

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

CASE NUMBER: CAM11UF/LAM/2006/0002

**REGARDING COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SCHEDULE
11 AND LANDLORD & TENANT ACT 1985 (AS AMENDED) SECTION 20C**

4 & 9 Bevelwood Gardens High Wycombe Buckinghamshire HP12 3EZ

Applicant : Mrs B R Pitter

Respondent : Freehold Portfolio GR Limited represented by
Simarc Property Management Limited

Date of Applications : 14th March 2006

Date of Determination: 19th June 2006

Tribunal Members : Mr A A Dutton Chair
Mrs H C Bowers MRICS

Date of Decision : 17th July 2006

REASONS

A BACKGROUND

1. The Applicant, Mrs Brenda Pitter, the Leaseholder of both 4 & 9 Bevelwood Gardens High Wycombe Buckinghamshire HP12 3EZ made applications to the Tribunal under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). She sought a determination as to the liability to pay for administration charges which were levied or sought to be levied by Simarc Property Management Limited on behalf of the Landlord.
2. The administration charges that she disputed in both applications related to the following:-
 - a charge for a Ground Rent Report in the sum of £58.75
 - a charge for a Breach of Covenant Report in the sum of £70.50
 - the charge levied in respect of a Notice of Transfer assignment or charge in the sum of £70.50 or £141.00 for a combination of those matters
 - the charge for a Licence to Assign of £176.25
 - charge of £64.62 for providing insurance information
3. In her applications Mrs Pitter indicated that she was happy for the matter to be dealt with by way of a paper determination a request to which the Respondent did not object.

B EVIDENCE

4. The evidence of the Applicant was contained in her applications and in a submission made on the 7th May 2006 in response to the Respondent's letter to the Tribunal dated 2nd May 2006 (the Respondent's statement of case).
5. The Respondent's statement of case addressed the various items as follows:-
 - a. In respect of the provision of the Ground Rent Report they referred to the Council of Mortgage Lenders Handbook and indicated that it took 20

minutes to prepare and that at an hourly rate of £150.00 a fee of £50 plus VAT was reasonable.

- b. In respect of the Breach of Covenant Report they exhibited an example, whilst accepting the Lease made no comment about such a Report, they pointed out that it was required by the Applicant's mortgagees and that it took 30 minutes to prepare and that therefore a fee of £75.00 plus VAT was reasonable.
 - c. Licence to Assign - the Respondent accepted that there was no requirement for a Licence to Assign in this Lease and that accordingly the Applicant was not required to pay this sum.
 - d. Insurance - again they confirmed that fees were not requested from the lessees of Bevelwood Gardens for providing insurance details but did point out that the Lease provided for the Lessee to be responsible for paying for any charges associated with the request for this information.
 - e. Notice of Transfer fee – the submission stated a figure of £70 plus VAT was sought and set out the works that were required.
6. We had noted all that had been said in the application forms by Mrs Pitter but in reply to the Respondents submissions in a letter of the 7th May 2006, Mrs Pitter made the following points:-
- a. In so far as the Ground Rent Report was concerned she felt the fee of £50 plus VAT was excessive and raised an issue that Freehold Portfolios GR Limited appeared to be a dormant company. There appear to be a suggestion that Simarc as not being a party to the Lease had no authority to make demands, collect rents or provides the reports.
 - b. On the question of the Breach of Covenant Report she accepted that the mortgage company had applied for this but that she thought the Report was unnecessary and that the records of any Breach of Covenant should be the province of the management company.

- c. On the Licence to Assign she felt that it should be removed from the fees information list and although she accepted she did not have to pay this she wished to challenge it in any event.
- d. In relation to the charge for information in respect of insurance, she relied on the original submission made in her application and that the lessor could make no charge and that it should be removed from the fees information list as being inapplicable.
- e. On the Notice of Transfer fee she relied on the fee set out in the Lease.

C THE LAW

- 7. Schedule 11 of the Act which is referred to at Section 158 of the Act deals with the reasonableness of administration charges. At paragraph 1.1 there is a definition of the Administration Charge which is "*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 grant of approval under is Lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the Landlord or a person who is party to his Lease otherwise than as Landlord or Tenant

(c) in respect of a failure by the Tenant to make a payment by the due date to the Landlord or a person who is party to his Lease otherwise than as Landlord or Tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his Lease

8. In this part of this Schedule variable administration charges means "*an administration charge payable by a Tenant which is neither –*
 (a) *specified in his Lease, nor*
 (b) *calculated in accordance with a formula specified in his Lease.*
9. The Schedule goes on to provide that an administration charge is only payable to the extent that it is reasonable and that a party to the Lease can apply to the Tribunal to vary the lease. At paragraph 5 it sets out the liability to pay the administration charges and in particular by whom it is payable, to whom it is payable, the amount, the date at which it is to be paid and the manner in which it is to be paid.

