

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Schedule 11 of the Commonhold and Leasehold Reform Act 2002

DECISION AND REASONS

Case Number: CH1/21UC/LAC/2007/0001

In the matter of Flat 3, 63 Carlisle Road, Eastbourne, BN20 7BN

Applicant (Landlord): Labyrinth Property Management

Respondent: Mr. Paul Andrews

Date of Application: 8th January 2007

Date of Hearing: 3rd July 2007

Tribunal Members: Mr. S Lal L.J.M (Legal Chairman)
Mr. R A Wilkey FRICS FICPD

Date of Decision: 3rd July 2007

Decision

1. The administration charges claimed are not payable and the application is dismissed, the Tribunal having no jurisdiction to determine the matter substantively under Schedule 11 of the 2002 Act.

Reasons

Introduction

2. The Applicant applied to the Tribunal on the 8th January 2007 under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Act") to determine liability to pay administration charges in respect of Flat 3, 63 Carlisle Road, Eastbourne, BN20 7BN ("the property"). Preliminary Directions were issued on the 5th February 2007. The Applicant replied to Directions by service of a Bundle complete with a Statement of Case dated the 2nd March 2007 (Bundle 1, comprising pages 1-51).

3. Following the service of the Statement of Case, the Tribunal issued further Direction on the 13th April 2007. In these Further Directions the Tribunal noted that "Following a review of the case papers, and the Applicant's Statement of Case dated the 2nd March 2007, the Tribunal raises the matter of its jurisdiction to make a determination. The matters referred to in the Applicant's Statement of Case may not fall within the definition of an Administration Charge as set in Schedule 11 to the Commonhold and Leasehold Reform Act 2002. For this reason the Tribunal proposes to hold a Preliminary Jurisdiction Hearing to consider whether it has jurisdiction to make a determination."
4. Both parties were further directed to prepare a statement or skeleton argument as to their respective positions in advance of the jurisdiction hearing.

Background

5. In August 2005, the Applicant had made an application to this Tribunal pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability of service charges by the Respondent, Mr. P. Andrews for the years 2002 to 2005.
6. The matter was heard by the Tribunal (Ms. J A Talbot MA, Solicitor, Chair, Mr.D Nesbitt FRICS, and Mr. A O Mackay FRICS) on the 24th April 2006. On that occasion the Applicant withdrew the Section 27A Application because the Respondent had "in the previous few days.....made 2 payments by cheque, which cleared the service charge arrears apart from an amount of £1630.05 in respect of exterior decoration works carried out during the Autumn 2004 and Spring 2005."
7. The Tribunal nevertheless found that the requirements of Section 20 of the 1985 Act as amended by the Commonhold and Leasehold Reform Act 2002 had not been complied with and therefore the amount the Applicant's could recover was capped. The Tribunal held that the Respondent was liable only to pay a maximum of £250 for the building works, £250 costs and £250 re-imbusement of fees.
8. The Applicant sent the Respondent on the 22nd August 2006 a letter requesting payment of the above £750 and also a further payment of £1492.00 for their costs. The Respondent has paid the £750 but not the other amount and it is recovery of this that gives rise to the present application.

The Hearing

9. The Applicant was represented by Mr. Andrew Whelpton (Trainee Solicitor at Stephen Rimmer & Co) assisted by Mr. Alex Cook, also a Trainee Solicitor at the same firm. The Respondent did not appear and was not represented. The Respondent had not contacted the Tribunal. The Tribunal were satisfied that the Notice of Hearing for the hearing had been sent to the last known contact address of the Respondent and in the absence of any communication from him to the contrary the matter would nevertheless proceed.

10. Mr. Whelpton informed the Tribunal that he had not prepared a Skeleton Argument as regards the jurisdiction argument as he relied upon the contents of the Statement of Case served on the 2nd March 2007. He submitted that the total amount of costs including his attendance before the Tribunal was in the region of £2786. He recounted the history of the S.27A application and how the Respondent had been "actively evasive" and had failed to pay his service charges on time. He pointed to the Fourth Schedule, Part 1. Paragraph 16 of the Lease which required the Respondent to:

"To pay all costs charges and expense (including Solicitors costs and Surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court."

11. Mr. Whelpton argued that the costs incurred amounted to an administration charge within the meaning of Schedule 11(1)(c) of the 2002 Act although he did not provide any legal authority to support this view other than the submission that it was the case. He added in response to questions from the Tribunal that the letter dated the 11th December 2006 from his firm to the Respondent (page 47 of Bundle One) constituted a valid notice under section 146 of the Law of Property Act 1925, thus incurring the liability under the Fourth Schedule, Part , Paragraph 16 of the Lease.

Consideration

12. The Tribunal's decision turned on an interpretation of the meaning and scope of the Clause contained in the Fourth Schedule, Part 1. Paragraph 16 of the Lease.

13. Relying on its own expert knowledge, the Tribunal found that on the true construction of the Clause, costs are only payable if incurred for the preparation and service or incidental to the same of a Notice under Section 146 of the Law of Property Act 1925.

14. On the facts of the case as presented by the Applicant, no such notice has been prepared or served in the prescribed form. The costs that have been incurred relate to the recovery of service charges by both solicitors letter and by application to the Tribunal (in 2006) and of course this Tribunal. The Tribunal finds that the costs were not actually incurred for work which had any or sufficient nexus to the preparation and service of such a Notice. The letter dated the 11th December 2006 is part of the correspondence relating to an attempt by the Applicant to recover their costs generally from the Respondent and citing the Clause in support. They would certainly not amount to administration charges within the definition of an Administration Charge as set in Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This application is clearly an attempt to recover costs generally, no doubt motivated by the "capped" amount awarded by the Tribunal in 2006. The Applicant's have clearly, considering the history of the matter, been left with a shortfall and in the Tribunal's view this represents an attempt to recover those costs. However the Tribunal is of the view that they cannot be lawfully described as Administration Charges and thus the Tribunal has no jurisdiction to determine the matter substantively under Schedule 11 of the 2002 Act.

15. The administration charges claimed are not payable and the application is dismissed, the Tribunal having no jurisdiction to determine the matter substantively under Schedule 11 of the 2002 Act.

Chairman.....

Date.....