

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/24HU/LAM/2006/0004

REASONS

Application : Section 24 of the Landlord and Tenant Act 1987 as amended ("the 1987 Act"), section 35 of the 1987 Act, section 37 of the 1987 Act, and section 20C of the Landlord and Tenant Act 1985 as amended ("the 1985 Act")

Applicant/Leaseholder (in the application under section 24) : Mr Roland John Morris

Respondent/Landlord : Mrs Janice Lee

Building : Seagull Court, North Street, Emsworth, Hants, PO10 7BB

Flats : the 6 flats at the Building

Lease of Flat 4 : the lease dated the 20 July 2001 and made between the Respondent/Landlord (1) and Valerie Barbara Harfield (2)

Lease of Flat 6 : the lease dated the 26 January 2006 and made between the Respondent/Landlord (1) and the Respondent/Landlord and Bernard William Trask (2)

Applications : section 24 application (Applicant : Mr Morris) : 2 May 2006
 section 35 application (Applicant : Seagull Court Residents Association Limited ("SCRA")) : 1 July 2006
 section 37 application (Applicant : SCRA) : 31 July 2006

Date of Preliminary Issue Hearing : 27 September 2006

Venue : Committee Room 2, Havant Civic Centre, Civic Centre Road, Havant

Appearances for Applicant/Leaseholder : Mr Morris

Appearances for Respondent/Landlord : Mr Trask

Also in Attendance :

for Applicant/Leaseholder : Mrs Morris, and Mrs Whittle

for Respondent/Landlord : Mr Turner

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB, Mr J H S Preston JP FRICS

Date of Tribunal's Reasons : 27 September 2006

Directions hearing

1. At a directions hearing on the 9 August 2006 the following matters were identified as preliminary issues for the Tribunal to determine at this hearing :
 - a. section 24 application :
 - i. the validity of the section 22 notice dated the 15 April 2006, and, in particular, whether the notice was given by "a tenant of a flat" pursuant to section 22(1), and whether the notice complied with paragraphs (a) to (e) of section 22(2)
 - ii. whether the Tribunal has jurisdiction to deal with the application; however, Mr Morris indicated that the part of the application which related to the transfer of the freehold of the Building pursuant to a contract of sale was in fact now being dealt with in the county court, and was therefore withdrawn from the application to the Tribunal
 - b. section 35 application : whether the Tribunal has jurisdiction to deal with the application, and in particular whether, pursuant to section 35(1) the application was :
 - i. by a "party to a long lease of a [Flat]"
 - ii. "for an order varying the lease"
 - c. section 37 application : whether the Tribunal has jurisdiction to deal with the application, and, in particular, whether the application to vary the leases was made by "any of the tenants under the leases" pursuant to section 37(4)

Section 22 of the 1987 Act

2. The material parts of section 22 are :

22 (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served [by the tenant on--]

[(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.]

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with];

- (c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
 - (d) where those matters are capable of being remedied by [any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
 - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) a leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section [on a person] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the [person], but a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit. (4) In a case where—
- (a) a notice under this section has been served on the landlord, and
 - (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice

Section 24 of the 1987 Act

3. The material parts of section 24 are :
- 24 (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
- (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver,
- or both, as the court thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—
- (a) where the court is satisfied—
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case; or
 - (ab) where the court is satisfied—
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied—
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;

- (ac) where the court is satisfied—
- (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
- (b) where the court is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person—
- (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
- (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—
- (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,
- as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.

- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the court may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.
- (9A) The [tribunal] [FNI] shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises (4) In a case where—
- (a) a notice under this section has been served on the landlord, and
 - (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice

Section 35 of the 1987 Act

4. The material parts of section 35 are :
- 35 (1) Any party to a long lease of a flat may make an application to [a leasehold valuation tribunal] for an order varying the lease in such manner as is specified in the application.
- (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—
- (a) the repair or maintenance of—
 - (i) the flat in question, or
 - (ii) the building containing the flat, or
 - (iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

- (b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
 - (c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
 - (d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
 - (e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;
 - (f) the computation of a service charge payable under the lease;
 - (g) such other matters as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
- (a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
 - (b) other factors relating to the condition of any such common parts.
- (3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.
- (4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—
- (a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and
 - (b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
 - (c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.
- (5) [Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002] shall make provision—
- (a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and
 - (b) for enabling persons served with any such notice to be joined as parties to the proceedings.
- (6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
- (a) the demised premises consist of or include three or more flats contained in the same building; or

- (b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
- (8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.[...]

