

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

**In the matter of section 158 and Schedule 11 of the
Commonhold & Leasehold Reform Act 2002 (as amended)**

**and in the matter of 12 Earlsmead Court, 15 Granville Road,
Eastbourne, East Sussex, BN20 7HE**

Case Number: CHI/21UC/LAC/2008/0003

Between

Mr J W Fenwick (“the Applicants”)

and

Abbey View Estates Limited (“the Respondent”)

The matter was determined in the light of written representations
without a hearing on 12th January 2009

Decision of the Tribunal

Issued: 13th January 2009

Tribunal

Mr R P Long LLB (Chairman)
Mr J S MacAllister FRICS

Application

1. This is an application by Mr J W Fenwick to the Tribunal to determine the liability to pay for or the variation of certain administration charges. The charges in question are:
 1. By Abbey View Estates Limited for dealing with enquiries in connection with the Applicant's proposed sale of his flat: £195-00
 2. By Messrs Stredder Pearce, the Respondent's managing agents for dealing with enquiries in connection with the proposed sale of the Applicant's flat £140-00 (plus VAT of £24.50), and
 3. By Abbey View Estates limited for approving a deed of covenant in connection with the sale £195-00.
2. An application by the Respondent that the Tribunal should dismiss the application pursuant to regulation 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 (SI 2003.2098) as amended was abandoned by it before the matter came before the Tribunal.

The Law

3. The relevant law is contained in Schedule 11 of the Commonhold & Leasehold Reform Act 2002 ("the Act"), which is given effect by section 158 of that Act. The Schedule relates to variable administration charges as therein defined, and provides, so far as is relevant for the purposes of the present application that such charges are payable only to the extent that the amount of them is reasonable.
4. The Schedule further provides that any party to a lease of a dwelling may apply to the Tribunal for a determination whether a variable administration charge is payable and if so by whom and to whom it is payable, the amount which is payable, and when and in what manner it is payable. It is not suggested that any of the charges the subject of the present application fall outside the definition of administration charges above referred to.
5. It is material to the determination of the matters presently before the Tribunal that paragraph 4 of Schedule 11 to the Act requires that any demand for administration charges shall be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. The form of the summary is set out in The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258), which came into force on 1st October 2007. The effect of sub paragraph 3 of paragraph 4 of the Schedule is that a tenant may withhold payment of a demand for administration charges if the summary does not accompany it.

The Lease

6. Paragraph 2(5)(a)(i) of the Lease of Flat 12 Earlsmead Court provides that upon any assignment of that property "the lessee (who shall pay the reasonable charges of the lessor's solicitors) shall procure that any assignee ... shall enter

into a direct covenant (in a deed in such form as the lessor's solicitors shall require) with the lessor to perform and observe all the covenants and conditions contained in (the lease)"

