

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

**Decision of the Leasehold Valuation Tribunal on two Applications under the
Landlord and Tenant Act 1985 (as amended) Section 27A and Section 20C**

Case Number: CHI/40/UE/LIS/2008/0047

- Applicants:** (i) Mr C R Coombe (No 1)
(ii) Ms Merchant & Ms Carell (No 10)
(iii) Ms F Page (No 13)
(vi) Dr S Chalke (No 14)
- Respondents:** (i) Halse Manor Management Ltd
(ii) Mr W E O'N Gladwin MRICS, FAAV
(iii) Ms S Sargison (No 2)
- Premises:** Halse Manor
Halse
Taunton
Somerset
TA4 3AE
- Date of Applications:** (i) 5th November 2008
(ii) 31st December 2008
- Date of Directions:** 10th November 2008
- Date of Revised Directions :** 18th December 2008
- Date of Inspection:** Monday 2nd March 2008
- Dates of Hearings:** (Day 1) Monday 2nd March 2008 at the Holiday Inn,
Deangate Avenue, Taunton.
(Day 2) Monday 16th March 2009 at The Express by
Holiday Inn, Blackbrook Business Park, Taunton.
- Appearances for Applicants:** (i) Mr C R Coombe in person
(ii) Ms Merchant and Ms Carell in person
- Appearances for Respondents:** Mr D Sutton (No 5)
Mr D Porter (No 12)
Mr W E O'N Gladwin MRICS, FAAV
- Other Attendances:** Mr D Pinchbeck (Nos 9 and 11)
Ms F Page (No 13) Day 1 Only

**Members of The Leasehold:
Valuation Tribunal** Mr A D McCallum Gregg (Lawyer Chairman)
Mr J McAllister FRICS (Valuer Member)
Mrs M Hodge MRICS (Valuer Member)

Date of Tribunal's Decision: The 29th day of April 2009

I. PRELIMINARIES

1. In the directions given on the 10th of November 2008 the Tribunal directed that it was not able to reconsider the matter of reasonableness and payability of certain service charges already decided in its decision dated the 11th February 2006 for the service charge years 2004/5 and 2005/6 (Case No CHI/40UE/LSC/2005/0081).
2. Notwithstanding that Mr W E O'N Gladwin MRICS, FAAV, is cited in the proceedings as a respondent, the Tribunal directed that he was not in fact a respondent but an expert appearing on behalf of the first respondent, Halse Manor Management Limited as well as being the appointed manager of the premises following the decision of the Tribunal of the 11th of February 2006 (case CHI/40UE/LSC/2005/0081).

II. INTRODUCTION

- (a) This was an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 ("The 1985 Act") as to the reasonableness of and liability to pay certain service charges in respect of Halse Manor for the years 2004/5, 2005/6, 2006/7, 2007/8.
- (b) Under Section 20C of the 1985 Act for an order that the first respondent's costs incurred in connection with these proceedings should not be recoverable as a service charge.
- (c) The Lease – The relevant terms of the lease (which are similar for all leaseholders) are found in Schedule 1.
- (d) The Law – The law relating to this application is found in Schedule 2.

III. INSPECTION OF PREMISES

- (i) The Tribunal inspected Halse Manor in the presence of Mr Coombe (No 1), Mr Sutton (No 5), Mr Porter (No 12), Miss Page (No 13).
- (ii) Halse Manor (the premises) was constructed over 300 years ago as a manor house. About 25 years ago it was converted into 15 residential units comprising 7 terrace style houses and 7 flats (all of which are held on long leases) and a freehold bungalow, No 9 Halse Manor, owned by Mr Pinchbeck.
- (iii) The premises are laid out in extensive walled garden grounds, largely grassed over. It is a Grade II Listed Building. The Tribunal inspected the garage

owned by Mr Pinchbeck and the adjoining car ports. The Tribunal also inspected the communal hall leading to flats 10, 11, 12 and 13. It was noted that Mr Coombe maintains the flowering shrubbery bed adjacent to his property.

It was also noted that the garage that adjoins the property at the bottom of the drive is supposed to bear 1/16th of the cost of the maintenance of the drive. There is a right of way across the garden at the rear leading to an adjoining property. The repairs to the wall on the south side of the property had been noted together with the new gates that had been erected. The wall on the north side was inspected. This is in serious need of repair and repointing.

Other decorative repairs to some of the guttering and the soffits was also noted.

