RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1987

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/29UN/LAM/2005/0012**
Property:	**Arlington House** **All Saints Avenue** **Margate** **Kent**
Applicants:	**Mr. Moss and Mr. Beasley and other lessees of Arlington House on behalf of the Arlington House Residents Association**
Respondent:	**Metropolitan Property Realizations Limited**
Dates of Hearing:	**14th December 2005** **28th February 2006**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. M.G. Marshall FRICS** **Ms. L. Farrier**

Date decision Issued: 4TH APRIL 2006.

RE: ARLINGTON HOUSE, ALL SAINTS AVENUE, MARGATE, KENT

Background

1. The Applicants are the lessees of flats at the subject property and the Respondent is the lessor. The Respondent is a member of the Freshwater Group of Companies as are Highdorn Company Limited and Freshwater Property Management.

2. The Applicants made an application under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for the appointment of a manager.

Inspection

3. The subject property is a purpose built block of 142 flats in Margate.

4. We inspected the property in the presence of Mr. Moss and Mr. Beasley of the Applicants, Miss Taskis Counsel for Respondent, Mr. Jones from Wallace LLP Solicitor representing the Respondent, Mr. Jones Regional Surveyor of Freshwater Property Management, Mr. Gammon Area Manager of Highdorn Company Limited and Mr. Maloney FRICS FIRPM MEWI who was to be called as an expert witness by the Respondent. Our attention was drawn to a number of matters.

Hearing

5. The hearing was attended by those who were at the inspection and by a number of other lessees.

The Determination

6. There were certainly a number of instances of the performance of the managing agents on behalf of the Respondent falling below a fully acceptable level but after considering the documents produced and hearing the evidence and the submissions at the hearing we came to the conclusion that we should not appoint a manager. Counsel for the Respondent accepted that the Respondent cannot recover the costs of this application from the service charges but for the sake of clarity we make an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred or to be incurred by the Respondent in connection with these proceedings before the Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees or underlessees of Arlington House, on the basis that if there had been better communication by the managing agents then the lessees would probably not have made the application. All our findings were on a balance of probabilities and our reasons appear below.

Reasons

7. The subject property is residential but forms part of a development which includes commercial use. The result is that there is a likelihood of some costs overlapping and there is a need to see that the residential lessees are charged only for the expenses for which they are liable. We had found at the hearing of a case concerning the same parties that there had been an overlap but we were not satisfied on the evidence produced to us in respect of the present application that the residential lessees were now being charged for expenses for which they were not liable.

8. At the previous hearing concerning the same parties the Tribunal found that the charges for the electrical work were not reasonably incurred. The evidence before us now is that the charges for the electrical work had never been demanded and following that determination would not be demanded. But for the previous determination of the Tribunal the lessees would have been charged for that electrical work and the Applicants therefore rely on the fact that those charges would have been made, as evidence that unreasonable service charges are likely to be made. The Respondent relies on the fact that the majority of the service charges which were challenged at the previous hearing were found by the Tribunal to have been reasonably incurred. We were not satisfied that the proposal to charge for that electrical work provided sufficient evidence of the likelihood of future unreasonable charges.

9. Fire prevention measures and means of escape are required and if the method of providing them is acceptable to Thanet District Council and the Fire Brigade then unless the costs are unreasonable they are likely to be justified.

10. The Applicants considered that all the fire precaution works should have been done at the same time or at least as part of the same process of consultation. The lessees would like to feel that once they have paid for fire precaution works they will not be faced with charges for such works for a long time but at the previous hearing it was made clear that the charges demanded at that stage would not cover all the work required and that there would be further charges for further work. We were satisfied that in this case the works were complicated and extensive and that phasing of work was justified both from a logistical point of view and to spread the cost to the lessees. Clearly the installation of the fire retardent ceiling and decoration would have to be undertaken after other work had been completed and it may be easier to organise such work in phases. If the work is phased so that each phase is below the level where consultation is required and in that way avoids the need to comply with the consultation requirements or the charges are increased by arranging the work in phases then that would give us cause for concern but we were not satisfied that this was the case here.

11. The lessees were concerned at the large increase in service charges but the subject property is a forty year old building upon which work needs to be carried out. Mr. Gammon's evidence was that since the previous determination of the Leasehold Valuation Tribunal concerning the same parties two further notices under Section 20 of the Landlord and Tenant Act 1985 had been served in respect of major works and that the Respondent intends to apply to the Leasehold Valuation Tribunal for a determination of the reasonableness of those works before the works are done. We accepted this as evidence of the Respondent's intention to consult.