Section 37 of the 1987 Act

5. The material parts of section 37 are :

- 37 (1) Subject to the following provisions of this section, an application may be made to [a leasehold valuation tribunal] in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.
- (2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.
- (3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall only be made if—
- (a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
- (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
- (6) For the purposes of subsection (5)—
- (a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
- (b) the landlord shall also constitute one of the parties concerned.

The notice under section 22

6. The notice dated the 15 April 2006 :
- was on the headed paper of SCRA
 - was signed "for SCRA" by "J G Whittle... Chairman", "Mrs V B Morris... Director" and "John Morris... Secretary"
 - was addressed to "Mrs Janice Lee Lessor" and "Mr Bernard William Trask Secretary SCM Ltd" "Joint Directors of Seagull Court Management Limited"
 - gave notice that SCRA "in the names of the under mentioned members of [SCRA]" intended to make an application for orders under sections 5A, 19 and 24 of the 1987 Act "in respect of such premises to which these sections apply as specified in the notice" but would not do so if
 - the Respondent/Landlord gave specific performance of clause 9 of the contracts for sale of Flats 1 to 5 by the 20 April 2006

- ii. the Respondent/Landlord corrected the lease of Flat 6 immediately

The application under section 24

- 7. The application dated the 2 May 2006 :
 - a. was by Mr Morris
 - b. named D. Houzgo of 1 & 1B Property Services Ltd as the proposed manager
 - c. gave as grounds of the application that :
 - i. the Respondent/Landlord was in breach of a contract for sale which included at clause 9 an undertaking to sell the freehold of the Building to a nominated management company
 - ii. the Respondent/Landlord had recently disposed of part of the freehold common parts to herself and Mr Trask by way of a lease of Flat 6
 - iii. no notice of the freehold disposition had been given under sections 4A and 5 A of the 1987 Act
 - iv. the lease of Flat 6 was not in the same terms as the leases of Flats 1 to 5, which was a breach of the terms of those leases
 - v. the residents of Flats 1 to 5 had lost all confidence in the ability of the Respondent/Landlord to influence Mr Trask as joint director of her management company not only to abide by the “essential statutory legislation”, but more importantly the contracts of sale and purchase, and, the matter of paramount importance, the promises made at meetings with the residents

The application under section 35

- 8. The application dated the 1 July 2006 :
 - a. was by SCRA
 - b. sought to vary the lease of Flat 6
 - c. gave as grounds of the application that the lease of Flat 6 included a common accessway from North Street, a ground floor room designated as a “management store”, and a parking bay, all of which were common parts
 - d. named the leaseholders of Flats 1 to 6 as being affected by the application
 - e. stated that the leaseholders of Flats 1 to 5 were members of and represented by SCRA

The application under section 37

- 9. The application dated the 31 July 2006 :
 - a. was by SCRA
 - b. sought to vary the leases of Flats 1 to 5, and to make the lease of Flat 6 “conform in respect of clause 4.7”
 - c. gave as grounds of the application that there was an urgent need to tidy up the leases in readiness for the transfer of the freehold
 - d. attached a draft amended lease
 - e. stated that details of the members represented by SCRA were on a separate sheet

Submissions

10. In a letter dated the 31 August 2006, on SCRA notepaper, and signed by Mr Morris as secretary, it was submitted that :
 - a. the failure of the Respondent/Landlord to act on the terms of the contracts was currently before the county court
 - b. the leaseholders had elected to be represented by SCRA, which was a recognised residents' association
 - c. in relation to the application under section 24 :
 - i. the section 22 notice referred to section 24, not just to the rectification issue
 - ii. the notice was given by SCRA on behalf of the leaseholders
 - iii. the requirements of section 22 (a) to (e) had been complied with
 - iv. the leaseholder would be willing to substitute one of their names for SCRA in the application
 - v. the appointment of a manager was an appropriate remedy
 - d. in relation to the applications under sections 35 and 37:
 - i. the freehold matter was essentially a matter for the court
 - ii. the applications to the Tribunal needed to be amended
 - iii. the leases of Flats 1 and 5 accidentally omitted the "mirror lease" requirement in clause 4.7 of the leases of Flats 2, 3, and 4
 - iv. the lease for Flat 6 also omitted it
 - v. other essential modifications could be left until after the transfer of the freehold
11. In a statement dated the 18 September 2006 and entitled "skeleton argument" and signed by Mr Trask and the Respondent/Landlord, it was submitted that :
 - a. Mr Trask understood that the section 22 notice dated the 15 April 2006 was incorrect
 - b. clause 4.7 was not in the lease of Flat 5 (the first flat to be completed and sold) but was added to the leases of Flats 2, 3, and 4 as a safeguard while the Building was not fully occupied during completion, and it was a superfluous clause now that all the flats were occupied
12. In a schedule attached to a letter dated the 22 September 2006 on SCRA headed paper and signed by Mr Morris as secretary and Mrs V B Morris as director, it was submitted that :
 - a. clause 4.7 might become superfluous when the lease of Flat 6 complied with clause 4.7, but the lease of Flat 6 was still in dispute
 - b. there had been virtually no maintenance, window cleaning or grass cutting since January 2003
13. At the hearing before the Tribunal, Mr Morris submitted that :
 - a. the section 22 notice and applications under sections 35 and 37 had been in the name of SCRA on behalf of its members, namely the leaseholders of Flats 1 to 5
 - b. various other statutes provided for limited companies to represent leaseholders, and the naming of SCRA in the notice and applications was in accordance with the intention of parliament as shown in those other statutes

