RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Flat 14 The Hollies 230 High Street Potters Bar EN6 5BL**
Applicant	:	**Venus Tradelinks Plc**
Respondents	:	**Mr. Sowrifagha Wilcox**
Case number	:	**CAM/26UE/LSC/2008/0042**
Date of Application	:	**24th June 2008**
Type of Application	:	**An application for a determination of liability to pay a service charge and costs pursuant to sections 20c and 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), and for a determination under Section 168(4) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent is in breach of a covenant or condition in a lease**
Hearing Date	:	**19th November 2008**
Hearing Venue	:	**The Maple House High Street Potters Bar EN6 5BS**

Tribunal :	**Mrs. J. Oxlade**	**Lawyer Chairman**
	Ms. M. Krisko BSc (EST MAN) FRICS	**Valuer Member**
	Mr. P. Tunley	**Lay Member**

DECISION AND REASONS

DECISION

For the reasons given below:

1. Mr Wilcox ("Tenant") is in breach of covenants set out in Clause 4.3, of the Lease dated 21st March 2005 of Flat 14, The Hollies, Potters Bar, Hertfordshire, EN6 5BL.

2. Mr Wilcox ("the Tenant") is liable to pay service charges assessed at £710.28.

3. The costs incurred by Venus Tradelinks Plc ("Landlord") in respect of the proceedings before the Leasehold Valuation Tribunal ("LVT") shall not be regarded as relevant costs, and so shall not be taken into account in determining the amount of any service charge payable by the Tenant.

4. The case shall be transferred to the County Court.

REASONS

The Parties

1. Venus Tradelinks Plc is the freeholder and Lessor ("the Landlord") of Hollies House, a modern building of brick construction, consisting of offices on the ground and first floors, and 24 flats on the second, third, and fourth floors.

2. Mr. Sowrifagha Wilcox is the Lessee ("Tenant ") of Flat 14, Hollies House ("the premises") which is a flat situated on the third floor of the building, pursuant to a lease dated 21st March 2005 between Classic Manor Estate Limited and Kenneth and Anne Ward, and which was assigned to him on 14th October 2005. The Tenant's interest has not yet been registered with the Land Registry.

Background

3. The Landlord commenced an action in the Barnet County Court, which (once amended) sought a declaration - prior to seeking forfeiture - that there was outstanding rent, service charges, administration charges and interest pursuant to the lease. Judgement was given in the Tenants absence, which judgement was set aside on 17th January 2008 once it had been established that the Tenant had been abroad at the material time. The service charge aspect of the dispute was transferred to the LVT by the order of DDJ Joshi dated 17th January 2008.

4. By application to the LVT dated 24th June 2008, Solicitors for the Landlord, completed an application form seeking a determination of service charges for the years 2005, 2006, and 2007, and future years 2008, and 2009. Somewhat curiously they considered that the application should have been made by the Tenant, and named themselves as Respondent. They indicated that the Tenants challenge was entirely without merit and merely an attempt to delay paying sums which were due, and sought that an appropriate order as to costs.

Jurisdiction

5. Pursuant to section 168(4) of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act") the LVT has jurisdiction to determine "whether a breach of covenant or condition of the lease has occurred".

6. Further, when considering whether or not a breach has occurred, by virtue of section 27A of the 1985 Act the Tribunal considers liability to pay, which by virtue of section 19 of the said Act is limited by the reasonableness of the service charges.

7. Accordingly, the jurisdiction of the Tribunal was to determine what charges were outstanding, whether they were reasonable and so whether the Lessee was liable to pay them, and whether there had been a breach of the terms of the Lease.

8. Further, the Tribunal was asked by the Lessee, pursuant to section 20C of the 1985 Act, to determine that it would be just an equitable not to permit the Landlords costs to be "relevant costs" and so added to his service charge.

