

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

S27A of the LANDLORD AND TENANT ACT 1985, AS AMENDED

REF: LON/00BC/LIS/2010/0010

Address: 3 Alders Close, Wanstead, E11 3RZ

Applicant: Alders Heath Management Co. Ltd.

Respondent: Ms M E Austin

**Tribunal: Mrs JSL Goulden JP
Mr P S Roberts DipArch RIBA**

1. The Tribunal is dealing with an application under S27A of the Landlord and Tenant Act 1985, as amended ("the Act") by way of a referral by an Order of Bow County Court made by District Judge Vokes dated 21 April 2010. Part of the claim had been admitted by the Respondent. The county court Order stated "*as to the balance of the claim which is not admitted, the same be transferred to the Leasehold Valuation Tribunal to determine the reasonableness of the service charge*".

2.The Applicant is Alders Heath Management Co. Ltd. represented by Shoosmiths Solicitors. The Respondent is Ms M E Austin who is unrepresented.

3. Directions of the Tribunal dated 6 May 2010 were issued in which it was stated that a paper hearing was considered appropriate. No request was received either from or on behalf of the Applicant or Respondent requesting an oral hearing, and therefore a paper hearing took place on 14 June 2010.

4.A copy of the Respondent's lease of 3 Alders Close Wanstead E11 3RZ ("the property") is in the case file. This was dated 31 October 1985 and was made between Laing Homes Ltd (1) Alders Heath Management Co. Ltd (2) and Glyn Walter Stevens and Frances Zoe Stevens (3) and was for a term of 125 years from 1 July 1984 at a rent of £5 per annum and subject to the terms and conditions therein contained.

Background

5.In March 2009 the Applicant's managing agents, Hillcrest Estate Management Ltd. ("Hillcrest") had instructed the Applicant's Solicitors, Shoosmiths, to institute proceedings in respect of 3 Alders Close Wanstead E11 3RZ ("the property") in the sum of £430.75 together with Hillcrest's administration charge of £50.

6. Following correspondence between the Applicant's representatives and the Respondent and her co lessee, Mr D J Forbes, proceedings were issued in the Bow County Court on 21 December 2009 seeking recovery of a total sum of £3,934.16 which was stated to be in respect of "*arrears of service charge and management fees...*". This sum included additional arrears, legal fees (including estimated time), administration charges and interest due to the Applicant.

7. A Default Judgment was entered against Mr Forbes on 21 January 2010. Ms Austin made a part admission but contested the legal fees which amount to £2,701.95 including VAT

8. The Tribunal is satisfied that, in the circumstances, it is not necessary to inspect the property.

The Applicant's case

9. In written representations from Shoosmiths, the Applicant's solicitors, set out the sequence of events leading up to the issue of proceedings against the Respondent and her co lessee.

10. Shoosmiths stated that Hillcrest, the managing agents, had reviewed their files "*in their entirety and that Hillcrest had no record of ever having been advised of a correspondence address for the Respondent other than 18 Wadley Road*".

11. The Applicant had claimed legal fees in the total sum of £2,701.94 and that sum was detailed in the Particulars of Claim lodged at the County Court as "*Shoosmiths costs to date (including VAT, disbursements and 42 minutes estimated fee earning time to bring this matter to completion)*". Invoices in support were produced.

The Respondent's case

12. In written representations from Ms Austin, she stated, inter alia,

"I notice from various documents from Shoosmiths which I have seen since 5/05/10 that they anticipate over £2000 extra fees for their work in this matter, over and above the amount of fees which is the subject of the claim. I feel that this was intended to frighten me and to discourage me from defending the claim.....I have tried on several occasions to enter into discussion with them regarding settling the claim early and have never knowingly delayed action or payment. In the absence of their participation in negotiations I had no choice but to either pay an amount I considered grossly disproportionate, or to allow the matter to be decided by a Court/Tribunal...."

13. Ms Austin confirmed that she had admitted the amount of £1,182.22 which she said was payment for the total of the arrears of service charge at that time, being £1,090.74 plus interest of £91.48. The sum of £1,182.22 had been sent to Shoosmiths by cheque and had been debited from her account.

