IN THE LEASEHOLD VALUATION TRIBUNAL
LON/00AY/LSC/2006/0136

AND IN THE MATTER OF FLAT 8 SPA HOUSE, 303 STREATHAM HIGH ROAD, LONDON SW16 3NQ

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

BETWEEN

SPA CENTRAL MANAGEMENT LIMITED

Applicant

-and-

MR S. M AHMAD

Respondent

THE TRIBUNAL'S DECISION

Hearing

Date: 25 January 2007

Appearances: Mr Moore and Miss Gavrielides of Ringleys Chartered Surveyors on behalf of the Applicant
Mr S.M Ahmad in person

Inspection: 30 January 2007

Tribunal: Mrs S O'Sullivan Solicitor
Mr M Mathews FRICS
Mrs R Turner JP

Background

1. Unless stated otherwise the page references herein are to the pages within the Applicant's bundle of documents.

2. This is a claim which was initially brought by the Applicant in June 2005 in Lambeth County Court seeking recovery of service charge arrears in the sum of £1,470.27 and which was by order of the Court transferred to the Tribunal. The proceedings were then adjourned by the Tribunal to allow the Applicant to issue a further application for determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (the "Act") to include further sums which had fallen due since the issue of the court proceedings. This Application dated 18 September 2006 sought a determination of the Respondent's liability to pay and/or the reasonableness of various service charges pursuant to section 27A of the Act in relation to the service charge years 2004, 2005 and 2006.

3. At the hearing the Respondent also made an application under section 20(C) of the Act to disallow, in whole or in part, the Applicant's costs incurred in these proceedings.

4. A pre-trial review was held on 19 October 2006 and directions made. In accordance with those directions a statement of case was served by the Applicant and a bundle was also lodged by the Applicant for the hearing on 25 January 2007. The Respondent failed to comply with any or all of those Directions. Accordingly no evidence was adduced by the Respondent.

5. By way of background the Tribunal heard that the subject property was one of 14 leasehold flats at the premises known as Spa House, 303 Streatham High Road, London SW16 3NQ with associated underground car parking (the "Development") which were developed and all sold and occupied by April 2004.

The Lease

6. The Respondent is the lessee of Flat 8 Spa House 303 Streatham High Road London SW16 3NQ (the "Property") pursuant to a lease dated 7

April 2004 made between Weston Homes (City) Limited (1) Spa Central Management Limited (2) and the Respondent (3) (the "Lease").

7. The Tribunal was provided with a copy of the Lease at pages 20 to 38 of the bundle. The accounting period commences on 1 April in each year to 31 March of the next year (page 2 of the Lease).

8. By clause 5.7.3 of the Lease the Respondent covenanted to:

> ***"pay in advance by half yearly instalments on 1 April and 1 October in each Accounting Year such sum on account of the Expenses for that Accounting Year as the Company or Company's agents from time to time specify as a reasonable estimate of the Tenant's proportion of the Expenses but if no such sum is specified by 31 March in each year the Tenant must pay to the Company the same amount as was payable in respect of the preceding Accounting Year"***

"Expenses" are defined on page 3 of the Lease as:

> ***"all costs charges and expenses incurred or to be incurred by the Company in performing and carrying out the Company's obligations specified in Schedule 4".***

The extent of the Respondent's obligations are set out in Schedule 4 at pages 16-18 of the Lease. The Respondent's proportion is set out on page 4 of the Lease as 8.62069%. It is not disputed by the Respondent that the service charges claimed by the Applicant properly fall within clause 5.7.3 of the Lease.

Inspection

9. The Tribunal inspected the Development on the morning of 30 January 2007. The inspection was attended by Mr Moore on behalf of the Applicant and the Respondent in person. Mr Ola, director of the Applicant and resident of Flat 5 also attended the inspection along with Ms Benn, resident of Flat 12, who attended with the Respondent.

10. Spa House is a recently completed development of 14 flats laid out in two adjoining blocks, one containing flats numbered 1-6 ("Block One") and the other flats 7-14 ("Block Two") with underground parking containing spaces for 11 cars which is reached via an electric gate. The development is set off Streatham High Road, a busy main road. Vehicular access to the Development is off Heybridge Avenue.

11. The Tribunal noted planted areas to the front of both blocks and to the corner of Heybridge Avenue and a small strip of planting alongside the access to the underground parking area. Save for one bed to the front which had been cleared and left uncultivated the planted areas were attractively planted and appeared to have been reasonably well maintained. We saw little evidence of litter. We also saw a bin store which had space for two large bins and which was clean and tidy. We saw two satellite dishes which had been attached to the Development by residents.