Alleged Breaches of the Lease

9. Mr Faisal Saifee, Counsel for the Landlord, filed a skeleton argument which helpfully identified two categories of breaches of the lease:

   (a) the Tenant was required by clause 4.13(c) of the lease to (i) give written notice to the Landlord within one month of an assignment, and by clause 4.24 (ii) within 21 days of the assignment to pay a reasonable registration fee and vat – neither of which had been done

   (b) the Tenant was required by clause 4.3 of the lease to pay to the Landlord an appropriate percentage of the service charge and an additional service charge, quarterly in advance and any balance in the following quarter. The Lease defined the appropriate percentage. At paragraph 9 of the skeleton arguments, Mr Saifee set out a schedule of amounts currently outstanding, which totalled £2954.17, and which we attach as **Annex 1** to this decision, and which for ease of reference the Tribunal have itemised as 1 – 13. Item 1 is a credit to the account and item 7 should read £0.20.

10. Directions for the filing of evidence were made on 14th July 2008. In due course the matter was set down for hearing on 19th November 2008.

Inspection

11. Prior to the hearing, the members of the Tribunal inspected the common parts of the building, including the car park to the rear of the premises, in the presence of the Tenant. The Landlord was not present.

Hearing

12. The Tenant attended the hearing, without legal representations, and Mr Saifee of Counsel, Mr Rosenberg of Trott and Gentry, and Mr Lefteri attended on behalf of the Landlord.

13. At the commencement of the hearing the Tribunal clarified matters with both parties which were apparent from the papers. The following points were raised with the Landlord:

Assignment

14. In response to our request for clarification of whether the Landlord sought a finding that there had been a breach of the lease as a result of the failure by the Tenant to notify the Landlord of the assignment (as referred to in paragraph 9(a) above), Mr Saifee indicated that he did. However, we indicated that (i) the County Court had transferred to the LVT only the service charge issue, and (ii) the Landlord had not in the application under section 27A of the 1985 Act alleged this as a ground on which there had been a breach – accordingly, the allegation was being made in these proceedings for the first time. Upon our observations, and that as the proceedings are a precursor to forfeiture and so have serious implications for the Tenant, Mr Saifee indicated that he did not pursue a finding on this point. We were then left with considering the service charges set out in paragraph 9(b) above as claimed in appendix 1.

Defective Service Charge Demands

15. In response to our request for clarification of whether the Landlord had made demands for service charges on or after 1st October 2007 which complied with the requirements of section 153 of the 2002 Act and in the format set out in the Service Charge (Summary of Rights and Obligations, and Transitional Provisions)(England) Regulations 2007, Mr Saifee conceded that (i) the appropriate form had not been followed in respect of items 8 to 13 inclusive, (ii) that the effect of this was that the charges are not yet enforceable until claimed in the proper form, and so (iii) no interest will accrue on them until then.

16. The Tribunal indicated to the Tenant that if and when such demands are issued in the correct format, his liability to pay would then arise. If reasonableness is an issue, then either party could seek to resolve the dispute by making an application for the LVT to consider the matter.

Previous Agreement to Pay

17. The Tribunal noted that document A20 in the bundle and the skeleton argument of Mr Saifee could be read as implying that at some point there had been agreement between Landlord and Tenant about certain of the disputed items which appear on appendix 1. Mr Saifee indicated that A20 was drawn up by him as a result of discussions between himself and the Tenant at a meeting after the hearing on 14th June 2007. However, that did not accord with the Tenants recollection of events, and in the absence of a document signed by both parties Mr Saifee said that he did not wish to assert that there was in existence an agreement which precluded the jurisdiction of the Tribunal, by virtue of section 27(4) of the 1985 Act. Accordingly, the LVT were able to consider the reasonableness of items 1 – 7 of appendix 1.

Certification of Accounts/Power to Withhold Payment

18. Although the Landlord argued that the lease did not require the provision of certified accounts at the end of each accounting year (because of the word "or" on page 13 point (ii) of the Lease), we indicated that this did not absolve the Landlord of the statutory duty to provide a certificate with the statement of account which must be supplied no later than 6 months after the end of the accounting period by virtue of section 21(3) of the 1985 Act. Mr Lefteri said that accounts had been certified and relied on document D1 in the bundle, which was a letter from Goodman Lawrence dated 24th October 2008. However, Mr Lefteri was given some time to produce accounts which, on inspection, were noted to be accounts of the company. They did not certify the accounts relating to service or additional charges. Accordingly, it is apparent that this aspect of the legislation had not been complied with.

19. It was the Tenant's belief that he could withhold payment of the service charge in the event that there had not been a certificate provided. However, the statutory provision which would have supported that stance, namely section 21A of the 1985 Act, has not yet come into force.

