Ref: LON/00BE/LSC/2003/0016

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DETERMINATION

OF AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (as amended)

RE HOWARD COURT, PECKHAM RYE, LONDON SE15 3PH

Applicant:	Visible Information Packaged Systems Ltd	(Landlord)
Respondent:	Marionette Ltd	(Tenant)
Hearing:	16 February 2004	
Inspection:	None	
Appearances:	Mr N Shepherd, Company Director, for Applicant, with Miss N Farrow of Paltridge Estates (Management) Ltd.	
	The Respondent was represented Mr A Cox, with Ms M A Bowring FRICS.	

Members of the Leasehold Valuation Tribunal:

PROFESSOR J T FARRAND QC LLD FCIArb Solicitor (Chairman)

MR R T BROWN FRICS ARLA (Ind)

MRS A LANDAU JP LLB

1. The effective Application, dated 2 December 2003, seeking a determination as to liability to pay service charges for the year 1 April 2002 – 31 March 2003, was made by the Applicant as landlord, the Respondent being the tenant of flats 3, 5, 10, 16, 27 and 30 in the subject-property. It is understood that formerly the freehold of the subject-property, which contains 31 flats, was owned by a company associated with the Respondent. No other tenants have applied to be joined as respondents.

2. By the time of the Hearing, the only service charge item still in dispute between the parties was scheduled as: "10% supervision charge of Paltridge Estates Management Ltd." Identifying this item and the particular amount allegedly payable was not possible from the service charges Statements issued to the Respondent, dated 26 March 2003, which did not mention any such item. Nor was it possible from the summary of Expenditure on the subject-property for the year ended 31 March 2003 certified, in June 2003, by accountants for the Applicant, which simply indicated: 'Managing Agents - £7,285.00', without copying any supporting invoices.

3. The Management Contract between Paltridge Estates and the Applicant, dated April 2000, provided for payment of fees set out as follows:

General management.....£200.00 flat per annum

Supervision of a capital nature.....10% of value of works

The Tribunal accepted the assumption that £200 *per* flat was intended, so that the basic fee would be £6,200 (ie £200 x 31) and the supervision fee in 2002-3, according to the certified account, would then appear to be £1,085 (ie the balance of the £7,285 paid to the Agents and not otherwise justified). However, although the Contract contained no explanation of exactly what was intended by "supervision of a capital nature", the Tribunal similarly accepted that it envisaged the extra work occasioned by 'major works' of repair and refurbishment. The certified account for 2002-3 included a total of £383,478.27 for major works, which would have resulted in payment of a supervision fee of £38,347.83. No such payment is itemised in the Statement to the Respondent or in the certified account for the service charges year in question. The explanation may be that the certified expenditure on major works includes the supervision fee, but this was not evidenced by any invoices or documentation supplied to the Tribunal. Accordingly, the Tribunal was not in a position to determine whether any particular amounts were payable or not by the Respondent.

4. Nevertheless, largely ignoring the question of the particular costs incurred, the issue was treated as a general one of reasonableness: had it been reasonable for the Applicant to incur the cost of the 10% supervision fees contractually payable to Paltridge Estates? If not, the cost would not be payable (in full) by the Respondent (see s.19(1) of the 1985 Act). Here it should be noted that the question of whether or not costs were reasonably incurred includes being reasonable in amount (see *Veena SA v Cheong* [2003] 1 EGLR 175 at para.103).

5. The Respondent's objection to the fees in issue was essentially based on two facts. The first was that these percentage fees were incurred in addition to reasonable unit fees of £200, so that the amount recoverable for each flat would total approximately £1,200, which was excessive and unreasonable. The second fact was that a 10% supervision fee was also paid to surveyors, as contract administrators for the major works: this fee was not disputed but a total of 20% for supervision was said to be excessive. It was submitted that a 2% fee, making a total of 12%, would produce a reasonable overall cost to incur for supervision of major works by managing agents and surveyors. This 12% level of overall fee was supported as reasonable in her experience by Ms Bowring, giving evidence as an expert witness.

6. The Applicant's support of the 10% supervision fees payable to Paltridge Estates was also essentially twofold. Firstly, it was stated by Mr Shepherd that he had attempted but failed to find any other managing agents prepared to take on the subject-property for less in the way of fees. Secondly, it was asserted by Miss Farrow as well as by Mr Shepherd that, in effect, the Respondent was such a troublesome tenant that that the extra 10% above the unit fee was fully justifiable and therefore reasonable.

7. The Tribunal, however, did not regard the Applicant's stance as acceptable. No cogent evidence, documentary or otherwise, had been produced either of the search for more competitive managing agents or of the Respondent's alleged troublemaking and its implications in management terms. Further, the Tribunal had regard to the fact that the Management Contract expressly provided that the 10% fee was for "Supervision of a capital nature": this is not apt for dealing with tenants, however, difficult and time-consuming, which would be covered by the basic £200 per flat per year.

8. The overall 12% level for supervision of major works, which was submitted for the Respondent to be a reasonable cost to incur, appeared to the Tribunal to be in accord with its own general knowledge and experience.

Therefore, the Tribunal, as to the general issue of reasonableness, determined that the reasonable cost for the Applicant to incur for supervision of a capital nature (ie major works) by Paltridge Estates would have been a 2% fee. This fee would have been in addition to the basic £200 per flat fee, which had not been disputed. In the result, the determination is that the amount payable by the Respondent for such supervision is not 10% but is limited to 2% of the value of the works.

9. For completeness, it should also be noted that the Tribunal had queried whether managing agent's fees were payable by tenants on a proper construction of the relevant leases. However, the Respondent's representative was instructed not to dispute this issue but to concede that such fees were payable provided they were reasonable. Consequently, the Tribunal was not required to determine this aspect of payability.

10. Finally, it is to be noted that no applications had been made for reimbursement of the Applicant's fees (ie now under reg.9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003) or for limiting inclusion of costs in future service charges (ie under s.20C of the 1985 Act) and that the Tribunal had received no submissions as to either of these matters. However, it is considered that applications about either matter would be inappropriate: as to the former, the Applicant was largely unsuccessful in the proceedings so no basis for ordering reimbursement of fees is apparent; and as to the latter, not only is there apparently no provision in the relevant leases enabling inclusion of the costs of proceedings in service charges, but also this now appears precluded by para.10(4) of Sced.12 to the Commonhold and Leasehold Reform Act 2002.

Chairman

Date 3rd April 2004