

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/33UF/LVT/2005/0002



Property :	Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk	
Lessor :	London Land Securities Limited, of 70 Tudor Road, Hampton, Middlesex TW12 2NF	
Receiver & Manager :	Mr Robert Wells, of Robert Wells Property Agents, 2 Duke Street, Norwich NR3 3AJ	
Application	1	To vary the Order dated 30 th May 2003 appointing Mr Robert Wells as Receiver & Manager of the property [LTA 1987, s.24(9)]
	2	To vary the leases of the flats within the property [LTA 1987, s.35]
	3	For an order that all or any of the costs incurred by the Receiver & Manager in connection with these 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 applicant lessees [LTA 1985, s.20C]
Applicant(s)	1	Robert Wells (as Receiver & Manager)
	2	Crispin Lambert (on behalf of One Task Limited) Flat 2 Alan Walter Roper Flat 18 Eric Pooley Flats 25 & 29
	3	Natasha Sharma, on behalf of the 14 lessees whose addresses for service are all given as c/o 70 Tudor Road, Hampton, Middlesex TW12 2NF
Respondent(s)	1	London Land Securities Limited, of 70 Tudor Road, Hampton, Middlesex TW12 2NF (as lessor & freeholder)
	2	London Land Securities Limited, of 70 Tudor Road, Hampton, Middlesex TW12 2NF (as lessor)
		Trafalgar Court (Mundesley) Management Company Limited (as management company named in each lease)
		All leaseholders (other than those named as Applicants) listed in Schedule A to the application

The mortgagees listed in Schedule B to the application

3 Robert Wells, Eric Pooley, Crispin Lambert, Alan Walter Roper

THE DECISION OF THE TRIBUNAL

Tribunal : Mr G K Sinclair (Chairman), Mr J R Humphrys FRICS, & Mr R Marshall FRICS FAAV

For the Receiver : Stan Gallagher (counsel) instructed by Cozens-Hardy & Jewson, Norwich (Sarah-Jane Inglis)

For LLSL : Robert Salis (counsel) instructed by Cozens Moxon & Harts, Hampton, Middlesex (Ref : MF)

For 14 lessees : Natasha Sharma (s.20C application only)

Also attending : Flat 1 – Ravinder K Sharma
Flat 2 – Crispin Lambert
Flat 11 – Surendra Ganatra (as representative)
Flat 12 – Ross Hawkins
Flat 13 – Peter Kriek
Flat 14 – Pramila Sharda (as representative)
Flat 17 – Narinder Sharma
Flat 18 – Alan Roper
Flat 19 – Ashwani Sharda (as representative)
Flat 20 – Bedi Sarna (as representative)
Flat 21 – Sidney Lobo
Flat 22 – Sonal Sharma
Flat 24 – Natasha Sharma
Flat 26 – Jag Bokri (as representative)
Flat 27 – Jag Bokri (as representative)
Flat 31 – Pramila Sharda (as representative)
Flat 32 – Azra Heyer

Hearing date : Friday 23rd September 2005, at the Boardroom, Norwich City Football Club, Carrow Road, Norwich

First and second applications

- I. The parties having agreed terms in respect of the Applications brought by the Receiver & Manager and by three of the lessees, the tribunal has been invited to and does make the order attached.

The section 20C application

2. On 21st September 2005 Ms Natasha Sharma submitted a 3-page application, with reasons, why the Receiver & Manager should not be entitled to recover as part of any service charge payable by the lessees his costs of the application under section 24(9) of the Landlord and Tenant Act 1987.
3. Her application also sought similar relief in respect of the application under section 31 of the 1987 Act, despite the fact that the Applicants are fellow lessees – not either the landlord nor the Receiver & Manager – and so not in a position to seek recovery of any costs incurred from their fellow lessees.
4. At the hearing Ms Sharma sought to amplify her written submissions, stating that she felt that a lot of this effort could have been avoided if there had been more openness from Mr Wells, eg if she and her side had been allowed to see counsel's advice. The majority (ie those who were all sold leases on the same date for £1.00, and gave their addresses as care of the landlord's address)¹ felt that all of these applications could have been avoided if Mr Wells had not been so partial towards one side.
5. In opposing this section 20C application, Mr Gallagher said on behalf of the Receiver & Manager that the main ground appears to be that the manager failed to disclose counsel's Opinion about various issues relating to his duties. Those instructions and advice were, he submitted, privileged having regard to their content. It was entirely reasonable for the manager not to waive privilege concerning advice received about his various courses of action. He should not be obliged to disclose it, nor be criticised for not doing so. The tribunal on the last occasion had encouraged the manager to seek legal advice. The history of the matter suggests that with an extremely demanding manager's role it was right that he seek advice. The only criticism is that neither Mr Wells nor his predecessor sought it earlier.
6. As for the suggestion that a different approach could have avoided this hearing, nothing in the saga suggested that this hearing could have been avoided. Those past tribunal

