

**RESIDENTIAL TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL FOR THE
EASTERN RENT ASSESSMENT PANEL**

CASE NUMBER: CAM26/UJ/LS1/2004/002

SECTION 27A AND 20C LANDLORD AND TENANT ACT 1985 AS AMENDED

**Property : 18 Woodland Place, Cedars Village, Dog Kennel Lane,
Chorleywood, Hertfordshire**

Applicant : Tony Brian Warren

Respondent : Cedars Village Management Limited

Representation :

**For the Applicant : Mr Adam Rosenthal – Counsel
Mr T B Warren - Applicant
Mr D J O'Neill**

**For the Respondent: Miss Joanne Wicks – Counsel
Mr C D Moore FRICS
Mr R A Brown
Mr P Rand
Mr C H Meyler
Mr M P Sniders
Mr C Wrigley
Mr J R Corner**

Application dated : 06 January 2004

Hearing Date : 06 July 2004

**Committee : A A Dutton Chair
Miss M Krisko BSc(ESTMAN)FRICS
Mr B Tyers**

Decision Date: 29th July 2004

DECISION

A. BACKGROUND:

1. This application was made by Mr Tony Brian Warren (the Applicant) for the determination of the reasonableness of service charges for the years September 2002 to 2203 and September 2003 to September 2004. The Respondents to the application are Cedars Village Management Limited (the Respondent).
2. In Mr Warren's original application, which was dated 6 January 2004, he had sought to challenge a number of items. They were the Management fee, the administration charges, domestic costs, maintenance, repairs and maintenance, communal rates, G.P. Consultancy fees, insurance and accounting for service charges. At the hearing, which commenced on 5 July, Counsel on behalf of the Applicant, Mr Rosenthal, indicated that the items in dispute had been condensed slightly to include Management fees, administration charges, domestic costs, maintenance (salaries) and repairs and maintenance only.
3. It is fair to say that it appears that Mr Warren has been mounting an almost one-man fight with the Respondents in connection with these matters and during the course of the hearing much was made by the Respondents of the fact that Mr Warren's views did not represent the views of the great majority of the other occupiers of the estate.
4. It is worthwhile setting out the unusual nature of the development which we are asked to consider. Cedars Village is a retirement village intended to provide accommodation for those past retirement age but is rather different from the traditional sheltered housing schemes. There are a number of companies involved and their inter-relationship is an important aspect of this case. The main controlling company is Retirement Villages plc. Part of that Group is Cedars Village Limited who own the freehold of the development including the communal areas. The Respondents, Cedars Village Management Limited, are a non-profit making

Management Company responsible for the day to day operations at the estate and RV Services Limited, previously called Elmbridge Contracts Limited, provide what has been termed as Head Office Management. There is a Management Contract between Cedars Village Limited and R V Service (see below) and the Applicant, as with all other Lessees, has entered into a Deed of Covenant with both the Respondent to these proceedings and the freeholder, Cedars Village Limited, now a plc.

5. The rights of occupation to apartment 18 are governed by a Lease made between the Applicant and Cedars Village plc of the 3 April 1998. There is no need for us to go into any great detail. Suffice to say that the Lease is for a term of 99 years from the 1 January 1995 with an annual ground rent of £255.00. In addition the Tenant covenants to enter into a Deed of Covenant, which we will refer to later, and to carry out certain obligations. They include certain restrictions on assignment of the property but by and large the terms of the lease are non-contentious. The Landlord in the lease provides the usual covenant for peaceful enjoyment and also a covenant, subject to the Tenant making payments required, to procure that the services contained in the Deed of Covenant are provided by the Management Company.
6. The Deed of Covenant also dated the 3 April 1998 contains the obligations by Cedars Village Management Limited to provide various services which are set out in the Second Schedule thereto upon the tenant covenanting to make maintenance payments under the provision of clause 2 and an additional levy if there are two people living in the property of £100.00 per annum.
7. The obligations of Mr & Mrs Warren in this case were to pay 0.6422% of the total expenditure of the Management Company in providing the various amenities, the costs of providing audited accounts, reasonable reserves against future expenditure and a Management fee, not to exceed 12% of the total sums collected in respect of

the services. It is right to say that these documents were freely entered into by Mr Warren following legal advice.