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16. The hearing in this matter took place on 25 January 2007. Mr Moore, Estate Manager, and Miss Gavrielides, Legal Officer, both in the employ of Ringleys Chartered Surveyors, appeared on behalf of the Applicant.

17. The Respondent was not represented and was not present when the hearing was due to commence at 10 am but when called by the Clerk to the Tribunal confirmed he was on his way. The hearing therefore did not commence until 11am with the Respondent arriving just after 11.05 am. On arrival the Respondent informed the Tribunal that he had not been aware of the date of the hearing and had thought it was taking place in February 2007. He did however confirm that he had been present at the pre-trial review when the date of the hearing had been agreed. The Tribunal also noted that at his request he had also been provided by the Clerk to the Tribunal with a copy of the Applicant's bundle under cover of a letter dated 4 January 2007 which again clearly contained the date of the hearing and which the Respondent acknowledged receiving. The Tribunal was therefore satisfied that the Respondent had received proper notice of the hearing and as no application for an adjournment was received from the Respondent at that point we proceeded with the hearing.

18. The Applicant first set out the sums sought from the Respondent in relation to each service charge year as set out below.

Service Charge Year	Item	Amount
01.10.04	**O/s service charge**	**£622.24**
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01.10.06	**O/s reserve fund**	**£107.16**
	Total Claimed	**£4,288.28**

19. The Applicant confirmed that the Respondent had never made any payments in respect of service charge falling due since the grant of the Lease save for those made by his solicitor out of completion monies. The Tribunal requested copies of the demands sent out in respect of the service charges. The Applicant was not able to produce copies of the demands as its computer system did not allow it to do so. A sample of a service charge demand was provided dated 25 January 2007 and the Tribunal was able to satisfy itself that the prescribed information was contained within the demand. The Respondent also confirmed that he did not dispute that he had received the demands in respect of the service charges claimed.

20. The Respondent submitted as a preliminary point that he had never received copies of the service charge estimates and therefore had not been able to challenge the items contained within the estimate and it was on this basis that he had not paid the service charges due. The Applicant confirmed that a copy of the budget estimate for each year (pages 77-78) was sent to the Respondent in April each year along with the service charge demand for that period and that the Applicant had never received any response to those budget statements. The Respondent admitted to having received the demands which would have accompanied those estimates. He acknowledged that the budget estimates may well have been sent but gave evidence that he often experienced problems with receiving his post due to the small size of his letterbox. On this point the Tribunal preferred the evidence of Mr Moore and found that it was likely that the Respondent would have received copies of those estimates. In any event the Respondent was not able to produce any evidence to show that he had subsequently attempted to obtain copies of the budgets and been unable to do so. The Tribunal also noted that the actual expenditure did not vary significantly from that contained within the budget estimates and that the Respondent now had the opportunity to challenge the service charge costs in any event on the basis of the actual costs incurred.

21. The service charges for the periods in question had been certified by accountants and the Tribunal was satisfied that these accounts would have been prepared by reference to the actual invoices. Accordingly the Tribunal did not require sight of supporting invoices for every amount contained within the accounts for the three years in question. It did however look at invoices for the year ending 31 March 2005 by way of a sample and did request sight of relevant invoices for other years where appropriate.

22. The Tribunal considered each of the disputed items by reference to the service charge years as a whole and then heard further more general submissions from the Respondent and the evidence heard is set out below.

23. By way of background the Tribunal heard that there was a lack of funds in the service charge accounts due to some lessees not paying the charges due. The Applicant had also entered into payment plans with some of the lessees which meant a delay in receipt of funds. Mr Moore described this as a vicious circle where a lack of funds prevented the Applicant from carrying out some of its responsibilities.

Accountancy fees/Company secretarial fees

24. Accountancy fees were charged in the sum of £528.75 for the year ending 31 March 2004, £705 for the year ending 31 March 2005 and £587.50 for the year ending 31 March 2006. The Respondent did not challenge the accountancy fees. The Tribunal noted that the accounts had been properly certified in each case by either Rouse & Co Chartered Accountants or Vantis Rouse rather than having been prepared in-house and the charges made were therefore made in respect of accounts certified by an accountant qualified within the meaning of the Landlord & Tenant Act 1985 and accordingly, allowed all of the costs claimed in respect of accountancy fees for the periods in question.

