

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00HH/2006/0128

Re: 22 SORRENTO, MIDDLE WARBERRY ROAD, TORQUAY, DEVON TQ1 1SH

In the Matter of an Application under Sections 20C and 27A of the Landlord and Tenant Act 1985

Committee: Mrs. T. Clark (Barrister at Law) Chairman
W. H. Gater FRICS IRRV
I. Arrow

Applicant/Lessee
Mrs. P Hill

Respondent/Lessor
Sorrento Management Association Ltd.
[APA Management and Lettings Ltd.]

REASONS FOR THE TRIBUNAL'S DECISION.

BACKGROUND.

1. This case concerns an application (dated 30/11/06) by Mrs. P. Hill, lessee of flat 22 in the block known as Sorrento, for determination of reasonableness and payability of service charges for the years 2004-2005, 2005-2006, 2006-2007 and 2007-2008.
2. Sorrento is a purpose-built 1960s block with a flat roof, comprising 31 flats; with gardens, communal areas, parking-spaces and garages outside.
3. The difficulty is that all 31 lessees are shareholders in Sorrento Management Association Ltd; the 'lessors' in this case. The Association has no assets other than its income from service charges, and therefore any tribunal findings as to service charges inevitably reflect back to the Association and to the lessees themselves.
4. The Tribunal members inspected the property on 4th April 2007, and conducted a hearing thereafter which was attended by the following:

(See attached list)

Mrs. Hill attended, as Applicant, accompanied by her husband Mr. Hill. The Directors were represented by Mr. T. Howells of Ashfords Solicitors, and Mr. Caldicott of APA Management was also present.

Mr. and Mrs. Simpkin expressed their support of Mrs. Hill's case by letter.

5. Following the hearing, additional information was requested from the parties, and the Tribunal Members reconvened on 25/5/07 in order to consider and finalise their Decision.

LEGAL FRAMEWORK

1, Section 27A of the Landlord and Tenant Act 1985, as amended by the Commonhold and Leasehold Reform Act 2002, provides for Applications to be made to the Tribunal for determination on service charge issues.

2. There is no limitation as to who may make such an application, so that the fact that Mrs. Hill only became a lessee in November 2005 does not preclude her from applying for a determination in respect of charges for the year 2004-2005.

3. Although section 27 A (4) states that "No application may be made in respect of a matter which has been agreed and admitted by the tenant", Section 27 (A) (5) expressly provides that: "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."

4. Section 20C of the Act provides that the Tribunal may order that some or all of the costs incurred in the proceedings are not payable by the tenant/lessee by way of service charges.

5. Section 20 also deals with the consultation requirements which must be either complied with or dispensed with by the Tribunal before a lessor can claim payment for certain 'qualifying works'. Regulation 6 of the service Charges (Consultation etc) (England) Regulations 2003 Schedule states that the requirements are activated whenever such works result in the relevant contribution of any tenant being more than £250.

In this instance, therefore, the landlord would be obliged to comply with the consultation requirements if any works were proposed which cost more than 31 x £250, i.e. £7,750.

MEMORANDUM OF ASSOCIATION

1. The Company Memorandum of Association sets out the objects of the association, and gives it power to 'make and from time to time alter regulations'.

2. In accordance with the above, the Directors and Committee issued a ten-page document setting out 'Guidelines for Leaseholder/Shareholders', in February 2007.

3. The Memorandum also states that "Auditors shall be appointed...."

THE LEASE - RELEVANT CLAUSES

1. Clause 4 (ii) (a) of the Lease provides for the tenant/lessee to pay an equal 31st share of the costs, expenses and outgoings of the property, as set out in the Schedule.

2. Clause 4 (ii) (c) gives power for the Lessor/ Managing agents to call for interim payments 'on account'.

3. Clause 4 (iii) provides for additional sums to be paid into a 'reserve or contingency fund'.

4. Clause 5 sets out the Lessor's obligations as to maintenance, repair and renewal.

5. The "First Schedule" deals with allocated parking spaces, (as qualified by the Fourth Schedule Paragraph 14).

6. The Fifth Schedule lists the items which are to be taken into account, when assessing service charge payments, including (Para 9):-

"The fees and disbursements paid to any workmen servants or others (including Managing Agents and other professional advisers) as the Lessor in its absolute discretion sees fit to employ in connection with the proper and convenient managing of the estate".

THE APPLICANT'S CASE

1. Mrs. Hill set out detailed objections to various elements of the service charges for each of the relevant years, which broadly fell into the following categories (in no particular order):-

a) Management costs

Mrs. Hill argued that APA were expensive and inefficient; that their fees did not represent good value; and that other agents (notably 'TMS' - Torquay Management Services -) would have charged lower fees despite including secretarial services as part of their remit.

It was also suggested that a "rolling contract" under which APA were re-appointed from year to year was inappropriate, and that there should be a process of 'competitive tendering' for the management job on a regular basis.

b) Costs of AGM and EGM

The figures given for such expenses were as follows:-

2004	-	£292
2005	-	£424
2006	-	£1,002
2007	-	£1,155

Mrs. Hill queried these costs generally, and pointed out that the Church Hall could be hired for £25.

c) Use of a garage as store

The rental of one of the spare garages to the Association for use as a store for garden machinery and other items was challenged, on the basis that a shed in the grounds would be more cost effective.

d) Insurance

It was suggested that the Insurance was unnecessarily expensive, and information was sought as to Insurance monies paid out during the relevant period.

e) Legal Fees

Mrs. Hill contended that the fees incurred for consultation with solicitors on a number of issues were unnecessary and/or excessive.

f) Postage and photocopying

The figures for these items, and the annual increases shown, were challenged.

g) Accountancy and Audit fees

These two items, at just over £1,000 each for the year 2007-2008, were said to be excessive.

