Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BF/LSC/2006/0196

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C

Applicants: **Mr G Dallas, Mr J Croxford, Mr M Uboldi, Mrs G Anderson, Ms K Hawabhay**

Respondent: **Gleeson Homes Ltd**

Premises: **Stanley Court, Stanley Road, Sutton, Surrey SM2 6SF**

Date of Application: **12 June 2006**

Date of Hearing: **23 October 2006**

Appearances for Applicant: **Mr G Dallas and Mr J Croxford**

Appearances for Respondent: **Mr M Tejada – Managing Agent**
Ms J Ashmore – Company Secretary
Mr G Saunders-Griffith – Head of Legal Services

Also in attendance:

Leasehold Valuation Tribunal: **Miss S J Dowell BA(Hons)**
Mr F L Coffey FRICS
Ms T L Downie

Date of Tribunal's Decision: **13 November 2006**

REF: LON/00BF/LSC/2006/196

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF :

STANLEY COURT, STANLEY ROAD,
SUTTON, SURREY, SM2 6SF

B E T W E E N :

MR G. DALLAS of Flat 8, Stanley Court
MR J. CROXFORD of Flat 18, Stanley Court
MR M. UBOLDI of Flat 20, Stanley Court
MRS GILLIAN ANDERSON of Flat 6, Stanley Court
MS KRISH HAWABHAY of Flat 12, Stanley Court

Applicants

- and -

GLEESON HOMES LIMITED

Respondents

THE APPLICATION

1. This is an application dated 9th June 2006 made by Mr Dallas on behalf of himself and the lessees of Stanley Court listed above. The application is for determination of liability to pay service charges and the reasonableness of those service charges in respect of Stanley Court.

SUMMARY OF STATUTORY PROVISIONS

2. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
   (a) which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

(1) 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on whether a service charge is payable 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
(e) the manner in which it is payable.

(2) Sub section (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under sub section (1) may be made in respect of a matter which
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

PRE TRIAL REVIEW

3. A pre trial review was held on 11th July 2006. The Applicants were represented by Mr G. Dallas. The Respondents were not present or represented but a statement prepared by Ms J. Ashmore, the Respondents' company secretary, was sent to the Tribunal. At the pre trial review the Tribunal identified the following issues to be determined:

(1) the amount of service charge payable for the year ending 24th June 2005, in particular the cost of management and the standard of management and the possibility of unquantified surveyors fees being included as part of the service charge.

(2) The amount of service charge payable for the year ending 24th June 2006, in particular costs on account of major works and external redecorations in the sum of £1,895.46 per flat, the standard of management and the cost of management.

THE HEARING

4. The hearing of the application took place at 10 Alfred Place, London WC1 on 23rd October 2006. The Applicants were represented by Mr Dallas and Mr Croxford. No other Applicants were present at the hearing. The Respondents were represented by Mr G. Saunders-Griffiths, Head of the Respondents' Legal Team assisted by Ms J. Ashmore, the Respondents' company secretary. Mr M. Tejeda senior property manager for Andertons, managing agents, appeared as a witness for the Respondents.

PRELIMINARY APPLICATION

5. At the beginning of the hearing Mr Saunders-Griffiths raised a jurisdictional point. He submitted that the Tribunal's jurisdiction was limited to the matters raised on the application form. Mr Dallas had listed three questions he wished the Tribunal to decide for the year ending 24th June 2005 and three questions he wished the Tribunal to decide for the year ending 24th June 2006. Mr Saunders-Griffiths submitted that the Tribunal's jurisdiction could go no wider than the application form. He submitted that the matters which had been listed in the directions order had broadened the dispute but that this Tribunal had no jurisdiction to hear the matters listed in the order for directions (which are set out in paragraph 3 above).

6. Mr Dallas strenuously opposed this application. He pointed out that the directions were dated 11th July 2006 and that he had been given no notice of this application. He said he was aware that Ms Ashmore was unable to attend the pre trial review but that the Tribunal had considered the application for an adjournment and had refused it.

