

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL**

CASE NUMBER: CHI/ODMW/OCE/2003/0063

B E T W E E N

PELLHURST MANAGEMENT SERVICES LIMITED

Applicant

- and -

MARLYN ESTATES LIMITED

Respondent

and

CASE NUMBER: CHI/00MW/LIS/2004/0029

B E T W E E N :

**J A DOWNER
D COOK
J P DELUCE**

Applicants

- and -

MARLYN ESTATES LIMITED

Respondent

PREMISES: 7 & 7A PELLHURST ROAD, RYDE
ISLE OF WIGHT

REASONS FOR THE DECISION OF THE COMMITTEE

1 The Application background

- 1.1. This was originally an application by Pellhurst Management Services Limited, the nominee purchaser, for the Tribunal to determine the terms that were in dispute between it and the reversioner, Marlyn Estates Limited, for the acquisition of the freehold of 7 and 7A Pellhurst Road, Ryde, Isle of Wight.
- 1.2. The application was made under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993.
- 1.3. The initial Notice was served on the Respondent on 14th May 2003. The participating tenants were stated to be:-

Mrs Jacqueline Angela Downer of Flat 7A

Mrs Denise Cook of Flat 1

Mrs Constance Jane Regan of Flat 2

There were two non-participating tenants, Ms Melanie Daniels and Mr Dominic Robinson, joint tenants of 7b.

- 1.4 Although Mrs Cook was stated to be a participating tenant she had not signed the initial Notice, which was signed by Mrs Downer and Mrs Regan only.
- 1.5 A counter-notice was served by solicitors on behalf of the Respondent on 14th July 2003. This counter-notice was addressed to the named participating tenants (including Mrs Cook) and not to the Nominee Purchaser. In the Notice the Respondent admitted that at the relevant date the participating tenants had the right to acquire the freehold interest in the premises.
- 1.6 The negotiations for the acquisition progressed. When a completion statement was provided by the Respondent's Solicitors to the Applicant's Solicitors, several items were disputed. The parties were unable to resolve this dispute and so on 15th December 2003 the Applicant made its Application to the Tribunal for it to determine the terms in dispute.
- 1.7 In the meantime, Mrs Regan had sold and assigned her flat to Mrs Deluce. No doubt unaware of the need to do so, Mrs Deluce failed to give notice to the Nominee Purchaser within 14 days of her acquisition of the Lease that she wished to take over as a participating tenant. Consequently, the Nominee Purchaser did not notify the reversioner within the time stipulated under Section 14 of the Act. Hence the number of participating tenants had post the serving of the initial notice, dropped below the 50% requirement.

2. Preliminary Issue

- 2.1 The Tribunal had to decide as a preliminary issue as to whether it had jurisdiction to deal with this matter in the light of the situation as set out in paragraph 1.7 above. It therefore issued Directions at the first hearing on 24th March 2004 for representations to be made on the point.
- 2.2 The matter came before the Tribunal on the adjourned hearing on 28th May 2004. Mr Leonard for the Respondent appeared in person. The Applicants were represented by Mr Samuelson, solicitor. Representations had been received by way of a skeleton argument from both parties. The skeleton argument from the Applicant's Solicitor had not been seen by the Respondent until just prior to the hearing. The Respondent was asked whether or not in those circumstances he was content for the hearing to proceed notwithstanding that he had not had the opportunity of taking legal advice on the Applicant's submissions. Mr Leonard said that he was content to proceed.

2.3 Having carefully considered the representations, the Tribunal decided for the reasons set out in paragraphs 2.4 to 2.6 below that it did have jurisdiction to deal with the matter in dispute concerning the acquisition and that the hearing could therefore proceed.

2.4 Section 24 of the 1993 Act states:-

"24.(1) Where the reversioner in respect of the specified premises has given the Nominee Purchaser –

(a) a counter-notice under Section 21 complying with the requirement set out in subsection (2)(a) of that Section, or

(b)

but if any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice..... was so given, a Leasehold Valuation Tribunal may, on the application of either the Nominee Purchaser or the reversioner, determine the matters in dispute."

