RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 – Section 20C
Commonhold & Leasehold Reform Act 2002 –
Paragraph 10 of Schedule 12

Case No: CHI/24UN/LVT/2005/0005

Re: **Ashlawn Gardens,**
Winchester Road,
Andover, Hants SP10 2EU

Between

Mr S T Webber & Others **("the Applicants")**

and

Swattons (Andover) Ltd

and **("the Respondents")**

Ashlawn Gardens Ltd

Appearances:

Mr S T Webber for the Applicants

Mr Andrew Kirkconel of Bell Pope Solicitors
for Ashlawn Gardens Ltd

Mr Tony Ford of Brockmans Solicitors
for Swattons (Andover) Ltd

Tribunal: T D George, Lawyer (Chairman)
D L Edge FRICS

Part I

A. This application is made by the Applicants relating to the flats at Ashlawn Gardens, Winchester Road, Andover, Hampshire, following the withdrawal by them of an Application under Section 37 of the Landlord and Tenant act 1987 which was made on 22 August 2005. The date of the withdrawal was the 19 January 2006.

Section 20C(1) of the Landlord and Tenant Act 1985 provides that a tenant may make an application for an Order that all or any of the costs incurred or to be incurred, by the Landlord in connection with proceedings before a court [residential property tribunal] or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Subsection (3) provides that the court or tribunal to which the application is made may make such Order on the application as it considers just and equitable in the circumstances.

The Tribunal has no power to construe the terms of the leases of the flats.

The issues that give rise to this Application commence with the letter dated 6 May 2005 from the Applicants to Mr C J Price of Ashlawn Gardens Ltd setting out the Applicants' requests for the revision of the Additional Premium and the Building Fund Contribution referred to in the leases of the flats at Ashlawn Gardens. The reply to that letter is the letter dated 2 June 2005 from Bell Pope to the Applicants' representative, Mr Webber. By his letter in reply dated 6 June 2005, Mr Webber expressed his disapproval of Ashlawn Gardens Ltd instructing solicitors and in his evidence he reinforced that view. In the same letter Mr Webber suggested a meeting between Bell Pope, Ashlawn Gardens Ltd and representatives of the Ashlawn Gardens Residents' Association. Mr Webber also wanted to deal with the Additional Premium.

The reply by Bell Pope is contained in their letter dated 17 June 2005. It records the rejection of the offer about the Building Fund Contribution and agrees to a meeting and makes suggestions as to who should attend and where. Mr Webber replied by letter dated 20 June 2005 complaining about delay and saying that whether there would be merit in a meeting, would depend on the response about the Additional Premium or would resort to the LVT be likely to be more rewarding. The next letter is the one dated 22 July 2005 by Bell Pope. It repeats the Building Fund Contribution offer and suggests that three months be given for that to be considered by the residents. It rejects the Respondent's proposal for a one hundred pound per annum ground rent in place of the Additional Premium. The offer of a meeting is repeated. The reply is the letter dated 4 August 2005 making it clear that the residents had decided to make an Application to a Leasehold Valuation Tribunal with a view to a more reasonable outcome. It confirms that the Application to the LVT is being submitted, and that Bell Pope should not write to Mr Webber again. Contrary to that request, Bell Pope did write on 9 August 2005. That letter contains two suggestions that the residents should take legal advice as to their position.

In evidence, Mr Webber agreed that he and the residents did not seek legal advice and he thought with the benefit of hindsight they should have done so. They did not research the definition of a "flat" in Section 37 which definition is contained in Section 60 of the same Act. Instead they included the bungalows at Ashlawn Gardens in their Application to the Leasehold Valuation Tribunal. Mr Webber confirmed that they had thought about the percentages contained in Section 37 but included the bungalows in their calculations. Mr Webber also confirmed, as is the fact by the dating of them, that letters supporting the Application were not signed until after the Application had been submitted and did not accompany the Application. The Tribunal wrote to Mr Webber on 26 August 2005 following receipt of the Application dated 22 August 2005 pointing out the deficiencies in the Application and suggesting that he may wish to take advice from a Lawyer who is experienced in these matters. By letter in reply dated 27 August 2005, Mr Webber said he was getting the letters of consent, deciding which Section

of the Landlord and Tenant Act 1987 he would proceed under and exactly what variations he was seeking. The letter of 3 September 2005 enclosed some letters and dealt with the indication of the relevant Section of the Landlord and Tenant Act 1987 and the variations sought.