- c. the section 22 notice might not have complied to the letter with the requirements of section 22(2)(a) to (d), but the purpose of section 22, namely the need to give a landlord the opportunity to put matters right before an application was issued, had been achieved in correspondence
 - d. in any event, the Tribunal should exercise its discretion to waive any deficiency in the notice pursuant to section 24(7)
 - e. it was not submitted that the "Amended Preliminary Notice" dated the 26 September 2006 and produced by Mr Morris at the hearing retrospectively corrected any deficiencies in the notice dated the 15 April 2006
 - f. Mr Morris conceded that the grounds set out in the section 24 application largely referred to the contract of sale and the extent of the premises contained in the lease of Flat 6
 - g. however, the grounds also referred to the failure of the Respondent/Landlord to abide by the "essential statutory legislation", by which it was intended to refer to the Respondent/Landlord's failure to manage the Building properly
 - h. Mr Morris conceded that the section 35 application referred only to variations of the lease to Flat 6, and that neither SCRA nor any of the leaseholders of Flats 1 to 5 were parties to the lease of Flat 6, although, once the freehold of the Building had been transferred to SCRA, SCRA would then have an interest in Flat 6 as landlord
 - i. the grounds for the section 37 application had been intended to claim that the leases for Flats 1, 5 and 6 should be varied by the inclusion of a clause in the same terms as clause 4.7 of the lease for Flat 4
 - j. although leases had now been granted for all the Flats, it was conceivable that a new lease might still be granted if, for example, one of the existing leases were forfeited, so that the inclusion of clause 4.7 was still a practical requirement, in addition to being a legal requirement
14. Mr Trask submitted that:
- a. he had received legal advice that the section 22 notice and the applications were incorrect, but Mr Trask himself had no further comment so far as the Tribunal's jurisdiction was concerned
 - b. in answer to a question from Mr Morris, Mr Trask said that he was attending the hearing on behalf of the Respondent/Landlord, although he did have knowledge of the management of the Building
 - c. Mr Trask conceded that SCRA had been properly constituted as a company to represent the leaseholders
 - d. so far as the applications under section 20C of the 1985 Act were concerned, Mr Trask conceded that he was not aware of any clause on the leases which would entitle the Respondent/Landlord to include in future service charges any costs incurred by the Respondent/Landlord in these applications, and, in any event, the Respondent/Landlord was not going to do so

The Tribunal's decision and reasons

15. The Tribunal finds that it has no jurisdiction to deal with any of the applications under sections 24, 35 or 37 of the 1987 Act

16. In making that finding, the Tribunal has taken account of all Mr Morris's submissions and the whole of the circumstances in the round, but makes the following findings in relation to each of the applications