The Respondent submitted that there should be no separate charge for company secretarial fees which were billed at £73.44, £293.65 and £293.75 for the years 2004-2006 respectively but that rather these costs should be absorbed into the accountancy fees. The Tribunal heard that these costs were incurred by the management company for providing the secretarial

services. The Tribunal held that these were costs which could properly be claimed under the Fourth Schedule to the Lease and, accordingly, the Tribunal allowed all of these costs for the periods in question.

Cleaning

25. The costs in issue were £718.88 for the year ending 31 March 2004, £3,623.35 for the year ending 31 March 2005 and £3,580.14 for the year ending 31 March 2006. The cleaning had until recently been carried out pursuant to an annual contract which provided for 4 hours of cleaning of the communal areas of the Development per week. No cleaning contract was currently in place as the service charge account did not have sufficient monies to pay for any cleaning services.

26. The Respondent conceded that the cleaning itself was very good and did not dispute the cost of the cleaning itself. His only complaint was that no window cleaning was ever carried out. It was his case that not only the communal glass doors to the entrance to Block One and Block Two should be cleaned but also the lessees' own windows which fronted the Development. At the hearing the Tribunal were provided with a copy of the cleaning specification. This provided for the cleaning of communal windows only and Mr Moore confirmed that as no cleaning of the lessees' windows took place, no charge was made in respect of the these windows.

27. In making its decision as to the reasonableness of these costs the Tribunal had regard to the size of the two blocks and their common parts. The Tribunal had also noted that the Development was clean on inspection and that the glass communal doors at the entrances to the blocks also were clean. It noted that there was no obligation upon the Applicant contained within the Lease to clean the windows to each individual lessee's property but only to keep the external common parts clean and that, in any event, no charge had been made in respect of any window cleaning save that to the communal glass doors and side panels. Accordingly it therefore allowed all of the costs claimed by the Respondent as set out in paragraph 26 as reasonable for cleaning.

Insurance

28. The amounts charged in respect of insurance were £1,044.47 for the year ending 2004, £4,156.52 for the year ending 31 March 2005 and £5,407.54 for the year ending 31 March 2006. The Tribunal was provided with a copy of the certificate of insurance for each of the years in question. On the basis of its knowledge and experience the Tribunal allowed these charges as reasonable.

Lift Maintenance and Call out charges

29. The sum of £61.87 for the year ended 31 March 2004, £733.20 for the year ended 31 March 2005 and £620.40 for the year ended 31 March 2006 was claimed in respect of the lifts. The Tribunal heard that these charges were made up of routine annual maintenance charges and call out charges for one off repairs.

30. The Respondent did not challenge the charges in respect of annual maintenance. However he did challenge the charges levied for call out charges in June 2005, in respect of which the Tribunal were provided with a copy invoice at the hearing. The Respondent's evidence was that the lifts suffered from an inherent defect in that they came off the tracks as they had not been installed properly and, therefore, as this was a problem which should have been rectified in the warranty period, these costs were unreasonable. The Respondent did not adduce any expert evidence on this issue. The Applicant's evidence was that the lifts were generally in good working order and that there was no inherent defect as alleged.

31. The Tribunal agreed that routine maintenance of the lifts must take place and that the Applicant was entitled to charge for this. Although the Tribunal noted that some call out charges had been incurred these did not relate to the lifts coming off the tracks but rather to a defective alarm, the front door being knocked out of line and a mirror being smashed in what appeared to be acts of vandalism. The Tribunal did not find there was any evidence to support the allegation of an inherent defect and indeed the Respondent accepted that the lifts worked well the majority of the time. On the basis of their knowledge and experience the Tribunal found that the costs set out in paragraph 30 in respect of the maintenance of the two lifts and call

out charges for the period in question were reasonable and allowed all of the costs claimed.

Light and Heat

32. Copy invoices from the relevant utility companies were produced in respect of the charges made for Light and Heat and the Tribunal noted that all charges were supported by invoices. The Respondent's complaints in relation to these costs appeared to be that he had not been made aware of the location of the various meters and that the charges made were based on estimates which meant that they could well be higher than actual costs. However the Tribunal noted that although some of the readings on the invoices provided were marked as estimates there were others which were clearly actual readings taken. On this basis the Tribunal allowed all of the costs claimed under this heading for the periods in question.

Management Fees

33. The sum in issue was £266.64 for the year ended 31 March 2004, £2,420.13 for the year ended 31 March 2005 and £2,167.50 for the year ended 31 March 2006. This equated to an annual charge of £150 plus VAT per unit.