IV. MATTERS TO BE DETERMINED ON BEHALF OF THE FIRST APPLICANT

1. Year 2004/5

- 1(i) The applicant complained that the charges for 2004/5 exceeded the percentage specified in his lease (8.72% instead of 7.74%) resulting in an excess charge of £175.15. The applicant agreed that the total management charge for the year 2004/5 of £20,405 was reasonable. He maintained however that under the terms of his lease he should only pay 7.74% of the charges but he had in fact been charged 8.72% which in fact amounted to an excess of £200.86.

The Tribunal found that the applicant's lease (and the leases of all other leaseholders) is defective. Notwithstanding the defects the landlord can only charge the percentage as set out in the lease (see Schedule 1 for terms of lease). In the absence of agreement otherwise or a variation of the lease then the percentage figure as set out in the lease has to be applied. The Tribunal therefore found that there had been an excess charge of £200.86 and that the charging of this sum was unreasonable and should be disallowed.

2. Year 2005/6

- 2(i) The applicant complained that the charges for this year exceeded the percentage specified in his lease (8.41% instead of 7.74%) resulting in excess charges of £156.51. Again the applicant accepted that the total management fees for the year 2006 of £23,028 were reasonable. The proportion that he had been asked to pay however was £1,782.36 resulting in an excess charge and overpayment of £156.51. The Tribunal found that the charging of this sum was unreasonable and it should accordingly be disallowed.

- 2(ii) The applicant disputed the sum of £1,084 paid to the managing agent for "work involved with 2006 LVT Hearing" contrary to the order made by the Tribunal under Section 20(C) of the Act (Reference CHI/40/UE/LSC/0081).

The Tribunal found that this invoice had been dated the 2nd of February 2006 which followed the Leasehold Valuation Tribunal hearing on the 9th and 10th of January 2006. The invoice had however been submitted prior to the written decision which was dated the 11th of February 2006.

The respondents had paid this bill in the knowledge that a Section 20(C) application had been made and was being considered by the Leasehold Valuation Tribunal. Accordingly this sum of £1,084 should be disallowed in total.

- 2(ii) Additional charges levied by Cluff Let amounting to £1,950 in total should be disallowed (see copy invoices in respondent's bundle Nos 10, 14, 17, 19, 20 and 23).

Following the previous decision of the Leasehold Valuation Tribunal the Tribunal found that only 10% of the agent's fees should be payable by the leaseholders. Whilst the applicant asserts that the figure involved is £1,950 the Tribunal found that the correct figure is in fact £1,400. This was agreed by the applicant. The Tribunal determined that only 10% of this figure, namely £140 should be allowed and accordingly the balance of £1,260 was disallowed.

- 2(iv) Charges on lessee's funds arising from inadequate record keeping. The Tribunal found that the decision with regard to these charges was both pragmatic and reasonable and followed professional advice that had been taken by the respondent company.

A unanimous decision had been taken at a meeting of the shareholders present on the 26th day of October 2006 to write off the sum of £1,586.70 though the applicant did not attend the meeting when this was discussed and the decision was taken.

On balance the Tribunal felt that this was reasonable and sensible approach.

- 2(v) Failure to comply with Section 22 of the Landlord & Tenant Act 1985 for the years 2004 and 2005/6. Failure to comply with Sections 21, 22 and 23 of the Act is a summary offence and proceedings may be brought by the local authority. The Tribunal has no jurisdiction to compel compliance and are unable to accede to this request.

3. Year 2006/7

- 3(i) Again the charge levied against the first applicant exceeded the percentage specified in his lease (7.76% instead of 7.74%) resulting in an excess charge of £6.66. The applicant agreed that the overall charge of £23,414 was reasonable. As before the Tribunal found that it was not reasonable for the percentage charge specified in the applicant's lease to have been exceeded and accordingly found that there had been an excess charge of £6.66 which should be disallowed.

- 3(ii) Failure to comply with Section 21 and 22 of the Landlord & Tenant Act 1985. Section 21 of the Act deals with the provision of regular statements of account. Section 22 of the Act deals with the inspection of those documents. Section 22(1) states as follows:

"A tenant may by notice in writing require the landlord

- (a) To afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be dealt with in a statement of account required to be supplied to him under Section 21 and for taking copies or extracts from them or
- (b) To take copies of extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies)."

In short, it is a requirement that a tenant shall be afforded reasonable facilities to inspect documents.

The Tribunal were told that copies were available in Taunton and the respondent conceded that they could easily have provided copy accounts in Taunton even if the originals had been sent to the Salisbury Office.

Whilst the Tribunal does not have any jurisdiction to make an order as to the venue of production in this matter it is the Tribunal's view that it was unreasonable not to provide copies of the invoices in their Taunton Office even though originals had been sent to Salisbury.

