

**LON/OOAZ/LIS/2006/0107
LON/ENF/1759/06**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985
(as amended) SECTIONS 27A and 20C**

PROPERTY: 141 LEE HIGH ROAD LONDON SE13 5PF

APPLICANTS: LESSEES OF 141 LEE HIGH ROAD/ 141 LEE HIGH ROAD LIMITED

Represented by: Mr B Swabey, Solicitor

RESPONDENT: MR AJAY KUMAR ANAND

TRIBUNAL

Mrs T I Rabin Chairman
Ms M Krisko FRICS
Ms S Wilby

Date of Tribunal's decision: 4th December 2006

141 LEE HIGH ROAD LONDON SE13 5PF

FACTS

1. The Tribunal was dealing with two applications by the Applicants. The first application was by the lessees of 141 Lee High Road London SE13 5PF, Ms Victoria Ashton, Ms San Jia, Ms Stella Tan and Ms Sandra Power ("the Applicants"), to determine the reasonableness of the service charges payable to the Landlord, Mr Ajay Kumar Anand ("the Respondent"), for management fees and accountants fees demanded for the service charge year ending on 31st December 2005 relating to 141 Lee High Road aforesaid ("the Building"). This application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The second application relates to an application to determine the price to be paid by 141 Lee High Road Limited ("the Nominee Purchaser") This application had been made under Section 24 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act").
2. The issues to be determined by the Tribunal were, in relation to the first application, the liability of the Applicants to pay the accountants fees of £120 and the managing agents fees of £400 and in relation to the second application the terms of the transfer and the reasonable costs to be paid to the Respondent' by the Nominee Purchaser resulting from the application to enfranchise.
3. Copies of the leases relating the ground floor and first floor flats ("the Leases") were produced to the Tribunal and are in the Applicants' bundle. The Applicants' obligations in relation to the payment of the service charge are set out in Clause 4 (4) of the Leases and the Respondent's obligations in relation to the provision of services are set out in Clause 5. The service charge provisions are set out in the Fifth Schedule.

HEARING

4. The hearing took place on 28th November 2006. The Applicants and the Nominee Purchaser were represented by Mr B Swabey of Swabey & Co, solicitors with Ms Ashton attending to give evidence on behalf of the Applicants. The Respondent did not attend but submitted written submissions through his solicitors, J R Jones, only received on the morning of the hearing. The Tribunal agreed to consider the late submissions in the interest of justice.

EVIDENCE AND DECISION

5. Dealing first with the application for the determination of the liability of service charges, the Tribunal's jurisdiction is set out in Section 27A (1) of the Act 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

6. The Applicants were disputing the charges for management fees amounting to £400 and accountant's fees of £120 demanded in 2005. Ms Ashton on behalf of the Applicants pointed out that the Respondent had undertaken no management whatsoever, and had even failed to collect the ground rent and the services were limited to paying the insurance premium and nothing else. Demands for the premium were sent to the Applicants on an annual basis but, despite numerous requests, no copy of the policy or the annual renewal schedule had ever been provided and the only manner in which Ms Ashton had been able to satisfy herself that there was building insurance in place was by contacting the insurers who referred her to the Respondent's brokers. The broker was unable to give her any details as he had been instructed by the Respondent but he did confirm that the Building was insured. Ms Ashton produced the bill submitted by the Respondent for the building insurance for year 2004/2005 which was payable in January 2005 (page 53 of the Applicants' bundle). This included the sum of £168.88 described as "agent's administration and collection expenses" which sum was added to the total premium payable for the Building. As arranging insurance was the only service undertaken by the Respondent Ms Ashton took the view that this sum adequately covered their expenses and that any additional charge was double counting.
7. Ms Ashton told the Tribunal that, in the absence of any form of management by the Respondent, the Applicants had agreed between themselves that they would deal with any day to day maintenance and repairs jointly. She believed that the electricity to the common parts was included in the middle flat meter and that there were only four meters, one for each flat. Despite the representation made on behalf of the Respondent by J.R.Jones, she was not aware that that anyone the Respondent's behalf had inspected the Building to check if any repairs were necessary.
8. The Respondent's written representations were on the basis that the managing agents were obliged to liaise with the landlord when dealing with the insurance renewal and the landlord would be obliged to monitor the Building to ensure that no repairs were needed and the cost of £100 per flat was reasonable
9. The Respondent is entitled to charge for managing agents fees under Clause 1(1) (a) of the Fifth Schedule to the Leases. Having considered