20. Accordingly, what may have acted as a defence to the claim for service charge, turns out not to be the case.

We raised the following matters with the Tenant:

Proportion of Service and Additional Charges

21. Although on the face of the papers the Tenant had identified as an issue the unfairness of the proportions as set down in the lease, we indicated that as it was set down in the lease, we had no power to vary this without a properly constituted application made to vary the terms of the lease under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act"). As this had not yet been made we could not consider such

an application today. If and when such an application is made, we will of course consider it.

20. In any event, any decision made to vary the lease would not apply retrospectively, and so not alter the proportion of sums currently in dispute.

Predecessors Service Charges

21. The Lessee was concerned that he had "inherited" a service charge which should have been paid by the previous Lessee. Firstly, the Tribunal indicated that during the conveyancing process the Solicitors should have asked for information about outstanding and unpaid service charges, and apportioned liability for various service charges accordingly. Secondly, where or not that had been done, he remained liable to pay any outstanding charges whether incurred during his time or his predecessors. It as also true that a new Landlord would inherit any disrepair in the building which had been caused during his predecessors time. Accordingly he could not argue that he was not liable for historic charges.

22. However, on examination of the Annex 1, item 1 reflects a credit to Mr Wilcox account – because the previous Tenant did leave money on account, which would cover the service charge due on 1st January 2006 - and the balance then goes to Mr Wilcox to off-set against the other charges. Mr Wilcox expressed surprise because he had not been told this before, and that this had been a bone of contention for some time. There was no explanation given by the Landlord for this somewhat belated concession that not only was there nothing due from Mr Wilcox for a time before he occupied the building, but indeed an overall credit in his favour.

Inspection of Documents

23. The Tenant indicated that he had wanted to inspect documents but had been prevented from doing so, because Mr Lefteri had not given access - and in any event it was only open during office house. Mr Lefteri said that they had an open office policy and that the tenants can inspect at any time, and Mr Wilcox had failed to show up for 2 appointments made out of hours to make an inspection. There was a conflict of evidence, which in the event we did not need to resolve. However, we indicated to both parties the statutory framework: that the Tenant is entitled to inspect - upon making a written application no later than 6 months from the date on which summary of service charges is served on him - and the Lessor must "afford reasonable facilities" to do so. We indicated that we could not indicate what was hypothetically "reasonable" or not in advance, but would have to determine whether reasonable facilities were made available after the event.

Consultation Requirements

24. The Tenant was concerned that consultation requirements had not been followed. He said that things got done in the building, but that monies were spent without any consultation. A case in point was the rear door (which we were shown on inspection) and we were told that a key had been broken in the lock, and so the whole thing had been replaced. The Tenant says that only one estimate is ever obtained, and so proper consultation never took place.

25. We indicated to the Tenant that where this was so, the Landlord would be limited to the amounts recoverable as set down in the statute - unless the LVT on receipt of an application from the Landlord before or after the works were done, determined that the limitation should be lifted. The 1985 Act provides the following limitations on the Landlords recoverability to an "appropriate amount" which is defined as follows:

    (a) where the works are "qualifying works" (i.e. works done to the building), an amount which results in the relevant contribution of any tenant exceeding £250
    (b) where there is a "qualifying long term agreement" (i.e. where the Landlord enters into a contract for more than 12 months – a lift contract, for instance) a relevant contribution of any Tenant in respect of an accounting period exceeding £100.

26. In respect of items 2- 7 there was nothing which exceeded these relevant amounts, and the Landlords claim was not thereby limited.

Administration Charge

27. During the course of the hearing, the Tenant said that the document at A20 referred to a sum of £587.50 due on 17th April 2007 which was referred to as an "administration charge", and which was something which he previously contested. However, it was omitted from the document at Annex 1. Mr Saifee took instructions and indicated that the charge was conceded. No reasons were given for this concession, nor why it had previously been pursued and only now the Landlord was conceding it.

28. The Tribunal indicated that it would record this concession in our decision, in to prevent any future argument, should the matter creep back into the accounts.