2.5 In this case a valid initial Notice had been given and so this was not a case where the validity of the initial Notice was being challenged. A counter-notice had been given. Both parties accepted that although the counter-notice had been addressed to the participating tenants and not the Nominee Purchaser, that this counter-notice was valid. The counter-notice had been sent to the Solicitors for both the Nominee Purchaser and the participating tenants. Also there was some identity between the participating tenants and Directors of the Nominee Purchaser company.

2.6 The Tribunal therefore decided that the provisions of Section 24(1) of the 1993 Act did apply and that it had jurisdiction to determine the matters in dispute. Nowhere in the Act did it state that the number of participating tenants post the initial notice had to remain at at least 50% of the number of tenants. The important date to determine the right to enfranchise was the date of the initial notice.

3. The Matters in Dispute

3.1 The following matters remained in dispute at the date of the application to the Tribunal:

- a) the capital value of the freehold;
- b) the reversioner's conveyancing costs (£382.50 claimed);
- c) the reversioner's surveyor's costs (£117.50 claimed);
- d) the reversioner's costs of obtaining judgment against the tenant of 7b (£1,341.87 claimed);
- e) the reversioner's legal costs of seeking advice with regard to the enfranchisement procedure (£111.62 claimed);

- f) office copy entries (£40 claimed);
- g) outstanding service charges and insurance costs (2,771.30 claimed);
- h) amount of judgment obtained against tenant of 7b (£1,775.28 claimed);
- i) the reversioner claimed further costs, but un-particularised, in its skeleton argument.

3.2 The Capital Value.

3.2.1 It was the reversioner's case that £4,000 plus costs had been agreed. It was the Applicant's case that at one stage a subject to contract offer had been made of £4,000 inclusive of conveyancing costs. As the parties did not appear to be ad idem the Applicant argued that no sale price had been agreed. The reversioner was prepared to adhere to the figure of £4,000 plus costs but conceded that the evidence of the correspondence between the parties showed that this was not the agreement. The Tribunal decided that there had been no binding agreement and that the consideration for the acquisition of the freehold was still at large.

3.2.2 The Applicant produced a report of a surveyor, Mr Sean Woolford MRICS and Mr Woolford gave evidence to the effect that the value of the freehold was £2,800. His methodology of how he arrived at that figure was explained. Under cross examination from Mr Leonard he did not consider that the reversioner's ability to charge 10% of the cost of certain items of expenditure in accordance with Schedule 5B of the Lease, if it did not appoint a managing agent, added to the capital value of the premises. There was no profit element contained within that figure. Furthermore, he did not consider that the theoretical possibility of the leaseholders being able to erect 3 garages on the parking space would add to the capital value realisable by the reversioner. The work and the benefit of such development would inure to the Leaseholders. He did not consider that the possibility of the reversioner being able to charge for his consent to any such development would add to the capital value.

3.2.3 Mr Leonard had included in his bundle for the Tribunal a letter from a surveyor consulted by himself as to the capital value of the premises which stated that the value would be at most £3,000. Mr Leonard did not wish to rely on that report, however, because he said that it was inaccurate.

4. Other Items to be taken into Account

4.1 The Applicant accepted that the figure of £382.86 inclusive of VAT as claimed by the reversioner would be a reasonable figure to pay for the landlord's conveyancing costs. Mr Leonard thought that it would be more than that to completion of the sale. Mr Samuelson for the Applicant accepted that it would be reasonable to add a small amount to that figure to complete the matter, but that most of the work would already have been done and paperwork prepared.

