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H M COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of Section 27A of the Landlord & Tenant Act 1985 (Service Charges) and in the matter of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (administration charges)

Case No. CHI/00ML/LIS/2011/0040

Property: **Lower ground floor Flat, 117b Preston Road, Brighton, East Sussex, BN1 6AF**

Between:

GOODWYN REALTY LIMITED

("the Applicant/Landlord")

and

HAROLD SPILLMAN

(the Respondent/Tenant)

Members of the Tribunal:	Mr H Lederman	Lawyer/Chairman
	Mr JN Cleverton FRICS	Valuer Member
Date of the Decision:	12 th January 2012	
Date of hearing	7 th November 2011	
Representation	Dony Spiro manager and Tricia Patel for Goodwyn Realty Limited Harold Spillman in person, accompanied by Ms Shula Rich, Peter DeButzkoy and Councillor Lee Litmann (observer) (morning only)	

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL:

1. The sums of £214.07 and £239.01 claimed as Insurance charge for the period 24 12 2009 - 23 12 2010 and 24 12 2010 to 23 12 2011 are not payable and are not due under the demands which have been served.
2. The £10.00 and £25.00 claimed as a fee for Land Registry and collection fee respectively for 1st November 2010 are not payable and are not due under the demands which have been served.
3. The Tribunal adjourns consideration of whether the Respondent's Counterclaim in County Court proceedings (claim no 1QT31537) may be used a defence to any service charges which may be found to be payable.
4. The Tribunal makes an order that none of the costs incurred by the Applicant Landlord in connection with these proceedings are charged to service charge payable by the Respondent or any other lessee of 117 Preston Road Brighton.
5. A summary of the rights and obligations of tenants of dwellings in relation to service charges complying with Regulation 2007/1257 (as amended) was not served with any service charge demand. A summary of the rights and obligations of tenants of dwellings in relation to administration charges complying with the Administration Charges Regulations was not served.

1. On about 23 03 2011 Goodwyn Realty Limited ("the Applicant") the landlord of 117 Preston Road Brighton BN1 1AF commenced County Court proceedings (1QT31537) against Harold Spillman (the Respondent) claiming £548.08 ground rent and other monies with interest from 29 09 2008 to 23 03 2011. There was no breakdown or other explanation of the £548.01 claimed at that stage. In his undated Defence the Respondent denied he owed that sum or any sum because he had a counterclaim for £1237.38 which he said was set out in his letter to "the Managing Agent" of 12 12 2008 and to the freeholder of 17 03 2009. The claim was transferred to the Brighton County Court. On 24 05 2011 District Judge Pollard at Brighton County Court ordered "the case be transferred to the Leasehold Valuation Tribunal".
2. On 15 08 2011 Jeffery Matthey Company Secretary of the Applicant prepared a witness statement which provided the following breakdown of the Applicant's claim in the County Court for this Tribunal:

Date and item	£
29 09 2008 Ground rent	20.00
29 09 2009	20.00
15 03 0210 Insurance charge for period 24 12 2009 to 23 12 2010	214.07
29 09 2010 ground rent	20.00
01 11 1010 Land Registry Fee	10.00
01 11 1010 Collection Fee	25.00
24 12 2010 Insurance charge for period 24 12 2010 to 23 12 2011	239.01
Total	548.08

3. That breakdown was reflected in a document dated 23 03 2011 described both as a statement of account (in the index to the Applicant's bundle) and as a demand (within the document itself) at page 33 of the bundle.
4. Before the hearing commenced in the course of the introductions (and explanation of the potential issues) it was agreed that the above breakdown within the bundle at page [12] was the basis of the Applicant's claim against the Respondent.
5. The Respondent's Response to that claim was contained in an undated manuscript document within the Respondent's bundle which appeared to have been prepared following the Tribunal's written directions of 13th June 2011. In summary the Respondent said:
 - a. the Tribunal's jurisdiction to determine ground rent issues was disputed;
 - b. the insurance charge was disputed on the basis that it had not been demanded in accordance with the terms of the Lease

- (explained in more detail below) nor has any end of year certificate been provided (page 2 of the Respondent's bundle)
- c. The Land Registry and collection charges were challenged as unreasonable "administration charges".
 - d. Liability for Interest claimed was challenged.
 - e. Liability for costs claimed was disputed.

