



**Residential
Property**
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/24UF/LAC/2010/0001

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SCHEDULE 11 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Address: 35 The Parkway, Gosport, Hampshire, PO13 0PT

Applicant: Mrs A M Martin

Respondent: Remington Commercial Limited

Application: 30 December 2009

Determination: 13 May 2010

Appearances: Not applicable

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Miss C D Barton BSc MRICS

DECISION

Introduction

1. This is an application made by the Applicant under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination of her liability to pay and/or the reasonableness of administration charges in the sum of £5,862.80 paid to the Respondent for the retrospective grant of a licence to alter the premises.

2. The factual background of this matter can be stated shortly. Until 2009, the Applicant was the leasehold owner of the property known as 35 The Parkway, Peel Common, Gosport, Hampshire ("the subject property") by virtue of a lease dated 21 September 1964 made between Metropolitan Railway Country Estates Ltd and (1) John Alfred Watts and (2) Mary Ena Watts for an initial term of 99 years from 1 May 1963 ("the lease"). However, the term was subsequently extended to 999 years.

3. The Tribunal was told that the subject property is a detached bungalow constructed in 1964. It seems that in 1973 a conservatory was added to the property which did not require planning permission. The work was subject to building regulations and on completion was approved by the local authority on 24 September 1973. The leasehold owner at the time was a Mr S. Draper. Since that time, there have been five separate owners including the Applicant.

4. The Applicant took an assignment of the lease of the subject property in 2007. She marketed the property for sale in May 2009 and found a buyer in June 2009. However, prior to completion, the purchaser's solicitor informed her solicitor that the written consent granted by the landlord for the addition of the conservatory was required. This placed her sale of the subject property and related purchase of another property in jeopardy. For the retrospective grant of a licence to alter, the Respondent required payment of £5,000 for the increased value of the property as a result of the addition of the conservatory and a further sum of £862.80 for its legal costs for the preparation and granting of the licence. The Applicant contended that she was left with no

alternative in the circumstances other than to pay the Respondent the total sum of £5,862.80 ("the administration charges"), which is the subject matter of this application. The retrospective licence to alter granted by the Respondent is dated 23 October 2009. On 30 December 2009, the Applicant issued this application challenging the sum of £5,862.80 paid to the Respondent.

The Relevant Law

5. The relevant law to be applied in this application is to be found in Part 1 of Schedule 11 of the Act. Paragraph 1(1) defines an administration charge as:

"... and amounts 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 application for such approvals...."

6. Logically, the Tribunal must, firstly, determine the issue of liability to pay administration charges under the terms of an Applicant's lease in the manner required by paragraph 5(1). Paragraph 5(2) provides that subparagraph (1) applies whether or not any payment has been made. Furthermore, paragraph 5(5) also provides that a tenant is not to be taken as having agreed or admitted any matter by reason only of having made any payment.
7. Once a Tribunal has determined the extent of any liability, it can go on to consider the reasonableness, under paragraph 2, of any administration charges claimed.

Decision

8. The Tribunal's determination of this application took place on 13 May 2010. It was based entirely on the written submissions and other documentary evidence filed by the parties. There was no hearing and the Tribunal heard no oral evidence.
9. The Respondent, through its solicitors, primarily submitted that the Applicant had made this application after she had sold the subject property. As she did

not have any legal or equitable interest at the time, she did not have *locus standi* to make the application. Therefore, the Tribunal did not have jurisdiction to make any determination in this matter.

10. The Tribunal did not accept this submission as being correct for two reasons. Firstly, the relevant period was when the administration charges were paid to the Respondent and not when the application was made. At the time the Applicant paid the administration charges to the Respondent there was privity of estate between the parties. Secondly, there is no express provision in either paragraphs 3 or 5 of Part 1, Schedule 11 of the Act that prevents an application from being made in this way. Accordingly, the Tribunal concluded that it did have jurisdiction to determine this application.
11. The Respondent also submitted that the administration charges were agreed between the parties after negotiation during which no party made any mention of an administration charge or charges for obtaining the Respondent's retrospective written consent for the addition of the conservatory. The sums paid by the Applicant were a premium and solicitors costs and not administration charges.
12. The Tribunal also did not consider this submission as being correct. By clause 2(11) of the lease, the lessee covenanted, *inter alia*, with the lessor "*not to... set up upon any part of the premises any new building or structure without the previous consent in writing of the Lessor*". It is beyond doubt that the sums paid to the Respondent were paid pursuant to this clause. They were, payable directly in connection with the grant of this approval under the lease and fell within the definition of an administrative charge in paragraph 1(1)(a) of Part 1, Schedule 11 of the Act. Therefore, whether the payments are referred to as a premium and solicitors costs is entirely semantic. Furthermore, having regard to the circumstances at the time payment was made to the Respondent, it was clear that there had not been any real consensual agreement to the payment by the Applicant. At the relevant time, she was faced with the invidious position of either making payment to the Respondent or having to abort the sale of the subject property and her related purchase, possibly with the loss of her deposit.

Paragraph 5(5) of Part 1, Schedule 11 of the Act expressly provides that mere payment by a tenant is not to be regarded as agreement or admission of any matter. Consequently, the Respondent is not entitled to take any jurisdictional point by reason of the payment made by the Applicant.

13. The Tribunal then turned to consider the issue of the Respondent's entitlement to claim the administration charges and the Applicant's liability to pay them. As stated above, the administration charges were paid to the Respondent to retrospectively obtain its consent, as required by clause 2(11) of the lease. Although the clause expressly requires the consent of the lessor to be obtained, there is no contractual entitlement in this clause or any other clause in the lease that requires the lessee to pay the lessor any sum for granting the consent. The only basis in this instance on which the Respondent was entitled to be paid for retrospectively granting the consent was by way of a collateral agreement between the parties. The Applicant's position is that she was left with no alternative other than to make payment to the Respondent because she had no bargaining position at the time. In any event, she considered the sum demanded by the Respondent was excessive. Therefore, it could not be said that the parties were *ad idem* at the time payment was made and that there was no real agreement to do so.

14. Whilst the payment to the Respondent reflected the commercial reality of retrospectively obtaining the licence to alter, the Tribunal found that, strictly, it had no contractual entitlement under the terms of the lease to insist on payment. The Tribunal found support for this view in the earlier Tribunal decision of *Reeve v G & O Estates* (CAM/22UQ/LAC/2009/0008) where it was held that the tenants had no contractual liability to pay the landlord an administration charge for retrospectively consenting to a subletting. An application was made by the landlord to the Lands Tribunal for permission to appeal that decision. In refusing the application, the President of the Lands Tribunal, HHJ Bartlett QC, stated that "*the provisions of section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 do not create an entitlement to make an administration charge where the lease does not itself provide for this...*". Accordingly, in the present case, the Tribunal

found that the Applicant had no liability to pay and the Respondent had no contractual entitlement under the terms of the lease to claim the administration charges in issue. It follows from this that it was not necessary for the Tribunal to go on to consider any arguments advanced by the Applicant regarding the application and effect of the Limitation Act 1980 as to whether the Respondent could seek to forfeit the lease because the breach had subsisted for more than 12 years or whether they was deemed waiver of the breach. For the same reason, it was also not necessary to go on to consider the arguments advanced by both parties in relation to the reasonableness of the administration charges themselves.

Dated the 13 day of July 2010

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