34. It was the Respondent's case that a very poor level of management had been provided over the period in question. The Respondent's complaints were that the Applicant failed to respond to residents' queries, it had failed to deal with inherent defects on the Development within the initial warranty period, did not deal effectively with residents' breaches of covenant and that responses to correspondence were never received and that generally its mismanagement had led to the Development declining very quickly. The Respondent gave evidence that he had written 20 or more letters to complain about various matters but was not however able to provide the Tribunal with copies of any letters he had written to the Applicant to complain about any of these issues.

35. In response Mr Moore denied that the management had been poor. He gave evidence that the Applicant had made every effort to deal with any issues which arose with the developer during the warranty period.

He did not have any record on file of receiving either correspondence or telephone calls from the Respondent to which he could respond. As far as enforcing alleged breaches of covenant were concerned he gave evidence that once an alleged breach of covenant came to his attention he would write to the resident involved. By way of example in the case of satellite dishes he had written to a number of residents and been successful in having satellite dishes removed from the Development. On the basis of the above it was Mr Moore's case that all of the management fees charged were reasonable.

36. The Tribunal noted the evidence given by both parties in relation to the management charges. The Tribunal did not accept on the evidence before them that the management had been poor. The Respondent had not produced any evidence to show that he had made any complaints at all in respect of any services provided to the Respondent. In addition the management company also faced some difficulties in that it did not have sufficient monies in the service charge account to provide some services due to non payment of the service charges by some lessees. As to the sum actually charged on the basis of their knowledge and experience the Tribunal found that on a unit by unit basis the charges levied by the Applicant were at the low end of the scale in view of the services provided and therefore allowed the charges set out in paragraph 34 in full.

Water Rates

37. Copy invoices in relation to the water rates were produced to the Tribunal. The Tribunal noted that there seemed to have been a large increase recently in the amount charged and Mr Moore confirmed that this had been noted generally across the portfolio of properties which they managed and were in the process of investigating this rise generally. The Respondent did not raise any specific dispute to these costs save as to agree with the Tribunal's observation and the Tribunal found all of the costs charged under this heading over the period in question to be reasonable.

Grounds Maintenance

38. The sum in issue was £581.68 for the year ended 31 March 2005 and £658.02 for the year ended 31 March 2006. At the hearing the Tribunal

were provided with a copy of the garden maintenance contract which provided for 2-3 hours of gardening work to be carried out each month at the Development at a monthly cost of £52.88. The Tribunal heard from Mr Moore that the gardening services carried out consisted of general weeding, tidying and looking after the shrubs.

39. The Respondent's evidence was that no gardening work had ever been carried out at the Development and that as he worked from home he would have noticed any gardening work being carried out.

40. On inspection the Tribunal had noted that the planted areas were in good order and were well maintained save for one bed in front of Block One which needed clearing and replanting. The Tribunal did not accept the Respondent's suggestion that no gardening had ever taken place. On the basis of their knowledge and experience the Tribunal found that the costs charged for the services provided in respect of gardening were reasonable and allowed all of the costs charged set out in paragraph 39 above.

General Maintenance

41. The sum of £587.50 for the year ended 31 March 2005 and £164.50 in respect of the year ended 31 March 2006 was charged in respect of general maintenance. The Tribunal heard from Mr Moore that these sums related to general items which needed to be carried out at the Development such as the installation of timers, installing bays in the parking area and erecting signs. This heading also included call out charges relating to the repairs to the electric gate.

42. The Tribunal first looked at the costs incurred in relation to the gates and was provided with a copy invoice in the sum of £258.50 in relation to works carried out to the gates in February 2004. The Respondent disputed the call out charges in respect of the gates. It was the Respondent's case that the gates had simply never worked since 24 November 2004. This failure had caused in turn various other problems at the Development including the illegal parking on the development by non-residents, the alleged use by one of the residents of the car parking area as a business from which to sell second hand cars and the dumping of rubbish. The Tribunal heard that it was the Respondent's case that the design of the gates was fundamentally flawed and were totally unsuitable for the type of entrance. The Tribunal also heard that the gates suffered from an inherent defect although he could

not say what this defect was. He submitted that the Applicant should have dealt with the problem during the warranty period and as it had failed to do so, the call out charges, were unreasonable.

43. In reply Mr Moore conceded that the gates had been a problem. However he submitted that under normal conditions the gate should work but that there had been many instances of vandalism by persons trying to seek access to the underground car parking. He did not accept that the gates suffered from an inherent defect as suggested nor did he accept that they had not worked since November 2004. The Tribunal heard due to the problems with vandalism the Applicant was considering replacing the gates with an electric shutter. The gates were currently left open as the service charge account simply did not have the funds to carry out the necessary repairs to put the gate into working order. The Respondent accepted that there had been some vandalism but submitted that the problems were mostly due to the poor design.

