LMS had collected £41.12 from incoming lessees to comply with the provisions of clause 5(a) of the lease. Apparently no part of that sum had been credited to Bevelwood. She was of the view that LMS was not entitled to demand their own additional fee for this work.
6. By a letter dated 23<sup>rd</sup> April 2007 Mrs Pitter produced a letter from LMS in which a demand was made of £35 plus VAT for the administration and registration of the share. She also disclosed a copy of the entry at Companies House showing her as a director which she said gave her the authority to make the claim on behalf of all lessees who were not applicants.
7. The last submission from Mrs Pitter was by letter dated 8<sup>th</sup> May 2007 the contents of which we noted. It included a claim for the refund of the application fee of £50
8. LMS sent two letters to the tribunal, the first dated 27<sup>th</sup> April 2007 indicated that Bevelwood had not historically collected the £6 fee. It was suggested that the nominal amount involved and the perceived need to add VAT, notwithstanding that Bevelwood was not registered for VAT purposes had resulted in the fee being uncollected for some time. It was suggested that Bevelwood would be required to register for VAT to carry the collection process and that if the tribunal determines that the £6 fee should be collected then Bevelwood would be required to collect that from current member. The same letter went onto deal with a registration fee under clause 3(f) of the lease which is not the subject of this application

9. The second letter dated 17<sup>th</sup> May 2007 indicated that the fee of £6.00 plus VAT was not in question. It was said that LMS had not been instructed to collect the fee and that if it was Bevelwood would either have to register for VAT or seek a variation of all leases to remove the requirement to pay VAT. The letter went on to confirm that if the tribunal found that the charge by LMS was unreasonable they would upon application refund same to the lessees, but only in so far as the charge was made during their period of management. The letter also went on to say that they had attempted to settle the matter and indeed to resign as Company Secretary with Mrs Pitter taking over the role, but she subsequently declined so to do.

#### **C. The Law**

10. The law is to be found at section 158, but more particularly in the 11<sup>th</sup> Schedule to the Act. In addition, we must consider the terms of the lease if that sets out the nature of the charge and the sum payable.

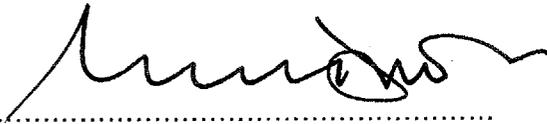
#### **D. The Decision**

11. There is no doubt that the fee payable for the registration of the share transfer is covered by the lease and is £6.00 plus VAT. It is not a variable administration charge. If the Company, as in this case is not registered for VAT then it does not need to charge it, and nor is it obliged to do so under the lease. Accordingly there can be no requirement for the amendment of the lease as suggested by LMS. We find therefore that the maximum sum that Bevelwood can presently charge is £6.00, although the lease does make provision for increasing this in general meeting. As a matter of comment if Bevelwood, and Mrs Pitter is a director of that company, wish LMS to act as company secretary and deal with the transfer and registration of share dealings we do think that the limited fee of £6.00 is insufficient. However, that is a matter between them and accordingly to answer Mrs Pitters first question the answer is in our finding no, the charge of £41.12 is not recoverable under the lease as against new lessees
12. Clearly Bevelwood and LMS can agree whatever fee they wish, provided it is reasonable, for carrying out the obligations of Bevelwood under the lease. Neither Bevelwood, nor LMS can charge more than is provided for in the

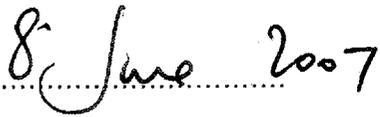
lease to any new lessee for the registration and issue of a new share certificate in Bevelwood. This in our view answers Mrs Pitters second question

13. There is clearly an obligation on Bevelwood to ensure that its agents adhere to the terms of the lease. We are not aware of the management contract between these two parties. In this case Mrs Pitter has sought to be the champion of all lessees. We do not accept that she can take on that role. It would be necessary for those lessees affected by the actions of LMS to join in the application. We are not aware that any have. Accordingly our decision can only relate to the payment made by Mrs Pitter. Despite requesting that she provide a copy of the receipts or demands for the share transfer fee the only evidence we had was a copy letter from LMS dated 17<sup>th</sup> June 2005 to Messrs Fendom Dawson, solicitors, who we assume acted for her seller when she purchased. We conclude therefore that the only refund that we can order in these proceedings relates that charged in 2005. As to whether LMS should have collected the £6 fee for the residents benefit was cannot say as we have not seen the management contract. However, if the £6 was included within the £41.12 collected then it would appear that it was collected for Bevelwood by LMS as its agents and should be accounted for. It appears from the correspondence however that the £6 was not included, see the letter from LMS dated 27<sup>th</sup> April 2007. We will take this point further below
14. Accordingly we order that LMS should, on the assumption that the monies have not been credited to Bevelwood, which appears to be the case from the correspondence before us, refund the sum of £35.12 to Mrs Pitter forthwith. Although as we have said above, we cannot deal with other lessees unless they are parties to the application, it seems to us that if this charge has been made as standard since 2002 then for those persons who have made the payment and remain lessees a refund is likely to be due, and if paid voluntarily would avoid claims to this tribunal and possible costs consequences. We would suggest that the correct way forward is for £6.00 of the payment to be credited to Bevelwood and the balance refunded, but this does depend upon the terms of the management agreement between Bevelwood and LMS. LMS may then like to consider whether they continue dealing with this aspect on behalf of Bevelwood.

15. On the question of costs we find that LMS cannot recover same as a service charge and make an order under section 20C of the Landlord and Tenant Act 1985.
  
16. On the question of the application fee we find that it should be borne by the Applicant. Although Mrs Pitter has been successful it seems to us that as a director of the company Bevelwood Management Limited, the client of LMS, it should have been possible to have resolved this without coming before us.

A handwritten signature in black ink, appearing to be 'M. Pitter', written over a horizontal dotted line.

Chair

A handwritten date '8 June 2007' in black ink, written over a horizontal dotted line.

Date