

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

Case No: CHI/29UE/LSC/2010/0072
County Court Claim Number 9CT01228 (Canterbury County Court)

Re: 322 London Road, Dover, Kent, CT17 0SX

Between:

Mr Atiqur Rahman
("the Applicant")

and

Mr Khalid Latif & Mr Tariq Syed
("the Respondents")

Decision of the Leasehold Valuation Tribunal

As to Jurisdiction

The Tribunal determines that it does not have jurisdiction to make a determination for the Reasons given hereafter. The file is to be sent back to the Canterbury County Court with a copy of this determination.

Member of the Tribunal: Mr John B. Tarling, MCMI (Solicitor)

Date of the Tribunal's Decision: 16th July 2010

Background to the Application

1. On 5th February 2010 the Tribunal received the file of papers from the Canterbury County Court in Case Number 9CT01228 relating to a claim made by the Applicant against the Respondents in respect of the above property. The matter had been transferred by the Canterbury County Court to the Tribunal under the provisions of Paragraph 3 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. That statutory provision provides as follows: "3. (1) Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court (a) may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question."
2. The Applicant had filed with the Canterbury County Court some Particulars of Claim dated 24th April 2009 which claimed various amounts for buildings insurance and other payments. A copy of the Lease was obtained and this is dated 20th August 2002 and made between the Respondents (as Landlords) and the Applicant (as Tenant). The definition of the property demised by the Lease is contained in Recital 1.2 of the Lease and it is defined as "the ground and lower floors..." The permitted use of the property is contained in recital 1.12

and this is described as “restaurant bistro or café licensed or unlicensed” . In addition to the permitted use of the property there is a covenant by the tenant contained in Clause 9.1 of the Lease which is a covenant “not to use the property except for the Permitted Use and (for example) not to use the property as residential accommodation or to keep any animal on it.”

3. On 16th February 2010 the Tribunal wrote to the Applicants Solicitors, SSF Solicitors of Dover, pointing out the restrictions contained in the Lease and indicating that the Tribunal had formed a preliminary view that as these were commercial premises, the Tribunal had no jurisdiction over commercial Service Charge disputes. On 12th April 2010 SSF Solicitors replied to the Tribunal saying that they shared the Tribunal’s view that it did not have Jurisdiction as the premises are exclusively commercial. On 4th June 2010 the Tribunal issued Directions confirming that its preliminary view was that it did not have jurisdiction to make a determination as the property appeared to be solely business premises. The Directions invited any party who did not agree to write to the Tribunal with a skeleton argument as to jurisdiction with any supporting extracts from Case law or statutory provisions.
4. On 17th June 2010 SSF Solicitors for the Applicant wrote to the Tribunal confirming that they agreed with the Tribunal that it did not have jurisdiction to make a determination as the premises were solely business premises. On 23rd June 2010 the Respondent Mr Latif wrote to the Tribunal saying that he did not agree that the Tribunal did not have jurisdiction. He said “the premises is part residential and ... as a proportion of the premises concern a flat. As the matter complained of concerns the proportionate split of insurance between a residential part of the building and commercial this should be within the Tribunal’s jurisdiction..”
5. In the Tribunal’s Directions the Tribunal had given notice to the parties that if there was a dispute as to jurisdiction the Tribunal proposed to make any determination as a paper determination rather than at a oral Hearing, unless either party requested an oral hearing. As neither party had requested an oral hearing the Tribunal proceeded to determine the matter as a paper determination.

The Respondents written representations as to jurisdiction

6. The Respondents had prepared a Skeleton Argument dated 14th July 2010 in accordance with the Tribunal’s directions and a copy had been sent to the Applicants Solicitors. Paragraph 7 of the Skeleton Argument contained the submissions “that the Tribunal has jurisdiction to hear the case as it concerns a restaurant on the ground floor and lower ground floor and flats on the first and second floors. The whole property was insured under a single policy.” Reference is then made to a Decision of the London Leasehold Valuation Tribunal being Case Number LON/00BJ/LSC/2009/0810 in respect of 74 Battersea Rise London SW11 1EH. That Decision was dated 20th April 2010. The Respondents submitted that the London LVT Decision is very similar in nature to the Respondents case whereby there was a restaurant on the ground floor with residential flats at above two floors. This is the same scenario in the

Respondents case. Applying the caselaw to Respondents case it is submitted that the Tribunal has jurisdiction over the matter. In Paragraph 8 of the Respondents written submissions the Respondents say the matter concerns the split of the insurance premium between the restaurant and the flats above.

7. The remaining submissions relate to the arguments as to why the apportionment of insurance premium is unfair and the reasons in support of the Respondents position. No further legal authorities, case law or statutory provisions were supplied to the Tribunal by the Respondents. As an exhibit to the Respondents written submissions they had supplied a copy of what appeared to be an extract from an auction brochure advertising the freehold reversion for sale by auction. That referred to the freehold tenure and gave details of the tenancies and accommodation. The Ground floor and lower ground floors were described as "Ground floor restaurant". Above the Restaurant were two self-contained flats. Flat 1 was let on a regulated tenancy And Flat 2 was vacant at the time the auction brochure was prepared.

The law relating to the Tribunal's jurisdiction

8. The following statutory provisions are relevant to any decision on the matter of jurisdiction of the Tribunal relating to Service Charge matters:
 - (A) Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act"):
"Meaning of "service charge"
(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management"
 - (B) Section 27A of the 1985 Act
"Liability to pay service charges - jurisdiction"
(1) an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable... "

The Tribunal's consideration of the London LVT Case

9. The Tribunal first of all read through the London LVT Decision referred to it by the Respondents. That property was indeed similar to the subject property with commercial premises used as a restaurant on the ground floor and residential flats on the first and second floors. In that case the Applicant was the owner of the Freehold of the whole property. One of the Respondents owned a Head Lease of the two residential flats. Two other Respondents held sub-leases of each of the two residential flats. The Application in that case was made under Section 27A of the 1985 Act and the subject matter of the dispute was the amount of the insurance premiums. In that case there appears to be have been no dispute as to any apportionment as between the commercial and residential parts of the property. In the London LVT case the application was made by the Landlord who held the residential flats as part of his ownership of the Freehold. In the current case the Respondents had no status as residential

tenants and hence had no power to challenge the insurance arrangements under the provisions of the 1985 Act.

The Tribunal's determination as to jurisdiction

10. The Respondents had accepted that the part of the property which they held as Tenants under the Lease was solely commercial. The Lease contained provisions which prohibited the user of those premises as residential. Section 18 of the 1985 Act makes it clear that the jurisdiction of the Tribunal is limited to service charges which are payable by a **tenant of a dwelling**. The Respondents are not "tenants of a dwelling" but commercial tenants. So far as the London LVT case is concerned, that decision relates to the determination of the **amounts of** insurance premiums payable by the tenants of the two residential long leasehold flats. There appears to be no determination in that Decision as to any issues of apportionment between commercial and residential parts of a building. For those and other reasons the London LVT Decision is of no assistance to the Tribunal in the current case. In any event that Decision would not have been binding on the current Tribunal.

11. For the reasons given above the Tribunal determines that it does not have jurisdiction to make a determination in this case. The Tribunal hereby declines jurisdiction and the file is to be returned to the Canterbury County Court with a copy of this Determination.

Dated this 16th day of July 2010



John B. Tarling

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John B. Tarling, MCMI, (Solicitor)
A member of the Panel appointed by the Lord Chancellor