44. The Tribunal noted that the call out charges incurred appeared to relate to limit switches having been incorrectly set and were not suggestive of any inherent defect. The Tribunal found no evidence of the inherent defect alleged by the Respondent. As far as the other items falling within this heading were concerned the Respondent did not raise any specific dispute in relation to these costs and on the basis of their knowledge and experience the Tribunal found the sums charged to be reasonable. Accordingly the Tribunal found all of the amounts claimed by the Applicant under this head of expenditure in relation to all of the service charge years to be reasonable.

Hire of Hall

45. The Respondent submitted that the cost of hiring a hall in the sum of £32 for the year ending 31 March 2005 and £124 for the year ending 31 March 2006 each year in which to hold the AGM was unreasonable as he submitted that a meeting between 14 lessees could easily take place in a corridor at the Development. Mr Moore submitted that it was their view that a formal meeting should take place within a semi formal setting and that there was insufficient space in corridors for an effective meeting to take place. The Tribunal found that the hire of a hall was an item which could be

claimed under the service charge pursuant to the terms of the Lease. Having noted the very small communal areas at the Development the Tribunal would agree with the Applicant that to hold a meeting in such a space would be difficult and accordingly found the costs of the hire of the hall to be reasonable in respect of all of the periods in question.

Legal costs

46. Legal costs were included in the service charge accounts for the years ending 31 March 2005 and 2006 in the sum of £23.50 and £139.75 respectively, these amounts being the balance remaining of the total legal costs incurred which had been recharged directly to the individual tenants.

47. The Tribunal found that on proper construction of the Lease legal costs were not recoverable under the service charge but that rather pursuant to clause 5.13 the there was a direct covenant by the Respondent to indemnify the Applicant against all costs including solicitor's costs in respect of any action taken in relation to any breach of covenant by the Respondent.

48. The Tribunal therefore disallowed the costs set out in paragraph 47 above.

Other items

49. The Service charge accounts also contained other items such as sundry items and companies house fees. The Respondent did not make any specific challenge to these items and the Tribunal did not consider these items in any detail but in view of the fact that the amounts concerned were *de minimis* allowed all of these items as reasonable for the periods in question.

Costs

The Respondent made an application under Section 20(C) of the Act to limit the landlord's costs in the proceedings. The Tribunal had already found that legal costs such as solicitors costs did not fall within the service charge

provisions and were not recoverable as part of the service charge. However the Tribunal found that the costs of the managing agents in the proceedings were an item which was clearly contemplated by the parties could be included in the service charge. After hearing the parties' submissions and taking into account the fact that the Applicant had been almost wholly successful in its claim the Tribunal found it just and equitable in the circumstances that no order be made under section 20(C).

CHAIRMAN

DATE 12 February 2007

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01.10.06	**O/s reserve fund**	**£107.16**
	Total Claimed	**£4,288.28**

19. The Applicant confirmed that the Respondent had never made any payments in respect of service charge falling due since the grant of the Lease save for those made by his solicitor out of completion monies. The Tribunal requested copies of the demands sent out in respect of the service charges. The Applicant was not able to produce copies of the demands as its computer system did not allow it to do so. A sample of a service charge demand was provided dated 25 January 2007 and the Tribunal was able to satisfy itself that the prescribed information was contained within the demand. The Respondent also confirmed that he did not dispute that he had received the demands in respect of the service charges claimed.

20. The Respondent submitted as a preliminary point that he had never received copies of the service charge estimates and therefore had not been able to challenge the items contained within the estimate and it was on this basis that he had not paid the service charges due. The Applicant confirmed that a copy of the budget estimate for each year (pages 77-78) was sent to the Respondent in April each year along with the service charge demand for that period and that the Applicant had never received any response to those budget statements. The Respondent admitted to having received the demands which would have accompanied those estimates. He acknowledged that the budget estimates may well have been sent but gave evidence that he often experienced problems with receiving his post due to the small size of his letterbox. On this point the Tribunal preferred the evidence of Mr Moore and found that it was likely that the Respondent would have received copies of those estimates. In any event the Respondent was not able to produce any evidence to show that he had subsequently attempted to obtain copies of the budgets and been unable to do so. The Tribunal also noted that the actual expenditure did not vary significantly from that contained within the budget estimates and that the Respondent now had the opportunity to challenge the service charge costs in any event on the basis of the actual costs incurred.