The Tribunal discussed with the Respondent the nature of its jurisdiction under section 27A of the Landlord and Tenant Act 1985 (as amended) "the 1985 Act") to consider payability (including whether sums are payable under the Lease) and to consider whether costs incurred as service charges were reasonably incurred or for services or works which were of a reasonable standard under section 19 of the 1985 Act. Having understood the position the Respondent agreed that those were the only issues which he wished the Tribunal to consider at the hearing. The Tribunal made it clear that it would also consider:

- f. the issue of whether any demands for service charges were valid or had been accompanied by a summary of rights and obligations under section 21B of the 1985 Act and under the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257; and
 - g. whether demands for administration charges had been accompanied by a summary of rights under Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007/1258
6. No objection was put forward by the Applicant to the Tribunal considering those issues. No application for a lengthy adjournment was sought. The Applicant's representatives sought and were granted the opportunity to make contact with their office to obtain additional documents which were sent by facsimile transmission to the hearing centre for use at the post-luncheon part of the hearing.
 7. The above Response (in paragraphs 5 a to 5 e above) was put forward by the Respondent in addition to the Counterclaim. The Counterclaim put forward by way of Defence within the County Court proceedings raised different issues arising from service charges demanded in the period when the freehold of 117 Preston Road was vested in the previous freeholder Knolldowne Properties in the period before 20th June 2008 (the date of the transfer of the freehold to the Applicant).
 8. The Respondent was an articulate man who had taken legal (and possibly other) advice about his lease but was not familiar with the detail or effect of the legislation or practice relating to service charges other than from that advice. He had no legal training. He displayed a good understanding of the questions put to him sometimes after explanation. The Applicant's general manager Mr Dony Spiro appeared to have considerable experience of the residential property field and claims to

service charge arrears. His accompanying employee was described as a trainee licensed conveyancer. They were both articulate and sophisticated and had a full understanding of questions and issues (once explained). Mr Dony Spiro said that he was authorised to make decisions relating to the Tribunal proceedings on behalf of the Applicant. The Tribunal proceeded on this basis as it became clear the directors of the Applicant had authorised Mr Spiro and Tricia Patel.

9. The Chairman checked carefully that the Applicant and the Respondent understood the issues before seeking agreement and making any ruling at every stage of the introductions and hearings.
10. All parties agreed, after explanation by the Chairman, that this Tribunal had no jurisdiction to make any ruling or order about ground rent.
11. The next issue considered in the introductions was the extent of the transfer of the case from the County Court. It was explained that the jurisdiction of Tribunal was limited to the matters transferred from the County Court under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which (in its relevant parts) provides:

"Transfers

(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, and

(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any remaining proceedings pending the determination of that question by the leasehold valuation tribunal, as it thinks fit.

(2) When the leasehold valuation tribunal has determined the question, the court may give effect to the determination in an order of the court.

....."

See *Staunton v Taylor* [2010] UKUT 270 (LC) LRX/87/2009 (George Bartlett QC) in particular paragraph 21

12. The Tribunal then sought the views of the Applicant and the Respondent as to whether the transfer of the "case" to the Tribunal included the Respondent's Counterclaim. The Respondent had been under the

impression from advice given to him that the Tribunal did not have jurisdiction to consider the counterclaim. It was explained to him that the Tribunal's jurisdiction to entertain such a counterclaim was discretionary and might in some circumstances extend to a counterclaim which amounted to a true defence to claims to service charges. It was explained that reading the Respondent's letters of 12 12 2008 and 17 03 2009 (produced in his bundle) there might be arguments to be made for and against the Tribunal taking account of such counterclaim. The Respondent had not come prepared to deal with his counterclaim in view of the advice he had received and did not wish it to be heard at the hearing. The Applicant was given an opportunity to make submissions on this issue.

