

# **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

## **LEASEHOLD VALUATION TRIBUNAL**

**Property** : 15B Gladstone Road,  
Watford,  
Herts. WD17 2QZ

**Applicant(s)** : Mohammed Saddique

**Respondent(s)** : Aston Property Investments Ltd.

**Case number** : CAM/26UK/LSC/2005/0008

**Date of Application** : 1<sup>st</sup> February 2005 following transfer from the  
Watford County Court

**Type of Application** : To determine liability to pay service charges  
(Section 27A Landlord and Tenant Act 1985)

**Tribunal** : David S Brown FRICS MCI Arb (chair)  
Bruce M Edgington

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### **TRIBUNAL DECISION**

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#### **Introduction**

1. The subject property is said to be one of 3 flats in a Victorian house built in the 1880's and converted into flats in 1984.
2. It appears that the Respondent bought the leasehold interest in the subject property on 19<sup>th</sup> March 2004 and on the 24<sup>th</sup> August 2004, according to the claim form, a notice was sent out by the Applicant landlord's managing agent seeking a payment of £750 from the Respondent as a payment for past and future service charges.
3. Court proceedings were issued for recovery of these monies and a defence was filed claiming that the demand was not reasonable and seeking transfer to this Tribunal for determination.

4. On the 20<sup>th</sup> December 2004 District Judge Carr order the transfer by consent.
5. Both parties agree to this matter being determined without a hearing,

### **The Lease**

6. The Tribunal has seen a copy of the counterpart lease which is for a term of 99 years from the 25<sup>th</sup> December 1983
7. In clause 3(4) the tenant covenants to pay for a proportionate part of the cost of the service charge to cover the matters set out in the 6<sup>th</sup> and 7<sup>th</sup> Schedules. Of relevance to this dispute, paragraph 5 of Schedule 7 states that the service charge includes:-

*“The costs and expenses (if any) of the management running and administration of the Building (including the preparation of the annual accounts of the Lessor relating to the Building and preparation of the Service Charge Certificate) specifically and without prejudice to the foregoing to include fees of managing agents accountants auditors and Solicitors”*
8. The 5<sup>th</sup> Schedule sets the proportion per flat at one third and permits collection of service charges on account of “*anticipated expenditure*” which the landlord, his accountant or managing agent think to be fair and reasonable.
9. The 5<sup>th</sup> Schedule also states that the service charge – both past and anticipated – shall be “*certified by a Certificate .....signed by the Auditors or Managing Agents of the Lessor .....acting as experts and not as arbitrators*” as soon as practicable after the end of the landlord’s financial year.
10. Finally, in so far as it is relevant, there are provisions in Clauses 2(8) and (9) for the payment of solicitors’ fees in specific instances such as service of a notice under Section 146 of the **Law of Property Act 1925**.

### **The Demand**

11. Attached to the Application are copies of 2 documents. There is a service charge account for the year ending 31<sup>st</sup> May 2004 showing what amounts to a deficit. Whilst there appears to be a surplus of £28.34, there is a note to say that the solicitors fees of £470 have not been paid. There is a note at the bottom stating that contributions of £750 are required from each flat.
12. The other document is what appears to be a proposed service charge account for the year ending 31<sup>st</sup> May 2005. This shows the position as if each flat had paid £750. It appears to show a working deficit of some £283.32 i.e. £2,561.66 expenditure less £2,278.34 balance available after collection of monies from the tenants.
13. Of particular relevance as far as this case is concerned are the solicitors' charges of £470 for year ending 2004 and £1,611.50 for the year ending 31<sup>st</sup> May 2005.

#### **The Respondent's Case**

14. The Respondent's defence to the county court action is short and really amounts to a statement that the demand for £750 is unreasonable. By letters to the Tribunal written by Ms. Angela Neale dated 18<sup>th</sup> and 22<sup>nd</sup> February 2005, the Respondent's case is put in more detail.
15. The main letter is that dated 18<sup>th</sup> February. The first point is really in 2 parts i.e. (a) that solicitors' costs incurred relating to a dispute with Flat A are not recoverable as service charges and (b) that the landlord should not be employing a solicitor to 'do everything to do with the property for him'. Point (a) appears to have become irrelevant because it seems that this part of the solicitors' fees have been reimbursed by Flat A.
16. The second point is that the property is a small flat, with no work having been done in the relevant period, a couple of metres' square of common parts which are not cleaned heated or lit, no sinking fund and an insurance premium proportion of only £99. It is said that £750 is therefore unreasonable.

17. The third point raised is that Ms. Neale and the Respondent own several flats in the same town and the service charge demanded is 3 times higher than the most expensive which is managed by Countrywide who, amongst other things, are a firm of professional managing agents.
18. The Respondent then says that if the other 2 flats have paid the £750 then this is irrelevant to this dispute; there is no breakdown of the solicitors' fees and there is then an open offer to pay £250. Finally, the Respondent asks for an order pursuant to Section 20C of the **Landlord and Tenant Act 1987** that the Applicant's cost relating to these proceedings shall not form part of any future service charge demand. Presumably the Respondent is referring to the **Landlord and Tenant Act 1985** ("the 1985 Act")

#### **The Applicant's Case**

19. The Applicant's case is put by the same solicitors whose charges are being disputed namely Messrs. Broad, Riggall & Godman. They have written a long letter dated 22<sup>nd</sup> April 2005. In essence the arguments are:
  - (a) a breakdown of the solicitors' charges is provided
  - (b) the Respondent should have apportioned the service charges with the previous owner
  - (c) there were many problems with arranging insurance because the solicitors' agency with the previous insurance company was terminated when that company was taken over by another and
  - (d) work specifically relating to Flat A will be deducted from the service charge account

#### **The Law**

20. The **Commonhold and Leasehold Reform Act 2002** changed the law substantially. A Leasehold Valuation Tribunal is now given the task of deciding not only the reasonableness of service charges but also, pursuant to the introduction of Section 27A to the 1985 Act, whether they are actually payable by a party.

