In the matter of G M Thompson & Others (the Applicants)
and
S M Properties (the Respondent)
and
in the matter of the Applicants' applications to the Leasehold Valuation Tribunal for a determination of liability to pay service charges under Section 27A of the Landlord & Tenant Act 1985 ("the Act")
and
for an order under Section 20C of the Act in respect of:

3 Enville Manor,

(sometimes known as The Old Rectory/Enville Rectory),

Bridgnorth Road, Enville, South Staffordshire DY7 5JA

BIR/41UF/LLC/2004/0001 and BIR/41UF/LSI/2004/0002

Background

On 26th January 2004, Mr G M Thompson submitted an Application to the Midland Leasehold Valuation Tribunal ("the Tribunal") for a determination of liability to pay service charges in respect of the subject property under Section 27A of the Landlord & Tenant Act 1985 ("the Act") and an Application for an order under section 20C of the Landlord & Tenant Act 1985.

The Applications relate to the service charge years ending 31st December 2001, 2002 and 2004 and the areas of dispute are the reasonableness of the costs in the relevant years of the matters set out on Attachments 1, 2 and 3 hereto.

3 Enville Manor is held by way of a long term ground lease for a term of 99 years from 24th March 1988 at an initial ground rent of £35 rising progressively to £105 pa.

Enville Manor was inspected on 9th March 2004, and found to comprise a substantial period building converted some years ago into eight self contained flats, set in substantial grounds on the outskirts of the village of Enville. During the course of the inspection, The Tribunal's attention was drawn in particular to the condition of No 7 (which, together with No. 3, was inspected internally) where there were indications of significant flooding in the ceiling – probably caused by the failure of the box valley gutter above; the decorations of the common parts which had been renewed approximately 12 months before, albeit in different styles; the locked access to the loft/roof space, the need for the garage block facias to be repainted; the poor condition on the forecourt – with a broken surface and loose manhole cover ; a section of missing guttering from the main house; and a substantial crack in the front boundary wall.

Pre-Hearing:

(1) Representations:

Prior to the hearing, there had been significant correspondence (copied to all parties) relating to whether or not the correct Respondent had been named in the Applications submitted by the Applicant, given that the managing agents, SM Properties had been named and not, as might more usually have been expected, the Landlords, S M Properties (21) Ltd.

As a result of this, the Tribunal had asked for confirmation from the Applicant that the Applications were to be dealt with as submitted. In response a letter was received from the Applicants' solicitors, Messrs Hutcheson Forrest Gratton of Bath confirming the point and indicating that "it would manifestly be in the interests of justice and commonsense if the matter be permitted to proceed as listed".

Accordingly, and after careful consideration, the Tribunal considered that there were reasonable grounds for proceeding in accordance with the Applications, given that the Applicant had clearly intended that the Managing Agents should be named as the Respondent and therefore wished the matter to be dealt with on that basis. For the avoidance of doubt, the landlords were included in the subsequent directions as the 2nd Respondent.

(2) Applicants:

Between the time of the Applications and the date of the hearing, a number of other residents of Enville Manor had applied to become Joint Applicants in the matter:

Flat 1: S and S L Morley /Mrs D E K Day

Flat 2: R Bernard

Flat 4: K T James

Flat 5: R G Tait

Flat 7: Ms C A J Emery

Hearing:

At the hearing, the Applicants were represented by Mr G Thompson, assisted by Patrick O'Donnell; Mr Anthony Verduyn of Counsel on behalf of SM Properties (21) Ltd; Mr Conrad Rumney of Counsel on behalf of SM Properties; and Mr Richard Davis of Messrs Buller Jeffries (Solicitors) in respect of SM Properties (21) Ltd and SM Properties. S Morley and Ms C A J Emery (Joint Applicants) were also present, as were a number of members of the public in an observer role.

Prior to considering the substantive issues, the Tribunal was invited to hear representations on behalf of both Respondents upon application from Mr Verduyn and Mr Rumney that the Applications before the Tribunal should be dismissed as frivolous, vexatious or otherwise an abuse of process of the Tribunal in accordance with Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the Procedure Regulations").

Mr Verduyn opened by submitting that the landlords, S M Properties (21) Ltd ("21 Ltd") were the proper Respondent in this matter and not the Managing Agents, SM Properties ("Properties"). This was supported by the fact that in terms of the definition in Regulation 2 of the Procedure Regulations, his clients had not been named as Respondents' in the original applications. This was a very important point to establish as the two entities were entirely separate.

Mr Verduyn emphasised that the Procedure Regulations governed whether or not 21 Ltd could be joined in the proceedings, and in his ~~few~~ view they did not provide for this. While the Civil Procedure Rules allowed for such action, those did not apply in current case.

Regulation 6 under the Procedure Regulations allowed a party to request to be joined in as a party to any proceedings to which the regulations applied, but that was a very different situation from requiring them to be joined against their will. This was not just a technical point; his clients' position had in fact been significantly prejudiced by the large amount of paperwork which had arrived only the day before the hearing.