8. The only other document we need to refer to at this stage is an Agreement dated 7 October 1994 between Cedars Village Limited and Elmbridge Contracts Limited, now RV Services Limited. This is the Management Agreement and again where appropriate we will refer to the provisions during the course of this Decision.

B. EVIDENCE:

9. Mr Warren's evidence was contained in the statement that accompanied his application. Although it did not contain a Statement of Truth he confirmed in evidence that the contents were true and stood by all that was said in that document. He confirmed that no matters were now being pursued with regard to the service of s20 Notices which had formed part of these complaints and that he limited his complaints to the matters we have referred to in the background section of this Decision.
10. Under cross-examination from Miss Joanne Wicks, Counsel for the Respondent, he confirmed that he had full knowledge of how the estate worked, having taken legal advice prior to acquiring his property. It was put to him that he had formed a group called Cedars Village Action Group and that about ten people had apparently made contributions towards the expenses. He conceded that a minority, perhaps up to thirty people, had given him verbal support for the application that was now before us. On specific matters his view was that the Management fee and the administration charges show duplication. That is to say that whilst salaries and monies were being paid for administration those administrators were in fact carrying out part of the element which should have been within the Management fee and that therefore unnecessary costs were being incurred. On domestic costs his real complaint was that there should have been different rostering arrangements which would have done away with the need to employ an outside agency when there were shortages of staff with regard to cleaning. Insofar as the

repairs and maintenance were concerned, he was of the view that a full time qualified gardener would be more appropriate than the unqualified staff that were presently used.

11. The only other witness called on behalf of Mr Warren was Mr David John O'Neill the Business Development Manager for Hanover Property Management Limited in Hemel Hempstead. He had submitted a Report that was in the bundle and which we had read. His evidence was essentially that if Hanover Property Management were dealing with the management of the estate, the fee they would be looking for was not £375.00 plus VAT per unit per year which is what the present Management fee has been fixed at, but rather a figure of £256.00 per unit per year. He confirmed that they managed over 5000 retirement properties and have often assisted developers in setting up new developments. He did accept that this development was not ordinary and had services above the normal levels.
12. In cross-examination he confirmed that Hanover was a mid-size Management Company but had not managed any village schemes of this nature. It was put to him that his evidence was not independent. Firstly the witness statement itself contained none of the usual wording for an independent witness seeking to comply with the requirements of the court and that having advised Mr Warren as to the costs that Hanover would charge, in effect he was pitching for work and was not an independent expert, but somebody who had a vested interest in his position. It also transpired during the course of evidence that he had not visited the site although he had visited another site owned by the same organisation in the course of development in Berkhamsted.
13. He adhered to the terms of his Report in that essentially there appeared to be duplication of work carried out between the Management and administration that the unit charge of £375.00 plus VAT was high. He also stated that the Reserve Fund appeared to have declined considerably in the recent past and that there was no schedule of planned maintenance to show how a figure in the 2000-2001

accounts of £17,000.00 had been corrected or indeed how that had now reduced to a figure of £12,0000.00 for the year September 2002/2003. He also made comment as to the right to charge VAT, which was apparently in issue. During the course of cross-examination it became apparent that there were certain details of which Mr O'Neill was unaware. For example, he did not understand that the monies being paid for the restaurant and the shop by the people running same were being paid into the service charge account for the benefit of the residents and appear to have relied on information given by Mr Warren which he had not himself checked.

14. The Respondents called a number of witnesses and we hope they will forgive us if we take their evidence fairly shortly. We had on file the Respondent's reply which was prepared to deal with the more extended areas of complaint raised by the Applicant and we noted all that was said therein. Mr Raymond Alan Brown, the Chief Executive and Director of Retirement Villages plc gave evidence as to the method in which the various companies inter-related and were run, with confirmation also that whatever the outcome the Respondents would not be seeking to recover the costs of these proceedings through the service charges although Mr Warren had in fact made an application under s20.C. He also told us that such was the time taken to deal with Mr Warren's complaints that on a pure costs basis, the time spent dealing with the matter had exceeded the Management charge made by the Group.
15. Clifford Hanan Meyler also gave evidence. He was the Operations Director of the Respondent Company and also of RV Services Limited and Retirement Villages plc. He gave us details of his experience and the tasks that he undertook. We were told he was paid by RV Services and he confirmed that in his view there was no overlap between the administration and the Management elements. The same service charge arrangements were in place at all three developments that were now up and running and the covenants and percentage were the same throughout. He told us that there had been disquiet amongst the residents at the percentage

charged for Management fees and as a result of a meeting between the residents and the Respondents, it was agreed that for the next three years the Management charge would be fixed at £375.00 uplifted only by Retail Price Index increases in April of each year. The matter would be reviewed at the end of the three-year period.

