

CHI/29UH/LSC/2008/0035

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: 32-40 Stagshaw Close, Maidstone, Kent, ME15
6TN

Applicants: The Lessees

Respondents: Homegroup Limited

Application: 3 March 2008

Inspection: 2 June 2008

Hearing: 2 June 2008

Appearances:

Tenants

Mr Lozano	Leaseholder
Mr Telfer	Leaseholder
Mr Stokes	Representative of Miss Stokes, Leaseholder
Miss Tomes	Leaseholder
Mr Goddard	Leaseholder
Miss Arbizu	Leaseholder

For the Applicants

Landlord

Mr Atkinson	Counsel
Mrs Longman	Shared Ownership Manager
Mr Ward	Neighbourhood Housing Manager

For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr R Athlow FRICS MRIPM
Miss L. Farrier

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UH/LSC/2008/0035

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF 32-40 STAGSHAW CLOSE, MAIDSTONE,
KENT, ME15 6TN**

BETWEEN:

- (1) MR LOZANO (FLAT 36)**
- (2) MR TELFER & MISS STOKES (FLAT 38)**
- (3) MISS TOMES & MR GODDARD (FLAT 34)**
- (4) MR & MRS WILDING (FLAT 30)**
- (5) MISS ARBIZU (FLAT 40)**
- (6) MESSRS RUSS (FLAT 32)**

Applicants

-and-

HEMAGROUP LIMITED

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicants pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination or that the reasonableness of various service charges arising during the service charge years 2005-2008.
2. The Applicants are the lessees of their respective premises by virtue of leases granted variously to them. The Tribunal was provided with a copy of an undated draft of the lease granted in relation to Mr Lozano's flat (Flat 36) ("the

lease"). It is a matter of common ground that the leases granted to the other Applicants were on the same terms. Under the terms of the leases, the Applicants are the co-owners of their respective premises together with the Respondent, who is the freeholder. The Applicant's own a 50% share and also pay 50% rent to the Respondent. The Respondent is a registered charity and a registered social landlord. The flats were intended for key workers and sold as affordable housing by the Respondent. The Tribunal was told that the Applicants are predominantly teachers at the nearby Maidstone Grammar School.

The Lease Terms

3. At the hearing, the Applicants confirmed that they did not challenge their contractual liability to pay a service charge contribution under the terms of their leases. The only challenge being made was in relation to the reasonableness of the service charges set out below. It is, therefore, not necessary to set out the detailed service charge provisions in the lease. It is perhaps sufficient to provide a general overview of the relevant terms.
4. By a clause 3(2) (b) of the lease, the lessee covenanted with the landlord to pay the service charge in accordance with clause 7. Clause 7 (1) provides, *inter alia*, that each service charge year shall end on 31 March and that the lessee shall pay a service charge contribution in relation to the expenditure incurred by the landlord expressly provided for in clauses 7 (4) to (6). The lease provides that the lessee's service charge contribution shall be such reasonable sum as shall be demanded by the landlord from time to time. This is paid by the lessees by equal monthly payments on the first day of each calendar month.
5. By clause 5 of the lease, the landlord covenanted, *inter alia*, to maintain, repair, redecorate and renew the main structure of the building and all external parts thereof including the common parts. In the lease, the common parts are defined as also including any garden or landscaped areas.

The Disputed Service Charges

6. The service charges being challenged by the respective Applicants for each of the disputed service charge years can be set out as follows:

2005 (Actual)

Tomes & Goddard

Gardening	£80.87
Management Fee	£298.90

2006 (Actual)

Goddard, Tomes & Arbizu

Cleaning	£499.38
Gardening	£517
Management Fee	£641.86
Window Cleaning	£211.51

2007 (Estimated)

All Applicants

Gardening	£846
Cleaning	£1,600
Window Cleaning	£540
Management Fee	£1128

2008 (Estimated)

All Applicants

Gardening	£600
Cleaning	£1,600
Window Cleaning	£600
Management Fee	£1,176

Each head of the claim is considered in turn below by the Tribunal.

Inspection

7. The Tribunal inspected the subject property on 2 June 2008. The property is a purpose built block of 6 flats built about four years ago as affordable housing for key workers. The construction is of modern design with brick and tile-hung elevations under a tiled roof. Most of the finishings externally are in Upvc. There is a communal entrance hall with stairs to the upper floors.

