

LON/00AY/LSC/2006/0359

**DECISION BY THE RESIDENTIAL PROPERTY
TRIBUNAL SERVICE ON APPLICATION UNDER
SECTIONS:
LANDLORD AND TENANT ACT 1985 – SECTION 27A.**

Applicant: **Mr Arthur W Blackwell**

Respondent: **Ms N May**

Address: **Flat 3, 60/62 Palace Road, Tulse Hill, London SW2 3NR.**

Application date: **10 October 2006**

Hearing: **20 December 2006**

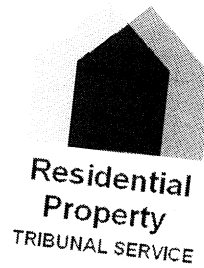
Appearance: **Mr Arthur W Blackwell**

For the Applicant

Ms N May

For the Respondent

**Members of the Leasehold Valuation Tribunal:
Mr Adrian Jack (Chairman)
Mr C White (FRICS)
Mrs G Barrett (JP)**



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)**

LANDLORD AND TENANT ACT 1985 Section 27A

Property: Flat 3, 60-62 Palace Road, Tulse Hill, London SW2 3NR
Applicant: Mr Arthur W Blackwell
Respondents: Ms Natalie May
Tribunal Members:
Mr Adrian Jack (Chairman)
Mr White FRICS
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1. This is an application by Mr Arthur W Blackwell for the determination of certain service charges due in the service charge year 2003/04 by Ms Natalie May. Although Mr Blackwell sold his interest in the property in March 2005, we shall still refer to him in this decision as the landlord.

Procedural

2. By a claim form issued on 26th July 2006 in the Bristol County Court under action number 6BS08270 the landlord claimed £569.18 plus costs plus interest as the tenant's share of payment made for buildings insurance plus a share of the cost of electricity. The attached Particulars of Claim said that the landlord was the freeholder of the block until March 2005.
3. The tenant filed a Defence and by order of 19th September 2006 the action was transferred to the Lambeth County Court. On 28th September 2006 District Judge Zimmels at Lambeth County Court transferred the matter to the Leasehold Valuation Tribunal.
4. The Tribunal held a pre-trial review on 7th November 2006. The tenant appeared but the landlord did not. The pre-trial review ordered the landlord to send copies of all receipts and invoices in respect of disputed items and in particular the insurance certificate.

5. At the hearing before us on 20th December 2006, both the tenant and the landlord appeared. The landlord did not produce the documentation which had been ordered. He explained that he was living in Thailand. Arrangements for the collection of post at his address for service in Bristol had been unsatisfactory and he had not been aware of the pre-trial review. In consequence he explained he had not seen the Tribunal's directions.

Facts

6. The lease was granted in 1988 and contains standard service charge provisions.
7. There had been a previous dispute between the landlord on the one hand and the tenants of five flats at the property including Ms May on the other. This had resulted in a hearing before this Tribunal in August and October 2003 under the chairmanship of Mr Nicol. The tenants were seeking the appointment of a manager and there were various service charge issues in the service charge years 2001/02 and 2002/03.
8. By a decision of 4th November 2003 the Tribunal determined the various service charge issues and appointed Mr Robert Aitken-Sykes of Prior Estates Ltd as manager of the block for a period of three years.
9. In the current action the landlord claims service charges from the tenant as 9.90 per cent of the following sums:

Building insurance renewal	£4,499.34
London Electricity common parts	27.08
London Electricity common parts	53.15
Additional item	69.47
10. The tenant said that she had already paid Prior Estates Ltd insurance and electricity in 2003/04. The additional item she said related to a matter in respect of which the Tribunal had already adjudicated in its 2003 decision.
11. The landlord produced no documentation to show that he had paid the insurance premium. The tenant (not the landlord) produced an insurance schedule dated 31st July 2003 with the landlord indicated as the assured, but it was impossible to relate the sums on this schedule to the £4,499.34 claimed by the landlord.
12. The landlord produced no documentation to justify the electricity charges on the common parts.

The law

13. Section 19(1) of the Landlord and Tenant Act 1985 provides that:
 "Relevant costs shall be taken into account in determining the amount of a service charge payable for a period
 (a) only to the extent that they are reasonably incurred, and
 (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
 and the amount payable shall be limited accordingly."
14. Section 27A of the Act gives this Tribunal jurisdiction to determine by whom, to whom, how much, when and how service charges are payable.
15. Section 141(1) of the Law of Property Act 1925 provides that:
 "Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter

thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of the reversionary estate, and without prejudice to any liability affecting a covenantor or his estate."