Short Adjournment

29. Having clarified the above preliminary matters, the case was adjourned for 20 minutes, for the Landlord to obtain an Office Copy Entry (OCE) showing transfer of the freehold title to Venus Tradelinks PLC, and a copy of the certified accounts.

30. The Tribunal also indicated that as the Landlords claim was now limited to items 2-7, it might be an opportunity for the parties to try to negotiate to settle the outstanding issues.

Concessions

31. After the short adjournment the Landlord provided the OCE which indeed showed the transfer of title to Venus Tradelinks PLC. In addition Mr Lefteri produced certified accounts for the years 2005, 2006, 2007, but these related to company accounts, not a certificate as to the service charges accounts.

32. Mr Saifee indicated that an agreement had been reached between the parties as to items 2,4,5,6, and 7, and that the Tenant had agreed to pay those items which amounted to £710.28, having taken into account the credit of £84.48 under item 1. The effect of the agreement is that by section 27(4) of the 1985 Act the LVT are precluded from considering the reasonableness of those charges.

Outstanding Service Charge Issue

33. Mr Saifee indicated that there was one outstanding issue on the account: namely item 3, a charge due on 31st March 2006 as a balancing charge to 31st December 2006 of £276.96.

34. The Tribunal therefore asked Mr Saifee to explain the charge. Reference was made to a document at F18. Mr Lefteri explained that the total service charges amounted to £469.21, and that having invoiced £192.25 on account, the sum of £276.96 was outstanding. However, the Tribunal noted that item 1 of Annex 1 indicated that there was a credit of £276.73 from the previous Tenant – accordingly, the sum appeared to have been paid. Mr Lefteri was asked to explain what period the accounts covered: initially he said from the time his company took over on 11th August 2005 to 31st December 2005; but when we expressed surprise that management charges could possibly have been as high as £186.32 per unit for 4 ½ months, he said that he thought that perhaps they related to the calendar year. He then produced another document which summarised the expenditure and the shortfall, but when divided by the percentage applicable to this Tenant, did not amount to £469.21.

35. In the light of the apparent confusion surrounding this charge, Mr Saifee was invited to take instructions as to whether or not it was being pursued, and after some 5 minutes, he indicated that the charge was being conceded.

Tenants Liability

36. Accordingly, as a result of the concessions and agreement made, the Tenant is liable to pay the sum of £710.28 for the reasons set out in paragraph 32. As there is no provision which entitles him to withhold payment, he has been in breach of his lease by failing to pay this sum.

37. The LVT's function is simply to make findings about whether or not a breach has occurred and then transfer back to the matter for forfeiture proceedings to continue. We have no discretion on whether or not the Tenants breach is explicable, or merits some understanding. Indeed the County Court alone decides whether or not to exercise its discretion and give relief from forfeiture.

38. We would say this though: we found that the Landlords accounts were impenetrable and so it is unsurprising that the Tenant was mystified about how the figures were arrived at, and sought an explanation; on the one occasion before us that Mr Lefteri was asked to explain how a charge was arrived at, it was a complete muddle, and the charge was withdrawn; it is apparent that the Landlords proper claim was limited to £710.28 and not the sums originally claimed of £2954.17, he not having complied with the requirements of the 2007 Regulations; the Landlord readily made two concessions, without an explanation about why the sums were being asked for in the first place; the Landlord has taken the best part of 2 years to establish that nothing was due as a result of the previous Tenants failure to pay, and in fact only the day before the hearing was there found to be an overall credit to the account as a result; the Landlord has failed to obtain certified accounts despite a statutory requirement to do so. We make the above findings, so that when considering the matter of forfeiture or relief from it the County Court Judge seized of the matter is entirely aware of the background.

Interest

39. Although in Mr Saifee's skeleton argument it was said that interest was due, having settled on the figure of £710.28 (exclusive of interest), no request was made to add interest to this.

County Court Costs

40. Mr Saifee sought our determination that the reserved costs of the hearing before DDJ Joshi on 17th January 2008 be determined by us. However, we consider that the County Court if is the best forum for determination.

Section 20c Application

41. The Tenant applied under section 20 c of the 1985 Act for a determination that the Landlord's costs be not added to the service charge account as "relevant costs". The Landlord had not provided a costs schedule so that the Tribunal could see exactly what was claimed.