¹ Hereafter referred to as the "nominee lessees"

decisions are full of references to the matter not being as simple as might be expected. To suggest another course, or that an agreement might magically have been reached, was fanciful. What had now been reached was an agreement for the manager to be placed in funds of £500,000 within 28 days. Finally, said Mr Gallagher, after years we are a month from the manager being in a position to start the works. We were all here because the manager took advice and instigated proceedings. It would be wrong to debar the manager from recovering his legal costs. Further, it would be of assistance for the tribunal to order that his reasonable legal costs be recovered under the service charge.² There was a technical argument that the Receiver & Manager is not seeking to recover under the leases but under his management order, so this was not capable of being debarred under s.20C. However, Mr Gallagher said that he didn't seek to shelter behind technical points, but that it was not just and equitable to make such an order. If debarred from being able to recover them, it would be the manager personally who would be responsible for considerable legal costs, when in a representative capacity. That would be wrong and unjust. His right to recover his costs should be upheld.

Decision

7. The tribunal rejects the application by Ms Sharma on behalf of the nominee lessees. The two principal applications were brought about by the lack of hoped for co-operation on the part of the landlord and nominee lessees that had been seemingly promised at the hearing in 2004. Not one nominee lessee had paid a penny towards the £500,000 sum authorised by the tribunal on that occasion; instead seeking to hide behind the Receiver & Manager's failure to recover any funds from 3 particular lessees - in 2 cases the lessee having died and their estates still being tied up in probate. The other lessees (who had paid market price for their flats) had already made very substantial contributions towards their shares of the £500,000 required initially. It was, in the tribunals' determination, extremely unlikely that the agreement reached today (or any other agreement) would have been forthcoming without either the threat of a further tribunal hearing and/or the assistance of counsel.

8. It was entirely proper that the Receiver & Manager seek legal advice about how he might

² Upon enquiry by the tribunal, and hastily obtained instructions from the solicitor beside him, Mr Gallagher stated that costs to date were estimated to be in the region of £12,000

effect recovery of the outstanding approved service charge contributions. That advice had presumably identified the problems with the contribution percentages recoverable under the current leases and the possibility of seeking increased powers in his capacity as property Receiver;³ hence the Receiver & Manager's application. Three lessees had also made an alternative application for variation of the lease provisions.

9. Insofar as costs have been incurred by the Receiver & Manager then they are recoverable under the service charge provisions in the leases. The question of reasonableness, and of how much of the estimated £12,000 is recoverable, shall be left to later determination (if required) of any future year's service charge. This tribunal had insufficient information on which it could possibly decide that issue today.
10. Insofar as costs have been incurred by Messrs Lambert, Pooley and Roper, then section 20C⁴ simply does not apply. In any case, the point which Ms Sharma seeks to make is misconceived. The service of notice provisions in respect of applications under Part 4 of the 1987 Act do not impose any obligation to give **advance** notice that an application will be made. In most cases it is the responsibility of the tribunal office to give notice of an application to Respondents and potential Respondents. In the case of Part 4 applications, however, this burden is imposed on the Applicant itself. In the instant case a combined application was issued, so the tribunal office chose to serve it on each Respondent. Otherwise, the joint application document would have had to be served twice – once by the office and once by the Applicants.

Dated 23rd September 2005



Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

³ Rather than simply using the landlord's or managing agents' powers under the leases

⁴ Which refers to costs incurred by "the landlord"

Trafalgar Court – Leaseholders agreement

I [NAME] of flat [FLAT NUMBER], Trafalgar Court, Mundesley, Norfolk ("the Flat" and "the Building") hereby agree to pay the sum of [£14,000.00 / £17,500.00] into a stakeholder account operated jointly by the Manager's solicitors, Cozens-Hardy & Jewson, and London Land Securities Limited's solicitors, Cozens, Moxon & Hart, to be disbursed solely for the purposes of funding the refurbishment of the roof, exterior and common parts of the Building as previously approved and directed by the Leasehold Valuation Tribunal ("LVT").

The said payment to be made in consideration of the Application before the Leasehold Valuation Tribunal being stayed.

The address for service on [NAME] in any proceedings to enforce this agreement shall be 70 Tudor Road, Hampton, Middlesex TW12 2NF.

If Cozens, Moxon & Hart decline to operate the stakeholder account jointly Cozens-Hardy & Jewson shall act alone.