He said the Chairman went to some lengths to establish what the issues in dispute were and then made the directions.

DECISION

7. The Tribunal is satisfied that we have jurisdiction to hear the matters identified by the Tribunal at the pre trial review as the issues to be determined.

8. The pre trial review took place on 6th July 2006. We accept that no representative was present from the Respondents but noted that a statement from Ms Ashmore had been considered by the Tribunal. There had been no challenge to the directions until today, over three months after they had been issued. Moreover these directions had been complied with by both parties.

9. It is the Tribunal's decision that our jurisdiction is not confined to the exact words of the application form. Our jurisdiction flows from sections 18, 19 and 27A of the Landlord and Tenant Act 1985 as amended (as set out above). In addition the purpose of a pre trial review is set out in paragraph 12 of the Leasehold Valuation Tribunal (Procedures) (England) Regulations 2003 which states at sub-paragraph (3) at the pre trial review a tribunal shall –

> "(a) give any directions that appear to the tribunal necessary or desirable for securing the just, expeditious and economical disposal of the pleadings".

We have no doubt that the directions made by the Tribunal at the pre trial review were within the terms of this regulation.

THE LEASE

10. The Tribunal was provided with a copy of the lease of Flat 8 Stanley Court. We were informed that there are twenty-five flats in Stanley Court and it was agreed between the parties that all leases were in identical form. This lease was granted by M.J. Gleeson (Contractors) Limited for a term of 999 years from 29th September 1961 in consideration of a premium as well as a yearly rent of £18 plus 1/25th of an insurance premium plus a further £18 per annum "as a contribution to the Maintenance Fund" (clause 1). Neither of the fixed yearly payments of £18 constitutes a service charge within the meaning of the Act and insurance premiums were not in issue.

RELEVANT PROVISIONS OF THE LEASE

11. When looking at whether the lessees are obliged to contribute to costs incurred by the landlord under the service charge this is a matter of construing the lease as a whole.

12. The charging clause in respect of service charges is to be found at clause 3(vi) and is drawn in an unusual form. It states "within one month after receipt of written notification from the Lessor of the sum due from the Lessee under this sub clause to pay to the Lessor a sum equal to 1/25th part of the amount by which the Lessor shall estimate that the cost of repairs of maintenance and other expenses incurred or to be incurred pursuant to the Lessor's covenant contained in clause 4 sub clause (c)(i) to

(vii) hereof during the succeeding six months from the date of the estimate shall exceed the balance at the date of the estimate of the Maintenance Fund herein after referred to.

13. The lessor's covenants are contained in clause 4 of the lease including covenants to decorate, repair and maintain Stanley Court.

14. Clause 4(vii) requires the lessor "to keep an account of all sums received from the lessee (and from the other lessees of Stanley Court) hereinafter called "the maintenance fund" in respect of the annual sum of £18 payable by the lessees of Stanley Court as a contribution to the maintenance fund or pursuant to the lessee's covenant (and the covenants of the other lessees of Stanley Court) to make further payments contained in clause 3(vi) hereof and of all sums expended by the lessor pursuant to the covenants on the part of the lessor herein contained in sub clauses (c)(i), (ii), (iii), (iv) and (v) of this clause and to permit the lessee or some person duly authorised in writing by the lessee upon fourteen days' notice in writing in that behalf to inspect the books of account and vouchers relating to the said accounts at such place or places as the lessor may determine.".

15. Paragraph 5 of the lease states "notwithstanding anything herein contained the lessor may for the purpose of carrying out its obligations pursuant to its covenant contained in clause 4 hereof employ such person firm or company whether employed or associated with or a subsidiary of the lessor or not as it shall at its absolute discretion be expedient.".

16. Paragraph 7 of the lease states "it is hereby agreed and declared as follows:
(i) ....
(ii) ....
(iii) that the lessor shall be under no liability under the covenants contained in sub clauses (i), (ii), (iii), (iv) and (v) of clause 4 hereof unless and until the balance of the Maintenance Fund shall be sufficient to cover the costs and expenses being incurred by the lessor in complying with such covenants.".

