IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER THE LANDLORD & TENANT ACT 1985 SS18 & 19

CLAIMS TRANSFERRED FROM THE EASTBOURNE COUNTY COURT
CHI/21UC/LSC/2007/0061
CHI/21UC/LSC/2007/0062
CHI/21UC/LSC/2007/0063

Property	Flats 1, 2 & 3 28 Cavendish Place Eastbourne BN21 3JA
Applicant in all cases	Sinclair Gardens Investments (represented at hearing by Hurst Management Ltd)
Case No CHI/21UC/LSC/2007/0061 Respondent	Mr Gary Jordan, Flat 3
Case No CHI/21UC/LSC/2007/0062 Respondent	Mr S Obertelli & Miss L Reeves, Flat 2
Case No CHI/21UC/LSC/2007/0063 Respondent	Ms K M Evenden, Flat 1
Tribunal members	Ms H Clarke (Chair) (Barrister) Mr R A Wilkey FRICS FICPD
Date of hearing	13 December 2007
Date of decision	4 January 2008

1. **APPLICATION**
The Applicant issued claims in the County Court seeking judgement for unpaid service charges and insurance rent, along with ground rent, for the years 2004, 2005 and 2006. The Respondents defended the claims on the grounds that the relevant costs were unreasonably incurred or that the works they represented was of an unreasonably low standard. The claims for service charges and insurance costs were transferred to the Tribunal for determination of what amounts the Respondents were liable to pay.

2. **DECISION**
The Tribunal determined that the sums claimed for legal costs and for the managing agents' costs of dealing with a previous tribunal application were not payable by the Respondents under the terms of their leases. The Tribunal determined on the evidence before it that the remainder of the sums claimed were reasonably incurred. The amounts to be deducted from the service charge demands payable by the Respondents were therefore the following amounts:

2004	£3936.10
2005	no deduction
2006	£848.73 admitted by the Applicant to be not recoverable

3. **THE ISSUES**
At hearing all the parties to the application asked the Tribunal to make a determination of the sums payable up to 25 December 2004, 25 December 2005 and 2 December 2006. The parties also agreed that the Tribunal should consider the costs actually incurred rather than the provisional or estimated accounts. The issues before the Tribunal therefore related to a period of time slightly longer than that for which the County Court action was issued. With effect from 2 December 2006 management of the property was acquired by a Right to Manage company.

4. Directions were issued by the Tribunal on 13 July 2007 for submissions to be lodged by both parties and for a hearing.

5. **PARTIES TO THE APPLICATION**
The County Court actions appeared to have been issued against the Respondents named above and also against a Shivandran Varma. No representations or submissions were received by the Tribunal from Shivandran Varma, and the claim against Mr/Ms Varma was not included in the consent order providing for transfer to the Tribunal. No reference was made on the papers before the Tribunal to the tenants of Flat 4 or 5, and no representations or submissions were received from Flats 4 or 5. The Tribunal therefore considered that the claims with which it was concerned were those against the parties named above.

6. **THE LAW**
Under s19 Landlord & Tenant Act 1985:
"*(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination—*
(a)whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
(b)whether services or works for which costs were incurred are of a reasonable standard."

7. **THE LEASE**
A copy of the Lease for Flat 1 was produced. The Tribunal was told that all the Respondents' leases were in the same terms. The relevant sections of the Lease provided for the tenants to pay service charges for specific matters including maintenance, cleaning of the common parts and passageways serving the Building, The Lease also provided that the tenants shall pay for:
"2(3)(i)g) *the costs and expenses incurred by the Lessors in employing managing agents to manage the Building and a firm of Chartered Accountants to prepare a management account unless a majority of the Lessees of all the units in the Building shall agree to accept the Lessor's accounts*"

and there was a tenants' covenant to pay additional rent in respect of insurance.

8. **INSPECTION**

The Tribunal inspected the property immediately before the hearing. The property comprised a converted detached building next to a church, in reasonable condition, containing 5 flats. There was a well-maintained private rear garden adjoining the lower ground floor flat and a shared garden which was overgrown. The rear garden and the lower ground floor flat were reached along a narrow passage to the side of the building. The Tribunal noted that some slates had fallen from the main roof and there were areas of render left unfinished to the rear side wall at lower ground level. The external decorations had evidently been completed in the past few years and did not have a high standard of finish. The communal hallway showed numerous scuff and impact marks to the walls and areas of damage to the decorations. The quality of the decorations was adequate. The carpeting had dust and debris on it. The Tribunal's attention was drawn to the fact that the communal hallway was served by 3 light switches.

9. **THE HEARING**

The Applicant was represented by Mr Mark Kelly of the previous managing agents Hurst Management who were concerned with the property at the relevant times. Submissions and witness statements including relevant documents were provided to the Tribunal by Mr Kelly. The Respondents were represented by Ms Wood (Counsel) instructed by Lawson Lewis Solicitors. Witness statements were submitted by all 3 Respondents jointly and further statements by the Second and Third Respondents, together with relevant documents.

