

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UG/LSC/2007/0045

BETWEEN:

MRS M R T TALBOT

Applicant/Lessee

- and -

GALLEY HILL FREEHOLD COMPANY

1st Respondent/Landlord

- and -

COBHAM TOWERS (BEXHILL) RESIDENTS COMPANY LIMITED

2nd Respondent/Management Company

PREMISES: 23 Oxshott Court
Sutton Place
Bexhill
TN41 1PH ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR B H R SIMMS FRICS, MCI Arb
MR R A WILKEY FRICS, FICPD

HEARING: 23rd October 2007

DETERMINATION AND REASONS

DETERMINATION

1.

- 1.1** The Tribunal determined that it was unreasonable for the applicant to pay £22.50 sought from her by the Management Company (Cobham Towers (Bexhill) Residents Company Limited) hereinafter referred to as the Management Company in respect of work carried out in 2005 being the decorative treatment of communal internal doors in the Eastern block of Oxshott Court.

- 1.2 The Applicant having agreed all other figures sought from her by way of service charge for the years 2005, 2006 and 2007, the Tribunal determines that the Applicant shall pay to the Management Company the sum of £1,218.50 made up as follows:-

Amount claimed to be owed	£1,421.50
Less water and sewerage 16.1.07 and 25.6.07	£ 180.50
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	£1,241.00
Less £22.50 referred to above	£ 22.50
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Balance due	<u>£1,218.50</u>

- 1.3 Although the Tribunal has deducted the amount of £180.50 for the water and sewerage charge from the figure it determines the Applicant shall pay it does not mean that the Applicant does not owe this sum and should not pay it. This figure has been deducted from the figure determined because the Tribunal has no jurisdiction to determine such charges.

REASONS

2. The application

- 2.1 On the 22nd May 2007 solicitors on behalf of the Applicant submitted an application to the Tribunal seeking a determination as to the reasonableness of service charges for the years 2006 and 2007 in respect of the premises.
- 2.2 At a pre-trial review on 14th August 2007 it was identified that the only item which the Applicant challenged in respect of the service charges demanded of her for those years was the amount claimed in respect of the decorative staining of the internal communal doors to the East block of Oxshott Court which expenditure was actually incurred in 2005. The amount charged to the Applicant in respect of this work was £22.50 (her 1/24th share of the cost £540).

3. Inspection

- 3.1 The Tribunal inspected the premises immediately preceding the hearing on 23rd October 2007. The Tribunal paid particular attention to the standard of workmanship of the decorative staining of the aforementioned internal doors.
- 3.2 Oxshott Court is a block of 24 flats with 3 communal entrances. The Premises are in the Eastern block. Oxshott Court was constructed in the late 1970's. It is situated just a little way back from the seafront at Bexhill on Sea and has uninterrupted views to the sea.

This makes the block exposed to the weather coming in off the sea. At the inspection the Tribunal noticed evidence of water ingress into the Applicant's flat and although this was a matter of paramount concern to the Applicant it was not a matter over which the Tribunal had any jurisdiction because there had been no charge to the service charge account in respect of the problems connected with water ingress into the premises nor was there any budgeted expenditure in respect of that matter.

4. The Lease

- 4.1 By Clause 5 of the lease dated 15th December 1978 between James Miller and Partners Limited (1) Hubert William Wharton Hewison (2) and Cobham Towers (Bexhill) Residents Company Limited (3) the lessee covenanted to pay a contribution towards the expenses of the Management Company by virtue of obligations under Clause 4 and the Second Schedule of the lease.
- 4.2 By the Second Schedule to the lease the lessees are required, amongst other obligations, to "paint with two coats of good quality paint and in a workman like manner and to grain paint and varnish and whiten in like manner all such parts of the said common entrance hall, landing, staircases and passages of the said building as are now (or may hereafter be) painted, stained, papered and varnished and whitened..."
- 4.3 By paragraph 6 of the Second Schedule to the lease the lessee is required "throughout the said term to employ exclusively the Management Company for the purpose of complying with the lessees' obligations in the Second Schedule contained..."