If 21 Ltd was not a party to the proceedings then it clearly could not take part in the matters before the Tribunal, with the corollary that it could not be bound therefore by any decision of the Tribunal in relation to such matters.

Under cross-examination by Mr Thompson, reference was made to the fact that recorded delivery postage records were available showing that the Applicants' case had been posted to 21 Ltd on 1st March 2004. Therefore it was difficult see how it could be claimed that it had only arrived there on 8th March except for the fact that there appeared to be a distinct pattern of both 21Ltd and Properties only receiving mail selectively i.e. if they chose to receive it. In those circumstances, Mr Thompson did not believe that the reason given by Mr Verduyn was valid i.e. his clients had not been prejudiced by the late arrival of a large amount of paperwork the day before the hearing.

In answer to a question from the Tribunal as to whether 21 Ltd had raised any of these issues prior to the hearing, it was confirmed that this had been done in correspondence dated 27th February. Bearing in mind that the directions went out on 9th February, it was suggested that 21 Ltd had been somewhat casual in delaying their response until 27th February.

It was put to Mr Verduyn that under Regulation 3 (8) there was power to dispense with or relax the requirements of the preceding paragraphs if the tribunal was satisfied that the particulars and documents included with an

application were sufficient to enable the application to be determined, and no prejudice would or would be likely to be caused to any party to the application. Mr Verduyn responded by indicating that this presupposed that 21 Ltd was indeed a party to the applications, and he suggested that these provisions could not be used to join a party in the proceedings. In his view, to join 21 Ltd in the proceedings against their will would clearly be prejudicial.

It was suggested to Mr Verduyn that 21 Ltd must have realised they were being treated as a Respondent when they received a copy of the Applications and the directions, but he indicated that this was not the case.

Mr Rumney supported the view that Regulation 3 (8) of the procedure regulations was not aimed at joining parties into Applications unwillingly. Properties had been named as the Respondent even though they were merely the managing agents, and not the landlord. This was not just mis-description, as was plain from the confirmation obtained subsequently from the applicant that it was intentional to name Properties as the respondent.

On behalf of the Applicants Mr Thompson said that he did not believe either 21 Ltd or Properties had been misled by the Applications, and pointed out that in the leaflet produced by the Residential Property Tribunal Service, it said that the documents could be amended. It also had to be borne in mind that the directions went out on 9th February 2004 and it seemed that any prejudice to either of the Respondents had been largely of their own making by virtue of their own inaction in not replying until 27th February. Mr Verduyn made the point that the application form was a very important document in that it was part of an originating process, and accuracy was therefore of paramount importance.

On behalf of Properties, Mr Rumney indicated his agreement with Mr Verduyn that the proper respondent should be the landlord and not to the managing agents. To do otherwise would be an abuse of process.

He drew attention to the letter dated 4th March 2004 submitted by the Applicant's solicitors emphasising that: (1) paragraph 5 of the Application identified the landlords and not the Respondents'; (2) they seemed to accept that the proper entity to be named as the Respondent was the landlord; (3) paragraph two of the letter invited the reference to the first respondent to be withdrawn but that had not happened and therefore Properties had been forced to be represented at the hearing.

In response, Mr Thompson indicated that the Applicants would be quite happy to have Properties withdrawn from the application and 21 Ltd substituted as the Respondent.

Mr Rumney considered that the Applications were frivolous and an abuse of power given that the managing agent was not a party to the lease; the relationship between Properties and 21 Ltd could be ended at any time; and the managing agent was not entitled to anything under the lease etc.

He endorsed the view of Mr Verduyn that the landlord was not named as a Respondent and could not be joined in as a party to proceedings against its will. If that view was right, then the appropriate action would be to ask the Applicants to bring proceedings against the landlord by means of a further Application.

Under cross-examination, Mr Thompson confirmed that he had not been "confused" when completing the application form, although he argued that the way in which the wording of the form was couched invited details of the landlord to be inserted at paragraph 5 rather than at Paragraph 4. Furthermore, Paragraph 4 itself clearly contemplated (by the referring to "managing agent"), that the Respondent could be the managing agents in any given case. He did not believe however that there had been any prejudice to either of the Respondents as a consequence of the Applications and in his view, they were valid and should be determined by the Tribunal.

Decision

In evidence, it was accepted by the Applicants that in completing the Applications, the original Applicant had not fully appreciated that significance of the answers to the questions in boxes 4 and 5 of the application form and believed he was bringing proceedings against the proper party.

The Tribunal did not believe that either SM properties or SM Properties (21) Ltd were misled by this, but on the strict point of law made by the representatives of both Properties and 21 Ltd, the Tribunal accepted that a party cannot be joined in as Respondent unless by request, (under Regulation 6 of the Procedure Regulations).

Accordingly, the Tribunal indicated two possible ways of proceeding: –

1. To strike out the current Applications, leaving the Applicants to submit fresh Applications if they so wished, or

2. For 21 Ltd to request to be treated as a Respondent and for the Applicants to agree to Properties being removed from the Applications as Respondents, in which case, the Tribunal would adjourn the proceedings for submissions on the substance of the case in accordance with new directions to be issued shortly following the hearing and with a view to resuming during the week beginning 19th April 2004.