10. **SUBMISSIONS AND CONSIDERATION**

The Applicant produced service charge accounts for each of the years in question. In the course of the hearing certain items under the accounts were admitted by the Respondents to be payable. The Tribunal was therefore required to make a determination upon the following items.

11. **CLEANING**

The Applicant said that under the Lease the landlord was required to arrange for cleaning the side path as well as the hallway, but the cleaning contract was not shown to the Tribunal. The monthly charge of £21 & VAT was reasonable taking into account travel times. The Respondent said that the sub-tenant of Flat 3 was so dissatisfied with the quality of the work that she started to clean the hall herself. The cleaner had been seen to merely sign an attendance slip and leave, or did not come at all. The charge was too high.

12. The Tribunal noted that the Lease did require the landlord to clean the pathways serving the building. There was no evidence from the Respondents relating to the charges which other cleaning firms might make for the work. In the expert opinion of the Tribunal the sum charged was within a normal range for the work. The evidence that the cleaning was not done to a satisfactory standard was hearsay and was very vague. The tenant in question did not give evidence and was not even identified. It was not possible to determine whether her assessment of the work as unsatisfactory was one which the Tribunal shared. In the circumstances the Tribunal considered that the evidence did not show that the work was not of a reasonable standard and the amount demanded was payable.

13. **ELECTRICAL WORKS TO HALLWAY**
The Respondents pointed to 4 invoices which showed that the push-button switches and various lamps (some internal and some external) in the common areas were replaced numerous times between 2004 - 2006. Their case was that the number of replacements invoiced was suspicious, because they were too frequent to have arisen in the normal course of use, and they suggested that there may have been overcharging. The Applicant's case was that work would not have been undertaken if it was not required. There had been considerable vandalism during that period.

14. The Tribunal noted that the value of the invoices was very modest, between about £120-£250 each time. At least two different firms of contractors were employed to do the work. The periodic inspections by the agents recorded the faults which the contractors were asked to fix. It seemed unlikely to the Tribunal that the contractors would jeopardise their reputations and standing with the managing agents for the sake of these amounts. On the evidence the Tribunal determined that the costs were reasonably incurred and were payable.

15. **LEGAL COSTS**
Year ending 2004
The Applicant had charged £3936.10 in respect of costs incurred in connection with an unsuccessful tribunal application brought by the Respondents and heard on 10 February 2004. The tribunal application was an application for the appointment of a manager under s24 Landlord & Tenant Act 1987. The total comprised £1727.25 solicitors' costs of P Chevalier & Co, and £2208.85 costs of the managing agents. No order was made by that previous tribunal under s20C Landlord & Tenant Act 1985. The Applicant relied on clause 2(3)(i) g) of the Lease as set out above.

16. The Respondents contended that the Lease did not permit the Applicant to recover these costs. Moreover there were duplications and overlap between the bills.

17. The Tribunal directed itself that a covenant permitting a landlord to recover solicitors' costs or costs incurred in relation to legal proceedings ought to be in

clear and unambiguous terms so as to convince that the parties intended that outcome. The natural and ordinary meaning of the relevant clause of the Lease did not encompass solicitors' costs at all. Moreover, the lease provided for the payment of the costs of managing the building, ie costs incurred in the performance of the Applicant's duties under the Lease. The managing agents' costs were not incurred in managing the building, but in opposing the appointment of a manager. The situation was therefore different from and was to be distinguished from a case where legal proceedings were taken in connection with (for example) service charges. The Tribunal determined that the Lease did not permit the Applicant to recover either element of this sum of costs.

18. Legal Costs in year ending 2006
Costs of £848.73 had been charged by the Applicant but it was conceded by the Applicant that they were not payable as service charge because they were incurred in connection with the Respondents' RTM claim.

19. **INSURANCE**
Initially the Respondents challenged the premium and the level of excess on the policy, which rose from £450 p/a to £3,000 p/a with effect from November 2005. In the course of the hearing the Respondents abandoned their criticism of the premium but maintained that the excess on the insurance was unreasonably high. Virtually all claims would fall within the excess level. Since the RTM company had stepped in, contended the Respondents, insurance with an excess of £150 had been secured.

20. The Applicant responded that the property had suffered an unusually high rate of claims. For each of the years 2002-2005 the amount paid out by the insurers had significantly exceeded the premiums paid. In the light of the claims history any insurer would react as had the insurer used by the Applicant. The Applicant questioned whether the claims history had been disclosed to the present insurer. The Applicant used a block policy to cover a large number of properties and insured with a reputable insurer at a competitive rate.

21. The Tribunal noted that the Applicant's evidence did not indicate that it had reviewed its approach to portfolio insurance in the light of the huge increase to the excess, or had considered insuring this property outside the portfolio. However, no details or evidence of the current insurer had been provided by the Respondents and there was no actual evidence (as opposed to counsel's submissions) that the current insurer was aware of the claims history. It was understandable that the high level of claims would affect the matter. The Tribunal accepted that the insurance costs were reasonably incurred, there was a reasonable explanation for the increase in the excess, and no evidence to set against that of the Applicant. In the circumstances the Tribunal found on the evidence before it that the costs were reasonable.