4. Financial Year 2007/8

- 4(i) The applicant has been charged a percentage figure of 7.98% instead of 7.74% in his lease resulting in an excess charge of £77.02. The applicant agrees that the total figure of £32,005 is a reasonable service charge for the year and therefore that the proper charge should have been 7.74% of that figure, namely £2,477.18. The applicant was in fact charged £2,554.20 (7.98%), giving an excess charge of £77.02. The Tribunal finds that this is unreasonable and that figure should therefore be disallowed.

V. MATTERS TO BE DETERMINED ON BEHALF OF THE SECOND APPLICANTS

1. Year 2005/6

The Managing Agents Fees

- 1(i) The Tribunal have already dealt with this matter at Paragraph 2(ii) before and accordingly the sum of £1,084 should be disallowed.

2. Year 2006/7

Failure to Consult under Section 20 of the Act

- 2(i) The Tribunal heard evidence from the parties and considered the documents relating to this particular matter. The Tribunal was of the view that there was sufficient consultation under Section 20 of the Act. The length of time was reasonable and the additional costs also reasonable and there was no evidence of unreasonableness relating to these items. This complaint was accordingly rejected by the Tribunal.

3. Year 2007/2008

The Tribunal found as follows:-

- (a) The sum of £455 was for a survey and unblocking of the drains. The Tribunal found that the time taken and the cost of these services which had to be done was entirely reasonable and should be allowed.
- (b) Humberts supervising major works £1,310.12. The Tribunal found that these related to extraordinary repairs at Halse Manor amounting in total to £10,775 excluding VAT. The charge of £1,310.12 was made in accordance with the terms of the appointment of the Manager by the LVT. This figure is therefore payable, allowable and reasonably incurred.
- (c) A C Mole (HMML Accounts) £470. The Tribunal is of the view that accountants had to be employed to advise and complete the return for Companies House. The figure of £470 was considered to be reasonable and therefore allowed.
- (d) G D Pinchbeck (2 invoices for light fittings) £41.61. The Tribunal were told that these invoices were for the reimbursement costs of light fittings incurred by Mr Pinchbeck. He had charged for the materials only and no charge had been made for fitting them. The Tribunal was of the view that this was entirely reasonable and should be allowed.

4. Modification to Leases and Restrictive Covenants 2006/7 and 2007/8

This item has already been covered by the Tribunal (see Paragraph 2(i) on Page 4 before) which has no jurisdiction over these matters and is unable to give legal advice. Independent legal advice should be sought concerning the matter. In any event the Tribunal has no jurisdiction over freehold property owned by Mr Pinchbeck.

5. Contract Between W E O'N Gladwin, Humberts and HMML for the Period 1st March 2008 to the 31st March 2011

Mr W E O'N Gladwin was originally appointed as external manager of the property by the Leasehold Valuation Tribunal for a period of 2 years from the 1st of March 2006. On the expiry of that contract a further contract was entered into between Humberts and HMML for 3 years from the 1st of March 2008 and expiring on the 31st of March 2011.

The Tribunal are unable to comment on whether the contract between Humberts and HMML is just and convenient to all leaseholders as the Tribunal is only able to deal with the reasonableness of service charges in the context of the terms of the applicant's lease.

Accordingly the Tribunal has no jurisdiction to make the determination requested.

5(a) Knowingly breached terms of his contract with the LVT

Again, this is beyond the remit of the Tribunal and independent legal advice needs to be taken by the applicants.

5(b) Knowingly failed to provide leaseholders either with information reasonably requested or in reasonable timescale

The Tribunal has dealt with this at Paragraph 3(ii) on Page 4 before.

5(c) Knowingly breached the terms of his contract with the LVT by failing to execute the terms of the covenant in respect of 9 Halse Manor

This matter is beyond the remit of the Tribunal and the applicants should take independent legal advice.

5(d) Knowingly failed to comply with his obligations under the Landlord & Tenant Act and Leasehold Law.

The Tribunal notes that Mr Gladwin is the managing agent. The respondent company has an obligation in respect of all compliance issues. Such matters are beyond the remit of the Tribunal.

5(e) Knowingly breached terms of our lease by modifying the terms of the restrictive covenant in relation to the freehold property of 9 Halse Manor

The Tribunal finds that Mr Gladwin has not modified the restrictive covenant. He has instead applied a pragmatic approach to problems in an effort to reach a compromise. Again, the matter is beyond the remit of the Leasehold Valuation Tribunal.