Mrs. Hill produced a quotation from a different (albeit independent) accountant who also confirmed that an audit was not a legal requirement for 'a Company of this nature'.

h) Repairs and Maintenance

The figures charged for repairs and maintenance were disputed for a number of reasons. Inter alia, the Applicant argued that the amounts allowed for a 'sinking fund' were too great and should be spread over a longer period: that the consultation requirements had not been complied with: that the contractors used regularly by the management Company were not necessarily the best or the

cheapest: and that additional sums under this heading had been claimed in years when there had already been a substantial 'cash call', as well as a sum allowed under the heading "Miscellaneous".

i) Heating and Hot Water

Mrs. Hill queried figures claimed for the service, repair, replacement and fuel relating to the heating system, and also disputed amounts for removal of asbestos and for managing and overseeing the boiler replacement operation.

j) Other

The Applicant put forward a number of other objections to the manner in which the Directors and Committee conducted the business of running Sorrento.

RESPONDENT'S CASE

In response to the Applicant's submissions, Mr Ashton as Secretary of the Association, and Mr Howells as legal representative, made observations and submissions which are summarised below under the same headings:-

a) Management Costs

In terms of comparing the fees of other Managing Agents, it was said that it was difficult to compare "like with like", and that the TMS charges, (with VAT), if a similar contract was entered into, would actually be higher than APA. Higher charges were also justified for overseeing and arranging major works.

The competence and effectiveness of APA's management was defended, and it was pointed out that, under the Management agreement, either side could terminate the contract at three months' Notice.

The Directors and Committee were open to the idea that the Management contract could be re-considered and voted upon at each AGM, and possibly put out to competitive tendering if members so wished.

b) Costs of AGM and EGM

Mr Ashton outlined difficulties which had been encountered by the Committee in using the Church Hall, and sought to justify the more expensive venue at Lincombe Hall Hotel.

Among other AGM and EGM expenses, the Tribunal was told that the figure for "APA Management secretarial fees" (contained in the detailed breakdown of expenses exhibited as ELA/2) related to the cost of a stenographer to take an accurate record of the Minutes.

It was said that all 15 or 16 members of the Committee went out for a meal after the AGM, which was paid for out of the service charge account.

Mr Ashton expressed the view that it was his choice to spend monies in this way in lieu of any honorarium for himself, which he could have claimed for his services as his predecessor had done. (£750p.a.)

Nevertheless, the Lincombe Hall Hotel appears to have charged only £111.80 for the use of their meeting room, and the remainder of the £1,000+ seems to have been spent on sundry other expenses which were not altogether clear.

For example, in relation to a question about item 233 on Exhibit ELA/2, listed as 'AGM expenses - £384' Mr Ashton's answer was: "I had a lot of correspondence with an organisation in London, for clarification of the new lease provisions..."

Excluding the costs of the venue, and APA's secretarial fees, secretarial expenses of £530.93 were

paid to Mr Ashton for the period April 05 - March 06.

It was said that this represented expenses such as photocopying and postage. (See Post, f.))

c) Use of garage as store

We were shown the garage in question, which housed a large number of items from the property as a whole.

It was said that there would be great difficulty in putting up a shed in an acceptable position, which complied with Health and Safety regulations and which offered such a secure storage-space as the garage. It was also said that the rent currently paid was at a reduced level from market rates, and therefore reasonable.

d) Insurance

The Respondents stated that insurance was arranged through reputable brokers, Residents Line, who obtained competitive quotes each year.

e) Legal Fees

It would appear that the Committee had sought legal advice on a number of matters, including:-

i) Maintenance/felling of trees on the boundary.

ii) Re-allocation of parking-spaces.

iii) Drafting of sub-leases, and

iv) LVT proceedings.

The Respondents argued that they were entitled to consult 'professional advisers' under the Fifth Schedule of the Lease, and that such consultation had been necessary in all the above circumstances.

f) Postage and photocopying

Mr Ashton explained that he had to take 40 copies of relevant documents and circulate them to all members, and that both major works-contracts and service charge disputes had necessitated extra expenditure. (See also b) above.)

g) Accountancy and Audit fees

The Respondents considered that both were reasonable, and that it was inappropriate to seek competitive tendering each year.

However, Mr Ashton conceded that the Committee could vote to dispense with the need for an audit, and thus save that element of the expense.

h) Repairs and maintenance

Following additional questions by the Tribunal after the hearing, it was clarified that the first 'cash call' for additional funds for major works, in the sum of £1,419.35 per flat, was made in December 2006.

The second 'cash call' for £1,317.81, was made in April 2007.

It was said that the £4,000 for 'property repairs', £4,000 'Miscellaneous' and £12,000 'To Reserve Account', all claimed in the same year 2006-2007, were necessary and reasonable to cover additional repairs and maintenance, for example electrical works with a quote of £987, and a fire risk assessment at unknown cost. The 'Reserve' or 'sinking fund' was designed to deal with items such as complete redecoration in 4-5 years time, and possible window replacement.

i) Heating and Hot Water

It was said that a replacement boiler cost in the region of £64,000, with a life expectancy of 25 to 30 years.

The Respondents claimed that maintenance costs had now gone down, and that APA's charges for

overseeing the boiler works were reasonable.

j) Other

Overall, the Respondents argued that the consultation requirements had been complied with where necessary, and that the actions of the Directors and Committee had been reasonable throughout.

REPRESENTATIONS FROM Mr. NOTTAGE

Mr Nottage, who had applied to be joined as Respondent in the proceedings, submitted both written and oral representations to the Tribunal.

His observations were carefully considered and found to be both practical and helpful. His efforts to mediate between the parties, (whilst expressing some sympathy for both sides) were found to be admirable and potentially very constructive, but had unfortunately been unsuccessful to date.