22. **COSTS OF MANAGEMENT**

The Applicant's case was that management fees were charged at a fixed rate per flat and that this approach was recommended by the RICS Code of Management. The charge per flat was (in 2004) £185, (in 2005) £195 and (in 2006) £210. No additional charges were made save for administration of contracts. The Respondents said that the charges were too high. They should have been calculated at 10% of the service charge expenditure. In general the standard of work done to the building was too low and several things were not put right despite the agents being notified about them, such as the front door and the gas meter covers and dampness affecting Flat 2. The management was not done adequately because the agents could not be contacted. Their telephone either rang on, or went to an answerphone with no message facility. Mr Kelly acknowledged that Hurst Management installed a call holding system in the past 18 months. He said that if the answerphone took messages, they would spend all their time dealing with the messages.

23. There was no evidence from the Respondents relating to the charges which other managing agents might make for the work. The amount charged was equivalent to around £4 per week per flat. In the expert opinion of the Tribunal the sum charged was within a normal range for a relatively basic and economical management service. It was good practice to make a fixed annual charge so as to allow for budgeting. There was clear documentary evidence of regular inspections carried out three times a year, and action to remedy problems identified upon those inspections.

24. The evidence that the agents could not be contacted by phone was very vague and lacking in specifics. In any event there appeared to be no reason why the agents could not be contacted in writing. When written complaints were sent to the agents in connection with the gas meter covers and the quality of external works, a detailed response was provided by Hurst Management. The explanations given by Hurst in its letters were not subsequently challenged by the tenants.

25. No written notice was given in relation to the front door, and indeed the Tribunal was not provided with any detailed explanation of what was said to have been wrong with it. Even if the decorators who carried out works to the hallway in 2004 would have noticed that the front door did not close satisfactorily, the Tribunal did not accept that the managing agents and hence the Applicant was fixed with that knowledge. The inspection notes prepared for the managing agents did not record any problems with the front door. The evidence before the Tribunal therefore did not establish on the balance of probability that there was any particular problem with the door.

26. Whilst Mr Kelly accepted that a phone call was made in 2006 complaining that squatters had gained entry to Flat 2, he rightly commented that the managing agents and the landlord had no authority to take any steps to remove them.

27. The Respondents alleged that damp problems affecting Flat 2 were not satisfactorily dealt with by the managing agents, but there was no clear diagnosis of what the problem was and what ought to have been done about it. The Tribunal found on the evidence that the work which was recommended was done, with the exception of roofing felt work which was not mentioned on the relevant

invoice. However, the Applicant's agents instructed contractors to take the remedial steps which were recommended to them. The contractors whom they used were specialist roofing contractors. The Respondents contended that these steps were insufficient, but there was no expert evidence from the tenants identifying some other action which ought to have been taken.

28. The Respondents relied on a letter from Eastbourne Borough Council allowing an exemption from council tax in respect of Flat 2. The letter did not state on what basis an exemption was allowed, so no particular inference could be drawn from this. The letter stated that the flat was affected by rising damp and flooding. However the works recommended to the Applicant's agents, and carried out, appeared to have been connected with penetrating dampness from the roof/chimney area. The letter from Eastbourne Borough Council therefore did not assist the Respondents' case.

29. In the circumstances the Tribunal found that the evidence did not show such failings on the part of Hurst Management as to fall below a reasonable standard of service.

30. **EXTERNAL REDECORATIONS** (in 2006)
The Respondents complained that no scaffolding had been erected, and that the contractors worked to an unsatisfactorily low standard. Mr Kelly for the Applicant pointed out that the contract did not specify that scaffolding was to be erected. He was unable to explain why one area of the external wall had not been re-rendered despite being included in the specification.

31. The Tribunal noted that the proper consultation process had been followed and the estimate accepted had been about half the price of the others submitted. No observations appeared to have been made by the tenants. The standard of the work appeared to the Tribunal on inspection to have been adequate, bearing in mind that the outlay (£3980 plus 15% contingency and VAT) was very modest for the complete external redecoration of a three storey detached building.

32. **INTERNAL REDECORATIONS**
Charge of £887.13 (£755.00 plus VAT) in year ending 2004
The Respondents said this amount was too high for the small area involved, and the quality of work was low.

33. The Tribunal noted that in their witness statement the Respondents put the Applicant to proof of what work was included in the cost, but the Respondents themselves exhibited to their statement a copy of the specification of work. The Respondents also exhibited another estimate for the same work, dated contemporaneously, for a higher amount of £840 plus VAT. On the evidence and in the expert experience of the Tribunal, the cost was not only reasonable but fairly modest. This was consistent with the quality of the work, so far as could be observed on the inspection carried out more than three years later, which was

satisfactory but basic. The Tribunal considered that the cost was reasonably incurred and the standard of the work was reasonable, and the item was therefore payable.

Signed---------- Chair

Dated---------- 4 January 2019