21. The service charges for the periods in question had been certified by accountants and the Tribunal was satisfied that these accounts would have been prepared by reference to the actual invoices. Accordingly the Tribunal did not require sight of supporting invoices for every amount contained within the accounts for the three years in question. It did however look at invoices for the year ending 31 March 2005 by way of a sample and did request sight of relevant invoices for other years where appropriate.

22. The Tribunal considered each of the disputed items by reference to the service charge years as a whole and then heard further more general submissions from the Respondent and the evidence heard is set out below.

23. By way of background the Tribunal heard that there was a lack of funds in the service charge accounts due to some lessees not paying the charges due. The Applicant had also entered into payment plans with some of the lessees which meant a delay in receipt of funds. Mr Moore described this as a vicious circle where a lack of funds prevented the Applicant from carrying out some of its responsibilities.

Accountancy fees/Company secretarial fees

24. Accountancy fees were charged in the sum of £528.75 for the year ending 31 March 2004, £705 for the year ending 31 March 2005 and £587.50 for the year ending 31 March 2006. The Respondent did not challenge the accountancy fees. The Tribunal noted that the accounts had been properly certified in each case by either Rouse & Co Chartered Accountants or Vantis Rouse rather than having been prepared in-house and the charges made were therefore made in respect of accounts certified by an accountant qualified within the meaning of the Landlord & Tenant Act 1985 and accordingly, allowed all of the costs claimed in respect of accountancy fees for the periods in question.

The Respondent submitted that there should be no separate charge for company secretarial fees which were billed at £73.44, £293.65 and £293.75 for the years 2004-2006 respectively but that rather these costs should be absorbed into the accountancy fees. The Tribunal heard that these costs were incurred by the management company for providing the secretarial

services. The Tribunal held that these were costs which could properly be claimed under the Fourth Schedule to the Lease and, accordingly, the Tribunal allowed all of these costs for the periods in question.

Cleaning

25. The costs in issue were £718.88 for the year ending 31 March 2004, £3,623.35 for the year ending 31 March 2005 and £3,580.14 for the year ending 31 March 2006. The cleaning had until recently been carried out pursuant to an annual contract which provided for 4 hours of cleaning of the communal areas of the Development per week. No cleaning contract was currently in place as the service charge account did not have sufficient monies to pay for any cleaning services.

26. The Respondent conceded that the cleaning itself was very good and did not dispute the cost of the cleaning itself. His only complaint was that no window cleaning was ever carried out. It was his case that not only the communal glass doors to the entrance to Block One and Block Two should be cleaned but also the lessees' own windows which fronted the Development. At the hearing the Tribunal were provided with a copy of the cleaning specification. This provided for the cleaning of communal windows only and Mr Moore confirmed that as no cleaning of the lessees' windows took place, no charge was made in respect of the these windows.

27. In making its decision as to the reasonableness of these costs the Tribunal had regard to the size of the two blocks and their common parts. The Tribunal had also noted that the Development was clean on inspection and that the glass communal doors at the entrances to the blocks also were clean. It noted that there was no obligation upon the Applicant contained within the Lease to clean the windows to each individual lessee's property but only to keep the external common parts clean and that, in any event, no charge had been made in respect of any window cleaning save that to the communal glass doors and side panels. Accordingly it therefore allowed all of the costs claimed by the Respondent as set out in paragraph 26 as reasonable for cleaning.

Insurance

28. The amounts charged in respect of insurance were £1,044.47 for the year ending 2004, £4,156.52 for the year ending 31 March 2005 and £5,407.54 for the year ending 31 March 2006. The Tribunal was provided with a copy of the certificate of insurance for each of the years in question. On the basis of its knowledge and experience the Tribunal allowed these charges as reasonable.

Lift Maintenance and Call out charges

29. The sum of £61.87 for the year ended 31 March 2004, £733.20 for the year ended 31 March 2005 and £620.40 for the year ended 31 March 2006 was claimed in respect of the lifts. The Tribunal heard that these charges were made up of routine annual maintenance charges and call out charges for one off repairs.

30. The Respondent did not challenge the charges in respect of annual maintenance. However he did challenge the charges levied for call out charges in June 2005, in respect of which the Tribunal were provided with a copy invoice at the hearing. The Respondent's evidence was that the lifts suffered from an inherent defect in that they came off the tracks as they had not been installed properly and, therefore, as this was a problem which should have been rectified in the warranty period, these costs were unreasonable. The Respondent did not adduce any expert evidence on this issue. The Applicant's evidence was that the lifts were generally in good working order and that there was no inherent defect as alleged.