In particular the Tribunal had regard to his evidence of other, similar properties in Torbay, where he was aware of 'Management' charges of £5,322p.a. (at Manorglades Court) on the basis of a fee of £250 per flat.

He also recommended that additional charges for management and supervision of particular works should be carefully monitored and controlled.

Mr Nottage also gave comparable evidence of the accountancy fees for the similar property at nearby Manorglades Court, (as above) where only £580 p.a. was incurred, and of Manorglade's budget for legal fees at only £200 p.a.

TRIBUNAL FINDINGS

Dealing with the points at issue in the same order as above, having considered all available information, the Tribunal found as follow:-

a) Management Costs

The Tribunal considered that the basic management fees charged by APA were reasonable in all circumstances.

On TMS's figures, for an equivalent contract, the total would be over £5,000, and if the charge was based on Mr Nottage's example of £250 per flat, the total would be £7,750.

A not-uncommon basis for calculating Management fees is to take 15% of the total expenditure, which for the year 2006-2007 would amount to £9,300.

In comparison, the current APA fees are reasonable, subject only to the proviso that an additional £8,000 for overseeing the major-works process seems disproportionate.

Whilst not "disallowing" those charges or ruling them unreasonable per se, the Tribunal agreed with Mr Nottage's suggestion that such additional fees should be carefully considered and controlled in future.

An annual review of the continuing appointment of APA as Managing Agents was approved by the Tribunal.

b) Costs of AGM and EGM

The definition of 'service charges' under Section 18 of the 1985 Act, refers to "an amount... which is payable for services, repairs, maintenance, improvements or insurance or the landlord's costs of management".

The Tribunal found that payments for flowers to tenants in hospital, for dinners for the Committee, and for entertaining members and professional advisers after the meetings, fell outside the statutory definition, and should not have been claimed as part of the service charges.

If members wish to contribute voluntarily to such items, then that should be a separate matter

altogether.

In the same way, The Tribunal found that, if Mr Ashton is appointed as a 'servant or other' (Fifth Schedule of the Lease, Clause 9), or under the heading "all other expenses for the convenient management and running of the Estate", then he should be paid an appropriate honorarium, (say, £750) which should cover his secretarial and administrative costs. If he then chose to use part of his honorarium to entertain members of the Committee, that would be a matter for him.

The annual charge of £424 in the year to 2005 was reasonable, but the succeeding two years and the proposed figure for the year to September 2008 were found to be unreasonable, and the allowable amount for this item in each of the three years is limited to a maximum of £750, i.e. £24.19 per flat. Any monies already paid in respect of this item in excess of the £24.19 should be credited to the lessee's account, and amounts outstanding should be adjusted accordingly.

c) Use of Garage as store

The Tribunal determined that the rent paid for the garage was a 'reasonable' cost, because the proposed alternatives were not satisfactory. The sums for the garage are therefore payable for each of the years in dispute.

d) Insurance

The Tribunal were satisfied that the Insurance had been obtained at a competitive price, through a reputable broker, and that the said costs were reasonable.

We were assured that the property would be re-valued after completion of the major works.

e) Legal Fees

In order for the legal fees to be recoverable as part of the service charges, it has been held by the Court of Appeal in Sella House v. Mears (1989) 21 H.L.R. 147 that the lease has to state "in clear and unambiguous terms..." that legal fees are so recoverable.

The provision relied upon in the Respondent's case is Clause 9 of the Fifth Schedule to the Lease, which refers to the fees of "...any.... Professional advisers as the lessor shall in its absolute discretion think fit to employ in connection with the proper and convenient management and running of the estate."

It is arguable that the fees for advice in connection with tree Preservation Orders, lease drafting and interpretation are allowable under this clause, but the fees are nevertheless subject to the over-riding statutory test of 'reasonableness'.

In the recent case of Redcliffe Close Management Ltd v. Dr. Gordon Lancaster [2006] LRX/73/2006 it was held that where expenditure was not found to be within the management duties under the lease, the legal fees incurred in pursuing payment for such expenditure was not recoverable either.

i) In the subject case, the Tribunal found that it was not reasonable to incur £538.39 of legal costs in respect of the Tree Preservation Orders and it was ruled that only £250 was recoverable for this item.

ii) The Tribunal were not satisfied that it was reasonable to create such legalistic difficulties over the question of changes to allocated parking spaces. The Committee and Directors had unnecessarily incurred considerable solicitors' costs, when they had a discretion (under the First Schedule to the Lease) to substitute one parking space for another without any undue complications. The costs allocated for this item were therefore found to be recoverable only up to a maximum of £200.

iii) The legal costs incurred in dealing with sub-leases were also found to be unreasonable. There is no requirement upon the Lessor to either draft or vet sub-leases, but Lessees must be made aware of the implications to themselves if covenants are breached.

No amount was found to be allowable under this heading.

[For legal costs of the proceedings, see later under "Limitation of Costs".]

f) Photocopying and Postage

The Tribunal considered that, in a year when there was extra documentation for major works, £20 per flat p.a. was reasonable, say £620pa. £1,700 for the year '07 - '08 was excessive and unreasonable.

g) Accountancy and Audit

It was agreed that there was no necessity for an audit (nor for accountants and auditors to attend meetings) and that the requirement for one should have been dispensed with. This item was therefore held to be unreasonable and not recoverable from the Applicants.

h) Property Repairs (General)

For each of the subject years, the figure for general property repairs was less than £7,750, and so the statutory consultative requirements do not apply.

Apart from the extra 'cash calls' and the additional £20,000+ to be raised in each of the years '06 - '07 and '07 - '08, the general costs of 'property repairs' were held to be reasonable and recoverable from the lessees. It would be helpful if the Association distributed a detailed breakdown of costs, as per ELA/2, in each financial year.