SCRA acting on behalf of the leaseholders

17. The Tribunal accepts, as conceded by Mr Trask, that SCRA has been properly constituted as a limited company by the leaseholders of Flats 1 to 5, who are the members of the company
18. The Tribunal also accepts Mr Morris's submission that there are various instances in the statutes dealing with landlord and tenant law where limited companies are given powers to represent leaseholders for specific purposes
19. However, the Tribunal finds that :
- a. if parliament had intended a limited company to be able to give notice under section 22 of the 1987 Act on behalf of an individual leaseholder or group of individual leaseholders, or to make application under section 35 or 37 on behalf of an individual leaseholder or group of individual leaseholders, the provisions of sections 22, 35, and 37 could easily have said so
 - b. instead, sections 22, 35, and 37 refer specifically to "a tenant of a flat", "any party to a long lease of a flat", and "any of the tenants under the leases", respectively
 - c. the absence of any reference in sections 22, 35 or 37 to a limited company acting on behalf of a tenant implies, in the context of other statutes specifically so referring, that parliament did not intend a limited company to be able to so act in relation to those sections
 - d. the plain wording of sections 22, 35, and 37 means that the notice under section 22 has to be given by a tenant, an application under section 35 has to be made by a party to a long lease and an application under section 37 has to be made by any of the tenants under the leases, and that a limited company which is not itself one of those persons does not have power to do so on behalf of any of those persons

Application under section 24 of the 1987 Act

20. The notice dated the 15 April 2006 was not a valid notice under section 22 of the 1987 Act because :
- a. it was not given by "a tenant of a flat" for the purposes of clause 22(1), but by SCRA
 - b. it did not specify "the tenant's name, the address of his flat, and an address....at which [any person on whom the notice is served] may serve notices in proceedings..." for the purposes of section 22(2)(a)
 - c. it did not specify the premises to which the notice related for the purposes of section 22(2)(b), but stated that the notice was "in respect of such premises to which these sections apply as specified in the notice"
 - d. it did not specify any grounds relating to the management of the Building on which the Tribunal would be asked to make an order or the matters which would

be relied upon for the purposes of establishing those grounds for the purposes of section 22(2)(c), but instead referred to the contract of sale and the extent of the premises contained in the lease of Flat 6, neither of which relate to the management of the Building, as such

- e. it did not specify any steps relating to the management of the Building for the purposes of section 22(2)(d), but instead referred to the contract of sale and the extent of the premises contained in the lease of Flat 6, neither of which relates to the management of the Building, as such

21. The Tribunal is not willing to exercise its discretion under section 24(7). The Tribunal finds that :

- a. the naming of SCRA as the giver of the notice means that the notice did not constitute a notice under section 22 at all
- b. in any event, the ways in which the notice failed to comply with section 22 were so many and so substantial that it would be inappropriate for the Tribunal to make an order under section 24

22. In any event, the allegations stated in the application, namely the breach of the contract for sale, the disposal of part of the freehold common parts by way of a lease of Flat 6, the lack of any notice of the freehold disposition under sections 4A and 5 A of the 1987 Act, and the lease of Flat 6 not being in the same terms as the leases of Flats 1 to 5, contrary to the terms of those leases, did not relate to the management of the Building, and were not matters in respect of which it would have been appropriate to appoint a manager

23. The Tribunal :

- a. has taken into account :
 - the reference in the grounds to the application to the failure of the Respondent/Landlord to abide by the “essential statutory legislation”,
 - the references in the correspondence and the skeleton argument on behalf of Mr Morris to failure to comply with sections 21 to 23 of the 1985 Act and to the lack of maintenance since January 2003
- b. but finds that there was no mention of any such matters in the notice dated the 15 April 2006, nor any specific mention of the failure to comply with sections 21 to 23 of the 1985 Act or to the lack of maintenance since January 2003 in the application itself

Application under section 35 of the 1987 Act

24. The application was not by a “party to a long lease of a flat” for the purposes of section 35(1), but by SCRA

25. In any event, it was not an application by a “party to a long lease of a flat...for an order varying the lease” [Tribunal’s emphasis] for the purposes of section 35(1), but was an application for an order varying the lease of Flat 6

26. Neither SCRA nor any of the leaseholders of Flats 1 to 5, were parties to the lease of Flat 6

27. The grounds for the application, namely that the lease of Flat 6 included a common accessway from North Street, a ground floor room designated as a "management store", and a parking bay, all of which were common parts, were not valid grounds for an application under section 35 for the purposes of section 35(2)

Application under section 37 of the 1987 Act

28. The application was not by "the landlord or any of the tenants under the leases" for the purposes of section 37(4), but by SCRA

Application under section 20C of the 1985 Act

29. The Tribunal notes Mr Trask's concession that he was not aware of any clause on the leases which would entitle the Respondent/Landlord to include in future service charges any costs incurred by the Respondent/Landlord in these applications, and, in any event, that the Respondent/Landlord was not going to do so
30. The Tribunal accordingly makes no order under section 20C of the 1985 Act

Dated the 27 September 2006



Peter Boardman
(Chairman)

A Member of the Southern Leasehold Valuation Tribunal
appointed by the Lord Chancellor