We next heard from Mr Malcolm Philip Sniders who is the Administrator at the development, having been there since March 2000. He has in effect the day-to-day operation of the Village and listed a number of matters which he undertook which included regular meetings with the residents and caring for their well being. A fairly detailed statement had been submitted by him dated the 21 June 2004 and we had noted the comments. In evidence to the Tribunal he confirmed that the domestic staff were permanent although temporary staff were taken on during holidays. Apparently two permanent members of staff had recently left, one about two weeks ago and the other about three months ago on maternity leave and had only just indicated that she was not intending to return to work. We were told the Residents preferred cleaning in the mornings which obviously placed certain pressures on the staff and that Jet Maid (an outside contractor) was only used to cover short-term illness problems. He did confirm that recruitment was a problem and whilst they would seek to recruit fulltime staff, it was not always possible. He was asked about specific matters such as a tree trunk that had been left to lie in the grounds, whether bonfires were lit on regular occasions and the care of the impressive trees that were to be found within the development. We noted the answers given in respect of same as we did to matters relating to tendering for works and the use of staff generally around the development.

Following his evidence we heard from Mr Christopher Wrigley who is the Residents Association Chairman and Mr John Arthur Corner who is Chairman of the Cedars Village Residents Association Budgetary Sub-Committee. Mr Wrigley confirmed there is a level of dissatisfaction with regard to the Management fee both at the original 12% and the subsequent figure of £375.00. However by and large he suggested that the residents were happy with the present Management

arrangements. Mr Corner confirmed that there was concern at the Management fee escalating beyond control as a result of increasing service charge costs and that the residents generally felt that 12% was no longer an appropriate figure. He told us there had been negotiations which had led to the £375.00 being agreed. He also told us that there was a certain element of swings and roundabouts. For example carpeting in the main house, which was the responsibility of the service charge payers, had in fact been paid for, at least as to 50%, by RV Services. He told us that he believed he got accurate Management figures, received on a quarterly basis and although he did not go into minor matters, he did carefully check main items of expenditure. He was also of the view that the present Management arrangements should be retained. He felt that if outside managers were brought in to save money life would not be as tolerable as it is now and that it was better to deal with the people who were known and with whom he felt one could negotiate.

16. We also heard from Mr Peter Rand who is the Finance Director of the Respondent Company as well Retirement Villages plc and RV Services. He told us that he was paid through the service charge account but that in his view there was no duplication. He countered arguments put forward by the Applicant that the VAT charged by RV Services should not have been so charged and explained the differences in the Reserve Fund. Apparently there had been a stripping out from those figures of monies that had been retained for redecoration purposes which were now dealt with on an annual basis. The intention was he said, to slowly increase the Reserve Fund to cover expenditure for the future and he produced a Schedule to 2019/20 setting out the plans for the maintenance and upkeep of the development. He confirmed that the present Reserve Fund level was £14,669.00 and was intended to grow as necessary to cover the future expenditure. He also told us that whilst the freehold was, as we have indicated earlier, owned by Cedars Village plc., they did not charge the Respondents a rent for the use of the main house or the caretakers cottage and that furniture owned by RV Services was again not charged for although the replacement of standard furniture, as opposed to the

antiques, was included in the future service charge liabilities. He was then cross-examined on the question of duplication but was satisfied that there was no cross-over between the work that he did and that which was done by Mr Snider.