21. In this case, the Applicant seeks an Order that the charges are payable by the Respondent tenant and the Respondent has, in effect, made a cross application pursuant to Section 19 of the 1985 Act asking the Tribunal to determine that such charges are unreasonable.
22. There are 2 cases which are relevant to the issue of payability namely **Gilje v Charlgrove Securities Ltd. [2002] 3 L & TR 537** and **St. Mary's Mansions Ltd. v Limegate Investments Co. Ltd, Sarruf and others, The Times 13<sup>th</sup> November 2002, [2002] EWCA Civ 1491** and **[2003] 05 EG 146**.
23. In **Gilje**, the lease stated that the provision of a caretaker's flat was included in the service charge. The argument before the Court of Appeal was whether a general provision to pay for the caretaker's flat could be taken to infer a charge for a notional rent. In giving the lead judgment, Laws LJ said:-  
*"At the end of the day, I do not consider that a reasonable tenant or prospective tenant, reading the underlease which was proffered to him, would perceive that paragraph 4(2)(1) obliged him to contribute to the notional costs of the landlord providing the caretaker's flat. Such a construction has to emerge clearly and plainly from the words that are used. It does not do so. On that short ground I would uphold the Judge below and dismiss this appeal"*
24. In **St. Mary's Mansions**, another Court of Appeal case, Ward LJ gave the lead judgment and said that the words *"the costs of all other services which the lessor may at its absolute discretion provide"* and for the *"reasonable and proper fees"* for general management of the building did not entitle the landlord to include legal charges incurred in collecting ground rent and services charges as part of the service charge.

### **The Decision**

25. On looking at the service charge account and the representations on behalf of the landlord, it seems clear that the landlord has used the solicitors to manage the building. Certainly, the solicitors have been used to collect service charges and arrange insurance.

26. It is within this Tribunal's knowledge and experience that using a solicitor to manage a property as opposed to a professional managing agent is almost always going to be more expensive. The question which this Tribunal therefore considers to be the proper question to ask, in accordance with the construction advised by the Court of Appeal in **Gilje**, is whether a reasonable tenant or prospective tenant, reading the lease proffered to him, would perceive that the wording in paragraph 5 of the 7th Schedule would mean that the landlord would use solicitors as managing agents.
27. The Tribunal considers that no reasonable tenant or prospective tenant would anticipate this. What they would anticipate is that the landlord would go to a solicitor for legal advice from time to time, although in this case it does not appear to this Tribunal that any legal advice was needed except for the matter relating to Flat A where the legal costs have been recovered.
28. The charging rate of what the Tribunal infer from their reference is a consultant to the solicitors' firm of £150 per hour is reasonable for the solicitors to charge their client, but not for a professional managing agent who would employ subordinate staff to do the sort of work undertaken by the solicitors in this case. It is within the knowledge and experience of this Tribunal that a figure of around £150 per flat per annum would be a reasonable management charge by a professional managing agent.
29. As far as the problems with insurance are concerned, a professional managing agent would be likely to either use an insurance broker to obtain cover or, if the agent had insurance agencies, their own resources to obtain alternative cover in the event that their agency were terminated. One would only expect the pay a premium for the insurance and not a separate charge on an hourly rate basis.
30. Accordingly, the Tribunal accepts that £470 is a reasonable management charge for the year ending 31<sup>st</sup> May 2004 which equates to £133.33 per flat. This is slightly less than the figure mentioned above but the Tribunal takes

into account the comments by the Respondent that this is a small flat requiring little managerial input.

31. As far as the year ending 31<sup>st</sup> May 2005 is concerned, the Tribunal considers that with 5% increase for inflation, a figure of £495 would be reasonable. The Tribunal's view, therefore, is that £975.13 would be a reasonable service charge for that year which is made up as follows:-

Insurance premium (not disputed)	£297.00
Balance damage to 1 <sup>st</sup> floor flat (not disputed)	95.00
Surveyor's fee (not disputed)	88.13
Management fee	<u>495.00</u>
	<u>£975.13</u>

32. This equates to £325.04 per flat. This does not include the "surplus" item in the demand which the Tribunal did not consider to be reasonable as there was no explanation given as to how this would be in reasonable anticipation of future charges in accordance with Paragraph 6 of Schedule 5.
33. For the avoidance of doubt, the Tribunal also make a specific Order that none of the legal costs incurred in the dispute with Flat A are recoverable from the Respondent.
34. As to the Respondent's request for an order pursuant to Section 20C of the 1985 Act, it seems to the Tribunal that the landlord has acted unreasonably in attempting to collect such a high charge and it has no hesitation in making the order requested i.e. that the landlord is not entitled to collect the costs of representation in these proceedings (to include the county court proceedings) from the tenants in any future service charge demand.



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**David S Brown FRICS MCIArb**  
24/05/2005

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33. For the avoidance of doubt, the Tribunal also make a specific Order that none of the legal costs incurred in the dispute with Flat A are recoverable from the Respondent.
34. As to the Respondent's request for an order pursuant to Section 20C of the 1985 Act, it seems to the Tribunal that the landlord has acted unreasonably in attempting to collect such a high charge and it has no hesitation in making the order requested i.e. that the landlord is not entitled to collect the costs of representation in these proceedings (to include the county court proceedings) from the tenants in any future service charge demand.

  
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**David S Brown FRICS MCIArb**  
24/05/2005