

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

CASE REFERENCE: CAM//26UJ/LSC/2006/0010

LANDLORD & TENANT ACT 1985 SECTION 27A

**IN THE MATTER OF APARTMENT 18 WOODLAND PLACE CEDARS VILLAGE
DOG KENNEL LANE CHORLEYWOOD HERTFORDSHIRE WD3 5GH**

Applicant: Cedars Village Management Limited

Respondent: Tony Brian Warren and Rosemary Adelaide Warren

Appearances for the Applicant: Mr R Bhose Counsel
Mr P J Rand, Finance Director of Retirement
Villages Limited

Appearances for the Respondent: Mr T B Warren and Mr A Ingram

Tribunal Members: Mr A A Dutton, Chairman
Miss M Krisko BSc(Est Man) FRICS
Mr L Jacobs FRICS

Application Date: 2nd February 2006

Hearing Date: 24th May 2006

Decision Date: 8th June 2006

REASONS

A. BACKGROUND

1. This application was made by Cedars Village Management Limited on the 2nd February 2006 for the purpose of seeking a determination in respect of the service charge years ending 30th September 2004 and 2005 and in respect of payments on account for the service charge years ending 30th September 2005 and 2006. At the Hearing on the 24th May 2006 Mr Bhose, Counsel on behalf of the Applicants, sought to increase the Service Charge liability by reference to a further request for payment which was submitted on the 1st April 2006 in the sum of £950.00. This made the total liability of the Respondents £5,649.00 together with contractual interest at 4% above base rate of Barclays Bank plc as provided for in the Deed made between the Applicant for the first part, Cedars Village plc for the second part and the Respondents of the third part and dated 3rd April 1998.
2. This application was a follow on to an application that had been made by Mr Warren in 2004 and which had been the subject of a determination by the Tribunal under Case No. CAM26/UJ/LS1/2004/002 on the 29th July 2004. By that Decision Mr Warren's application had by and large been refused but there had been a reduction in the sum charged by the management company for their fees from £375 per unit to £325 per unit.
3. The sole issue before the Tribunal, which was clarified by Mr Warren on the day of the Hearing, was the right for R V Services Limited, to charge Cedars Village Management Limited VAT on its services.

B. EVIDENCE

4. The Respondents Statement of Case which was prepared by Mr Warren was submitted and noted. Mr Warren expanded upon the Statement of Case by way of a Statement prepared for the Hearing on the 24th May 2006 which he read out. This Statement explained his background and qualifications and his reasons for bringing the matter before the Tribunal. The Statement complained about the constitution of the Residents Association and was critical of its involvement in reaching agreement with the Applicant on various overheads. Mr Warren had made a complaint to the local constabulary concerning the VAT and produced e-

mail from Detective Constable Thody which in turn produced an e-mail from Mr Martin Lane of the Serious Non-Compliance Team of Her Majesty's Revenue and Customs Department. This indicated that there appeared to be no obvious irregularities but raised some points concerning the VAT charge. In addition appended to Mr Warren's original Statement he had produced a memo showing the management fee calculation together with some revised budget documentation and an extract from the Customs & Excise Notice no. 742. He also produced a letter from H M Customs & Excise dated 8th December 2004 dealing with the VAT status of Cedars Village Management Limited, Retirement Villages Management Limited and Retirement Villages plc. which stated that none of those companies were registered for VAT.

5. In addition to the two statements and the documentation he produced he was accompanied by a Mr Alan Ingram of Fair Property Ownership living in Bromley in Kent. He was a Company Director of Fair Acres (Of Bromley) RTM Company Limited and a Health and Safety Officer. We had handed to us a letter to Mr Warren of the 24th May 2006 setting out his experience.
6. On behalf of the Applicant, Mr Bhose responded to the submissions made by Mr Warren. He pointed out that Mr Warren had not made any payments in respect of Service Charges for the years in question and that the liability to the Applicant was £5,649.00 together with contractual interest. He referred us to the Decision made in 2004 which in his submission made it clear that VAT was charged and was chargeable, that RV Services Limited in providing a service was as a matter of law obliged to charge VAT. He confirmed that the Applicants had reduced their fees for the two previous years before the Decision in 2004 and that rebates had been made. Further the Applicant now used the £325 per unit figure as a base sum which had been uplifted by the Retail Price Index for the subsequent years and VAT had been subsequently added. He also pointed out that there were now only 150 units in the estate and that the figures shown in the account documentation was correct. Documentation produced at the hearing showed that RV Services Limited was registered for VAT and that the renewal of that registration which appeared to have been made in February of 2006 was merely as a result of the change of the registered office. It appeared clear from the Certificate of

Registration that the company had been registered for VAT purposes since June of 1991.