However, the decision to add annual figures of £4,000 for annual repairs, plus £12,000 each year for the Reserve Fund, with proportionate increases in the year '07 - '08, was held to be unreasonable. The Tribunal therefore held that, for the latter two years, one sum of £4,000 was reasonably recoverable in addition to the £12,000 payable to the Reserve Fund - the latter being a sensible provision. The second sum of £4,000 for 'Miscellaneous' items was disallowed.

i) Property Repairs - Major Works - Consultation

Following a post-hearing question from the Tribunal:

Consultation - Findings

Mrs. Hill confirmed that the first reference to the major works, estimated at about £88,000 in total cost, was at an Extraordinary General Meeting in March 2006.

This meeting proposed, quite properly, that the specifications (prepared by APA) should be sent out to three nominated and approved contractors, so that their tenders could be considered at the AGM in July 2006.

The meeting in July 2006 (Item 5) set out the proposals for tenders and consultation, with a vote to be held at the EGM in March 2007.

Whilst the consultation procedures contained in the aforementioned Regulations, pursuant to section 20 of the Act, are very detailed and specific, the Tribunal was concerned primarily with the question of whether or not the Lessor/Management Company had complied with the spirit of the law. In other words, we sought to establish whether or not the lessees had been given proper notice of what works were proposed and the likely cost thereof: whether at least three (preferably independent) estimates has been obtained; whether the lessees had been given at least 30 days to make observations on the tenders and/or nominate a contractor of their own choice, and whether or not the Lessor had had regard to any observations received.

In this case, we were satisfied that proper notice had been given, at the EGM in March '06, and three tenders had been properly obtained. Although the Lessors had not specifically invited observations in writing, they did invite written nominations for alternate contractors, and there was ample time for lessees to respond (a year!) before the EGM of March 2007, at which point voting-forms were distributed to all members to make their choice of contractor out of those who had tendered. Works were not scheduled to begin until May 2007.

We heard no evidence from Mrs. Hill to the effect that she had made written representations at this stage, nor that she had nominated alternative contractors who had been overlooked. In the particular circumstances, in accordance with Section 20ZA of the 1985 Act, we found that the consultation process was satisfactory and we considered it reasonable to dispense with the detailed statutory requirements.

As a result, the two 'cash calls' were found to be reasonable and payable by all lessees.

It would be advisable for both the Directors and Management Agents to familiarise themselves with the Consultation Requirements for future reference.

j) Heating and Hot Water

The figures under the headings Boiler Maintenance, Repairs, Gas, Heating and Hot Water appeared high in some instances, but we accepted that they were unavoidable and therefore reasonably incurred and payable.

k) Other

The Tribunal considered that there were some elements of the annual expenditure at Sorrento which should properly be dealt with from a separate account, as they did not fall under the definition of 'Service Charges'.

The Directors' Personal Indemnity Insurance, for example, should be payable by Directors only, and contributions to meals out, flowers etc should be voluntary and should not form part of the Service Charges.

The legitimate Company expenses should be distinct from the Service Charges, and separated accordingly.

Items such as the key-holder charges, (Which were in dispute) were charges which related to individuals, and should not form part of overall service charges.

The Tribunal also found that the Directors and Committee had been too ready, on occasions, to react personally to any challenge levelled at elements of the service charge, and too quick to take legal advice where sensible discussion could have achieved more.

It was fair to note that it was, indeed, the Directors and Committee who sought a full Hearing, with all attendant costs, rather than the 'paper determination' accepted initially by Mrs. Hill.

CONCLUSIONS:

The Tribunal acknowledged the credit given to the Directors and members of the Committee for their work on behalf of Sorrento, and agreed that they do a very good job in sometimes difficult circumstances.

It is hoped that, where future sums have been disallowed, (e.g. the 'Miscellaneous' figure), the result will be an amendment of the sums claimed from all lessees, and consequently a slightly less-generous provision for future contingencies, rather than any increased expense or loss to any member of the Association.

Where Mrs. Hill's objections were adjudged to be well-founded, and figures were reduced accordingly, it is anticipated that those who joined Mrs. Hill in the Application and supported her in her objections, (i.e. Mr. and Mrs. Simpkin and Mr. Impey), will be held liable for the reduced amount – to be credited or debited according to amounts paid or owing. Those who benefited from the expenditure, or who agreed it without reservation, will bear a slightly larger share of the cost. Thus the balance will be struck between the members/lessees who challenged figures on the one hand, and the entity of the Committee and Directors as a separate part of the same body on the other

hand.

LIMITATION OF COSTS

In accordance with the principle of what is "just and equitable in the circumstances", under Section 20C of the Act, the Tribunal found that some of Mrs. Hill's objections were valid, and that her liability to contribute to the costs of the LVT proceedings should be limited.

The Tribunal did not consider that it was reasonable to employ expert solicitors to contest the case against an unrepresented Applicant, especially as Mr. Ashton was able to present a very cogent and clear case on his own behalf.

The estimated legal costs of the LVT proceedings, (put at £6,000 + VAT in the Minutes of the March 2007 EGM) would amount to about £193 + VAT per flat.

As Mr. And Mrs. Hill have incurred considerable time and expense in presenting their case, the Tribunal found that their costs should be limited to a maximum of £100 each.

Those who challenged the service charges, i.e. Mr. Impey, and Mr. and Mrs. Simpkin, should have their liability limited to £150 for each flat-owner, and the remainder should be divided equally between all other members.

The Tribunal determines accordingly.



T. C. Clark

Chairman

26th May 2007

**SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION
TRIBUNAL.**

Case no. CH1/00HH/2006/0128

RE; SORRENTO, MIDDLE WARBERRY, TORQUAY, DEVON, TQ1 1SH

REFUSAL OF PERMISSION TO APPEAL.

The Application of Mrs. Hill for Leave/Permission to Appeal the decision of the Tribunal in respect of service charges at the above address is refused, for the reasons outlined below.