- 4.2 The reversioner had recovered all its costs and all ground rent and service charge arrears in the proceedings against Mr Robinson and therefore these were no longer being sought.
- 4.3 The reversioner sought £111.62 in respect of advice for the enfranchisement procedure from its Solicitor. Whilst Mr Samuelson initially challenged this on the basis that he did not consider this to be a Section 33 cost he conceded that it could be held reasonable for a reversioner to take initial legal advice.
- 4.4 Mr Samuelson did not challenge the office copy charge of £40.00.
- 4.5 Mr Samuelson agreed that if the landlord was not relying on his valuer's evidence he should not be able to claim the cost thereof. He conceded, however, that it could be regarded as reasonable for the reversioner to seek advice as to value even though he, the reversioner, subsequently chose not to rely on the advice.
- 4.6 The service charges claimed and which were still outstanding were the subject of County Court proceedings. The first, against Mrs Downer had been dismissed. The reversioner's application for permission to appeal had been refused, the Order therefor having been drawn up only on 27th May 2004. There remained the possibility that the reversioner could seek an oral hearing of this application for permission to appeal. The second case, against Mrs Deluce had only just recently started and was to be defended on the same basis as Mrs Downer's case. The Tribunal was unable to make a determination in respect of these service charges until the Court had finally decided these matters. Further Directions were therefore given to deal with this outstanding item.
- 4.7 The reversioner was unable to produce copy invoices for all the amounts claimed in its skeleton argument (paragraph 12) or to provide an explanation of the expenditure at the hearing on 28th May 2004 to enable the Tribunal to make a determination thereon. Further Directions were therefore given to deal with such matters.

5. A New Application

- 5.1 Marlyn Estates Limited did not appeal the Order dismissing the claim for arrears of service charges from Mrs Downer and the Company withdrew a similar case against Mrs Deluce.
- 5.2 Consequently, in order that some tribunal could be charged with considering the reasonableness of the service charges sought by the landlord, Mrs Downer, Mrs Cook and Mrs Deluce made a new application to the Leasehold Valuation Tribunal under Section 27A of the Landlord & Tenant Act 1985 and this was listed for hearing at the same time as the adjourned hearing of the application for determination of the terms for the acquisition of the freehold.

6. The Law

6.1 Section 19(1) of the Landlord & Tenant Act 1985 provides:-

“(1) Relevant costs shall be taken into account in determining the amount of a service charge for a period –

- (a) only to the extent that they are reasonably incurred
- (b)

and the amount payable shall be limited accordingly.”

6.2 Section 27A of the 1985 Act as amended by the Commonhold and Leasehold Reform Act 2002 states that:-

(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is reasonable 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

the manner in which it is payable.

7. The Leases

7.1 The leases of the flats require the tenants to pay £25 per annum ground rent plus one quarter of the landlord's costs of effecting insurance. The ground rent for the car parking area is £10 per annum.

7.2 By clause 4 of the lease of the flats the tenants covenant to pay one quarter of the landlord's costs as set out in the Fifth Schedule Part B of the leases.

8. The Adjourned Hearing on 15th September 2004

8.1 Again, Mr Leonard appeared for the Respondent and Mr Samuelson for the Applicants.

8.2 Mr Leonard pointed out that the Applicants' new application had arrived only a few days before the hearing. He was prepared to proceed and had brought all the necessary paperwork with him. The Tribunal agreed to proceed as it did not consider that the Respondent had been prejudiced by the late service of the representations and it was

important to try to bring this matter, which had been on-going for some considerable time, to a conclusion.

- 8.3 The Tribunal went through each and every item that the Respondent wished to be taken into account in deciding the amount to be paid by the Applicants for the transfer of the freehold and heard representations from both parties on each item.
- 8.4 The landlord claimed the following items in addition to the capital cost of the reversion:-

(a) From Mrs Downer:	£
Review fees	600.00
Office copies	40.00
Surveyor's fees re enfranchisement	117.50
Ground Rent for 2004	35.00
Daniells Harrison fee	117.50
Insurance June 2004	145.11
Management fee Mar 2004	250.00
ASB Law's fees for conveying freehold to Applicants	382.50
Other fees of ASB Law	1,443.62
Marlyn Estate's costs of LVT	911.80

(b) From Mrs Deluce:-	
Review fees	550.00
ASB Law fees	1,581.49
Management fees	250.00
Insurance June 2004	145.11
PDL fees re enfranchisement	130.02
Landlord's costs of enfranchisement	581.75

(c) From Mrs Cook:-	
Review fees	500.00
Insurance June 2004	145.11
Management charge	250.00
ASB Law	37.54

(d) Re Flat 7b:

This flat had been repossessed by the tenant's mortgagee and payments were up to date. A contribution of £257.95 had been received towards the cost of repair to the garden wall. As the freehold will be transferred without this work having been done, this money will need to be reimbursed by the Management Company either to the person who paid the money or to the new freeholders.