12. The lessees have a continuing concern that the aerials on the roof of the subject property have caused and are likely to cause damage to the building which will then have to be repaired at the expense of the lessees. There is a need for the Respondent and the managing agents to ensure that the cost of repair resulting from any such damage does not fall upon the residential lessees.

13. Mr. Jones the Regional Surveyor gave evidence that:
(i) The tank room which extends above the central section of the flat roof of the building is constructed of concrete column and beam and that between the columns there is infill cavity walling with the outer leaf of brickwork and the inner leaf of block work.
(ii) The majority of the aerials are fixed to the side of the tank room mainly round columns and a couple to the walls. Those which are attached to the columns cannot affect the brickwork and the two which are attached to the brickwork panels are being dealt with.
(iii) There is always the possibility of damage to the roof covering but if the damage were caused by an aerial installer then the aerial installer would have to pay for the repair. There had been no such incidents to his knowledge.

14. Mr. Gammon gave evidence that:
(i) The Freshwater Group of Companies have agreements with the aerial owners that they have unlimited liability for any damage caused by their aerials. The Respondent will seek redress from them in respect of any damage, which is as it should be.

(ii) All the aerials, except two which are attached to brickwork, are attached to columns.
(iii) At the cost of the aerial companies, a structural engineer has been commissioned by the Respondent to design a steel structure to be attached to the building which will obviate any damage by the aerials to the brick structure of the tank room. There will be no charge to the lessees in respect of this or in respect of any more aerials. As there are a number of vacant flats, the Respondent is responsible for almost a quarter of the service charges and Mr. Gammon's employers would take a dim view of him if he started incurring unnecessary charges.

15. We were not satisfied on the evidence produced that the aerial installations had caused damage to the roof to the detriment of the lessees.

16. It was apparent that works of repair and decoration were required but we were not satisfied that any lack of maintenance had caused or was likely to cause increased charges for the lessees.

17. We were not satisfied on the evidence before us that there had been any double charging of the lessees.

18. The managing agents have not maintained good communication with the lessees. For example:
(i) The managing agents had not produced water analysis reports when requested even though compliance with such a request would have been easy. The failure to produce those reports gave the impression to the lessees that the managing agents had something to hide.
(ii) A letter was received from Mr. Thatcher of the managing agents and a reply requesting information was sent to the address on that letter. The managing agents failed to reply within a reasonable time and Mr. Gammon gave as the reason for that failure that the letter was written to the wrong address. He said it should have been written not to the head office address given on the letter but to the area office and that the lessees should have known that they should write to the area office. To write to the address on the letter received is normal business practice but even if, which is not accepted, the letter should have been written to the area office, the head office which received the letter from Mr. Moss should have forwarded it straight away to the correct office within the organisation. The excuse given is completely unacceptable and the managing agents should realise that.
(iii) There had been a failure to deal with correspondence from the owner of Flat 18H and from Mr. Moss. Mr. Jones' evidence was that the correspondence had not been ignored, that Aston Heating had accepted responsibility for repairs to Flat 18H and that as they were now off site Mr. Gammon would see that his employers Highdorn Company Limited would carry out the repairs and pursue Aston Heating for the cost.

19. We were given evidence that a particular invoice was for repair to a window in Flat 6F. We later received evidence that the work had not been done but had been charged for and the invoice had been paid. The managing agents are now dealing with this and the contractor has stated that if it was a mistake he will carry out the repair at no extra cost.

20. The Applicants were concerned that the residential lessees could be charged for any repairs to the flat roof over the shops. Mr. Gammon gave evidence that there was a possibility that a section of that roof was over the intake room but that the majority of the flat

roof to the shops was commercial and nothing to do with the residential lessees and that if there were repairs to that flat roof there would be no charge to the residential lessees.

21. Section 24 of the 1987 Act sets out a number of circumstances in which a Leasehold Valuation Tribunal may make an order appointing a manager. We took note of all the matters raised and considered the shortcomings of the Respondent and the managing agents on behalf of the Respondent. We considered the individual failings and the cumulative effect of the failings. We also considered, as the 1987 Act requires us to do, whether it would be just and convenient to make an order appointing a manager in all the circumstances of the case and came to the conclusion that an order should not be made.

R. Norman
Chairman

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R. Norman
Chairman