MANAGEMENT COSTS.

1. Firstly, Mrs. Hill argues that 'all' the figures '...used to prove reasonableness of management costs' were incorrect.

It is right that the Reasons incorrectly state that Mr. Nottage gave evidence of service charges of £250 per flat per annum, at Manorglade Court, a similar block in Torquay. We have since been informed that this was an error, and that the correct figure was £153.79 per flat. However, the reasoning used by the Tribunal in reaching their decision was sound in spite of the mistake, and was based on the following information/evidence.

a) The existing Management charges at Sorrento before the hearing, **inclusive** of Secretarial charges, for the year 2006 – 2007, were £5,600, or **£180** per flat.

b) The equivalent charges at Manorglade Court for the same period, (on the corrected information), were £5,988, or **£153.79** per flat.

c) Mr. Ashton gave evidence of another block which he was involved with, (unnamed), where the equivalent inclusive charges were £5,237, or **£250** per flat. It was conceded that this was a block of 21 flats, where the annual expenditure was unusually high.

d) TMS quoted £125 + VAT per property, per annum, to include secretarial services. However, they also quoted an **additional** charge of '...between £15 and £30 per property' for serving the appropriate Notices relating to proposed major works, which had to be dealt with in that period.

Given the imprecise figures, it was not possible to calculate exactly what their charges would be; hence the reference in the Reasons to a total of 'over £5,000', which Mrs. Hill commented upon. The cost per flat would be somewhere between **£160 and £180.**

e) During the hearing, the alternative method of calculating Management costs was referred to, whereby the costs were fixed according to a percentage of the overall expenditure, a common percentage being 15%.

In this instance, if such a method was used, the figure for each flat in the relevant year would be £300 per flat.

It was not considered that such a system would be appropriate in the subject case, but the comparison puts the other figures into perspective.

Having heard all representations on this point, the Tribunal acknowledged that it is difficult to compare 'like for like' in terms of management contracts, but concluded that, on the evidence available, the Management and Secretarial charges (combined) for Sorrento were within the average range.

The Tribunal reduced the Secretarial charges as set out in the Reasons, leaving a final figure of **£173.23** per flat.

(**N.B.** : The new figures, (for a Company called 'Cosy Lettings'), which Mrs.Hill quotes in her letter of 'Grounds of Appeal', were not in evidence before the Tribunal, and so could not be taken into account.)

CHARGE FOR OVERSEEING MAJOR WORKS.

Mrs. Hill correctly quotes our finding that the £8,000 – (which represented about 10% of the total cost) – charged by APA '...seems disproportionate'.

However, none of the parties put forward *any* comparable information to the Tribunal, so that we had no evidence to suggest that it was an excessive figure in the circumstances.

CONFLICT OF INTEREST.

In answer to Mrs. Hill's point at 1.6 of her 'Grounds', the Tribunal's jurisdiction in this case relates only to service charges and costs, and not to questions of appointment (or dismissal) of company officials.

The Panel did not 'decide' that APA's appointment should be annually reviewed, as is suggested, but merely approved the proposal that it should be.

Similarly, in points 2.1 – 2.3 Mrs. Hill raises issues as to Mr. Ashton's competence, and that of the Directors and Committee. Such matters are not within the jurisdiction of the Tribunal.

In terms of the findings as to 'REASONABLENESS', Mrs. Hill argued that the Tribunal had judged the charges to be unreasonable in a number of different instances.

Whilst several of the figures were ultimately found to be excessive or unjustified, the Tribunal did not find any suggestion of bad faith or malfeasance. In each instance where there was a dispute over a charge, we found that both parties had valid representations to make, and there was a 'triable issue' for us to determine: none of the decisions were so inevitable that they required no deliberation.

CONSULTATION REQUIREMENTS.

The Tribunal found that it was reasonable to dispense with the consultation requirements in this case (in accordance with Section 20 of the Landlord and Tenant Act 1985 as amended), because all parties had been given ample opportunity to participate in the 'tendering process' for the major works, and no-one had been prejudiced in any way by the failure to comply exactly with every element of the detailed statutory procedure.

The brief chronology relevant to this issue is as follows:-

1. March 2006.

Notice was given of the works proposed; of the likely total cost; and of the plans for tendering to 'three nominated contractors' by the time of the AGM in July 2006.

(copy of pages 11 and 12 of the EGM in March 2006 attached herewith; Annexe A.)

2. ? 2006.

The 'Report (undated) of the Chairman, Secretary and Directors' for the year ending 31st March 2006 mentioned that:

' a target date for the works is to commence on 1st May 2007, to run over 12 weeks... '.

The date had not been fixed, but was merely a 'target'. (Copy attached: Annexe B)

3. Mrs. Hill concedes that the Management committee invited lessees to submit written nominations for alternative contractors, (if they wished) in their circular of 7th September 2006, allowing 2 months for such nominations to be considered.

4. The Committee's letter of 15th February 2007 gave full details of the tenders received from the various contractors, with a summary of the total costs, and enclosed a voting form for the lessees to vote on their choice of contractor. (Copy attached, Annexe C.)

The Tribunal did not consider that any of the lessees had been disadvantaged by, for example, the failure to serve a formal Notice in the exact terms specified by the 'Service Charges (Consultation Requirements)(England) Regulations 2003, and the time allowed for parties to make observations (2 months) was considerably longer than the 30 days specified in the statute.

CONTRIBUTION TO DEFENCE LAWYERS' COSTS.

It is correct that the Tribunal found that it had been unreasonable for the Respondents to employ expert solicitors to contest the case against an unrepresented Applicant. However, that did not imply that the Committee were not entitled to seek any legal advice at all, and recovery of unpaid charges is a valid reason for seeking professional advice. Approximately half of the costs – (rather than the total costs including the expenses of the hearing) - were allowable against Mr. and Mrs. Hill.