Decision

8. The hearing in this matter and also took place on 2 June 2008. Save for Miss Stokes, Mr and Mrs Wilding and Messrs Russ, all of the Applicants appeared in person. The Respondent was represented by Mr Atkinson of Counsel.
9. The Tribunal explained to the Applicants and that its jurisdiction did not extend to matters ground rent and disrepair that had been raised in their statements of case. The Tribunal's jurisdiction was limited to the service charges in issue, as particularised above.
10. It was also perhaps surprising that despite the Tribunal issue in Directions dated 2 April 2008, only the Applicants appear to have complied with those directions. Save for filing and serving a statement prepared by Mr Ward, a Neighbourhood Housing Manager, well out of time, the Respondent had not provided disclosure of any relevant documents or otherwise.
11. As the Applicants had already set out their position about the disputed service charges in their statement of case, the Tribunal considered it appropriate to hear firstly from the Respondent in relation to those matters.

(a) Gardening, Cleaning & Window Cleaning

12. It appears that the gardening, cleaning of the common parts and window cleaning was, until January of this year, was carried out by the contractor known as Gold Star. At paragraph 12 of his witness statement, Mr Ward stated that on 26 November 2007 he had received e-mails from for the lessees complaining about the standard of the work carried out by Gold Star. As a result, he and Mrs Longman attended a meeting with Mr Lozano on 28

January 2008. On that occasion, it was agreed that Gold Star would be given notice to end of their contract and that any service charges for ground maintenance and cleaning from November 2007 would be refunded to the Applicants.

13. In reply, the Applicants contended that the refund paid to them should not be limited to November 2007. They referred to the Tribunal to an undated letter addressed to the Respondent setting out the history of default in relation to the gardening and cleaning for the preceding year. In general, they complained that Gold Star at either not performed any of their duties or had done so on a very infrequent basis. They asserted that the Respondent had not responded to this letter until July 2007. Moreover, they had been told in January 2008 that Gold Star would be given four weeks' notice, but this had not been done until February 2008. Nevertheless, they further asserted that in April 2008 the same contractor had in fact cleaned the windows at the subject property.

14. The Applicants had, in effect, put the Respondent to proof that these costs have been reasonably incurred and were reasonable in quantum. Save for the copies of the relevant service charge accounts, the Respondent had not provided any other evidence that the services had been carried out adequately, at all or that the costs have been incurred. For example, the Respondent had not disclosed any relevant invoices that had been paid to Gold Star. The Tribunal did not accept, on the face of it, the assertion made by Mr Ward at paragraph 8 of his witness statement that the subject property had been inspected regularly at least once each calendar month as well as on a day-to-day basis. On balance, they Tribunal accepted the Applicant is evidence that there had been a long history of default on the part of Gold Star in the performance of their duties. Accordingly, the Tribunal found under section 19 of the Act that of these costs had not been reasonably incurred and disallowed all of the costs claimed for the gardening, cleaning of the common parts and window cleaning for all of the years up to November 2007. Mr Ward told the Tribunal that no further costs were being claimed from the Applicants from over 2007 and that, at present, no contractor had been appointed in place of Gold Star. Therefore, the Applicants have no liability to pay the Respondent any of these costs until 31 March 2008.

(b) Management Fee

15. Both Mr Ward and Mrs Longman, in evidence, contended that the management fee charged in respect of each of the disputed service charge years was reasonable. At paragraph 8 of his witness statement, Mr Ward stated that the premises are actively monitored and managed by a dedicated team of housing staff, which includes a housing officer, housing assistant and area surveyor. There is at least one visit to the property each month. The Respondent also provides a dedicated repair service and an out of hours emergency service to ensure that any urgent repairs can be reported each day of the year.

16. Mr Ward also relied on a letter sent to Mr Lozano by him dated 28 March 2008, in which he had set out a schedule of management services provided. These included, *inter alia*, the preparation and distribution of service charge budgets and accounts. He accepted that the service charge accounts for 2005 and 2006 had not been prepared or served on the Applicants until December 2007. By way of explanation for the delay, Mrs Longman said that the Respondent's accounts system did not provide for the requirements of leasehold tenants. However, she assured the Tribunal that it would now be able to issue estimated service charge budgets before 30 September of each year.