16. In relation to leases made after the coming into force of the Landlord and Tenant (Covenants) Act 1995 the position is different, but the lease in this matter pre-dates the 1995 Act.

Reasons

17. The landlord accepted before us that he had sold his interest in the property. Accordingly any outstanding claim which he had against the tenant was *prima facie* transferred to the new purchaser of the freehold.
18. The landlord provided no evidence that as part of the terms of the transfer he retained the benefit of any outstanding claims against the tenant. Indeed such a term would in our experience be unusual. The ordinary conveyancing procedure is for outstanding arrears from tenants to be taken into account as part of the completion statement, with the purchaser giving an allowance for such part of the arrears as the parties consider reasonably recoverable. Moreover the landlord said that the auction particulars gave full details of the outstanding disputes between him and the tenants at the block. That would have been unnecessary if the claims were not to be transferred to the purchaser.
19. The Particulars of Claim aver the sale of the freehold but plead no facts to show that the landlord retained the right to sue for arrears of service charge. As such in our judgment the Particulars of Claim disclose no cause of action in the legal sense.
20. Thus both as a matter of the evidence before us and as a matter of the pleading served by the landlord the landlord fails to show that he now has a claim for arrears against the tenant. Any claim for the arrears vests in the new landlord.
21. It follows that the tenant in this matter owes the landlord no monies.
22. We should add that, if we were wrong about this, we should have had grave difficulties deciding what, if anything, the landlord was owed due to the almost complete absence of relevant documentary evidence from him. As we have set out above the landlord failed to comply with the Tribunal's directions as to filing evidence. His living in Thailand explains, but does not excuse, this failure.
23. The landlord is clearly an intelligent man who had managed a number of blocks of flats. It must have been obvious to him that in order to justify the service charges he was demanding he needed to produce the documentary evidence in support. He should not be surprised if the Tribunal had determined the issues as to service charge adversely to him on this ground alone.
24. In the event, however, we do not have to determine this issue.

Costs

25. In this matter the landlord has lost comprehensively. We therefore make no order in respect of any fees paid by the landlord to the Tribunal. The costs in the County Court are a matter for the County Court.

DECISION

- a. The Tribunal determines that the respondent tenant is not liable to pay the applicant landlord any of the monies claimed in action number 6BS08270.
- b. The Tribunal makes no order for costs in respect of the fees payable to the Tribunal, but for the avoidance of doubt this order is without prejudice to the powers of the County Court to make orders in respect of the costs before it.

Adrian Jack

Adrian Jack, chairman

20th December 2006

LON/00AY/LSC/2006/0359

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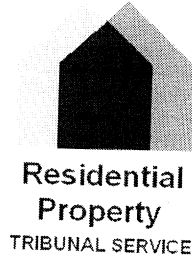
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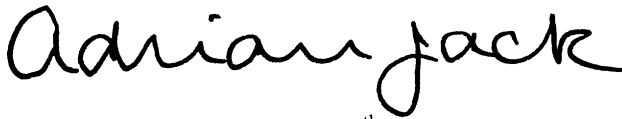
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DECISION

- a. The Tribunal determines that the respondent tenant is not liable to pay the applicant landlord any of the monies claimed in action number 6BS08270.
- b. The Tribunal makes no order for costs in respect of the fees payable to the Tribunal, but for the avoidance of doubt this order is without prejudice to the powers of the County Court to make orders in respect of the costs before it.



Adrian Jack, chairman

20th December 2006

In the Leasehold Valuation Tribunal
Ref: LON/OOAT/LCP/2006/0001

Applicants	Thornbury Court Limited
Represented by	Mr Simon Serota, solicitor of Wallace LLP Solicitors
Respondents	Thornbury RTM Company Limited
Represented by	Mr Faizal Faizia, (RTM Secretary)
Property	Thornbury Court, Church Road, Osterly, Middlesex, TW7 4PP

Tribunal
Ms E Samupfonda LLB (Hons)
Mr. C Kane FRICS
Mrs S Justice

1. This is an application under section 88 of the Commonhold and Leasehold Reform Act 2002, (the 2002 Act) for a determination of the Respondent's liability to pay the Applicant's reasonable costs incurred in relation to the Respondent's application to acquire the right to manage the subject property. The Applicant is the Freehold owner of the property. The Respondent is the Right to Manage Company that acquired the right to manage the property on 12th October 2004.
2. An oral pre-trial review was held on 31st May 2006, Directions made for the future conduct of the case and a hearing fixed for 27th July 2006. That hearing was adjourned with further Directions.
3. The hearing of this application took place on 6th December 2006. Mr Serota represented the Applicants and Mr Faizia represented the Respondents. Mr Gibbons, a shareholder in the Freeholder's company also attended the hearing. Both parties submitted detailed statements of case. We have therefore only referred to the salient points in this decision.
4. **Summary of the Applicant's case.**