Signed :
For and on behalf of the Lessee

Signed :
Robert Wells, LVT appointed Manager of the Building

Dated this 23 day of September 2005

Trafalgar Court – Agreement concerning recovery from flats 16, 23 and 30

London Land Securities Limited, the freehold owner of Trafalgar Court, Cromer Road, Mundesley, Norfolk ("the Building") hereby agrees to pay the sum of £45,500.00 within 28 days hereof into a stakeholder account operated jointly by the Manager's solicitors, Cozens-Hardy & Jewson and London Land Securities Limited's solicitors Cozens, Moxon & Hart, to be disbursed solely for the purposes of funding the refurbishment of the roof, exterior and common parts of the Building as previously approved and directed by the Leasehold Valuation Tribunal ("LVT").

The said payment to be made in consideration of the Application before the LVT being stayed and in consideration of the Manager, Mr Robert Wells hereby agreeing to bring proceedings in his own name against the lessees (or such others deriving title from the lessees) of flats 16, 23 and 30 in the Building to recover all outstanding service charges. The said proceedings to be commenced within 28 days hereof.

The Manager to account for and pay over to London Land Securities Limited all sums recovered whether by proceedings or otherwise from the said lessees (and such others deriving title from the lessees) and report monthly to London Land Securities Limited on the progress of such proceedings.

If it proves impractical to enforce a money judgment against any of the said lessees (or such others deriving title from the said lessees) the parties shall co-operate for the purposes of enabling the Manager to bring forfeiture proceedings in either his own name or the name of the Manager and the manager undertakes to do so.

If Cozens, Moxon & Hart decline to operate the stakeholder account jointly Cozens-Hardy & Jewson shall act alone.

Signed :

.....
For and on behalf of London Land Securities Limited

Signed :

.....
Robert Wells, LVT appointed Manager of the Building

Dated this 23 day of September 2005

Trafalgar Court – London Land Securities Ltd guarantee agreement

THIS DEED is executed on 23 September 2005

BETWEEN Ravinder Sharma of the first part AND Robert Wells of the second part

WHEREAS :

1. The freeholder, leaseholders and Manager of Trafalgar Court, Mundesley, Norfolk have agreed that £500,000.00 is to be spent on the commissioning of major works to be carried out on the said building, the respective liabilities of the leaseholders to be assessed in accordance with the respective liabilities set out in the respective leases and with the freeholder having the remaining liability
2. The leaseholders and freeholders have agreed within 28 days to pay their respective shares into a stakeholder account jointly controlled by Cozens-Hardy & Jewson and Cozens, Moxon & Hart
3. The freeholder, London Land Securities Limited, is willing to guarantee that any shortfall in contributions on the part of the leaseholders listed in the main part of this Deed is paid in order for the commissioning of the said works to commence

IT IS AGREED AS FOLLOWS :

I, Ravinder Sharma, director of London land Securities, guarantee that if any of the leaseholders of Trafalgar Court, Mundesley, Norfolk ("the Building") who are listed below have failed to pay the full amount of their respective liabilities for the Building into the nominated stakeholder account within 28 days, London Land Securities Limited will pay any shortfall into the said account.

This guarantee will take effect as a Deed.

Relevant leases:	Flat 1	Lessee : Ravinder Sharma
	Flat 11	Lessee : Vijay Sood
	Flat 13	Lessee : Peter Kriek
	Flat 14	Lessee : Varinder Singh
	Flat 17	Lessee : Narinder Sharma
	Flat 19	Lessee : Harpel Sindhu

Flat 20	Lessee : Ajeet Manak
Flat 22	Lessee : Sonal Sharma
Flat 24	Lessee : Natasha Sharma
Flat 26	Lessee : Avtar Kudhail
Flat 27	Lessee : Balbur Kudhail
Flat 31	Lessee : Satvinder Singh
Flat 32	Lessee : Azra Heyer

Signed and delivered as a Deed by:

.....

Ravinder Sharma
Director of London Land Securities Limited

And

.....

Robert Wells
Receiver / Manager of Trafalgar Court

In the presence of
And

Robert Salis, barrister of 2 Gray's Inn Square
Stan Gallagher, barrister of 2 St John St London

Trafalgar Court – Agreement concerning the undeveloped flats

London Land Securities Limited, the freehold owner of Trafalgar Court, Cromer Road, Mundesley, Norfolk ("the Building") hereby agrees to pay the sum of £125,500.00 within 28 days hereof into a stakeholder account operated jointly by the Manager's solicitors, Cozens-Hardy & Jewson and London Land Securities Limited's solicitors Cozens, Moxon & Hart, to be disbursed solely for the purposes of funding the refurbishment of the roof, exterior and common parts of the Building as previously approved and directed by the Leasehold Valuation Tribunal ("LVT").

The said payment to be made in consideration of the Application before the LVT being stayed.

If Cozens, Moxon & Hart decline to operate the stakeholder account jointly Cozens-Hardy & Jewson shall act alone.

Signed :

.....
For and on behalf of London Land Securities Limited

Signed :

.....
Robert Wells, LVT appointed Manager of the Building

Dated this 23 day of September 2005