In response to this Mr Verduyn indicated that he would have to take instructions and it was agreed that those would be conveyed to the Tribunal by not later than 4pm on Friday 12th March, 2004 indicating whether or not 21 Ltd were prepared to request to be treated as Respondent in respect of the present Applications. In the absence of that agreement, the Tribunal would dismiss the current Applications, leaving the applicants to submit fresh Application if they so wished.

Costs:

Mr Rumney addressed the Tribunal on the question of costs ~~have~~ having regard to Schedule 12 10.2(b) of the Commonhold and Leasehold Reform Act 2002 under which it was provided that a Leasehold Valuation Tribunal could determine that a party to proceedings should pay the costs incurred by another party in connection with any proceedings (in which)...he had, in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, destructively or otherwise unreasonably in connection with the proceedings; the maximum amount of such costs not to exceed £500.

Mr Rumney submitted that as the managing agents, Properties, had actually incurred costs well in excess of £500 and were unable to recover those costs from any other source e.g. the service charge or their clients and, the Applicants should therefore be required to pay the maximum amount recoverable of £500.

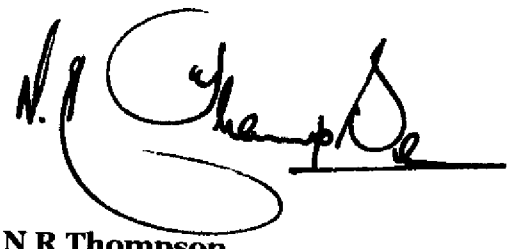
On behalf of the Applicants Mr Thompson refuted the suggestion that the Applications represented an abuse of process and contended that Properties should have raised their arguments much earlier.

The Tribunal determined that in all of the circumstances, some element of the costs incurred by Properties should be recoverable from the Applicants, but the amount should be restricted to £250 plus VAT (if applicable - there having been some doubt cast at the hearing as to whether Properties was actually registered for VAT)

So far as 21 Ltd was concerned, as it had been determined that they were not party to the proceedings, then the Tribunal decided that they could not awarded any element of their costs.

Post Hearing:

On 12th March, the Tribunal received a letter from Messrs Buller Jeffries indicating that 21 Ltd were not prepared to consent to being added as a Respondent in the proceedings. As a consequence of that, the Applications were dismissed in accordance with the decision taken at the time of the hearing.



N R Thompson
Chairman

Date: 23 JUL 2004

BIR/41UF/LSI/2004/0002
BIR/41UF/LLC/2004/0001

In the matter of G M Thompson (the Applicant)
and
S M Properties (the Respondent) (1)
S M Properties (21) Ltd (the Respondent0 (2)

and in the matter of

the Applicant's applications to the Leasehold Valuation Tribunal for a determination of liability to pay service charges under Section 27A of the Landlord & Tenant Act 1985

Property: Enville Manor, (also known as The Old Rectory/Enville Rectory),
Bridgnorth Road, Enville, South Staffordshire DY7 5JA

ISSUES TO BE DETERMINED

(I) Past Service Charges

Year in question Lease Year Ending 31 December 2002

A list of the items of service charge that are in issue (or relevant) and their value

1) Provision for Future Decorating	£4,500.00
2) Provision for Future Major Repairs	£1,630.00
3) Building Insurance Premium	£2,522.95
4) Cleaning of communal hallways	£805.00
5) Decorating of communal hallways	£6,833.31
6) Ground Maintenance	£1,616.00
7) General Maintenance/Repairs/Septic Tank	£4,638.04
8) Legal Fees	£1,179.00
10) Interest	£66.63
11) Management Fees/Expenses	£3,143.77

Year in question Lease Year Ending 31 December 2001

A list of the items of service charge that are in issue (or relevant) and their value

12) General Maintenance/Repairs/Septic Tank	£19,492.45
13) Legal Fees	£11,393.57
14) Interest	£100.98
15) Management Fees/Expenses	£7,126.09

(ii) Future Service Charges

Year in question Lease Year Ending 30 June 2004

A list of the items of service charge that are in issue (or relevant) and their value

16) Major Items of Expenditure	£1,725.00
17) Legal Surveyors Fees	£4,500.00
18) Management Fees/Expenses	£3,250.00

(iii) General Issues to be determined

19) The Respondent charges 'interest on arrears' at 15% per annum. The Applicant asks for a determination of the reasonableness of this. There is no express provision for this charge in the lease.

20) The Respondent charges interest on funds borrowed to fund the service charge expenditure. These appear to be loans the Respondent arranges from itself. There is no express provision for this in the Lease. The Applicant asks for a determination of the reasonableness of this.

21) Given the unreasonableness of the arrangements for inspecting the accounts that the Respondent had arranged on the 16 December 2004 in Newcastle-upon-Tyne, the Applicant asks for a determination of the reasonableness of the charges associated with these arrangements being added to the service charge.

George Thompson

Date: 26 February 2004