13. The Tribunal took the view that in the order of 24 05 2011 the words "the case" must be taken to include such part of the Defence as the Tribunal would have jurisdiction to hear. In the circumstances the Tribunal decided to adjourn the question whether the counterclaim should be considered as a defence to the service charge claim and the hearing of that counterclaim to another hearing, if such a hearing became necessary. Neither party had prepared a bundle of documents for hearing of the counterclaim and a fair hearing of those issues would not have been possible without an adjournment.

Hearing, bundles and written submissions

14. The Applicant prepared a bundle (paginated and indexed) with 34 pages. The Respondent prepared a brief bundle containing 7 pages, including the front sheet and his letters of 17 12 2008 and 17 03 2009.
15. Before the hearing the Tribunal wrote to the parties as follows:

"The Chairman has looked at the papers available and has noted that the accounts and other documents referred to in Mr H Spillman's letters of 12 12 2008 and 17 03 2009 were not enclosed. The validity of demands for service charges and administration charges is also in issue.

The Chairman directs:

A. Copies of those documents are produced and sent to the Tribunal office and copied to the Applicant by 12 noon 04 11 2011 and copies are brought for use at the hearing on 07 11 2011

B. Copies of all documents alleged to have been part of service charge or administration charge demands are produced, and copied to the Respondent and sent to the Tribunal office by 12 noon 04 11 2011 and copies are brought for use at the hearing on 07 11 2011"

16. Additional documents were produced during the hearing by both sides which are referred to below.
17. No decision was announced at the hearing apart from the decision to adjourned issues relating to the counterclaim.
18. On 8th November 2011 the Tribunal wrote to each of the parties inviting written comments upon *Akorita v Marina Heights (St Leonards) Ltd* Upper Tribunal (Lands Chamber), 29 June 2011 dealing with the issue of whether clause 7(i) in the Lease required a certificate to be issued by the managing agent for sums claimed as maintenance charge in excess of £17.50 for each half year. A copy was enclosed. Each party was given until 16.00 on 10 07 2011 to provide comments in writing, such comments to be filed at the Tribunal office in Chichester and to be sent to the opposing party by the same date.
19. Later in November 2011 the Respondent produced a two page letter with 4 accompanying documents. In that letter the Respondent produced for the first time documents which had not been produced at the hearing and "requested the Tribunal to investigate this matter and if necessary to order a rehearing on the points I am raising".
20. The Applicant replied that it did not wish to make any additional submissions (letter 22nd November 2011).

Inspection of the property

21. The Tribunal inspected the interior and exterior of the property and the building known as 117 Preston Road briefly before the hearing at 10.00 am. There was no attendance by or on behalf of the Applicant who had been notified of its right to attend the inspection. No evidence or representations were heard at the inspection. The building containing the property was a 4 floor terraced house some 150 years old, with rendered walls, pitched and tiled roof. The property itself was a self-contained flat that could be entered by steps leading down from street level at the front and at the back. There was a sitting room, bedroom, kitchen and bathroom/w.c and small rear garden reached by a back entrance. It is apparent from the official copies of the Land Register of the freehold of the building that the garden is shared with or portioned with the ground floor flat but nothing turns on this.

Procedure

22. The Tribunal determined to consider each of the issues separately and heard submissions on each before turning to the other issues. This made it easier for the Respondent who did not have to wait to the end of hearing to make submissions on evidence given earlier. The Tribunal enquired with the Respondent whether it was necessary to look at the accounts for 2002-2008 referred to in his letter of response. Although statements of account were handed to the Tribunal for that period at the

beginning of the hearing, neither party sought to refer the Tribunal to them or say they were relevant. The Respondent expressly said they were only relevant to his Counterclaim. Accordingly the Tribunal did not refer to them. The Tribunal also formed the view they were irrelevant to the issues which the parties had agreed.