42. The Tribunal heard full submissions from both parties on this point. Both relied on the history of the matter and differing assertions of how they had sought to resolve the matters.

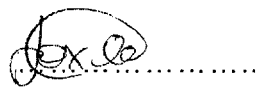
43. Whilst the lease creates a liability to pay service charges and balancing payments, and that some payments were not made in accordance with the lease, we consider it more likely than not that the Tenant had tried to ascertain from Mr Lefteri exactly how the charges were arrived out - because the accounts were not adequate and so that he could decide what was reasonable to pay - only to be left none the wiser. In those circumstances, and in the light of all of the findings made at paragraph 38, we determine that it would not be just and equitable for the Landlords costs of these proceedings should to be considered as relevant costs. They should not be added to the service charge account.

Conclusion

44. The Tribunal therefore conclude that the Tenant is liable to discharge items 2, 4, 6, and 7 of the Annex 1 (less the credit provided by item 1), totalling £710.28. We find that the Tenant is in breach of Clause 4.3 as a result of his failure to pay them. We record the concession made by the Landlord that item 3 is not a charge for which the Tenant is liable.

45. We find that it is just and equitable that the Landlords costs of the proceedings before the LVT are not added to the service charge account, and that the Landlord must bear those costs itself.

46. The matter should now be transferred back to the County Court.



Joanne Oxlade

Chairman

25th November 2008

clause 4.24 of the Lease within 21 days of any assignment the tenant was required to provide the landlord with a reasonable registration fee plus VAT.

Interest covenant

8 The Respondent's liability to pay interest on arrears arises from clause 4.2 of the Tenant's Covenants under the lease which states that the tenant covenants that if any sums under the lease remain due for longer than 14 days the tenant will pay interest until the date of payment. The interest rate under the lease is 4% above the base rate for Lloyds TSB Bank pursuant to paragraph 12 of the lease particulars.

Service charges outstanding

9 The amounts currently outstanding are as follows:

	Date due	Nature of sum	Sum due
1	1 January 2006 (ref 345)	Service Charge of £192.25 for 11/08/05 (the date the Respondent claims to have moved in) to 31/12/05. Less credit from previous tenant in sum of £276.73 on 1/1/06.	[£84.48]
2.	1 March 2006 (ref 347)	Service charge 01/01/06 to 31/03/06 (Appendix A)	£234.61
3	31 March 2006 (ref 346)	Balancing charge of £276.96 to 31/12/05 (Schedule 1).	£276.96
4.	31 March 2006 (ref 348)	Service charge 01/04/06 to 30/06/06 (Appendix A)	£235.26
5.	15 February 2007 (ref 371)	Additional service charge to 31/12/06 (Appendix A)	£77.20
6	1 April 2007 (ref 456)	Service charge 01/01/07 to 31/03/07 (Appendix B)	£247.49
7	1 July 2007 (ref 542)	Service charge 01/04/07 to	£0.29

		30/06/07. £247.29 paid on 17 August 07. (Appendix B)	
8.	1 October 2007 (ref 613)	Service charge 01/07/07 to 30/09/07. (Appendix B)	£247.49
9.	31 December 2007 (ref 710)	Final service charge for 2007	£85.79
10.	4 February 2008 (ref 681)	First quarterly service charge for 2008 and ground rent of £200.	£558.39
11.	17 March 2008 (ref 754)	Second quarterly service charge for 2008	£358.39
12.	1 July 2008 (ref 808)	Third quarterly service charge for 2008	£358.39
13.	17 September 2008 (ref 853)	Fourth quarterly service charge for 2008	£358.39
		TOTAL	£2954.17

10 Those sums remain outstanding despite payments of £235.26 on 28 August 2007 and £235.26 on 6 September 2007 (towards service charges for the last two quarters in 2007) and £247.29 paid on 17 August 2007.

11 The Defendant had a balance in credit on his account brought forward from 10 August 2005 of £276.73. He has not been required to pay for service charges due before he was assigned the lease. That leaves a total owing of £2954.17 (save interest).

Service charge consultation

12 It is submitted that section 20(3) of the Landlord and Tenant Act 1980 applies only to "to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount". The Service Charges (Consultation Requirements) (England) Regulations 2003/1987, state at regulation 6 that "For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than