17. Finally we heard from Mr Christopher Derek Moore, a Chartered Surveyor with Haslems. He had produced a fairly lengthy report which contained a Statement of Truth and the usual declarations one would expect to see. He had been instructed purely to deal with the level of Management fee. His report essentially upheld the Management fee of £375.00. He had assessed the reasonableness of the fee by applying four tests. The first was to consider whether the charge was fair against the RICS code as well as the Association of Retirement Housing Managers code. He felt from his discussions with the Management and his own investigations, that these codes had been complied with. His second test was to compare the charges of Cedar Village with others that he was aware of. In this regard he relied on a couple of Leasehold Valuation Tribunal cases, one of which he had been directly involved with. He also relied on his own experience which indicated that service charges in the region of 10-15% were not unusual. The third test he applied was the fact that the majority of residents had accepted the service charge payments and his fourth test was that the 12% figure was contained within deeds and therefore a contractual liability.
18. His view was that the two-tier system of management was appropriate but he did accept that in a large organisation there was always the risk that there would be duplication. He accepted that it was unusual for percentage figures to be used in respect of Management charges in the retirement sector and indeed this was now something frowned upon by the RICS. A fixed fee was more usual. He also took into account the fact that there appeared to be new purchasers waiting to acquire property on the development as and when it became available and that it indicated that the levels being sought by the Respondents in respect of Management charges were reasonable. Under cross-examination he confirmed he had dealt with only a handful of retirement villages but had considerable experience in service charge

disputes. It was put to him that there was a good deal of duplication when one looked at the RICS code and the list of responsibilities that had been prepared by the Respondents. His view was that there may have been an apparent overlap of wording but he was not convinced that there had been an actual duplication of work but he accepted there was always that risk although he was not prepared to accept that such risk had turned to reality in this case.

19. At the conclusion of the evidence both Counsel made submissions to us. Miss Wicks had provided a written submission, which she took us through. We noted all that was said. We were referred to the case of Forcelux v. Sweetman a Lands Tribunal case heard in May of 2001 which indicated certainly from that Tribunal's point of view the basis upon which the assessment of reasonableness should be conducted under the Act. Her submission with regard to the Management fee was that the Management fee was payable by reference to a contractual document, that there were benefits to be had from the "personality" of the Company RV Services, that the residents did not want a change of Manager and there was no evidence that other companies would provide such a good service at a lower cost. Insofar as the administration costs were concerned she argued that there was no overlap and that the deed required certain levels of administration which was therefore obligatory. She also commented upon matters relating to domestic and maintenance costs as well as repairs and maintenance.
20. Mr Rosenthal also referred to the case of Forcelux but asked us to note that the member of that Tribunal also indicated that the Charge should not be out of line with the market norm. He also asked that it be made clear that there was no application to appoint a new manager but merely a question of the reasonableness of the service charge and the apparent isolation of Mr Warren should not deflect us from considering the matters that were before us. The issue was, he reminded us, whether the service charges had been reasonably incurred. The main thrust of his argument on the Management fee was that there was a distinct overlap when one looked at the RICS code as well as the ARHM code and that in effect there were

double payments for the work being done. He was of the view that the evidence given by Mr O'Neill should be preferred to that of Mr Moore and on the question of domestic issues he relied on the arguments contained in the Applicant's statement as he did with regard to the maintenance charges.

C. INSPECTION:

21. We had inspected the Village prior to the commencement of the hearing. The development is to be found adjacent to Chorley Wood Common in a very pleasant setting. The area of the Village is some 21-22 acres and comprises of a number of houses and bungalows together with blocks of apartments. There was an extensive road network linking these and dominating the development was a "listed" country house which formed the hub of the development providing facilities such as restaurant, library, bar, snooker room, conservatory and a ballroom.
22. The grounds appeared to be in a well kept state and we noted there were a number of impressive trees subject to Tree Preservation Orders. The general impression was that the Village was a well kept and exclusive development.