The Lease of the property

23. All parties agreed that a true copy of the Lease of the property was at pages 19-31 of the Applicant's bundle made on 15th July 1970 between Sestet Limited and Valerie Lilian Cook. The material provisions for the purpose of the issues before the Tribunal are as follows. The recitals define 177 Preston Road as the building. The flat itself is defined as "the premises".
24. The provision requiring the Respondent tenant to pay rent is clause 2 of the Lease. In addition to ground rent, that clause requires the Respondent to pay an "*annual* maintenance charge" (emphasis added) - which is another phrase for a service charge - "by way of further or additional rent". There is a further covenant by the Respondent to pay the "rents" (that is ground rent and maintenance charge) in clause 4(1) of the Lease.
25. The "annual maintenance charge" is defined in clause 7(ii) of the Lease to be "the total of all sums actually expended by the [Landlord/Applicant] during the period to which the relevant Maintenance Account relates in connection with the management and maintenance of the Building and in particular but without limiting the generality of the foregoing shall include the following:
 - (a) the costs of and incidental to the performance and observance of each and every covenant on the [Landlord/Applicant]'s part herein contained [that is in the Lease]
 - (b) the costs of and incidental to compliance by the [Landlord/Applicant] with any notice regulation or order of any competent or legal authority
 - (c) all fees charges expenses and commissionspayable to any agent or agents whom the [Landlord/Applicant] may from time to time employ for managing and maintaining the building
 - (d) all fees charges and expenses payable to any solicitor accountant surveyor valuer or architect or other professional or competent adviser whom the [Landlord/Applicant] may from time to time reasonably employ in connection with the management and/or maintenance of the Building ... and in or in connection with enforcing the performance observance and compliance by the [Respondent tenant] and all other Lessees of the flats in the building of their obligation and liabilities herein contained including the preparation of the Maintenance Account and the collection of Maintenance Charges"

The above excerpt contains abbreviations and some omissions which are material to the issues in these proceedings.

26. The Respondent tenant is required to pay one quarter of the Annual Maintenance Charge: see clause 7(i) of the Lease. This reflects the division of the Building into four flats. Clause 7(i) also provides for the [Respondent tenant] to pay £17.50 "on account" of his contribution on 25th March and 29th September in every year. That clause then goes on to provide that "in the event of the said contribution to the annual maintenance charge amounting to more than [£35.00] in a particular year the [Respondent tenant] shall forthwith pay to the [Applicant landlord] the amount of such excess sum as shall be certified by the [Applicant landlord]'s managing agents". (Tribunal's insertions).
27. Clause 7(v) then provides that "the amount of the annual maintenance charge in each accounting year shall be ascertained and certified and certified by a Certificate (hereinafter called "the Certificate") signed by the [Applicant landlord]'s managing agents as experts and not arbitrators annually as so soon after the end of the accounting year as may be practicable".
28. Clause 7(vi) then provides that "the Certificate a copy of which shall be supplied to the Lessee without charge or written request shall contain a summary of the expenses and outgoings incurred by the [Applicant landlord] as aforesaid during the accounting year to which it relates with a summary of the relevant details and figures forming the basis of the Annual Maintenance Charge and the Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify".
29. There are other provisions relating to Maintenance Charge in the Lease.
30. One of the key items of expenditure which the [Applicant landlord] is required to incur to comply with its covenant in clause 5(3) of the Lease is the costs of insurance of the Building.
31. There is no provision in the Lease requiring the payment of interest upon any arrears of ground rent or service charge which may accrue due to default or delay by the Respondent tenant.

Relevant legislation

32. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions include the following:

"18— (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 ... or insurance or the landlord's cost of management and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

.....”
“19— (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly ...

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand. That information is prescribed by the Service Charges Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 (“the 2007 Regulations”).

There are similar provisions relating to Administration Charges in Schedule 11 to the 2002 Act and in the 2007 Regulations.

