Residential Property
TRIBUNAL SERVICE

**Leasehold Valuation Tribunal** **LON/00AH/LAC/2008/0003**

**London Rent Assessment Panel**

**Commonhold and Leasehold Reform Act 2002, Schedule 11**

| | |
|---|---|
| **Property:** | 18 St Clairs, Croydon, Surrey CR0 5NE |
| **Applicant:** | Mrs K Pellegrino - Former Leaseholder |
| **Respondent:** | Mehson Property Co Ltd - Landlord |
| **Tribunal:** | Mr T J Powell LLB |
| **Application:** | 18 January 2008 |
| **Directions:** | 24 January 2008 |
| **Paper Determination:** | 13 March 2008 |
| **Decision:** | 17 March 2008 |

## Decisions of the Tribunal

(1) The Tribunal determines that a reasonable sum for the provision of retrospective consent is £100 and therefore orders the Respondent to refund £550 to the Applicant;

(2) The Tribunal determines that a reasonable sum for responding to the pre-sale managing agent's questionnaire is £117.50 and therefore orders the Respondent to refund £117.50 to the Applicant;

(3) The Tribunal determines that a reasonable cost for the provision of Deeds of Variation is £411.25 including VAT and therefore orders the Respondent to refund £500 to the Applicant;

(4) The Tribunal orders the Respondent to repay the £100 Tribunal fees paid by the Applicant. The Tribunal also makes an order under section 20C of the Landlord and Tenant Act 1985 thereby preventing the Respondent from passing any costs of the Tribunal proceedings through the service charge for remaining leaseholders.

(5) All refunds to the Applicant should be made within 28 days of the date of this Decision.

## Background

1. The Applicant is the former leaseholder of a house known as 18 St Clairs, Croydon under a lease dated 10th August 1972. The house is situated on the St Clair estate. On 12th June 1984 the lease was extended to 999 years. In August 1988 the Applicant replaced the windows of the house and built an extension. In June 2006 the Respondent bought the freehold at auction from the previous freeholder Joy Centre Properties Ltd ("Joy Properties"). In mid-2007 the Applicant put the property up for sale and engaged Ormerods solicitors to act on her behalf. The Respondent through its (apparently closely linked) managing company Salmore Property Ltd ("Salmore") raised charges for answering the Applicant's solicitor's queries and demanded payment for retrospective consent to alterations. The Applicant paid the charges but now applies to the Tribunal for a determination of their reasonableness under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

## The Lease

2. The Lease provides that the management of the estate will be carried out by St Clair (Management) Ltd ("St Clair Management"), whose directors are residents on the estate. Clause 3(7) of the Lease contains a covenant by the Lessee not to make any alteration or addition to the exterior of the demised premises without the consent in writing of the Lessor. There is no provision for the Lessor to charge the Lessee for the provision of such consent or indeed for any administration charges, save for the registration of an assignment. Equally, there is no express obligation on the Lessor to provide information or answer

queries raised by the Lessee or her solicitors to enable an assignment to take place.

## The law

3. The relevant provisions of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 read as follows:

**Meaning of "administration charge"**

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

**Reasonableness of administration charges**

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Notice in connection with demands for administration charges**

4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

**Liability to pay administration charges**

5 (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—

(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, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

4. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.

5. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings (before the Tribunal) through the service charge, if the Tribunal considers it to be just and equitable.

## Evidence received

6. Pursuant to directions, both parties lodged bundles of documents upon which they intended to rely and served copies on each other. Those documents were considered carefully by the Tribunal when reaching its Decision on the issues in dispute.

7. As neither party requested an oral hearing, the Decision was made on the papers.

## The Tribunal's Decisions

8. The Tribunal's jurisdiction to decide upon the reasonableness of administration charges arises from the provisions of Schedule 11 of the 2002 Act, regardless of the fact that the Lease itself contains no provision for the raising of charges.

**A) The Freeholder's demand for £650 for retrospective permission for the 1988 works**

9. The Applicant's purchasers understandably asked to see the freeholder's written consent for the windows and building alterations. The Applicant claimed that in 1988 she had received the written consent of Joy Properties both for the replacement of her windows and for the construction of the extension, but she no longer had a copy of that consent. The mortgage company financing the extension had required the freeholder's consent, as had the local authority giving building regulations approval for the work. The Applicant claimed that the work was carried out before the lease extension, but that cannot be correct since the extension was granted in 1984, some 4 years before the works.

10. The Applicant relied upon a letter from Joy Properties dated 10 September 2007, which stated: "We never required consent for replacement windows providing they were in keeping. However, with regard to a rear extension we would have given formal consent if we had granted one. We no longer have the files so we cannot comment as to whether or not we did grant one." This letter suggested that the Applicant would have had implied consent for the window replacement, rather than written consent as she claimed, but it left rather open the question of whether written consent was given by Joy Properties for the extension.

11. The Respondent's case was that there was no written consent in any of the papers transferred to them by Joy Properties and, therefore, on the face of it the Applicant was in breach of Clause 3(7) of the Lease. The Respondent demanded £650 for retrospective consent and sought to justify the amount of the charge by reference to a list of losses it incurred by reason of having to deal with the issue, including the costs of looking at the file, consulting solicitors, corresponding with the Applicant's solicitors and drawing up the consent. The Respondent claimed that the Applicant had admitted the breach of the Lease, but there was no evidence of that in the papers.

12. The Respondent stated that since the Lease makes no provision for any charge to be made, it was acceptable to the Respondent to state a fee for the work involved and the Applicant had the choice whether to pay or not. Somewhat under protest and certainly under some duress, given that there was a risk of her sale falling through, the Applicant paid the £650, in her words for them "to update their records". The Respondent says that it is a simple case of the Applicant accepting the fee and receiving the service, and that the Applicant has received a direct benefit from this, namely the sale of her property.