SERVICE CHARGE YEAR ENDED 24TH JUNE 2005

17. The Applicants' statement dated 9th August 2006 stated that the managing agent's fees for each flat were shown in the service charge account as £70.40 plus VAT. In the statement Mr Dallas stated that this fee was not disputed and Mr Dallas confirmed this at the hearing. In those circumstances it was not necessary for us to consider the costs and standard of management for this year. We are satisfied that the lessor is entitled under clause 5 of the lease to charge the lessees the fees of a managing agent.

18. The other item identified by the Tribunal at the directions hearing for this service charge year was "the possibility of unquantified surveyors fees being included as part of the service charge". Since the directions hearing the Applicants have been supplied with the service charge accounts for the year ended 24th June 2005 and were satisfied that there were no surveyors fees included in the service charge for that year.

SERVICE CHARGED YEAR ENDED 24TH JUNE 2006 – COSTS OF MANAGEMENT

19. For this year the managing agent's fees have been increased to £125 plus VAT per flat.

THE APPLICANTS' CASE

20. The Applicants' case was that there had been no improvement in either service or performance by the managing agents and they considered the fee of £125 plus VAT to be excessive. The alternative figure put forward was £100 plus VAT as being a reasonable sum.

21. Mr Dallas told the Tribunal there were significant delays on the part of the managing agents and that routine maintenance on the estate was not carried out. Mr Croxford told the Tribunal that he had lived at the property since 1981 and that it used to be kept very well but now the block and the estate looked shabby and that it had deteriorated since Andertons took over the management in 2000. He gave two examples of matters which had not been dealt with one of which was a wooden slatted panel which had not been repaired for three years and another was that fencing which had been put up to stop parking had been damaged two years ago and not repaired.

THE RESPONDENTS' CASE

22. The Respondents submitted that £125 plus VAT was very competitive and that when they had gone out to the market they had received quotes of up to £300 plus VAT per flat. Mr Saunders-Griffiths explained that replacement of the panel was part of the major works which were currently in dispute and that the managing agents were dealing with the other item complained of by Mr Croxford. The lessor was satisfied that the managing agents were making diligent efforts to resolve these items and were providing value for money.

DECISION

23. We referred both parties to the decision of a previous Tribunal dated 14th March 2005 which related to Flats 8, 11 and 12 Stanley Court. The decision was included in the Applicants' bundle and the issue of managing agents' fees had been considered by that Tribunal. The figure which was considered by the Tribunal was £80 plus VAT per unit per annum which was referred to in a letter dated 21st February 2005. In fact this is slightly more than the amount charged for the year ended 24th June 2005. The previous Tribunal described this rate as "an exceptionally economic rate". We can only endorse that view and from our own knowledge and experience we are aware that a charge for managing agents' fees of £125 plus VAT per unit for a block of this nature on the outskirts of London is reasonable. The Applicants produced no comparative evidence to show that other blocks locally were managed for a lower amount. We accept that the block may currently look "shabby" (although we did not inspect it) but can only assume that this is due to the fact that the major works which have been proposed for some time have not yet been carried out.

24. However we were concerned that the Applicants were not aware of the menu of duties which the managing agents had contracted to carry out for the sum which was charged to each lessee. We strongly recommend that the landlord and managing agents should ensure that all lessees are sent a copy of the menu of services carried out by the managing agents for the benefit of the lessees.

SERVICE CHARGE YEAR ENDED 24TH JUNE 2006 – SERVICE CHARGES PAYABLE ON ACCOUNT OF MAJOR WORKS AND EXTERNAL DECORATIONS IN THE SUM OF £1,895.46

25. Neither of the parties were able to provide the Tribunal with a copy of the original demand for this payment. Mr Tejeda obtained by fax a copy of invoices sent to the lessees showing the sum of £1,895.46 as "previously invoiced on 9th May 2006". We therefore assumed that the original invoice for the service charge on account is dated 9th May 2006.

