# RESIDENTIAL PROPERTY TRIBUNAL SERVICE

# LEASEHOLD VALUATION TRIBUNAL

## LANDLORD & TENANT ACT 1985 : SECTION 19 (2A)

## DECISION OF THE LEASEHOLD VALUATION TRIBUNAL REGARDING JURISDICTION

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| **Case No:** | CHI/29UK/NSI/2003/0038 |
| **Property:** | **Winterton Court**<br>**Market Square**<br>**Westerham**<br>**Kent** |
| **Applicant:** | Carmel Properties Ltd<br>C/o Mayo & Perkins |
| **Respondents:** | Ms H S Frame<br>Mr & Mrs Toalster |
| **Date of Application:** | 28 May 2003 |
| **Provisional Directions:** | 22 July 2003 |
| **Members of the Tribunal:** | Mr P B Langford MA LLB (Chairman)<br>Mr M G Marshall FRICS<br>Ms L Farrier |
| **Date decision issued:** | 29 October 2003 |

## WINTERTON COURT, MARKET SQUARE, WESTERHAM, KENT

### 1. The Application

This is an application by Carmel Properties Ltd under Section 19(2A) Landlord and Tenant Act 1985 ("the 1985 Act") to determine whether the insurance premium paid by them in respect of Winterton Court, Market Square, Westerham had been reasonably incurred. They are the landlords of that property and they are seeking to recover the premium from the tenants of the four units in Winterton Court, under the terms of their respective leases. The application was made to the Tribunal on 6 June 2003 and notice of it was given to the four leaseholders – Mr Aray who trades from 1 Winterton Court under the name of Sultan Kebab House; Mr and Mr Yu of 2 Winterton Court who trade from the premises as Westerham Fish & Chip Shop; Mr and Mrs John Toalster of Flat 2; and Ms H S Frame of Flat 4. At the time the application was made, none of the leaseholders had paid their respective shares of the premium.

### 2. Background to the Application

The Tribunal gave Provisional Directions on 22 July 2003, which indicated that the Tribunal's jurisdiction extended only to tenants of a "dwelling" and not to commercial premises. Mr and Mrs Toalster and Ms Frame were named as the Respondents to the application and, if they wished to oppose it, they were directed to submit a written statement of their case, accompanied by any relevant documents, to the Tribunal by 19 August 2003. On 15 September 2003 the Landlords' solicitors, Mayo & Perkins, wrote to the Tribunal to say that all the lessees of Winterton Court had now paid their respective shares of the insurance premium, but that the Landlords desired the hearing fixed for 16 October 2003 to go ahead, as this would be helpful in resolving matters for the future and thereby avoiding further litigation. During the week before the hearing was due to take place, Mr Toalster notified the Tribunal that he had only just been made aware of the hearing because notices had not been sent to him at his home address, 1 Woodfields, Chipstead, which was also the address of his property company – Fig Tree Properties. He requested an adjournment

of the hearing to enable him to prepare his case and to submit a written statement, in accordance with the directions. Mayo & Perkins were approached to see whether they had any objection and they indicated that in the circumstances they were prepared to have the hearing adjourned. However, it appeared to the Tribunal from their preliminary reading of the papers, that the Tribunal might well not have jurisdiction to hear the matter at all. It was suggested to the parties that the sensible course of action was to use the hearing fixed for 16 October purely to determine the question of jurisdiction. If the Tribunal felt able to continue with the application, then directions would be given for the future conduct of the case leading up to the final hearing. The parties accepted that this course of action should be adopted.

3. **The Hearing**

We attended at the offices of Sevenoaks Town Council on 16 October 2003 to determine the question of jurisdiction. Miss Hockley of Mayo & Perkins represented the Landlords. Mr Toalster and Ms Frame, the Respondent Lessees, were also present in person.

4. We explained to the parties that in the case of Daejan Properties Ltd – v – London Leasehold Valuation Tribunal (2001) 3 EGLR 28, the Court of Appeal had decided that leaseholders could not challenge before a leasehold valuation tribunal any service charges which they had already paid, unless there was an actual contractual agreement between the leaseholder that, in consideration of the leaseholder making payment of the disputed charge, the landlord agreed that an appropriate part of the service charge would be refunded, if the leasehold valuation tribunal went on to determine that all or part of the disputed charge had not been reasonably incurred. It was made clear that, where there was no such contractual agreement and where for example a leaseholder had simply paid money under protest, this exception would not apply and the tribunal would not have jurisdiction. Any leaseholder wishing to dispute a charge already paid would have to go to the County Court. We invited the parties to make their submissions on this point.

5. Mr Toalster stated in emphatic terms that he and the other leaseholders had certainly made their payments under protest. The premium paid was by a huge margin greater than premiums he was accustomed to pay either as a landlord of property or as a leaseholder contributing to another landlord's premium. Reference was made to the letter which he sent with his payment, which stated – *"Apropos the invoice no CA 160 which has been the legitimate subject of a dispute between us and other leaseholders over a number of months, I have agreed to pay £530.59 on the strict understanding that competitive quotes must be secured in future in order to avoid exploitation of leaseholders"*. Ms Frame referred to the substance of the dispute, stating that the Landlords owed a duty of care to their leaseholders, but she did not make any specific comment on the question of jurisdiction.

6. Miss Hockley said that, now that Mr Toalster had clarified the position, she accepted that there was no binding contractual agreement between him and the Landlords for the refund of the money, if the Tribunal should determine that any part of the premium paid was excessive, and accordingly she accepted that the Tribunal probably did not have jurisdiction. We referred her to Mr Yu's letter of 24 June 2003, a copy of which she had meant to send with her letter of 15 September 2003 to the Tribunal. That letter from Mr Yu, which was shown to us at the hearing, stated that he was enclosing his share of the premium amounting to £994.44 "with the condition that they are refundable should the Court judge that you are liable to part of the overcharged premiums". She accepted that Mr Yu, as the leaseholder of commercial premises, had no standing in the case.

## 7. Consideration

With regard to Mr Yu's letter of 24 June 2003, we were not given any details as to how the Landlords received that letter and whether the cheque tendered by Mr Yu was accepted on the terms put forward. We were not certain that there was a definite contractual arrangement between the parties but, even if there was, we did not consider it was relevant since Mr Yu was a commercial tenant and not the tenant of a "dwelling". Mr Toalster's own evidence, and particularly the terms of his letter tendering his cheque in payment of the

premium, supported the proposition that he had paid his premium under protest but that he had not entered into any contractual agreement with the Landlords for a future refund, as a condition of payment. In those circumstances we considered that, in view of the decision in the Daejan case, we did not have jurisdiction to entertain the application. Since the application was made prior to 30 September 2003, it had to be considered under the old rules and not under the relevant provisions of the Commonhold & Leasehold Reform Act 2002, which only affect applications made to the Tribunal after 30 September 2003.

## 8. Decision

For the reasons given, we do not have jurisdiction to deal with this application, which therefore is hereby dismissed.

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P B LANGFORD (Chairman)