13. That is not the entire picture, however. It is clear from the papers that there is a fair amount of distrust and suspicion of the Respondent's motives in charging fees to leaseholders. The most stark expression of this came in an email from Joy Properties to Salmore (undated but probably sent on 3rd October 2006) which claimed that the Respondent was "trying to charge major sums for spurious retrospective consents."

14. Be that as it may, the Tribunal's view is that it accepts the Applicant's evidence and considers that written consent for the 1988 works was almost certainly granted by Joy Properties, even though it may now have been lost. Whether the Respondent could now seek to rely on any breach of the lease some 19 years after the event was a matter not before the Tribunal. However, the £650 charge raised by the Respondent appears to be excessive for the simple task of confirming that written consent was given in 1988 and/or that retrospective consent was now given, as necessary. The Applicant suggested that she would be willing to pay £50 to cover the Respondent's costs, but that sum seems too low.

15. The Tribunal therefore determines that a reasonable sum for the provision of retrospective consent in the circumstances is £100 and therefore orders the Respondent to refund £550 to the Applicant within 28 days of the date of this Decision.

**B) The Freeholder's demand for £235 for the provision of information prior to sale**

16. As part of the sale process, the Applicant's solicitors wrote to the Salmore with a "managing agent's questionnaire" seeking information relating to the freehold and leasehold interests in the estate. Salmore demanded £200 plus VAT, a total of £235 to respond. The Applicant complained to the Tribunal about the cost and about the Respondent's failure to give her a summary of her rights and obligations pursuant to paragraph 4(1) of Schedule 11 to the 2002 Act.

17. The Respondent's view was that the Lease does not oblige the freeholder or any managing agents to provide the information requested. Salmore was not employed by the residents of the St Clair estate and do not receive any remuneration or managing agent's fees. According to the letter dated 23 July 2007 to Ormerods, "We are the Lessor's only appointed party entitled to deal with such enquiries." Again the Respondent's attitude was that payment of the £235 was voluntary (i.e. the Applicant could have chosen not to pay and thus not to receive the replies) and that, in any event, it was in line with a fee agreed by the Bournemouth & District Law Society - although there was no evidence of the level of agreed fees in the papers.

18. The Applicant was willing to offer £100 for the Respondent/ Salmore to answer the questions. Paragraph 4(1) of Schedule 11 to the 2002 Act was ineffective as the appropriate Regulations specifying the terms of the summary of rights and obligations did not come into force until 1st October 2007 but, in any event, non-service of the summary would only have enabled the Applicant to withhold payment, but she had to have the replies if she wanted to progress her sale, and therefore paid the fee demanded of her.

19. The Tribunal considers that the sum of £235 is excessive for the work that was involved. The Tribunal determines that a reasonable sum for responding to the pre-sale managing agent's questionnaire is £117.50 and therefore orders the Respondent to refund £117.50 to the Applicant within 28 days of the date of this Decision.

## C) The Freeholder's demand for £911.25 for two deeds of variation

20. As well as responding to Ormerods' questionnaire Salmore indicated that a notice of defects in the Lease had been served on the Applicant. The alleged defects related to a lack of responsibility for the maintenance of the structure of the building, a lack of charging provisions in relation to the cost of major works, and a lack of enforcement covenants by the Landlord to carry out maintenance and repair obligations, if St Clair Management failed to do them. Salmore stated that: "A Deed of Variation has been drawn up by the Lessor's solicitors to remedy the defect and protect the lessee ... Without the Deed of Variation no parties are permitted to carry out the works, including the management company. The lessor will pursue a claim if any party breaches this ..."

21. As a result, the Applicant's purchasers required the Applicant to enter into two deeds of variation (one for an enforceability clause and one to rectify the defective landlord's repair and maintenance clause) for which she had to pay £911.25. This figure represents £500 for the two Deeds and £350 plus £61.25 VAT for solicitors' costs, though no breakdown of those costs was provided.

22. The Applicant complained to the Tribunal about the costs involved which she characterised as being "extortionate." She also complained that she (and other leaseholders) had been effectively forced into paying this and the other charges by the Respondent company, which "was causing problems and demanding payments when contacted as part of the conveyancing process". The Applicant was willing to offer £150 for the deeds of variation, which she said was "the original price quoted."

23. The Respondent did not appear to specifically address the reasonableness of the cost of providing the deeds of variation in its statement of case and the Tribunal therefore concludes that it has no comments to make.

24. The Tribunal considered that the costs charged were excessive for providing documents to the Applicant, which were necessary for her to effect a sale of her property, especially since the deeds of variation had already been drawn up by the Respondent's solicitors and they were modelled on deeds granted to other leaseholders in a similar position. The Tribunal was unable to see why the Respondent should charge £250 per deed, in addition to solicitors costs of processing the documents of £350 plus VAT. There did not appear to be any justification for the additional charges.

25. The Tribunal therefore determines that a reasonable cost would be no more than £350 plus £61.25 VAT, i.e. a total of £411.25 in all for providing the deeds of variation, and therefore orders the Respondent to refund £500 to the Applicant within 28 days of the date of this Decision.

## Refund of fees and Section 20C application

26. In the light of the above Decision, the Tribunal orders the Respondent to repay the £100 Tribunal fees paid by the Applicant within 28 days of the date of this Decision.

27. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 even though she has moved because she did "not want other residents to be charged." The Tribunal makes such an order, thereby preventing the Respondent from passing any costs of the Tribunal proceedings through the service charge for remaining leaseholders.

Chairman: T. Powell

Timothy Powell

Date: 17 March 2008