7. Mr Peter John Rand, the Finance Director of Retirement Villages was called. He confirmed that he was a Chartered Accountant and that he was an employee of RV Services Limited. RV Services Limited had been established as a group company to provide management services to all villages that were under the umbrella of Retirement Villages Group. He told us that the company had been registered for VAT since 1991 and that at no time since then had it not been registered. He confirmed that it was not permissible at law for them to avoid charging VAT and that Cedars Village Management Limited was not a VAT registered company. Accordingly it was obliged to pass on the VAT charge made by RV Services Limited to the Residents. His statement also confirmed that RV Services Limited was fully up to date with VAT payments and that there had been a routine inspection in December of last year when all was to be found in order.
8. In submissions at the close Mr Bhose confirmed that the total interest due was £810.42 and confirmed the total outstanding service charge liability was £5,649.00. He confirmed that there would be no application for costs in connection with the Applicants attendance for the Leasehold Valuation Tribunal but did seek a reimbursement of the application fee of £100.00 which Mr Warren agreed to repay if the decision made by the Tribunal on the Applicants case went against him.

C. THE LAW

9. The application made by Cedars Village Management Limited is under Section 27A of the Landlord & Tenant Act 1985 amended by the Commonhold and Leasehold Reform Act of 2002. Section 27A states as follows and sets out the jurisdiction of the tribunal
 - (i) *An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, and, if it is, as to –*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*

- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

D. DECISION

10. The single issue for us to decide in this case is whether or not it is appropriate for RV Services Limited to charge VAT to Cedars Village Management Limited and if it is for the Applicant to pass on that VAT element to the Respondents. Unfortunately in this case it was not until Mr Warren filed his Statement that the complaint became clear. As a result the Tribunal was provided with a number of lever arch files containing copies of the invoices which made up the service charges for the years that appear to be in dispute.
11. In the previous Decision it had been noted by the Tribunal that Mr Warren appeared to be ploughing a lone furrow and it became apparent at the hearing that he did not have the support of a number of residents. That is not to say however that Mr Warren is not entitled to make applications if there are matters which cause concern. In this case however it seemed to us that his position was misconceived. His own documentation did not appear to support his case. The extract that he produced from the Customs & Excise Notice no. 742 at paragraph 12.4 under the heading "What if a Managing Agent Provides Services to Occupants on behalf of the Landlord" stated as follows:

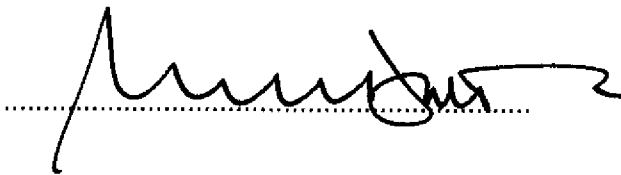
"A managing agent acting on behalf of a Landlord can treat the mandatory service charges to occupants as exempt, providing the agent invoices and collects the service charges directly from the occupants.

However any management fee collected from the occupants is standard rated because it relates to the managing agents supply to the Landlord."

Mr Warren had addressed the Tribunal to paragraph 12.2 in the mistaken belief that it appeared to assist. However this related to the provision of service to Freehold owners of dwellings which was not the case here. Furthermore the invoice that Mr Bhowe produced from RV Services to the Applicant clearly showed

that services were being provided by a company which was registered for VAT to the Applicant company which was not. Accordingly it was only appropriate in those circumstances for VAT to be charged to the Applicant company and subsequently passed on to the residents. Our finding therefore is that the Applicants were quite right and indeed were legally obliged to deal with the VAT in the manner in which they have and that accordingly Mr and Mrs Warren's application is dismissed.

12. We find also that Mr and Mrs Warren are obliged to pay the interest as provided for under the Deed referred to above. That is at 4% above base rate for the time being of Barclays Bank plc. The figure of £810.42 was put to us by Mr Bhose. We were not in a position to clarify whether that is correct or not but on the assumption that the mathematics are right then an amount of £810.42 should be added to the sum of £5,649.00 which is presently due and owing from Mr and Mrs Warren. We see no reason why the payment of the properly calculated sum of interest together with the outstanding service charges should not be made within the next 28 days.
13. Mr Warren also agreed to reimburse the fee of £100 to the Applicants if we found in the Applicants favour, which we have done. Accordingly that sum should also be paid within 28 days. There was no request by the Applicants for the cost of the application to be added as a service charge and we do not need to deal any further with that matter.



Chairman

Date 8 June 2006