17. When asked, Mrs Longman said that the management fee was calculated on the basis of the previous recommendation of the Housing Corporation, the Respondents predecessor. He conceded that there is no precise calculation by which the management fee is arrived at all whether it in fact properly reflects the Respondent's costs of management. The figure was simply uplifted annually on the basis of the RPI for the previous year.

18. The Applicants contended that if the management functions had been carried out by the Respondent there would not have been so many complaints on their part. They submitted that the inference to be drawn from this was that the Respondent had not performed its management duties adequately or at all.

19. As to the planned historic visits to the property set out at paragraph 8 of Mr Ward's witness statement, the Applicants asserted that there was no evidence that any of these visits had in fact taken place. None of the Applicants had seen any of the Respondent's personnel visiting the property especially in April of this year when it was half term for many of them as teachers. Indeed, on 9 April 2008 they attempted to inspect the service charge accounts but were unable to do so and these had still not been received by them.

20. The Tribunal accepted the applicants evidence that there had been little or no effective management of the subject property by the Respondent. On the Respondent's own case, it was accepted there out there had been a number of serious management failures. These included:
 - (a) a failure to serve service charge accounts for 2005 and 2006 until December 2007.
 - (b) a failure to manage Gold Star adequately or at all.
 - (c) a failure to inspect the subject property on a regular basis.
 - (d) a failure to maintain the subject property. The Tribunal, on inspection, noted missing UPVC cladding, slipped or missing tiles to the rear elevation and that of redecoration of the common parts was required.
 - (e) on Mrs Longman's evidence, a failure to account for the surplus service charge monies held in the service charge account.

21. Having regard to all of those matters set out above, the proper inference to be drawn is that there has been a failure on the part of the Respondent to manage the subject property and, therefore, the management fee claimed by it could not be said to be reasonable. Accordingly, and in the light of the Tribunal's findings, it allowed the nominal sum of £100 for each of the service charge years from 2005 to 2008. In relation to the 2007/08 service charge year, it should be made clear that the Tribunal's determination is based on the Respondent's estimated management fee for this year and the determination does not prevent the Respondent from being able to claim the actual fees incurred provided that it can demonstrate to the Applicants the basis on which those costs are being evacuated, especially in the light of Mrs Longman's evidence on this matter.

22. Although the 2008/09 service charge year did not strictly fall to be considered by the Tribunal in this application, nevertheless, it had been told that the Applicants were still being required to pay a monthly service charge despite the fact that no service charge budget had been prepared by the Respondent for this year as yet. Clause 7 (4) (a) of the lease makes it a condition precedent to recover a service charge contribution from the Applicants that an estimated budget is provided to them by the Respondent's surveyor. In the absence of any such estimate, it seems, that the Applicants have no contractual liability to pay any service charge contribution to the Respondent unless and until this is provided to them.
23. The Tribunal had also told by Mrs Longman that there was an unspecified surplus in the service charge account. In the light of the Tribunal's decision above, a credit should be applied to the service charge account to reflect those findings thereby increasing the surplus in the account. The Tribunal directs that the credit be refunded to the Applicants on or before 30 September 2008, being the latest date for the publication of the 2007/08 service charge account under section 21 of the Act.

Section 20C & Fees

24. In the substantive application, the Applicants also made a further application under section 20C of the Act for an order preventing the Respondent from being able to recover all or any of its costs incurred in these proceedings. The test to be applied by the Tribunal is whether it is just and equitable to make such an order having regard to all the circumstances. In the present case, the Tribunal does consider it just and equitable to make an order because the Applicants have wholly succeeded on the issues and that the entitlement to costs should therefore follow the event. For the same reasons, the Tribunal also directs, pursuant to Regulation 9 of the Leasehold Valuation (Fees) (England) Regulations 2003, the Respondent to reimburse the Applicants the total fees of £250 incurred by them in bringing this application.

Dated the 14 day of July 2008

CHAIRMAN.....I. Mohabir
Mr I Mohabir LLB (Hons)

CHI/29UN/LSC/2008/0026

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: St Mildreds Flats, 7 Ethelbert Terrace, Margate,
CT9 1RX

Applicant: Mr T Foster

Respondents: (1) Ms C Gray
(2) Mr H MacCorgarry

Application: 7 March 2008

Inspection: 28 May 2008

Hearing: 28 May 2008

Appearances:

Landlord
Mr T Foster Freeholder
For the Applicant

Tenants
Mr H MacCorgarry
For the Respondents

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr R Athow FRICS MRIPM
Ms L Farrier