Paragraph 2 of the 11th Schedule to the 2002 Act provides “A variable administration charge is payable only to the extent that the amount of the charge is reasonable” . Paragraph 1(3) of the 11th Schedule to the 2002 Act defines “variable administration charge” to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11th Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (“the Administration Regulations 2007”) require a summary of rights to accompany any demand for an administration charge made on or after 1st October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the

same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 01 10 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

“An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of 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”

Insurance

33. The Tribunal firstly confirmed that the Respondent's ground of objection to this head of claim was as set out in his Response document. In particular the Respondent confirmed that he did not seek to challenge at this hearing *the amount* of the sum charged as an insurance premiums. Specifically he did not at this stage challenge the insurance premiums on the basis that they were too high. Accordingly the Tribunal did not consider this issue.

34. The gist of the Respondent's objection was simple. The only sum that was due for service charge years 2009 - 2010 and 2010-2011 was £35.00 under clause 7(i) of the Lease. No certificate had been provided by the Respondent landlord or its managing agents under clauses 7(v) and 7(vi). Accordingly no additional or balancing payment had fallen due. When pressed by the Tribunal about whether clauses 7(v) and 7(vi) of the Lease amounted to a condition precedent to payment of the balancing charge the Respondent in effect suggested that they were although he did not analyse the issue in that way.
35. The Tribunal assumed without deciding that the service charge years runs from 24th March to 23rd March in each year as clause 7(iv) of the Lease provides is the "default" "accounting year" unless a different years is adopted.
36. It was common ground that the Applicant became registered proprietor of the freehold of the Building and the Respondent's landlord on or about 23rd June 2008.
37. The Applicant landlord was unable to point to any document which might amount to a certificate. The Applicant's representatives were given an opportunity to contact their office in London (or such other persons as they wanted) over the luncheon adjournment to obtain such documents as they wished to obtain. After the luncheon adjournment they indicated that they did not seek any further time to produce any further documents.
38. Mr Spiro indicated in evidence his understanding was as follows. In about 2005 the regulatory regime changed so that the Applicant landlord was no longer authorised to provide or market insurance or insurance services. Accordingly as a landlord it ceased "billing" or invoicing for insurance premiums and caused Coppergate Insurance Services Limited to deal with that aspect of the management. The Applicant produced a copy of its letter dated 15th March 2010 addressed to the Respondent referring to this issue saying that it had "removed the insurance from the service charge and will bill the premiums directly (for this year)" or through independent insurance brokers (Coppergate).
39. Mr Spiro said that the managing agents appointed were Bridgeford & Co. of 13 Quay Hill Lymington Hampshire. He referred to a document described as "Application for payment" dated 28th October 2010 relating to interim service charges for 25th March 2010 to 28th September 2010 (£131.88 demanded) and for the period from 29th September 2010 to 24th March 2011 (£131.88 demanded). That document was addressed to the Respondent. The Applicant was unable to point to any evidence of delivery of that document. There was nothing in that document which could be described as a certificate or even approaching a certificate as defined in clauses 7(v) and 7(vi) of the Lease.
40. Mr Spiro was unable to point to anything in that document or elsewhere which might indicate it was a certificate or was intended to be a

certificate within clauses 7(v) and 7(vi) of the Lease. There was no reference to expenditure or head of expenditure such as insurance within that document.

41. Mr Spiro put forward that document on the basis that it had been sent and on the reverse that it had contained what he said was a summary of rights and obligations complying with the 2007 Regulations for service charges set out above. The Respondent disputed that he had ever received such a document with a summary of rights and obligations. Mr Spiro had no direct knowledge of whether that document had been sent. He simply relied upon what he had been told about that document by an unnamed person at Bridgeford & Co. That document had not been produced in the Applicant's bundle and was only produced on the day of the hearing in response to the Tribunal raising the issue of compliance with the 2007 Regulations (service of summary of rights). The Applicant could not have been taken by surprise by this issue as the Respondent had said that he disputed service charges had been demanded properly.
42. The Tribunal gained the distinct impression that the Applicant was a relatively sophisticated organisation that was aware of the importance of service of summaries of rights and obligations from the way in which it produced copies of summaries alleged to have been sent in respect of demands for administration charges. The evidence given by Ms Patel indicated a familiarity with legal procedures and proceedings for collecting arrears and the Applicant's letter produced dated 22nd March 2010 addressed to the Respondent referred to referring "the papers" in this case to the Applicant's legal department". The Tribunal finds as a fact that it is inconceivable that the Applicant would have been unaware of the significance of proving that a summary of rights had been served.
43. Mr Spiro eventually accepted that he was not aware of any certificate which had been provided by the managing agents. The function of billing for service charges was left to the Applicant's managing agents. The Applicant's view was that if the Tribunal found that the service charges had not been demanded correctly, the Applicant would "re-bill" in the correct way.
44. Mr Spiro was unable to point to any direct or firm evidence that the letter from Bridgeford & Co had been sent or that it had been sent in the form in which it was produced to the Tribunal (with what professed to be a summary of rights and obligations on the reverse).