9. The Determination

9.1 The Capital Value of the freehold.

The Tribunal decided that the valuation of Mr Woolford was right and that the capital value of the freehold is £2,800. This was endorsed by the Respondent's own valuer's estimate of "at

best £3,000". Albeit that the Respondent did not rely on this evidence it was nevertheless put before the Tribunal in the documents provided by him. There is no marriage value and no compensation payable in respect of the affect of the transfer of the freehold on other property of the landlord. The Tribunal did not agree that there was a value to the landlord to be compensated for in respect of the landlord's ability to charge 10% of the cost of building works if a manager is not appointed. The Tribunal considered that there was no profit element for the landlord in this. Nor was the fact that the new freeholders could develop the parking space for garages a matter for which the landlord should be compensated.

- 9.2 The Tribunal considered that conveyancing costs of the landlord to the extent of £450 plus VAT would be added to the purchase cost. This would be a reasonable figure.
- 93 The landlord's surveyor's fees of £117.50 for a valuation of the freehold on receipt of the notice commencing the enfranchisement process were reasonably incurred and would be added to the purchase price.
- 9.4 Insurance contributions outstanding of £435.33 will be payable by the Claimants as part of the purchase price. However, should the policy be cancelled on transfer the purchasers will be due a refund of premiums dependent upon the date of cancellation.
- 9.5 There had been no dispute about the Daniells Harrison fee of £117.50 and this would therefore be payable.
- 9.6 The Tribunal decided that the management fee charged of £250 per flat was unreasonable in view of what was done for the fee. The Tribunal decided that in the light of its own experience of managing agents' service charges in the area £190 per flat would in all the circumstances be reasonable.
- 9.7 The Tribunal decided that it was unreasonable for the managing agents to charge £50 for every letter chasing unpaid service charges. Most management agents would not charge extra for a reasonable amount of chasing of payments. The Tribunal decided therefore that the fee of £190 per flat should include the review charges and that none of the review charges were therefore payable.
- 9.8 The Tribunal decided that the fees of ASB Law charged for the work done to recover service charges from Mrs Downer and Mrs Deluce were unreasonable in that in the case of Mrs Downer the claim had been dismissed and in the case of Mrs Deluce the claim had been withdrawn. It would be unreasonable for the landlord to be able to recover its costs through the service charge in circumstances where it would not have been able to recover its costs through the court. It was only the fact that these were "small claims" that the landlord escaped a costs order being made against it in favour of the tenants in question.

- 9.9 It was reasonable for the landlord to seek legal advice on receipt of the notice commencing the enfranchisement process. These fees come to £111.62. However, the balance of ASB Law's fees either come under the category of costs relating to recovery of service charges (dealt with in paragraph 6.8 above) or for advice given in the course of the enfranchisement proceedings before the Tribunal. It is specifically provided under the Act that these latter costs are not recoverable by the landlord and therefore the Tribunal does not order the tenants to pay the same.
- 9.10 The landlord's costs in connection with the Tribunal proceedings are not recoverable under Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 and therefore should not be added to the purchase price.

10. The Decision

- 10.1 The Tribunal determined the price to be paid by the Applicants to the freeholder of 7 and 7a Pellhurst Road, Ryde, Isle of Wight, for the freehold of the property is as follows:-

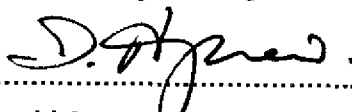
	£
Capital value	2,800.00
Ground rents outstanding	35.00
Daniells Harrison fee	117.50
Office Copy fees	40.00
Surveyor's fees re enfranchisement	117.50
Insurance premium	435.33
Management fees	570.00
Conveyancing fees (including VAT)	538.75
Other ASB fees	111.62

	£4,765.70
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Dated this

2nd day of October 2004

Signed:


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Donald Agnew
Chairman