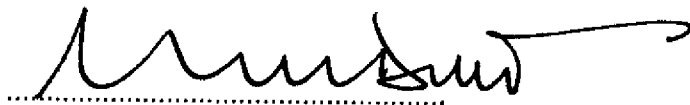
D DECISION

10. As we understand it from the documentation much of this information was required by Mrs Pitter's mortgagees. The Management Company, Simarc, has produced a fees information sheet which we understand to apply to any property that Simarc may be managing and is not exclusive to Bevelwood Gardens. Accordingly in so far as the fee charge for the Licence to Assign is concerned that is not applicable to this Lease and it does not seem to us that it is a matter that need concern Mrs Pitter. Accordingly we make no order in that regard and it is not a question of any variation to the Lease applying. It is it seems to us a misconceived element of her application.
11. Before we turn to the other elements we should perhaps comment that it seems to us that a fee of £150 per hour for what is essentially a clerical matter is too high. We bear that in mind in our findings in connection with the administration charges in dispute.
12. We will deal firstly with the Ground Rent Report. Apparently this was required by Mrs Pitter's mortgagees and on the face of it therefore it is a fee that needs to be paid. However we do bear in mind that a receipt should have been provided when the Ground Rent was paid and presumably either it was and has been lost or was never provided. It does seem to us however that the need to carry out any great investigation in respect of this particular element is limited in the

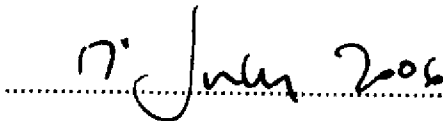
extreme. Presumably the accounts are computerised and it would require only a brief search of the record of the flats in question to provide this information. Bearing in mind the comments we have made concerning the hourly rate we find that a fee of £30 plus VAT is reasonable and we allow that amount.

13. In relation to the Breach of Covenant Report we note that in the submissions made by the Respondent they seek a fee of £75 plus VAT. This contradicts the rates set out in the Fees Information form which is £70.50 inclusive of VAT. This is therefore a figure of £60. We accept that there would be greater work necessary for the purposes of investigating this matter. This is a request that was made by Mrs Pitter's mortgagees and had to be responded to so as to enable her to complete her remortgage. In those circumstances it seems to us that this is a fee that is recoverable even though it may not be included within any specific element of the Lease. Mrs Pitter suggests a figure of £6.00 plus VAT which seems to us to be far too low. We do not find that a figure of £70.50 inclusive of VAT is unreasonable and we allow that amount.
14. We turn now to the question of Notice of Transfer. In the sheet of charges a figure of £70.50 is recorded as being the fee chargeable for a Notice of Assignment or Transfer doubling to £141.00 where a Notice of Charge is given. We find that is on the high side. However in our view we do not need to investigate that element further as the Lease provides for the fee which is chargeable at Clause 3(f) which states that a fee of £6.00 plus VAT at the current rate is to be paid for the registration of such Notice. We therefore disallow the fee claimed by the Management Company and substitute that of £6.00 plus VAT.
15. We turn to the insurance information. The company is required to carry out the insurance through a company nominated by the Landlord and at Clause 3 of the Schedule, when required to produce a copy, the company must do so, but at the lessees' expense. The amount claimed in the Fees Information Form is £55 plus VAT and given the need presumably to carry out photocopying of the various insurance documents we do not find that that is an unreasonable amount. We therefore allow the sum of £55 plus VAT for that element.

16. Finally we turn to Mrs Pitter's application under Section 20C of the Act. Having considered the evidence before us we are not inclined to make such an order. These charges have arisen as a result of Mrs Pitter's mortgagees requirements. In our experience these charges are not unusual nor are they unreasonable. Some of the charges on the Fee Information form clearly do not relate to the subject premises and could not be charged by the Management Company. We find therefore that in the main the fees charged are justifiable and in those circumstances we do not make an Order pursuant to Section 20C. That is not to say that Mrs Pitter could not challenge any fees that may be levied for dealing with the Leasehold Valuation Tribunal application if she considers those to be unreasonable.
17. In her letter of 7th May 2006 Mrs Pitter alludes to the status of the Landlord company. No evidence was produced to support the assertion she made. As the managing agent for the management company it may well deal with ground rent matters. They are not strictly speaking within the jurisdiction of this tribunal. Our remit in this action is to consider the reasonableness of the administration charges and we have confined ourselves to that matter.



Chairman



Date