5. The Law

- 5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

- 5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. The hearing

- 6.1 This took place at the Horntye Park Sports Complex Bohemia Road, Hastings on 23rd October 2007. Present for the Applicant was the Applicant Mrs Talbot herself, accompanied by Mr Addington. For the Respondent was Mr Derrick Smith, Chairman of the Management Company, Mr Godfrey John the Managing Agent and Mr Andrew Buss the maintenance manager for Godfrey John who looks after the day to day management of Oxshott Court.
- 6.2 At the outset of the hearing the Applicant confirmed that she did not dispute any of the service charge items for the year 2006 or 2007 but she did challenge the item of £22.50 for the work carried out to the decoration of the internal communal doors of the eastern block of Oxshott Court. This had been charged to the service charge account for the year 2005. She confirmed that the last service charge payment she had made was for the year ending December 2004.
- 6.3 Mrs Talbot explained how she asked the workman to stop work on internal doors of the East block as he was staining them rather than varnishing them as was required. She asked him to check with the Management Company before proceeding. She then had to go out but when she came back she found that the workman had finished the job and had continued to apply stain rather than varnish. She believed that he had come back at a later date to have another go but did not strip the doors down before applying more stain. She said that the work was totally unsatisfactory. It was uneven in colour, other parts had been missed and the colour did not match the colour of the individual flat doors. The estimate that had been supplied for this particular work was £540.00. Mrs Talbot had obtained her own quote for the doors being varnished, including the flat doors, for £310.00. She thought it suspicious that the invoice was dated 4th October 2005 whereas the work was actually done in November 2005. Mrs Talbot did not accept that the £540.00 was a reasonable amount for the work done even if it had been done satisfactorily which she said it had not. Mrs Talbot referred to letters from residents of the Eastern block complaining about the standard of the work done to the doors.
- 6.4 Mr Smith conceded that there had been some confusion of terminology as to whether the doors should have been stained or varnished. He said that what was intended was that the proposed work was to have the doors treated as they were originally, and they had originally been stained. The contractor suggested by Mrs Talbot had not provided any proof of his insurance cover or information as to jobs that he had already done and therefore it would have been unreasonable for the Management Company to have employed him in those circumstances. He confirmed that he checked all work done before cheques were signed. Of the 6 residents in the East block, 5 residents have paid

their service charges and from that he assumed that they were satisfied with the work that had been done. Following complaints about the work all the directors had visited the site and had asked themselves whether the staining of the internal communal doors would have deterred a potential purchaser of a flat and decided that the answer was no. It is not envisaged that any further work would be done to the doors in question but once the service charges have been paid he was prepared to look again at the problem of the stain on the doors. He said that for small jobs Mr John would just get on and have them dealt with. For slightly larger jobs Mr John would consult him and larger jobs would be a matter for the committee to decide upon. Major expenditure is dealt with at meetings of the residents and a fund is set up and ring fenced. Competitive estimates were not obtained for this job which was not a particularly large one. Mr John confirmed that he had instructed the contractor, Mr Buckingham orally and that there was no specification laid down. Mr Smith explained that it was a real problem if lessees did not pay their service charges because that meant that the Management Company did not have funds to pay for things such as electricity charges. This was why it was particularly serious that Mrs Talbot had not paid her service charges for some considerable time.

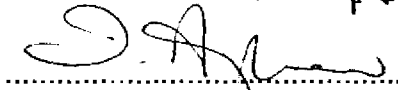
7. **The Tribunal's consideration**

7.1 The Tribunal considered that the workmanship in respect of the staining to the internal communal doors at the Eastern block of Oxshott Court was poor. The colour is uneven, the stain has been missed off in places and the colour does not match the colour of the individual flat doors. The work really needs to be properly redone. The Tribunal considered that the contractor ought to have been required to remedy the situation without further charge. Whilst the Tribunal accepted that the state of the doors would not deter a prospective purchaser from buying one of the flats in the Eastern block it considered that this was not the real test. The test was whether the work had been carried out to a reasonable standard and if it had not then it was not reasonable for the lessees to be expected to pay for it. As the Tribunal had found that this work was not to a reasonable standard it was not reasonable for the Applicant to have to pay the contribution of £22.50 towards it.

7.2 There was some confusion in the Applicant's mind about what she was contributing towards in her maintenance charges. As was clear from the evidence before the Tribunal her contribution is 1/24th of the Management Company's expenditure no matter where in Oxshott Court the expenditure is incurred. Thus, the Applicant must contribute towards the cost of work done in the Western block just as a lessee of the Western block would have to contribute 1/24th towards the cost of work done to the Eastern block. That is why her contribution towards the cost of the work done to the doors is the amount paid

to the contractor (£540.00) divided by 24 making the resultant figure £22.50. The Tribunal trusts that the Applicant now understands the position in that regard.

Dated this 15th day of November 2007

A handwritten signature in black ink, appearing to read 'D. Agnew', written over a horizontal dotted line.

D. Agnew LLB, LLM
Chairman