Briefly, Mr Serota, on behalf of the Applicant stated that in his view a RTM company is liable under s88 (1) of the 2002 Act for all the costs incurred by a landlord and managing agent where they are incurred following a right to manage application. The landlord is under a

statutory duty to comply with obligations that flow from a right to manage application under ss91 to 94. The costs incurred in doing so should be regarded as costs "in consequence of a claim notice" He submitted that an unwilling landlord being asked to give up the right to manage should not have to bear the cost himself. He referred the Tribunal to a previous Tribunal decision **LON/ENF/1005/03 Chivleston, 78 Wimbledon Parkside, London SW19** and relied on the statement made by Professor Farrand QC in which he said in relation to Freeholder's costs arising from an application by tenants for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 *"Accordingly, it would be surprising if freeholders were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them"* He added that the recoverable costs under s33 of the 1993 Act are subject to the same reasonableness test to be applied under s88(2) of the 2002 Act since the sections to all intents and purposes contain identical provisions. He invited this Tribunal to find that it was reasonable for the Applicant to instruct Wallace LLP and engage managing agents in respect of the right to manage application and to find that the hourly rates were reasonable as determined by a leasehold valuation tribunal in relation to proceedings involving the same parties in **Thornbury Court, Church Road, Osterley, Middlesex LON/ENF/10610/04**.

He explained that the Applicant incurred additional costs in complying with the statutory obligations under s91 to 94 of the 2002 Act. He said that these costs should be recoverable, subject to the reasonableness test because they were incurred in consequence of the claim notice.

The Applicant sought to recover (i) Legal costs £6,585 plus VAT, (ii) Managing agent's fees £3,328.75 and (iii) Accountants' fees £400 + VAT.

Legal costs

Mr Serota referred to Samantha Bone's (a solicitor of Wallace LLP) witness statement. This outlined the work that was undertaken by his firm, by whom and the hourly rate charged. In response to the Respondents' challenge over the time spent on various activities, he said that the alternative time estimates suggested by the Respondent were unrealistic, for example the 20 minutes suggested for inspecting the company register excluded travelling time.

In response to the application for costs to be awarded under paragraph 10 Schedule 12, Mr Serota said that this Tribunal did not have jurisdiction to make such an order as the claim related to the Respondent's right to acquire application. That application was disposed of without a hearing. He then submitted a copy of the order dated 14 July 2004.

Accountant's costs.

The invoice dated 4. 11. 05 from Pridie Brewster states that they were retained "to assist the Applicant and the managing agent in connection with the accounting records of maintenance costs and amounts collected in respect of flats 1 and 10 Thornbury Court. Reconciling these records to enable the Statement of Estate Management and Maintenance Costs for the period ended 12 October 2004 to be prepared and calculating the balance to be paid to the RTM Company" The work was carried out in response to the Respondent's request under section 94 of the 2002 Act.

Management fees

The Applicant engaged Castlebar Management Ltd. Mr Serota conceded that two invoices, 5891 and 5863 were not recoverable. Invoice 5838 was recoverable because this related to the work carried out in response to the Respondent's request under sections 92, 93 and 94 of the 2002 Act.

5. Summary of the Respondent's case

Briefly, Mr Faizi contends that s88 (1) of the 2002 limits the recovery of reasonable costs incurred up to the service of the counter notice. In his view, these are the only costs that are incurred "in consequence of a claim notice given by a company in relation to the premises." Therefore, a RTM company's liability ceases after the counter notice has been served. He therefore conceded that the Respondent is liable for the Applicant's costs from 16th January 2004 to 4th October 2004. However he sought to limit the amount that is recoverable on the grounds of reasonableness. He referred the Tribunal to number of previous leasehold valuation tribunals. In particular he relied on the decision 69 Oxford Gardens, London W10 5UJ LON/OOAE/LCP/2005/0003, paragraphs 11, 16, 17, 22, and 24.

Legal costs

Mr Faizi did not dispute the hourly rate charged. He challenged the costs on the basis that of the 92 items of costs in the solicitor's costs schedule, only 15 items are directly consequential to the Notice of Claim. The remaining items relate to the cost of litigation between the parties under s94 of the 2002 Act. Of the 15 items that he considered payable, he challenged payability on the grounds of reasonableness as he considered that the time spent was excessive or there was duplication of work, for example he said that it should not have taken 42 minutes to peruse the Notice of Invitation or 3 hours to inspect the company members' register. He scrutinised the schedule, reduced the

time spent as he saw fit. He concluded that the costs should be £400 plus VAT based upon his revised figures.