Conclusions on demands for insurance

45. The Tribunal has no hesitation in concluding that the provisions of clause 7 relating to the requirement to produce a certificate amounted to a condition precedent to the Respondent tenant's liability to pay balancing or excess charges over and above interim charges. This is the effect of clauses 7(i) and 7(v) and (vi) read as whole. It is not a particularly onerous obligation and was clearly intended to provide a lessee with

some limited measure of contractual protection in relation to expenditure which he or she would be required to reimburse. An alternative way of reading the structure of clause 7 would be to leave the lessees with the requirement to bring an action for an account if there was a breach of the certification requirement or after 1988 a determination under section 27A of the 1985 Act. Although the Housing Act 1980 did provide some limited protection in relation to unreasonable service charges, at the date of grant of this lease those provisions were not in force. The suggestion that the original parties could have intended that the lessee needed to bring an action for an account or for breach of contract and then seek disclosure to enforce the duty to provide a certificate only has to be mentioned for its unworkable and uncommercial effect to be seen.

46. Support for this approach is derived from the decision of the Upper Chambers (land Tribunal) in *Marina Heights (St. Leonards) Ltd* : [2011] UKUT 255 (LC) and the passages in *Woodfall on Landlord and Tenant* cited there. This Tribunal is alert to the importance of not relying upon the *Marina Heights* decision as a precedent in the sense of being absolutely binding - being a decision upon the particular provisions of the lease in that case. This Tribunal takes comfort from the fact that the provisions of the Lease in that case relating to interim service charges were materially similar to the certification provisions here.
47. Further, on an entirely separate issue, the Tribunal is not satisfied that the demand (if that is what it was) dated 25th March 2010 from Bridgeford & Co was sent to the Respondent in the form in which it was produced to the Tribunal. This document was a computer generated document which did not descend to identify the name or address of the alleged proprietor of Bridgeford & Co. No evidence was given as to the operating procedures or quality assurance procedures of this organisation or about its record keeping or compliance standards.

Land Registry fee

48. This was claimed by the Applicant on the basis that any Court would require official copies of the Land register to enter a judgment for service charge arrears. Ms Patel gave evidence to that effect. No authority or reference to any work or practice guide was produced to support such a proposition. It appeared to be something which Ms Patel or the Applicant had gleaned or inferred from a number of encounters with arrears cases, possibly in the context of claims for possession where evidence of title may be required or where an approach had been made to a mortgagee.
49. Eventually it was submitted by the Applicant that this sum was recoverable under clause 7(ii)(a) of the Lease. What the Applicant appeared to have in mind was writing to a mortgagee with a threat of forfeiture with a view to the mortgagee paying the disputed amount and adding the same to the lessee's mortgage debt.