31. The Tribunal agreed that routine maintenance of the lifts must take place and that the Applicant was entitled to charge for this. Although the Tribunal noted that some call out charges had been incurred these did not relate to the lifts coming off the tracks but rather to a defective alarm, the front door being knocked out of line and a mirror being smashed in what appeared to be acts of vandalism. The Tribunal did not find there was any evidence to support the allegation of an inherent defect and indeed the Respondent accepted that the lifts worked well the majority of the time. On the basis of their knowledge and experience the Tribunal found that the costs set out in paragraph 30 in respect of the maintenance of the two lifts and call

out charges for the period in question were reasonable and allowed all of the costs claimed.

Light and Heat

32. Copy invoices from the relevant utility companies were produced in respect of the charges made for Light and Heat and the Tribunal noted that all charges were supported by invoices. The Respondent's complaints in relation to these costs appeared to be that he had not been made aware of the location of the various meters and that the charges made were based on estimates which meant that they could well be higher than actual costs. However the Tribunal noted that although some of the readings on the invoices provided were marked as estimates there were others which were clearly actual readings taken. On this basis the Tribunal allowed all of the costs claimed under this heading for the periods in question.

Management Fees

33. The sum in issue was £266.64 for the year ended 31 March 2004, £2,420.13 for the year ended 31 March 2005 and £2,167.50 for the year ended 31 March 2006. This equated to an annual charge of £150 plus VAT per unit.

34. It was the Respondent's case that a very poor level of management had been provided over the period in question. The Respondent's complaints were that the Applicant failed to respond to residents' queries, it had failed to deal with inherent defects on the Development within the initial warranty period, did not deal effectively with residents' breaches of covenant and that responses to correspondence were never received and that generally its mismanagement had led to the Development declining very quickly. The Respondent gave evidence that he had written 20 or more letters to complain about various matters but was not however able to provide the Tribunal with copies of any letters he had written to the Applicant to complain about any of these issues.

35. In response Mr Moore denied that the management had been poor. He gave evidence that the Applicant had made every effort to deal with any issues which arose with the developer during the warranty period.

He did not have any record on file of receiving either correspondence or telephone calls from the Respondent to which he could respond. As far as enforcing alleged breaches of covenant were concerned he gave evidence that once an alleged breach of covenant came to his attention he would write to the resident involved. By way of example in the case of satellite dishes he had written to a number of residents and been successful in having satellite dishes removed from the Development. On the basis of the above it was Mr Moore's case that all of the management fees charged were reasonable.

36. The Tribunal noted the evidence given by both parties in relation to the management charges. The Tribunal did not accept on the evidence before them that the management had been poor. The Respondent had not produced any evidence to show that he had made any complaints at all in respect of any services provided to the Respondent. In addition the management company also faced some difficulties in that it did not have sufficient monies in the service charge account to provide some services due to non payment of the service charges by some lessees. As to the sum actually charged on the basis of their knowledge and experience the Tribunal found that on a unit by unit basis the charges levied by the Applicant were at the low end of the scale in view of the services provided and therefore allowed the charges set out in paragraph 34 in full.

Water Rates

37. Copy invoices in relation to the water rates were produced to the Tribunal. The Tribunal noted that there seemed to have been a large increase recently in the amount charged and Mr Moore confirmed that this had been noted generally across the portfolio of properties which they managed and were in the process of investigating this rise generally. The Respondent did not raise any specific dispute to these costs save as to agree with the Tribunal's observation and the Tribunal found all of the costs charged under this heading over the period in question to be reasonable.

Grounds Maintenance

38. The sum in issue was £581.68 for the year ended 31 March 2005 and £658.02 for the year ended 31 March 2006. At the hearing the Tribunal

were provided with a copy of the garden maintenance contract which provided for 2-3 hours of gardening work to be carried out each month at the Development at a monthly cost of £52.88. The Tribunal heard from Mr Moore that the gardening services carried out consisted of general weeding, tidying and looking after the shrubs.

39. The Respondent's evidence was that no gardening work had ever been carried out at the Development and that as he worked from home he would have noticed any gardening work being carried out.

40. On inspection the Tribunal had noted that the planted areas were in good order and were well maintained save for one bed in front of Block One which needed clearing and replanting. The Tribunal did not accept the Respondent's suggestion that no gardening had ever taken place. On the basis of their knowledge and experience the Tribunal found that the costs charged for the services provided in respect of gardening were reasonable and allowed all of the costs charged set out in paragraph 39 above.