D. DECISION:

23. The area of contention was mainly the relationship between the administration charges and the management charges and in particular the duplication of same. Before we deal with those we will firstly deal with the other issues raised by Mr Warren. In Mr Rosenthal's opening he had listed five issues and putting aside for the moment, the management/administration element these came down to domestic costs, maintenance salaries and repairs and maintenance. The domestic costs related to the staffing arrangements for the cleaners and the use of a Company called Jet Maid to provide cover. The maintenance costs appeared to centre around the garden staff. Insofar as repairs and maintenance was concerned it was argued that the costs of routine maintenance personnel seemed to be unreasonably high. With respect to Mr Rosenthal, there was little or no evidence adduced with regard to these three matters other than the statements made by Mr

Warren in his application. We heard from Mr Sniders on the question of the staffing arrangements for the cleaning element and he explained that it was their intention to try and employ full time staff where they could. Inevitably there were problems with staff illnesses and short term cover was required. It was felt that the use of Jet Maid services, although at a higher rate, worked out to be a reasonable method of providing the service to the residents. As far as the gardeners were concerned he had told us that none were fully qualified but the gardens were an important feature and we had been told in evidence that tree specialists had recently carried out an extensive survey where the trees had been tagged for future reference and that there was regular contact with the local authority's tree specialist. Insofar as repairs and maintenance was concerned, he told us that tendering took place, usually approaching three companies, and that the maintenance supervisor was experienced in the building and plumbing trade and was quite capable of dealing with the day-to-day issues that may arise.

24. We find there is no evidence that the Respondents are not complying with their obligations so far as the domestic costs, maintenance and repairs and maintenance are concerned. No evidence was adduced to us that these charges were unreasonably high or that there was unreasonable work undertaken. We are satisfied that the arrangements for the provision of domestic staff is perfectly reasonable. The employment of a full time qualified gardener would seem to be unnecessary and it is quite clear that the Respondents call in experts as and when needed and there is no evidence that the arrangements for tendering and the use of staff for maintenance works are unreasonable. We therefore find that there is no justification for us interfering with the charges made in respect of the domestic costs for the year 2002-2003 of £86,372.00 nor the budget for the year ending September 2004 and the same applies to the figures in respect of maintenance, salaries and general repairs and maintenance.
25. We turn now to the question of the Management and Administration charges.

26. Having considered the matter carefully we are satisfied that it is reasonable for the Respondents to have what appears to be a two-tier system of management, that is to say Mr Snider and his staff on site and Mr Meyler, Mr Brown and Mr Rand providing the higher-tier of management. An analogy was put to us by Mr Moore that this would be an arrangement one would often find in a chain of restaurants and although that is perhaps somewhat simplistic, the basis of that proposition seems to apply in this case and we find is not unreasonable.
27. It has to be said however that this two-tier system of management does, in our finding, lead to some duplication of work. Mr Rosenthal made much of the appointment and charges of managing agents set out in paragraph 2 of the RICS code and in particular at paragraph 2.5 thereof. That listed some 15 matters, which according to the code, subject to the terms of written agreement, should form a basic service in respect of a managing agents fees. He contrasted that with a document prepared by the Respondents for the proceedings headed "*Tasks Included In Administration Salaries Budget Head*" and in particular those of the Administrator. During the course of cross examination of a number of witnesses for the Respondent he elicited confirmation that on the face of it there would appear to be a possible duplication in respect of some items but there was no outright admission that it was the case. Mr Moore accepted there might be some duplication "depending upon how you looked at the words". However it seems to us that there clearly are elements which fall within both headings. We do not propose to particularise those in each individual case but for example at paragraph "K" of the RICS code there is provision for "*inspect property to check condition and deal with minor repairs to buildings, plant, fixtures and fittings. An appropriate frequency for these inspections should be agreed;*" In the Administrators charges and responsibilities there is a heading "*Regular Inspection of Buildings and Grounds with Maintenance Staff to Ensure Proper Maintenance*". A further example of the Administrators responsibilities which appear to overlap there is the obligation for "*preparation of initial draft budget for submission and approval by RV Services, monitoring expenditure against approved budget using monthly management*

accounts prepared by RV Services. In conjunction with RV Services as appropriate, preparing and updating, redecoration and plans, maintenance schedules, preparation of draft Reserve Fund expenditure plans, obtaining competitive estimates, quotations or tenders for goods and services as necessary". This latter element also coincides with paragraph "E" of the RICS code which requires "to produce annual spending estimates to calculate services charges and reserves as well as administering the funds and providing information to auditors".