the evidence the Tribunal finds that neither the Respondent nor the managing agents have undertaken any management of the Building other than renewing the insurance. A charge has been added to the annual premium to reflect the managing agent's administration and collection expenses. The Respondent has given no details of any other management functions undertaken by him and has produced no invoices in support of the insurance payment. Ms Ashton's evidence is that the Respondent and the managing agents ignore queries and requests for copy documents and the Applicants were obliged to undertake management functions themselves. **The sum of £400 is therefore disallowed.**

10. Ms Ashton also considered that the accountant's fee was excessive. There had never been a charge for accountancy in previous years. The only work to be undertaken by the accountants was to check that the insurance premiums had been paid and inspect service charge demands. The work was very limited and could not have taken more than thirty minutes. Ms Ashton considered that a charge of £60 in total would be appropriate. The Respondent's written representations, through JR Jones, were that the accountant's charges were reasonable and recoverable under Clause 1(1) (b) of the Fifth Schedule to the Leases.

11. The Tribunal agreed with Ms Ashton that an appropriate sum for the amount of work involved to produce the statement of costs would be £60. The work involved would have been minimal and £60 would reflect a fair charge, although no invoice in support has been provided, merely a figure in the statement of costs. **The Tribunal therefore disallows the sum of £60 and the remaining sum of £50 is allowed**

ENFRANCHISEMENT PROCEEDINGS

12. J R Jones in their written submissions stated that the terms of the transfer had now been agreed by the Respondent. The Tribunal in formally approving the transfer requires that in Panel 10 provision should be made that the Respondent transfers with limited title guarantee in accordance with the provisions of Section 2(2) of Schedule 7 to the 1993 Act.

13. The costs of conveyancing have been agreed between the parties at £550 plus VAT. Mr Swabey, on behalf of the Nominee Purchaser considered the additional sum of £250 plus VAT would be reasonable for the Respondent's solicitor's costs of verifying the Nominee Purchaser's claim. In the absence of any information from J R Jones regarding their charging rate or the number of hours spent in verifying the claim, the Tribunal makes an order that **the proper costs for verifying the claim would be £250 plus VAT.**

SECTION 20C

14. There is no necessity to make an order under Section 20C as the Leases make no provision for the recovery of such charges.

DECISION

15. The Tribunal's decision is as follows:

First Application

- | | |
|-----------------------|--------------------|
| (a) Management fees | Disallowed in full |
| (b) Accountant's fees | £60 disallowed |

Second Application

- | | |
|---|---------------|
| (a) Costs of verifying the claim | £250 plus VAT |
| (b) Transfer approved as amended in accordance with paragraph 12. | |

AWARD OF COSTS AND REPAYMENT OF FEES

16. There is a history of a lack of co-operation and responses from the Respondent and this is also reflected in the Tribunal's file. It is clear from copy correspondence that the Respondent has failed to address the Applicants' concerns and there has been a lack of communication between the parties' representatives, mainly due to the failure of J R Jones to deal with correspondence. Although the bulk of the correspondence related to the enfranchisement, the question of service charges was linked. The Applicants were obliged to set the matter down for a hearing in the absence of any attempt to deal with the issues. Representations were only received by the Tribunal at 9.22 on the day of the hearing which was due to commence at 9.45. The Tribunal order that the fees of £70 application and £150 hearing be reimbursed to the Applicants by the Respondent.
17. An application was made for costs to be awarded under paragraph 10 of Schedule 12 of the CARA 2002 but the Tribunal is not minded to make such an order.

CHAIRMAN.....



DATED 4th December 2006

T I RABIN