He made an application for an order under paragraph 10 Schedule 12 that the Applicant pays the Respondent £500 costs incurred in the Respondent's Right to Manage application. He considered that the Applicant acted unreasonably by initially denying the right to acquire and subsequently admitting it. He said that he incurred additional legal costs as a result. He relied on a leasehold valuation tribunal decision **Envile Manor RTM Limited BIR/41UF/LRM/0001** in which such costs were awarded.

Managing agent's fees

Mr Faizi contended that these costs were not recoverable because they were included in the £2,775.75 paid by the Respondents for the service charge expenditure after 12 October 2004. He did not have any evidence to support this contention. He alleged that the agents supplied information in the letters dated 20th October and 6th December 2004 at their own behest.

Accountant's fees

Mr Faizi stated that the Respondent has already paid £880.01. He did not have any evidence to support this.

6. Decision

There were two main issues that required the Tribunal's determination. Firstly, does s88 (1) permit the recovery of all the reasonable costs incurred by a Freeholder following an application for the right to acquire. Secondly, of the recoverable costs, what are the amounts recoverable. In determining this application, the Tribunal had regard to the relevant law and the submissions. Although helpful, we considered that we were not bound by previous leasehold valuation tribunals.

S88 provides

- (1) A RTM company is liable for reasonable costs incurred by a person who is-
 - (a) landlord under a lease of the whole or any part of any premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the 1987 Act in relation to the premises or any premises containing or contained in the premises in consequence of a claim notice given by the company in relation to the premises.
- (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by

him if the circumstances had been such that he was personally liable for all such costs.

(3) Not relevant to this application

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.

We decided to adopt a common sense approach to the interpretation of s88. It is our view that the effect of the words "in consequence of a claim notice" in section 88(1) is to allow the recovery of all costs that flow as a result of an application for the right to manage. Section 88(2) provides that any costs incurred are recoverable but are subject to the reasonableness test. It is apparent that a landlord has statutory obligations that only arise as a result of a claim notice being served. Section 93 imposes an obligation upon a landlord to provide information and section 94 imposes a duty to pay accrued uncommitted service charges. An existing manager also has a statutory duty under section 92 to supply details of contracts. We consider that all of this work is related to the claim notice and as such it is carried out "in consequence of a claim notice being given"

In determining the amounts that are recoverable we were in some difficulties because we did not know the context in which say letters, emails and telephone calls were made. There were legal proceedings under s94 of the 2002 Act before a leasehold valuation tribunal commenced in June 2005 in which the Applicant instructed the same professionals.. Also, in respect of the legal costs there appeared to be a lot of contact between the solicitors, Peter Gibbons and the managing agents over a very short space of time. Relying on the totality of the evidence before us we adopted a rather broad brush approach. We had in mind the limitations imposed by section 88 (2). We found that it was reasonable for the Applicant to use the professional services of solicitors, accountants and managing agents. We considered that the legal costs whilst being on the high side, the hourly rate charged was not challenged and was therefore considered reasonable. The test is not whether the work could have been done cheaper, but rather whether the costs that were incurred were reasonably incurred. We did not accept that the time spent was excessive. We do however find that some of the work could have been carried out by the managing agent to save legal costs.

We considered that we did not have jurisdiction to make an order under paragraph 10 schedule 12 in respect of the Respondent's right to manage application as such an order can only be considered in the context of current proceedings before a leasehold valuation tribunal.

Determination

Legal Costs

We concluded that the costs incurred from 16th January to 29th November 2004 were recoverable as we are satisfied that they were incurred in consequence of the claim notice. There was insufficient evidence upon which we could safely find that the costs incurred thereafter were closely or sufficiently related to the notice of claim. The amounts that are recoverable have been limited as we disallowed £2980 leaving £3605 + VAT.

Accountant's fees


We determined that these costs are recoverable in their entirety.

Management fees.

Of the costs claimed we determined that all were recoverable with the exception of the costs incurred on 9th and 13th December 2004 £622.00 as they appeared unconnected with the RTM application. There was insufficient information provided regarding sundry calls. This left a balance £2706.25

Thus the Tribunal determined under section 88 (4) that the reasonable costs payable by the Respondent to the Applicant is the sum of £7412.13 inclusive of VAT

Chairman



Dated

13/12/06