As stated above, both parties had a valid case to make, and neither was considered to be frivolous or vexatious, so that *some* costs inevitably (and justifiably) flowed from the proceedings.

Accordingly, the Tribunal is not satisfied that there are any valid grounds for objecting to the Decision, and Permission to Appeal is refused.



T.C. Clark
(Barrister at Law)
Chairman.

03.09.07

cont: - 11.

EGA March 06



Annex A

Sorr/02/03/06.

From the latest information which is available to the Association it is required that we budget for a figure between £84,000 and £88,000 to be in the Reserve Fund before any orders may be placed and in order to obtain further more realistic costings certain costs are involved and have to be met.

A provisional breakdown of this forecast is:

Roof	£ 40,000.
Exterior Decorations	£ 32,000.
Repairs	£ 8,000.
Surveyors and Administration.	£ 8,000.

	£ 88,000.

All the Members will realise this figure will not be provided from the present Maintenance Charges in time to allow the works to be undertaken either later this year or early next year.

They are urgently required to prevent any further damage by leaks from the roof into Leaseholders flats and to protect the building of Sorrento from any further deterioration, especially some of the woodwork.

It would it appears now fall to the Association to make a "Cash Call" on each Leaseholder/Shareholder in accordance with the Terms of the Lease (Clause 4 (iii)) which all have signed and agreed to uphold.

The figure payable by each Leaseholder/Shareholder being one thirty first 1/31st of the final total of the works with an intermediate payment based on the Tenders received and to allow work to proceed.

This payment going directly into the Reserve Account. If the costs exceed the initial "Cash Call" then extra funds will be the subject of a further "Cash Call".

Should the final costs be less than the amount received in the "Cash Calls" then any surplus will be retained in the Reserve Account.

As Secretary I stated that in order the Committee of Management be able to place before all the Members more accurate figures and possibly Tenders as Secretary I proposed and sought the approval and Vote of the Members to the following:-

Roof.

The Secretary proposed:-

APA Management be instructed by the Association to engage and act with Consultant Chartered Building Surveyors to prepare detailed specifications and drawings which incorporate all the latest Building Regulations for the construction, materials, insulation, rain water run offs and constructional application for the removal of the existing roof materials from concrete level and the construction and laying of a suitable flat roof with a minimum insurance backed guarantee for 10 years at Sorrento, to include all incidental works, local authority approvals, building works, scaffolding, health and safety, and the removal and cleaning of the site Sorrento on completion.

authority approvals, building works, scaffolding, health and safety, and the removal and cleaning of the site Sorrento on completion.

cont: - 12.

Sorr/02'03/06.

The preparation of Tender Documents and Insurance documents in order that APA Management may send out to three nominated and approved Contractors and obtain Tenders in time to present to the Annual General Meeting in late July 2006 always bearing in mind that the works may not be able to have an order placed until 2007, again a matter of funds.

Exterior Decorations.

The Secretary proposed:-

APA Management be instructed by the Association to engage and act with Consultant Chartered Building Surveyors to prepare detailed specifications which incorporate all the latest Building Regulations for the works to be carried out as External Decorations, guidelines and specifications of the preparation, materials to be used, application, etc, etc as would be required to ensure the external decorations have a minimum life scale of at least 4 years, to include all scaffolding, the removal and cleaning of the site.

The preparation of Tender Documents and Insurance documents in order that APA Management may send out to three nominated and approved Contractors and obtain Tenders in time to present to the Annual General Meeting in late July 2006 always bearing in mind that the works may not be able to have an order placed until 2007, again a matter of funds.

External Repairs.

The Secretary proposed:-

APA Management be instructed by the Association to engage and act with Consultant Chartered Building Surveyors to prepare a detailed schedule and specifications for all the required works prior to the external decorations and which must include a schedule of rates for day works of any item found and revealed during the works to the roof and external decorations.

The preparation of Tender Documents and Insurance documents in order that APA Management may send out to three nominated and approved Contractors and obtain Tenders in time to present to the Annual General Meeting in late July 2006 always bearing in mind that the works may not be able to have an order placed until 2007, again a matter of funds.

Scaffolding, Mr Pitman spoke about the high costs of scaffolding and advised that the Association could save some thousands of pounds on the Tenders if they could arrange for the Repairs to be followed by the Roof followed by the External Decorations so only erecting and dismantling the scaffold once. "

The problem to this will be the funding.

In discussion with Mr Coldicott, the Association may gain from the fact that the Chartered Building Surveyors will be preparing three sets of work and the fees be based on the total instead of individual projects.

In accordance with the Associations Management Agreement with APA Management over capital works APA will follow the above and treat it as one proposal in assessing their fees.

(17)

Annexe (B)

Sorrento Management Association Limited

**Report of the Chairman, Secretary and Directors
for the year ended 31 March 2006**

Based on the information which the directors have today, it is forecast that the balance in the reserve account at 31 March 2006 after payment of the heating contract will be £5,000.

As referred to above under items 10 and 13 in the minutes of the 2 March 2006 meeting, pages 10 to 13 are set out the first stages of the preliminary works.

The forecasts based on the information to date indicate that the minimum requirement to be budgeted for is £88,000 (eighty-eight thousand pounds).

Your directors are liaising with the consultant building surveyors and with APA Management in considering all ideas to endeavour to reduce the costs without lowering the specifications and quality of the works to be undertaken.

A target time scale for the works is to commence on 1 May 2007 and a programme to run over twelve weeks.

Based on the above it will require each leaseholder/shareholder member of the Association to contribute the sum of £2,840 (two thousand eight hundred and forty pounds) by means of a "cash call".

After very careful examination of the matter and considerable discussion your directors propose that this "cash call" be paid by each member in two payments of one not later than 31 December 2006 of £1,420 and the second payment not later than 31 March 2007 of £1,420 (although the second payment amount can be calculated more accurately once the tenders have been received).