28. According to the income and expenditure account for the year ending 30 September 2003 some £110,443.00 has been spent on administration and management. This we find is a large sum of money for the services provided and indeed makes up some 22% of the total expenditure by the Respondent.
29. We have no doubt that insofar as the administration element is concerned the charges incurred are reasonable. The administration of the estate is clearly acceptable to the Residents. There was evidence from Mr Wrigley and from Mr Corner that although there may be disquiet with regard to the management fee they were content with the administration of the village and felt that the Respondents were providing value for money insofar as the administration element was concerned. We find therefore that the administration charges for the years to September 2003 and the future cost to September 2004 are reasonable and we would not make any Order in respect of same.

We do find however that the management charges are on the high side. The provision for charging management is up to 12%. This suggests that there is an obligation on the Respondents to consider whether the management charge should be reasonable and reflect the work actually done by the management team for which there is a maximum charge of 12%.

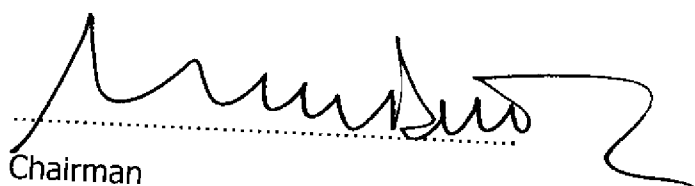
30. The evidence we had from Mr O'Neill was that his Company would charge £256.00 per unit. Unfortunately we found Mr O'Neill's evidence unhelpful. There is no

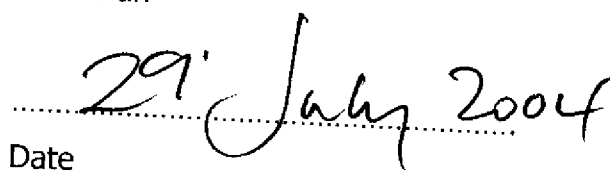
doubt that the comments made by Miss Wicks concerning his impartiality have to be taken into account. Clearly he was initially instructed with a view to putting forward proposals which could lead to his Company taking over the management. He therefore has a vested interest in the eventual outcome despite what may have been asserted on his behalf and indeed by him at the hearing. We were also concerned that although we could see it might be possible to fix a Management fee without inspecting the premises in question in straight forward circumstances we do not believe that could be realistically done with a development of this nature. We are not dealing here with a simple block of flats but a complicated arrangement involving a number of companies and a number of properties. We therefore reject Mr O'Neill's evidence insofar as the level of management fees were concerned.

31. So far as Mr Moore was concerned, his report seemed to start from the premise that £375.00 was a reasonable figure and then he reviewed that by reference to his four tests. He did accept in examination that there could be some duplication but as he indicated in his statement he believed the Management Company broadly complied with the codes of practice. We do not believe that sufficient weight was given to the duplication of services which we find has arisen in this case. Secondly the use of comparable evidence from other Tribunal Hearings is not really of any great assistance to us unless those other developments were of a very similar nature to the subject premises we are dealing with in this case. It is of course right to say that we are not bound by other Land Tribunals or Leasehold Valuation Tribunal Decisions and we did not find the evidence of the comparable cases of help.
32. Accordingly, in the absence of any compelling evidence and doing the best we can and from our own knowledge and experience we have concluded that the appropriate management charge applicable for this development, utilising a fixed figure as opposed to a percentage, should be £325.00 per unit per year. This is still a high figure but in our finding reflects the complexity of the estate and is

therefore reasonable. We therefore order that we find £325 per unit per year is the reasonable management charge for the two years in question.

32. We were told at the hearing that the Respondents intended to maintain a fixed rate for three years and of course it will be for the parties to consider the future management charges by reference to the Deed of Covenant. We hope however that what we have stated in this Decision will assist the parties when they come to review the management fees for future years and that there will be no need for any further referral to us.
33. Finally, although Mr Warren had made an application under s20C of the Act, the Respondents had indicated at a very early stage that they would not be seeking to add the not inconsiderable costs associated with these proceedings to the service charge account. Infact, given that the main plank of Mr Warren's complaint has been upheld we make an order under section 20C that the costs of these proceedings are not relevant costs for the purposes of recovery by the Respondents. In effect we merely formalise the undertaking given by the Respondents at the commencement of the hearing. We take that as evidence of their good will towards the residents and we hope this dispute which we believe has caused upset with a number of the residents can now be put behind all concerned and the peace of Cedars Village can be returned.


Chairman


Date