The Issues

The Enquiries

7. It is convenient to deal together with the costs both of the landlord and of Messrs Stredder Pearce, the managing agents, of replying to the enquiries raised of the landlord by Messrs Stephen Rimmer and Co, the Applicant's solicitors. The enquiries were in a form approved by Eastbourne Law Society, and if all the questions on the form require an answer (which will not always be the case) the Tribunal counted from the copy of the form before it (pages 48-53 in its bundle – Mr Fenwick's document 5) that seventy four items of information are required. Some of those will be easy to acquire, whilst others would be likely to involve some research. The Respondent provided a copy of a letter from Messrs Stredder Pearce to local solicitors dated 2 July 2007 indicating that their charge for dealing with the form was £140 plus VAT (page 97 in the bundle), and that is the amount that they charged in 2008 when the sale the subject of this application took place according to their account dated 9 April 2008 (page 95 in the bundle).
8. It is apparent that in order to deal properly with the application for information made by Messrs Stephen Rimmer & Co it was necessary for Messrs Stredder Pearce to seek some of the information that as sought from the landlords. That information was provided, according to the landlord's statement of case, by the landlord's in-house solicitors. The solicitors seek an additional sum of £195 (apparently with no addition for VAT) for doing this. Thus work for which Messrs Stredder Pearce would seek to charge £140 plus VAT in total has been charged to the Applicant at £335 plus (apparently) VAT on the £140-00 element only.
9. In the Tribunal's judgement that is an unreasonable total. It accepts that Messrs Stredder Pearce had to obtain part only of the information themselves, and to rely on the landlord for the remainder. They had to obtain and to collate the additional information with that which they themselves supplied, and to prepare the replies. In the Tribunal's judgement their charge for so doing was not unreasonable in the light of the work that they had to do.
10. However, the burden on the Respondent's solicitors was less onerous. They had merely to conduct some research to provide the information that was required. It is unlikely in the Tribunal's judgement that a total of more than thirty minutes would have been required for a solicitor of the experience of the lady referred to in the Respondent's statement of case to obtain that information and to prepare a reply, especially given that she appears from the correspondence to operate from the same office as that in which the rest of the Respondent's affairs are managed. Using the charging rate for which the Respondent contends of £219 per hour that would produce a charge of £109-50, say £110-00.

11. Accordingly the Respondent's solicitors recoverable charges are limited to £110 (plus VAT if it is chargeable) for the work in connection with the enquiries and those of Messrs Stredder Pearce are allowed at £140 plus VAT.
12. It is appropriate to add at this point that there is an issue about whether the charges are validly claimed because they were not accompanied by the summary required by paragraph 4 of Schedule 11 to the Act. As the Tribunal reads that paragraph the Applicant is not required to pay the amounts demanded unless they have been accompanied by such a summary. The absence of such a summary does not (as the Applicant argues in his statement of case) invalidate the demand. It merely means that the amount properly demanded is not payable until a demand accompanied by a statement is served.
13. Messrs Stredder Pearce say that this was the case in respect of their charges. The Tribunal have seen one page of the summary that accompanied the demand (page 96 in the bundle), but not the remainder of the statement. If a summary was supplied by them in accordance with the requirements of the regulations then no issue arises. If however such a summary was not supplied then a further demand accompanied by such a summary would have to be served before payment could lawfully be required.
14. There is no evidence of any such statement having been provided by the landlord's solicitors. Again it would be necessary for them to serve further demand for the amount found to be reasonable before that sum became payable.

Approval of the Deed of Covenant

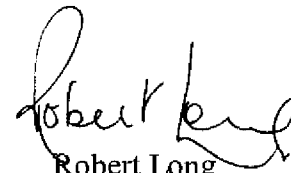
15. The lease provides that the lessee is to pay the reasonable charges of the landlord's solicitors in connection with a deed of covenant in such form as the landlord's solicitors shall require entered into by the assignee in respect of the matters mentioned in paragraph 6 above. At the most, paragraph 1(1)(a) of Schedule 11 to the Act gives the Tribunal jurisdiction over the grant of approvals under the lease. The application is couched in terms that suggest that the charges made by the landlord's solicitors in connection with the deed of covenant relate only to its approval. It is questionable whether the terms of the paragraph relate to such approval rather than to approvals, for example, for alterations, but even if they do the basis of the charges as set out in the lease is more extensive so that ultimately the Tribunal need not make a decision upon the point.
16. If the Tribunal were concerned only to determine what is reasonable for approving the form of the Deed of Covenant then the sum of £40 suggested by the Applicant might not in the circumstances be unreasonable, but they are entitled to charge for their work on the landlord's behalf in connection with the deed as a whole. That includes providing a draft, and dealing with correspondence and the execution and completion of the deed, as well as its approval. As the Tribunal reads the Schedule, the remainder of those costs are

outside of its jurisdiction. If it is wrong about that, then it would have concluded that a sum of £195 for all the work involved in connection with the deed was not unreasonable.