General Maintenance

41. The sum of £587.50 for the year ended 31 March 2005 and £164.50 in respect of the year ended 31 March 2006 was charged in respect of general maintenance. The Tribunal heard from Mr Moore that these sums related to general items which needed to be carried out at the Development such as the installation of timers, installing bays in the parking area and erecting signs. This heading also included call out charges relating to the repairs to the electric gate.

42. The Tribunal first looked at the costs incurred in relation to the gates and was provided with a copy invoice in the sum of £258.50 in relation to works carried out to the gates in February 2004. The Respondent disputed the call out charges in respect of the gates. It was the Respondent's case that the gates had simply never worked since 24 November 2004. This failure had caused in turn various other problems at the Development including the illegal parking on the development by non-residents, the alleged use by one of the residents of the car parking area as a business from which to sell second hand cars and the dumping of rubbish. The Tribunal heard that it was the Respondent's case that the design of the gates was fundamentally flawed and were totally unsuitable for the type of entrance. The Tribunal also heard that the gates suffered from an inherent defect although he could

not say what this defect was. He submitted that the Applicant should have dealt with the problem during the warranty period and as it had failed to do so, the call out charges, were unreasonable.

43. In reply Mr Moore conceded that the gates had been a problem. However he submitted that under normal conditions the gate should work but that there had been many instances of vandalism by persons trying to seek access to the underground car parking. He did not accept that the gates suffered from an inherent defect as suggested nor did he accept that they had not worked since November 2004. The Tribunal heard due to the problems with vandalism the Applicant was considering replacing the gates with an electric shutter. The gates were currently left open as the service charge account simply did not have the funds to carry out the necessary repairs to put the gate into working order. The Respondent accepted that there had been some vandalism but submitted that the problems were mostly due to the poor design.

44. The Tribunal noted that the call out charges incurred appeared to relate to limit switches having been incorrectly set and were not suggestive of any inherent defect. The Tribunal found no evidence of the inherent defect alleged by the Respondent. As far as the other items falling within this heading were concerned the Respondent did not raise any specific dispute in relation to these costs and on the basis of their knowledge and experience the Tribunal found the sums charged to be reasonable. Accordingly the Tribunal found all of the amounts claimed by the Applicant under this head of expenditure in relation to all of the service charge years to be reasonable.

Hire of Hall

45. The Respondent submitted that the cost of hiring a hall in the sum of £32 for the year ending 31 March 2005 and £124 for the year ending 31 March 2006 each year in which to hold the AGM was unreasonable as he submitted that a meeting between 14 lessees could easily take place in a corridor at the Development. Mr Moore submitted that it was their view that a formal meeting should take place within a semi formal setting and that there was insufficient space in corridors for an effective meeting to take place. The Tribunal found that the hire of a hall was an item which could be

claimed under the service charge pursuant to the terms of the Lease. Having noted the very small communal areas at the Development the Tribunal would agree with the Applicant that to hold a meeting in such a space would be difficult and accordingly found the costs of the hire of the hall to be reasonable in respect of all of the periods in question.

Legal costs

46. Legal costs were included in the service charge accounts for the years ending 31 March 2005 and 2006 in the sum of £23.50 and £139.75 respectively, these amounts being the balance remaining of the total legal costs incurred which had been recharged directly to the individual tenants.

47. The Tribunal found that on proper construction of the Lease legal costs were not recoverable under the service charge but that rather pursuant to clause 5.13 the there was a direct covenant by the Respondent to indemnify the Applicant against all costs including solicitor's costs in respect of any action taken in relation to any breach of covenant by the Respondent.

48. The Tribunal therefore disallowed the costs set out in paragraph 47 above.

Other items

49. The Service charge accounts also contained other items such as sundry items and companies house fees. The Respondent did not make any specific challenge to these items and the Tribunal did not consider these items in any detail but in view of the fact that the amounts concerned were *de minimis* allowed all of these items as reasonable for the periods in question.

Costs

The Respondent made an application under Section 20(C) of the Act to limit the landlord's costs in the proceedings. The Tribunal had already found that legal costs such as solicitors costs did not fall within the service charge

provisions and were not recoverable as part of the service charge. However the Tribunal found that the costs of the managing agents in the proceedings were an item which was clearly contemplated by the parties could be included in the service charge. After hearing the parties' submissions and taking into account the fact that the Applicant had been almost wholly successful in its claim the Tribunal found it just and equitable in the circumstances that no order be made under section 20(C).

CHAIRMAN

DATE 12 February 2007