Item 6 - The maintenance Forecasts for the years 2006 to 2008

As all members are aware, the maintenance year run from 1 October to 30 September in each year and does not follow the financial year. These dates allow for the accounts for the financial year ending 31 March to be presented to the Annual General Meeting in July and for the members to discuss the year's budget to commence on 1 October.

In preparing these budgets your directors have been required to assume that all the works and "cash calls" set out in item 5 above are in hand and that no costs in respect of these items will fall to be paid from the maintenance income.

The next point to be dealt with is that in order to comply fully with the terms of the lease (which all have signed and agreed to uphold) and to Clause 4(ii) and to ensure compliance with the Landlord and Tenant Act - Residential Long Leaseholds - it is required to change the way in which the maintenance charge is divided and allocated to each flat.

As from 1 October 2006, in accordance with the above, each flat (whatever floor area) will pay 1/31st (one thirty first) part of the total costs of the maintenance charge.

The new standing orders will reflect this and there will be additional correspondence and information to be sent to each leaseholder as well as changes in the recording ledgers at APA Management.

Annexe (C)

Sorrento Management Association Limited

Dated this 15th Day of February 2007.

To:-

Flat No:-

Leaseholder/Shareholder:-

Please reply to:-

Flat 19.
"Sorrento"
Middle Warberry Road
Torquay
Devon
TQ1 1SH

SORRENTO MANAGEMENT ASSOCIATION LIMITED. Extraordinary General Meeting - 6th March 2007.

As set out in the Chairman's, Secretaries and Directors Reports already forwarded to you in respect of the Extraordinary General Meeting of the Association to be held on the 6th March 2007 the Directors now enclose for Members the following:-

1. Major Works.

Enclosed is a copy of the ^{Feb} Minutes of a Meeting held at the offices of APA Management & Letting Limited on the 13th March 2007 at 2-00pm for the purpose of the opening and reviewing the Tenders received from Contractors for each section of the above.

These minutes set out the details of the Tenders received in respect of each of the Major Works.

Each Tender was carefully reviewed and considered given the information provided by the Contractor and how this agreed with the specifications, schedules, drawings, and Terms of Tender.

Based on the above information and other research the Meeting selected the Contractors which they consider are able to carry out the works within the time scale, efficiently and within cost budgets.

The names of the Contractors selected and their tender figures have been set out on the Voting/Proxy Forms.

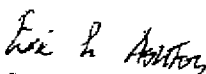
2. Voting/Proxy Forms.


Enclosed are two copies of the Voting/Proxy Form (one for you to retain if you are unable to attend the Meeting and wish to have your Votes recorded).

Please Note:-

In order to ensure the Voting/Proxy Forms are only completed by the Leaseholder it is now a requirement to have the Form Witnessed to avoid any discrepancies.

On behalf of the Board.


Secretary.


Chairman.

Registered Office: - Petitor House, Nicholson Road, Torquay, Devon TQ2 7TD
Registered in England - Company Number 1644773

SORRENTO MANAGEMENT ASSOCIATION LIMITED.

Minutes of a Meeting held at the offices of APA Management & Letting Limited on the 13th February 2007 at 2-00pm.

Present:-

APA Management & Letting Limited.

Mr A. Coldicott.	Managing Director.
M/s S. Carter.	Accounts.
M/s B. Costerton.	Secretary.

Sorrento Management Association Limited.

Miss B.E. Smith.	Chairman.
Miss A. Barge.	Vice Chairman.
Mrs G. Scrivener.	Director.
Mr E. L. Ashton.	Secretary.

Apologies.

Mr S.R. Smith of Park Holding & Smith telephoned the Meeting to to apologise as he had been delayed, but that he would visit APA Offices and examine all the Tender Documents received and proposed figures..

Business.

The business of the Meeting being to open all the Tenders received in respect of the Major Works, review these, and prepare a brief note to be distributed to all Leaseholder/Shareholders setting out the recommendations of the Meeting, and proposals of Tenders to be Voted upon at the Extraordinary General Meeting of the Association to be held on the 6 March 2007 with a view to the placing of Contracts.

To calculate the total costs of the Major Works as Tenders received, to include a contingency sum of two and a half per cent of the total, and then to calculate the requirements of the "Second Cash Call" to be made to and paid by each of the 31 Leaseholder/Shareholders by not later than the 4 April 2007.

The figures shown below include Value Added Tax at 17.5% where the Contractor is registered, as the Association is not registered a for VAT the Association are not able to reclaim VAT paid to Contractors or Suppliers.

It is therefore of benefit to the Association when placing Contracts if non Registered Contractors offer suitable Tenders and are able to carry out works to the specifications and standards required with the necessary guarantees. This is not always practical to achieve.

The Roof.

Tender Documents where sent out to four named Contractors, one of whom informed APA after two weeks that they had been awarded a major contract and where withdrawing from Tendering and no Tender was received from a second Contractor.

Tender No 1.	Contractor - Suncrest Roofing.	£35,569 (inc vat).
Tender No 2	Contractor - Torbay Flat Roofing	£49,326 (inc vat).

The Members present at the Meeting therefore propose that the Tender of **Suncrest Roofing** be presented to the Members at the Extraordinary General Meeting of the Association on the 6 March 2007 as the Contractor to be appointed.

The Exterior Decorations.

Tender Documents were sent out to three named Contractors, all of whom have submitted Tenders.

Tender No 1.	Contractor - George Ibbotson	£18,850 (not vat registered)
Tender No 2	Contractor - Steven Viney	£27,260 (inc vat).
Tender No 3	Contractor - Prattle Decorations	£28,023 (inc vat)

The Members present at the Meeting therefore propose that the Tender of **George Ibbotson** be presented to the Members at the Extraordinary General Meeting of the Association on the 6 March 2007 as the Contractor to be appointed.