14. Ms Austin maintained that the outstanding sum which was disputed was £2,751.94 being the remainder of the original claim of £3,934.16 less the amount which she had paid of £1,182.22. She said that she considered Shoosmith's demands as "*disproportionate and unreasonable*" and this is why she had defended that part of the claim. An offer of £217.78 in respect of legal fees (ie a settlement offer of £1,400 less the £1,182.22 paid) in full and final settlement had been rejected.

The Tribunal's determination

15. The Tribunal was of the view that this issue should have remained within the jurisdiction of the county court, but the Tribunal's jurisdiction flows from the Order of the county court and the Tribunal will therefore make a determination.

16. The Tribunal is critical of both sides.

17. On the one hand, it appears that the Applicant's representatives failed to reply to reasonable enquiries made by the Respondent. In a telephone attendance note to Ms Dickie at Shoosmiths, it was noted "*Mary Austin expressed her deep distress at having received the claim form but confirmed receipt of it. She advised that correspondence was being sent to an incorrect address where she hadn't lived for 2 years....*"

18. In a letter to Shoosmiths dated 20 January 2010, Ms Austin stated "*...what I told you was that I had not realised the service charges were in arrears until receipt of the Court documents. You may have noticed that I was somewhat upset and remember that I wished to rectify matters by paying the arrears. However the 'claim' and the 'arrears' are rather different matters*".

19. It is noted from the correspondence that the co lessee, Mr D Forbes, in a letter dated 18 February 2010 also complained to Shoosmiths "*I have never received a summons in relation to this matter. Nor did I become aware of the fact that judgment had been entered until the Mortgagees forwarded on to me a copy of your letter to them of the 28th January which I only received recently....I assume that all such documentation was sent to 18 Wadley Road but you should be aware that I have not resided there since 2002 and have relied upon Ms Austin to pass on any correspondence to me*".

20. On the other hand, the Respondent, by her own admission, allowed her standing order to lapse which resulted in further arrears. In addition, she made incorrect assumptions that the lack of response to her letters/telephone calls had indicated (incorrectly) that she was not in arrears and said, in an email to Shoosmiths dated 8 January 2010 "*I admit the liability for the service charge arrears which was simply an oversight partly due to poor communication from Hillcrest who continue to use an outdated address for me and have not answered at least one letter (dated 24 February 2009) seeking clarification of the arrears situation*".

21. The Respondent had been, in the view of this Tribunal, reactive rather than pro active. Her offer of settlement in the sum of £217.78 was clearly not going to

be acceptable to the Applicant, although the fact that they failed to notify her of this is deprecated.

22. The Tribunal rejects the Respondent's suggestion that the amount of fees generated should be equated in some way to the amount due from the Respondent. However, the Tribunal considers that the Applicant should have been aware of the Respondent's change of address at an earlier stage. Notification of change of address to the managing agents, Hillcrest Estate Management, had certainly been notified in February 2009 and yet Shoosmiths had sent a Pre Action Protocol soon thereafter, on 17 March 2009 to the Wadley Road address.

23. Further it is noted that in an email from the managing agents of 27 August 2009 which requested confirmation of the Respondent's address, the Respondent provided her correct Cambridge address by email dated 28 August 2009. Notwithstanding this information, proceedings were issued on 21 December 2009 showing the incorrect Wadley Road address. The Tribunal therefore finds that proper enquiries as to the Respondent's correct address had not been made before proceedings were issued and it follows that Shoosmith's comment that the managing agents had reviewed their files in their entirety and had no record of ever been advised of a correspondence address for the Respondent other than 18 Wadley Road cannot be correct.

24. Further, there is no indication of the level of fee earner, Ms Helen Dickie, who was dealing with the matter at Shoosmiths or her specific charge out rate. This matter is not considered to be unduly complex and/or onerous. The invoices provided are not of great assistance to the Tribunal since they appear to relate to both Nos 3 and 32 Alders Close. The timesheet provided also appears to be lacking in narrative.

25. Using a broad brush approach, the Tribunal determines the amount payable by the Respondent in respect of the total legal fees at £1,400 including VAT. This is to include any estimated amount to bring the matter to completion

CHAIRMAN.....

DATE.....15 June 2010.....