50. At one stage it was even said this was payable under clause 4(2) of the Lease. That argument was clearly unsustainable.
51. Obtaining copies of the Land Register appeared to be an automatic procedural step taken by the Applicant where arrears arose.
52. Let it be assumed that it is helpful and sensible for such official copies of the Land Registers to be obtained to ensure that the proposed Defendant (the Respondent) remains the Lessee. It could then be argued that such a step was a preliminary to or part of enforcing performance or compliance with the covenants under clause 7(ii)(d) of the Lease. Although this clause was not explicitly referred to by the Applicant, it was the gist of its case on this issue.
53. The amount charged for the official copies was £10.00. As was pointed out an online search could have been achieved for about £4.00. It was suggested that an organisation like the Applicant probably had its own online account with the Land Registry for such official copies. At that point the Applicant accepted that it did indeed have such an account and claimed £4.00 as the actual cost and £6.00 as the "administration fee". This was in addition to the £25.00 collection fee which had been charged.
54. The Tribunal was wholly unpersuaded that any sum for Land Registry fees fell within clause 7(ii)(d) of the Lease. If that is incorrect the Tribunal is not satisfied that such sum was reasonable as an administration fee. It was part of the costs of the County Court proceedings. If such is recoverable as part of the costs of the proceedings, it should be claimed within those proceedings. If the Applicant is not confident of recovery of that sum within those proceedings, it would not be reasonable for that sum to be recovered as a contractual entitlement, particularly if the Applicant were to lose those proceedings or for any reason not be granted the costs of those proceedings.
55. The Tribunal finds that no such sum is reasonable or payable for official copies of the Land Registers in the circumstances of this case. In addition to all the other points there is the possibility that the Applicant may lose the County Court proceedings in their entirety if his counterclaim succeeds. This possibility appears to have been completely ignored by the Applicant.

The Collection fee

56. The £25.00 claimed was described as standard fee claimed whenever there was a non-payment by a lessee. The sum was claimed by the Applicant itself not its managing agents.
57. It could be argued that such a fee was part of the administrative costs of the Applicant and part of enforcing performance or compliance with the covenants under clause 7(ii)(d) of the Lease.

58. The Tribunal accepts that there is an administrative cost to chasing arrears and has seen a copy of what purports to be the Applicant's letter threatening proceedings dated 22nd March 2010. The problem here is that it is in effect (as the Respondent suggested) another way of claiming legal costs and the Applicant did not employ a solicitor. The sum claimed prejudices the outcome of the County Court proceedings where the possibility exists that the Applicant will not obtain an order that the Respondent pays its cost and may be ordered to pay the Respondent's costs.
59. In those circumstances any collection fee levied would be unreasonable in amount at this stage of the County Court proceedings unless it could be shown that the Respondent's defence was bound to fail or had been admitted to be hopeless.

Service of summary of rights and obligations (administration charges)

60. The Applicant produced a copy of an Oyez form (2 pages of A4) summary of rights and obligations relating to Administration Charges which Mr Spiro said would have been served with the documents at pages 33 and 34 of the Applicant's bundle which for this purpose were argued to be demands. He was unable to produce any direct or first hand evidence of service of such a summary upon the Respondent, let alone service with the demand for administration charges. The Tribunal is not satisfied from the available evidence that such a summary was served upon the Applicant with a demand for administration charges.

Interest claimed

61. The Applicant claims interest under section 69 of the County Courts Act 1984 on the monies alleged to be due. This claim is not an "administration charge" and not within the jurisdiction of this Tribunal and will be dealt with in the County Court if the claim cannot be resolved.

Section 20C of the 1985 Act application

62. Section 20C of the 1985 Act provides in its material parts (immaterial amendments omitted):

"(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 proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with 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."

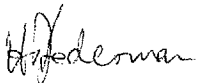
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“(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances”.

63. The Respondent sought an order that no costs incurred by the Landlord in connection with these proceedings are charged to service charge in respect of each Lease. This order was not opposed by the Applicant. The Tribunal makes an order that none of the costs incurred by the Landlord in connection with these proceedings are charged to service charge.

Disposal and the counterclaim

64. The sums claimed for insurance Land Registry fees and collection fees are not due or payable. The case will return to the County Court for determination of the claim to ground rent costs and interest and if necessary the counterclaim. No “rehearing” is currently necessary. If however the Applicant seeks to recover any other sum as service charges or administration charges, the Respondent may seek to persuade the Tribunal to allow him to use his counterclaim (if it is has merit) as a defence to such a claim: see *Canary Riverside Pte v Schilling* LRX/65/2005 and *Continental Property Ventures v White* LRX 60/2005.



H Lederman
Legal Chairman
12th January 2012