The Scaffolding.

Tender Documents were sent out to three named Contractors, two of whom have submitted Tenders, no Tender was received from the third Contractor.

Tender No 1.	Contractor - Tower Scaffolding	£14,783 (inc vat).
Tender No 2	Contractor - 1 st Scaffold	£20,620 (inc vat)

Tenders are based on a fixed rate for 16 weeks on site, thereafter a further weekly charge will apply if the scaffolding is required. (There is no reduction if the time is less).

The Members present at the Meeting therefore propose that the Tender of **Tower Scaffolding** be presented to the Members at the Extraordinary General Meeting of the Association on the 6 March 2007 as the Contractor to be appointed.

Repairs and Site Management

Tender Documents were sent out to three named Contractors, two of whom have submitted Tenders, no Tender was received from the third Contractor.

Tenders for this type of work have to be on an hourly or daily rate for tradesmen with a percentage added on to the cost of materials and plant. The final cost will not be known until all the work is opened up and calculations have been made therefore the comparison has to be on an assumed number of hours and material and plant costs.

Tender No 1. Contractor - Pitman Construction - Hourly rate £17-50p per hour - materials and plant cost plus 5% based on calculations this would give a Tender figure of £7,800..

Tender No 2 Contractor - Rok Construction - Hourly rate £21-75p per hour - materials and plant cost plus 15% based as above this would give a Tender figure of £9,100.

The Members present at the Meeting therefore propose that the Tender of **Pitman Construction** be presented to the Members at the Extraordinary General Meeting of the Association on the 6 March 2007 as the Contractor to be appointed.

Page Three of Three.

Summary.

Roof	Contractor- - Suncrest Roofing	£35,569
Exterior Decorations	Contractor - George Ibbotson	£18,850
Scaffolding	Contractor - Tower Scaffolding	£14,783
Repairs& Site Management	Contractor- - Pitman Construction	£ 7,800
		£77,002
Add 5% Contingencies.		£ 3850
Total		£80,852
APA - Balance Fee		£ 4,000
Total Project Budget		£84,852
Less "Cash Call No1"		£ 44,000
Funding Required.		£40,852

Based on the above forecast the amount each Leaseholder/Shareholder will be required to contribute:-

£1,317-81p (One Thousand Three Hundred and Seventeen Pounds - 81p) to the Second "Cash Call".

Eric L. Ashton

Eric L. Ashton.
Secretary.
On behalf of
Sorrento Management Association Limited.

B.E. Smith

B.E. Smith. (Miss)
Chairman.
Sorrento Management Association Limited.

15 February 2007.

Page Three of Three.

SORRENTO MANAGEMENT ASSOCIATION LIMITED.

FORM OF VOTING/PROXY.

Your attention is drawn to the paragraph on Voting/Proxy as set out in the Chairmans, Secretaries and Directors Report. Please read to ensure your wishes are correct for recording.

IThe Leaseholder of Flat Sorrento, Middle Warberry Road, Torquay, Devon TQ1 1SH being a Member of the above named Company hereby wish to record my PROXY/VOTE as follows:-

Item 1 To approve the minutes of the Annual general Meeting of the Association held on the 27 July 2007.

For Against Signed

Item 2. To present the Reports of the Directors on the following Items of the Major Works.

No Vote required.

a). The Roof

Contractor:- Suncrest Roofing £35,569

For Against Signed

b). The External Decorations.

Contractor:- George Ibbotson £18,850

For Against Signed

c). The Scaffolding.

Contractor:- Tower Scaffolding £14,783

For Against Signed

d). Repairs and Site Management.

Contractor:- Pitman Construction £7,800

For Against Signed

Item 3. To approve the amount of the Second Cash call as set out and date for payment.

£ 1,317-81p (One Thousand Three Hundred and Seventeen pounds - 81p) payment not later than 4 April 2007.

For Against Signed

Item 4. The Guidelines.

Item 5. To receive :- The Directors Report as far as they able to disclose on the actions of Mrs P.H. Hill of Flat 22, in seeking a Hearing before a Leasehold Valuation Tribunal on Management Charges and other matters.

Item 6. Any Other Business :- To transact any other Ordinary Business of the Association received in writing to the Chairman (Flat 1) or the Secretary (Flat 19) not later than 14 days prior to the Meeting. i.e. Not later than 7-00pm on the 20th February 2007.

BY ORDER OF THE BOARD.

Eric L. Ashton.
Secretary.
February 2007.

Proxy Forms/Voting Forms must be returned to reach the Chairman (Flat 1) or the Secretary (Flat 19) not later than 7-00pm on the 4th March 2007.

NOTE:- Late forms due to any circumstances will no be counted, proof of posting is not proof of delivery.

As an alternative Members may wish to:-

IThe Leaseholder of Flat Sorrento, Middle Warberry Road, Torquay, Devon, TQ1 1SH being a Member of the above named Company hereby appoint of (full address)

..... as my PROXY VOTE to act for me and on my behalf at the Extraordinary General Meeting of the Company to be held on the 6 March 2007 and at any adjournment thereof.

NOTE:- This form of PROXY/VOTE duly completed Signed in full, dated and Witnessed (by a third party) to be delivered to the Chairman Flat 1 Sorrento, or to the Secretary Flat 19 Sorrento, as the appointed place for delivery not later than 7-00pm on the 4th March 2007

NOTE:- Late forms due to any circumstances will not be counted, (proof of posting is not proof of delivery in time) and with all non returns will be counted as the Member "Not Voting" in accordance with the Minutes of the Annual General Meeting held on the 27 July 2007.

Name of Leaseholder/s (in full in print)

Flat No..... Sorrento.

Dated this Day of2007.

Witnessed by:-

Address (in full).....

Dated:-