LON/OOBB/LAC/2007/0002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 Schedule 11 SECTIONS 20C and 27 A LANDLORD AND TENANT ACT 1985

PROPERTY:	**UPPER MAISONETTE 368A STRONE ROAD LONDON E12 6 TN**
APPLICANT:	**Ms SEYI SALAKO**
RESPONDENT:	**ARORA PROPERTIES LIMITED**
Represented by:	**Mr A Arora**

TRIBUNAL

Mrs T I Rabin Chairman
Ms M Krisko
Ms L Walter

Date of Tribunal's decision: 26th February 2007

APPLICATION

1. The Tribunal was dealing with an application by the Lessee, Ms Seyi Salako ("the Applicant"), for a determination of the liability to pay for an administration charge being charged by the Lessor. Arora Properties Ltd ("the Respondent"). The charge related to the Applicant's property at 368A Strone Road London E12 6TN ("the Flat") which she held under the terms of a long lease. The charges relate to management fees charged by the Respondent. A copy of the lease of the Flat ("the Lease") has been produced to the Tribunal.

2. The parties agreed that the matter could be dealt with on documents only and without a hearing and the Tribunal agreed and the matter was considered on documents only on 20th February 2007.

THE LAW

3. The Tribunal's jurisdiction in relation to the determination of liability to pay an administration charge is set out in paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which allows a Leasehold Valuation Tribunal to determine whether an administration charge is payable. An administration charge is defined in paragraph 1 of Schedule 11 to the 2002 Act as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly :
   (a) For or in connection with the grants of approvals under his lease or applications for such approvals,
   (b) For or in connection with the provision of information or documents by or on behalf of a person who is party to his lease, other than as a landlord or tenant,
   (c) In respect of a failure by the tenant to make a payment by the due date to the landlord .....
   (d) In connection with a breach (or an alleged breach) of covenant or condition in his lease :

4. The application before the Tribunal as described does not fall within the description of an administration charge under the 2002 Act as it does not relate to any of the matters described above. The Tribunal considers that an application under Section 27a of the Landlord and Tenant Act 1985 ("the 1985 Act") would have been more appropriate as the charge complained about, although described as an administration charge, is in fact a management charge. The Tribunal will therefore treat the application as an application under Section 27A of the 1985 Act.

5. The powers of the Tribunal to determine whether a charge is payable are the same under Section 27A(1) and (2)) of the 1985 Act and paragraph 5 (1) and (2) of the 2002 Act and are as follows:

   (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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

(2) Subsection (1) applies whether or not payment has been made

EVIDENCE

6. The Tribunal considered the grounds for the application submitted by the Applicant and the response from the Respondent. The Applicant stated that she had never been charged a fee for management until the Respondent purchased the freehold. After the freehold was acquired by the Respondent a management fee of £25 per annum was demanded and this has increased to £100 per annum. The Applicant states that there is no power under the terms of the Lease for a management fee to be charged.

7. The Respondent stated that the freehold was owned by Mr Amit Arora and that Respondent acts as managing agent. The Respondent is only seeking a contribution to the costs incurred by the Respondent including the costs of sending demands to the tenants, inspecting the building of which the Flat forms part and checking that the building is adequately covered by insurance. The costs will also cover maintaining capacity for inspections, dealing with disputes between the long leaseholders, dealing with enquiries and to monitor compliance with the covenants in the Lease. The amount charged does not reflect the true cost to the Respondent.

8. The Respondent stated that the power to make a charge is in Clause 2(2) of the Lease which provides that the Lessee must:

> 2(2).....pay all existing and future rates taxes assessments and other outgoings whether parliamentary local or otherwise now or hereafter imposed or charged upon the demised premises or any part thereof or on the Lessor or the Lessee respectively PROVIDED ALWAYS that where such outgoings are charged upon the building without apportionment the Lessee shall be liable to pay one half of such outgoings and the Lessor shall keep the Lessee indemnified against the payment of the remaining half

DETERMINATION

9. The Tribunal noted that the Respondent was the managing agent and not the Lessor but there is no requirement that the freeholder should be named as the Respondent and the Tribunal can consider an application naming any relevant party. Since the charges are raised by the managing agents, they can properly be named as the Respondent.

10. The Tribunal were satisfied that Clause 2(2) of the Lease related only to rates, and other similar outgoings chargeable by an official body and which would be payable by the owners or occupiers of a property. . The intention of this clause was to impose an obligation to pay the rates and other outgoings on the Lessee where they were charged directly to the long leaseholder and to enable the Lessor to recover a proper proportion of costs chargeable on the building as a whole

insofar as the outgoing related to the Flat. There is nothing in this clause which allows a Lessor to impose a management charge.

11. The building houses two maisonettes and the Lease is a typical maisonette lease where each of the long leaseholder's covenants to keep their part of the building, both internally and externally, in good repair and condition and to keep the building insured in their joint names. There are provisions for the costs of maintaining and decorating the main structure to be shared. The Lessor's obligations under the Lease are set out in Clause 4 and are limited to ensuring that similar covenants are imposed in each lease of the two maisonettes, and to allowing the long leaseholders to enjoy quiet enjoyment of their maisonettes. The case of **Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd [1997] 1 EGLR 8 47** held that the terms of the lease governed what a Lessor could recover by way of service charges. The Lease contains no such provisions and it follows that no charge can be made.

12. The Respondent has no responsibilities under the Lease. All these have been passed to the two long leaseholders. The Tribunal considers that the Lease was drawn in such a manner as to remove all obligations from the Lessor and allow the two long leaseholders to manage the building themselves and it is not reasonable for the Respondent to attempt to impose a charge where he gives no service at all. It is worth noting that the Lease includes obligations for the Lessee to pay for the Lessor's costs of serving any notices under Section 146 of the Law of Property Act 1925 (Clause 2(10)) and serving notices of assignment (Clause 2(8). The Lessor does covenant to enforce any breaches of covenant by one long leaseholder at the request of the other long leaseholder (Clause 4(4)) but this must be at the cost of the requesting long leaseholder.

CONCLUSION

13. The Tribunal determines that there is no power for the Respondent to make any charge for management under the terms of the Lease and the sums demanded by the Respondent for management are disallowed in full for service charge years 2002-2007 and any charges paid by the Applicant are to be refunded immediately.

SECTION 20C OF THE 1985 ACT AND REIMBURSEMENT OF FEES

14. The directions given in relation to this application made reference to the Tribunal considering an application for Section 20C application made by the Respondent in his statement of case. Since there are no services provided for under the Lease it makes no provision for the recovery of the costs in connection with the service charges and an order under Section 20 C of the 1985 Act is not appropriate and no such order will be made.

15. The Applicant was obliged to bring these proceedings in the Tribunal s her attempts to agree the obligations in the lease with regard to payment of management charges had been unsuccessful. In view of the fact that the Respondent's position was untenable and not in accordance with the term of the Lease, the Tribunal considers that it is appropriate for the Respondent to reimburse the Applicant with the fee paid for this application. Accordingly the

Tribunal orders that the sum of £50.00 be paid by the Respondent to the Applicant within seven days.

CHAIRMAN.....

DATED: 26th February 2007