26. The works briefly described are as follows:

- Full preparation and repainting of external timber.
- Prepare/renewal of sections of timber canopy.
- Improvement of waterproofing detail to the canopy.
- Re-felting of porch roof incorporating drainage improvement.
- Renewal of the decayed sections of fascia, barge boards and soffit.
- Replacement of missing tongue and groove panelling at rear of the property.
- Test and overhaul of the guttering, downpipes and drainage.
- The renewal of substantial sections of garage fascia and guttering.
- New "Stanley Court" signage to the Worcester Road elevation and minor repairs.
- Garage asbestos roofs to be replaced with non-asbestos alternative, where these garages are demised, the owners to be billed for these works.

The total costs for the works is £47,386.70 as confirmed in a letter from Andertons to the lessees dated 10th May 2006.

27. Mr Saunders-Griffiths submitted that the landlord's authority to charge in advance for these works was contained in clause 7(iii) of the lease. Mr Dallas confirmed there was no challenge to the landlord's right to raise the monies for the major works and exterior decorations.

28. The Tribunal drew the parties' attention to the charging clause 3(vi) in the lease and asked for details of the maintenance fund. We were told there was "not much" in this fund. We noted the Respondents were unable to tell us the value of the fund. Mr Saunders-Griffiths confirmed that the invoice dated 9th May 2006 was "the estimate" referred to in this clause.

CONSULTATION

29. If relevant costs incurred exceed more than £250 per lessee then the landlord must comply with the consultation regulations as set out in section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. In view of the value of the works these requirements clearly apply to this case. In simple terms

the landlord is required to serve a notice of intention (Part 1 notice) explaining what works the landlord intends to carry out followed by a notification of the estimate (Part 2 notice).

APPLICANTS' CASE

30. Mr Dallas and Mr Croxford informed the Tribunal that neither of them had received either the Part 1 notice or the Part 2 notice. However the Tribunal pointed out to Mr Dallas that his letter of 9th May 2005 acknowledged receipt of the Part 1 notice and his letter of 20th January 2006 acknowledged receipt of the Part 2 notice. Mr Dallas then admitted that he had received these notices and gave no explanation of why he had sought to mislead the Tribunal. Mr Croxford reiterated that he had not received either of the notices and Mr Dallas told the Tribunal that none of the other lessees had received either of the notices.

VALIDITY OF NOTICES

31. Mr Dallas submitted that both notices were defective. His letter of 9th May 2005 stated that he did not believe there was sufficient detail or description of the proposed works on which to make objective observations and required the managing agents to provide a copy of the condition survey prepared by their surveyor and/or the description of the contract for the lessees' consideration and comment. He stated that unless and until such survey/report was to hand he did not consider the notice of intention to be properly served. He also in that letter asked that Octagon Limited, be invited to tender for the works. As far as the Part 2 notice was concerned Mr Dallas' submission was that it was not valid because full copies of the priced specifications were not attached.

RESPONDENTS' CASE

32. Mr Saunders-Griffiths submitted to the Tribunal that the notices were valid and had been validly served and that the consultation requirements had been complied with. He submitted there was no requirement to obtain a condition survey or provide a draft contract with the Part 1 notice and there was no requirement to provide full copies of the estimates with the Part 2 notice.

33. Mr Tejeda was called as a witness. He had not signed a witness statement and he gave oral evidence. He confirmed that the Part 1 notices were sent out to all the lessees on the 5th of May 2005, although he had not sent them personally. These were produced electronically and he admitted that he could not produce copies of all the notices sent to all the lessees. However he explained the procedure by which they had been sent out and confirmed that none had been returned by the Royal Mail. He said it was not their practice to send the detailed specifications and other documents with the Part 2 notices as this would be far too bulky. They had obtained estimates from three contractors including Octagon Limited. Copies of the form of tender giving the total estimate for each contractor were sent out with the Part 2 notices. Also there had been a meeting on the 23rd of February 2006 with the lessees when it had been agreed that some items should be removed from the specification.

