

CHI/43UK/LIS/2008/0051

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 27A OF
THE LANDLORD & TENANT ACT 1985**

Address: Whitegates, Court Bushes Road, Whyteleafe,
Surrey, CR3 0BX

Applicant: Rowan's Management Company Ltd

Respondents: (1) Management Holdings & Developments Ltd
t/a MHD
(2) Mr John Marsh (Flat 40)
(3) Hesmondhalgh & Maloney

Application: 24 October 2008

Inspection: Not applicable

Hearings: 3 July 2009 and 23 September 2009

Appearances:

Landlord

Mr T. Dunn
Mrs Mooney
Mrs Fox

Counsel
County Estates Management Ltd
County Estates Management Ltd
For the Applicant

Tenant

Mr Davids
Mr Southwell

Leaseholder

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr A O Mackay FRICS
Miss J Dalal

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UK/LIS/2008/0051

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

**AND IN THE MATTER OF WHITEGATES, COURT BUSHES ROAD,
WHYTELEAFE, SURREY, CR3 0BX**

BETWEEN:

ROWANS MANAGEMENT CO LTD

Applicant

-and-

**(1) MANAGEMENT HOLDINGS & DEVELOPMENTS LTD
T/A MHD**

(2) MR JOHN MARSH

(3) HESMONDHALGH & MALONEY

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 27A the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondents' liability to pay various service charges arising in each of the service charge years from 2006 to 2009.
2. The Respondents do not challenge the reasonableness of the service charges *per se* claimed by the Applicant in each of the relevant service charge years. For reasons that will become apparent, it is not necessary to set out here the relevant service charge terms that gives rise to the Respondents liability to pay

a service charge contribution. It is sufficient note the Respondents' leases make a distinction between service charge costs that fall within the first annual cost ("the estate costs") and the second annual cost ("the individual block costs").

3. The estate costs are those costs incurred by the lessor in carrying out its obligations under clause 5(A) of the leases which relate to the estate generally. The individual block costs are those costs incurred by the lessor in carrying out its obligations under clause 5(B) of the leases which relate to each of the individual blocks that comprise the estate and for which the service charge contribution of each of the lessees is to be calculated by reference to the fractions set out in the Fifth Schedule of the leases.
4. Historically, the Applicant had always sought to recover a service charge contribution of 1/40th from each of the 40 lessees for the total aggregated expenditure for the estate and individual block costs incurred in each of the service charge years. The First Respondent, in particular, has always maintained that this apportionment of the service charge costs was incorrect. It contended that the lessees liability for the estate costs should be 1/40th of the total expenditure and thereafter the liability of the lessees for each of the block costs incurred should be calculated by reference to the mechanism set out in the Fifth Schedule, as provided by clause 4(F) of the leases. This argument was not accepted by the Applicant and on 24 October 2008 it issued this application seeking a determination on this issue. Therefore, the only issue that fell to be determined by the Tribunal was the Respondents contractual liability to pay the estate and individual block costs.

Decision

5. The first hearing in this matter took place on 3 July 2009 and was adjourned with directions to enable the freeholder, Hesmondhalgh & Maloney, to be joined as a Respondent in these proceedings. However, it has not participated in these proceedings at all.

6. The second hearing in this matter took place on 23 September 2009. The Applicant was represented by Mr Dunn of Counsel. The First Respondent appeared in person. The Second and Third Respondents did not appear nor were they represented.
7. At the commencement of the hearing, Mr Dunn conceded that the First Respondent's construction of the leases in relation to the estate and block costs was correct. In other words, the lessees' liability for these costs should be calculated in accordance with clause 4(F) and the Fifth Schedule of the leases. The purpose of this Decision, therefore, is to record the admission made by the Applicant and to make a formal determination in those terms.

Section 20C & Paragraph 10 Schedule 12 Costs

8. At the conclusion of the hearing, the First Respondent made two oral applications in relation to costs. The first application was made under section 20C of the Act seeking an order that the Applicant be provided from recovering any costs it had incurred in these proceedings. The second application was made under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 (as amended) for an order that the Applicant pay a contribution of £500 towards the costs it had incurred in these proceedings. The order was sought on the basis that the Applicant had acted unreasonably in bringing these proceedings.
9. The submissions made by the Applicant in relation to both applications were the same. Mr Davids said that he had raised the matter regarding the apportionment of the estate and block costs with the Applicant as long ago as 2007. It was not until these proceedings that the Applicant conceded that his argument was correct. He submitted that the First Respondent should not be liable for any of the Applicant's costs in these proceedings. Furthermore, he also submitted that, by bringing this application and not abandoning its position until the hearing, the Applicant had acted unreasonably. Therefore, he sought a contribution of £500 towards the costs he had incurred in having to respond to the application.

10. In reply, Mr Dunn submitted that the Applicant had not acted unreasonably by either bringing this application or adopting the stance it took. He contended that the relevant lease provisions and, in particular, paragraph 4(F) was ambiguous and had exercised an experienced solicitor and Counsel. He submitted, therefore, that in relation to either application, the Tribunal should make no order.
11. The Tribunal firstly considered the application made under section 20C of the Act. The section provides that the Tribunal may make an order when it considers that it is just and equitable to do so having regard to all the circumstances of the case. In the present case, the First Respondent has succeeded entirely. It cannot, therefore, be just or equitable for it to have any liability for the costs incurred by the Applicant in these proceedings. Accordingly, the Tribunal makes an order under section 20C preventing the Applicant from being able to recover any of its costs against the First Respondent through the service charge account.
12. Turning to the application made under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 (as amended), the Tribunal may make an award of costs up to a maximum of £500 against any party who, in its opinion, has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
13. The Applicant initially sought legal advice from its solicitors regarding the construction of the relevant service charge terms and the lessees' liability for the estate and block costs. The initial advice given by letter dated 22 March 2007 was not entirely clear on this point. By a further letter dated 12 August 2008, the Applicant's solicitors reconsider this point and appear to accept, in part, the argument advanced by the First Respondent. The view expressed by the Applicant's solicitors was that the leases are difficult to follow and complicated in parts. This was also the Tribunal's view. It, therefore, did not consider that the Applicant had acted unreasonably by making this application to the Tribunal for a judicial determination on the issue of the lessees' contractual liability for the estate and block costs. Accordingly, the Tribunal

did not make an order that the Applicant pay a contribution of £500 towards the First Respondent's costs.

Dated the 18 day of November 2009

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