Mr Webber also confirmed that he had not made any enquiries as to whether Flat 7a was the subject of a long lease. It turned out that it was and the long lessee, Swattons (Properties) Ltd, was an objector.

The involvement of Mrs H M Nicholson of Flat 41 is important. By her letter dated 30 August 2005, she objected to the Application and said she did not want to be involved in the plans to change the current arrangements. A copy of that letter was also sent to Mr C Price of Ashlawn Gardens Ltd.

Following the pre-trial review on 14 October 2005 Mr Webber confirmed that he and Mrs Nicholson's neighbour, Mrs Edna Whatley of Number 40, went to see Mrs Nicholson. Mr Webber confirmed that he had not been invited by Mrs Nicholson to go and see her. He also confirmed that he explained to Mrs Nicholson the effect of her letter dated 30 August 2005 and how it may prevent the residents from getting to a hearing. He confirmed that he invited her to become an Applicant and that he did not tell her what she was letting herself in for. Mr Webber said that Mrs Nicholson said she wanted to support her friends and not go against them. Mr Webber said that Mrs Nicholson also said this to her friends subsequently. Following this meeting the letter dated 2 November 2005 was sent to the Tribunal making Mrs Nicholson an Applicant, contrary to her earlier letter dated 30 August 2005. That consent was expressed to be reversed in a letter dated 16 November written by the husband of Mrs Nicholson's niece, Mr B Hayward, who says in his letter that Mrs Nicholson is not able to make this sort of decision and always consults him. The letter is countersigned by Mrs Nicholson. In evidence, Mr Webber said that Mr Hayward is the brother of Mrs Price, a director of Ashlawn Gardens Ltd. Mr Webber said that no longer having Mrs Nicholson as an Applicant, the percentage had gone against him and, therefore he withdrew the Application.

B. Having regard to the obligation on the Tribunal to make such an Order as the Tribunal consider just and equitable, the Tribunal takes the view that having considered all the correspondence, the Application dated 22 August 2005, the sequence of events and the oral evidence and submissions, that it would not be just and equitable to make an Order preventing the Landlord from recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.

Part II

C. This Application is made by the Respondents pursuant to paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 which provides that where a party to proceedings acts, in the opinion of the Leasehold Valuation Tribunal, frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings, the Tribunal may order that party to pay the costs incurred by another party in connection with the proceedings not exceeding the sum of £500.

Mr Andrew Kirkconel produced written submissions together with copy correspondence. We did not find dictionary definitions helpful, or the quotations from letters dated 19 January 2006, 31 May 2005 and 8 October 2005.

However it is clear that prior to 22 August 2005, being the date of the Application to the Tribunal, that negotiations were being offered to the Respondents together with the suggestion of a meeting. These were rejected by the Applicants who made it clear that they would go to the Tribunal to try and improve their position. The letter of 9 August 2005 made two suggestions to the Respondents to obtain legal advice. It is important that the Respondents did not take legal advice and did not take advantage of the offer of a meeting despite the exchanges of correspondence.

During the proceedings, Mrs H M Nicholson had a change of mind, an additional long lease came into the picture, which the Applicants did not anticipate when making their Application, though they could have found out on proper enquiry.

In all the circumstances and also taking into account the relevant points in Part I of the decision and the correspondence and oral evidence and submissions, we do not find that the Applicants were so unreasonable that a costs order should be made against them. We, therefore, make no order for Costs under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

Dated 3rd day of February 2006

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T D GEORGE
(Chairman)