5(f) Knowingly entered into a new contract with the director of HMML that contains terms unfairly weighted against the Leaseholders

Again, this is beyond the remit of the Leasehold Valuation Tribunal.

5(g) Awarded preferential treatment to the owner of freeholder Mr Pinchbeck whilst under contract to the LVT to the detriment of Leaseholders.

See 5(e) before.

6.1 The Tribunal also considered the written representation by way of a letter dated the 23rd of February 2009 with data sheet annexes from Ms Page (No 13) relating to the service charges but she did not give evidence in person.

6.2 Whilst Dr Chalke (No 14) was named as an Applicant no representations were received from him.

7. Written representations had been received from other leaseholders in support of HMML and these had been copied to the parties.

SECTION 20C APPLICATION

If a lease permits a landlord to recoup his legal costs in relation to these proceedings as a service charge the tenant may apply for an order under Section 20C of the Act preventing this from happening in whole or in part and the Leasehold Valuation Tribunal may make any order which it considers just and equitable in all the circumstances. The first issue to be considered by the Tribunal is whether or not there is power in the lease to make such an order. The applicants state that there is no such power and the respondents are not aware of any power. The Tribunal did however note that the previous Tribunal dealt with this matter in their decision of the 11th of February 2006.

In the light of the history of this matter the Tribunal are not prepared to make any order under Section 20C.

Once again the Tribunal expressed its dismay that it had been necessary for yet another application to be brought before the Tribunal and urged that all parties, in their own interests, should endeavour to find a way forward and co-operate in order to resolve their differences and avoid these unhappy time consuming and expensive disputes having to be considered by the Tribunal.

Dated: 29th April 2009



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Andrew Duncan McCallum Gregg
Chairman
A Member of the Southern Leasehold
Valuation Tribunal appointed by the
Lord Chancellor

SCHEDULE 1
TERMS OF THE LEASES
(As Taken from the Lease of Flat 1 dated the 2nd December 1996)

Between:-

1. Rencon Developments Limited
2. Halse Manor Management Limited
3. Christopher Roderick Coombe

1. Clause 41 - The Lessee hereby covenants with the Lessor and with the company to contribute by way of additional rent 7.74% of the costs, expenses, outgoings and matters mentioned in the fourth Schedule.
2. Clause 42 – The contribution under Sub-Clause (1) hereof for each year shall be estimated by the company or its agents as soon as practicable after the 1st day of April in each year and the Lessee shall pay the estimated contribution together with value added tax charged thereon at the appropriate rate in advance on the 31st day of March in every year.....
3. Clause 8 – The First Respondent covenants to repair and maintain the structure, utilities and common parts of the property; to keep internal common parts clean and reasonably lit and the gardens cultivated and in good order and to keep the exterior and common parts decorated.
4. 4th Schedule (Services and Other Matters to the cost of which the Lessee is to contribute).
 - (i) All costs and expenses incurred by the company for the purpose of complying with or in connection with the fulfilment of its obligations under sub-clauses 1, 2, 3 and 4 of Clause 8 of this lease.
 - (ii) All rates, taxes and outgoings (if any) payable by the company in respect of the roads, paths, forecourts and gardens of the estate.
 - (iii) The reasonable laying out, stocking, tending and maintenance of the communal grounds, facilities and land surrounding the building.
 - (iv) The employment and maintaining of such staff as may be reasonably necessary in the opinion of the company to attend to the care of the estate.
 - (v) The maintenance of the common television aerials (if any).
 - (vi) The reasonable cost of management of the estate.

- (vii) To provide parking space or spaces where necessary exclusively for the parking of boats and caravans.

**SCHEDULE 2
THE 1985 ACT (AS AMENDED)**

Section 27a – Liability to Pay Service Charges – Jurisdiction

1. An application may be made to the Leasehold Valuation Tribunal for a determination whether a service 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. Subsection (1) applies whether or not any payment has been made.
3. An application may also be made to the Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management or any specified description a service charge would be payable for the costs and if it would as to:-
 - (a) The person by whom it would be payable.
 - (b) The person to whom it would be payable.
 - (c) The amount which would be payable.
 - (d) The date at or by which it would be payable and
 - (e) The manner in which it would be payable.
4. No application under sub-section (1) or (3) 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 to 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 insofar as it purports to provide for a determination
 - (a) In a particular manner.
 - (b) On particular evidence of any question which may be the subject of an application under Sub-Section (1) or (3).
7. The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of this matter.

Section 20c "Limitation of Service Charges: Costs of Proceedings"

1. A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with the proceedings before a court or leasehold valuation tribunal or land tribunal or in connection with an arbitration proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.