Costs and Fees

17. The Applicant asks for costs of up to £500 pursuant to paragraph 10 of Schedule 12 to the Act on the ground that the application made by the Respondent for the dismissal of the application was frivolous, vexatious, abusive, disruptive or otherwise unreasonable. The Tribunal has little hesitation in dismissing that application. The application by the Respondent was withdrawn before the matter came before the Tribunal, which may or may not suggest that the Respondent concluded that it had little merit. The Applicant has been acting for himself, and other than such of his own time as he may have devoted to dealing with the matter and preparing a three page statement in response before it was withdrawn he has provided no material evidence that he actually incurred any cost in connection with it.

18. Finally the Applicant asks that his fees paid for this application be refunded in accordance with the Tribunal's power so to do contained in regulation 9 of the of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 (SI 2003/2099) as amended. The Tribunal has a broad discretion in this respect. The Applicant has succeeded in one of the three grounds of his application, and his application has resulted in reduction of some £85 from a total of some £560-00 that was in issue. He paid a fee of £50-00. On balance it is not reasonable to grant the application for a reduction in fees. Even on a proportionate basis the amount that could be justified would be so small as to be insignificant in the overall context of the matter.


Robert Long
Chairman
12th January 2009

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Between

Mr J W Fenwick

("the Applicants")

and

Abbey View Estates Limited

("the Respondent")

Decision of the Tribunal on the Applicant's application for leave to appeal

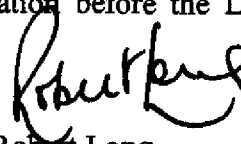
Issued: 4th March 2009

Tribunal

Mr R P Long LLB (Chairman)

Mr J S MacAllister FRICS

1. The Applicant, Mr Fenwick, seeks leave to appeal the Tribunal's decision in this matter that was issued on 13th January 2009. He does so upon the ground that the Tribunal should have determined his application in respect of an administration charge of £200 raised by the respondent for a certificate of consent. It is said that the failure to do so was a substantial procedural defect, and that the Tribunal failed to take account of the relevant considerations or evidence applicable to the matter.
2. The consequences of this failure are said to be twofold, namely first that the Tribunal wrongly failed to provide a determination that would protect leaseholders at 12 Earlsfield Court against unjustifiable demands for administration charges for such certificates of consent in future, and secondly that the criteria by which the Tribunal exercised its discretion in dealing with the application for repayment of the application fee were inappropriate. Finally it is said that the manner in which the Tribunal dealt with the matter is incompatible with the Human Rights Act because the Tribunal failed to give reasons for the fact that it had made no determination.
3. The uncontested evidence before the Tribunal was that the sum of £200 in question had been refunded by the Respondent to the Applicant in November 2008. No issue therefore arose in that respect by the time the Tribunal came to consider the matter in January 2009. It was entitled to regard the matter as having been resolved, and did so. In hindsight it accepts that it may have been appropriate to mention that this was the case, although the point is entirely self explanatory. Its failure to do so in the circumstances of this case hardly amounts to a material breach of the Human Rights Act and certainly not, if such a breach exists at all, to one that would justify granting leave to appeal upon the points that have been raised.
4. It is no part of the Tribunal's function to make a determination in such circumstances as these in the expectation that it may afford guidance in the future. It is able only to make a determination on the facts of the case before it, and another case where such a charge may arise may turn upon quite different facts. If such a charge is made in the future, and the lessee then concerned is aggrieved thereby, it is open to that lessee to make an application to the Tribunal that will be considered upon the facts relevant to that case and no other.
5. In the circumstances the Tribunal sees no reason to justify the suggestion that it exercised its discretion inappropriately in respect of the application for refund of fees. It was fully aware of the circumstances, and entitled to reach the decision that it made upon the information that was before it.
6. The Applicant's request for leave to appeal is refused for these reasons. It is open to the Applicant to renew that application before the Lands Tribunal within fourteen days.



Robert Long
Chairman

13th February 2009