DECISION

34. We are satisfied that the consultation requirements were complied with. We accept the evidence of Mr Tejeda that notices were sent out to all the lessees. However we have no reason not to believe Mr Croxford who stated that he had not received the notices. This in itself does not make the consultation procedure invalid if the landlord had behaved in a reasonable manner in sending out the notices.

35. We are satisfied that both notices are valid. The Part 1 notice gives sufficient detail to enable the lessees to identify the works which are to be carried out and to obtain their own surveyor's report if they wished to do so. The Part 2 notice complies with the law. There is no requirement that full copies of the priced specifications should be sent out to the lessees. The Part 2 notice dated 20th January 2006 made it clear that copies of the estimates were available for inspection at Andertons Limited.

REASONABLENESS (Section 19 of the Act)

36. Mr Dallas submitted that some of the works were not necessary. He had set those out in his letter of 12th February 2006 to Mr Tejeda. Mr Tejeda explained that these items had been taken out of the specification and the reductions were as follows:

- Paving works - £795
- Fencing and timber works - £350
- Trellis work - £4,100

37. As a result of this concession a letter dated 10th May 2006 had been sent from Andertons to each lessee explaining that the revisions had reduced the total cost to £47,386.70. With that letter there was a reference to "an amended invoice" which we assume is the invoice dated 9th May 2006 referred to in paragraph 25 above. The Tribunal concluded therefore that there was no dispute about the reasonableness of the cost of the works.

LIABILITY

38. Mr Dallas submitted that the landlord had no authority to carry out any works to the garages because they were demised to the lessees and that any sums for the works to the garage doors including the sum of £2,000 "provisional sum for garage door repairs" should be deducted. Ms Ashmore said that she had taken legal advice about this matter and she referred us to a letter dated 22nd March 2006 from her to Mr Dallas in which she explained that the landlord's solicitors "clarified that the garages formed part of the property and part of the Stanley Court development of which the lease determines that the lessor is responsible for maintaining and decorating. Therefore this item would remain part of the external redecorations.".

DECISION

39. The Tribunal pointed out that the lease of Flat 8 clearly demised the garage with the flat. Neither Mr Saunders-Griffiths nor Ms Ashmore were able to take the Tribunal to the clause in the lease which supported the advice they had received from their solicitors. The demise in the lease of Flat 8 specifically includes the garage. The

lessee is responsible for repairs and decoration to the demised premises as set out in clause 3(i) and (iv) of the lease. There is no obligation on the lessor to repair and paint any areas for which the lessee is responsible as set out in clause 4(c)(i) and (iii).

40. In those circumstances we determine that the sum of £2,000 for repairs to the garage doors should be removed from the service charge together with any other charges included in the specification for works to the garages. An amended invoice should now be issued to each lessee.

41. We determine in any event as the date of the estimate is 9th May 2006 and the costs have not been incurred then there is no power for the landlord to recover this sum. We accept Mr Saunders-Griffiths' submission that the landlord's authority to charge in advance for works is contained in clause 7(3) of the lease, but it is subject to the provisions of clause 3(vi) of the lease. The landlord cannot seek to recover from the lessees, at this stage, the sum of £1,895.46 in the invoice dated 9th May 2006. The clause obliges the lessee to pay sums which are incurred or to be incurred during the succeeding six months from the date of the estimate.

APPLICATION UNDER SECTION 20C OF THE ACT

42. In his application form Mr Dallas had indicated his intention to apply to the Tribunal for an order preventing the landlord from recovering any costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal as part of the service charge. Mr Saunders-Griffiths confirmed to the Tribunal that the landlord had no intention of seeking to recover the costs of the proceedings before the Leasehold Valuation Tribunal as part of the service charge. On the basis of this assurance Mr Dallas withdrew his application.

REIMBURSEMENT OF FEES

43. Mr Dallas confirmed that he did not wish to make any application for reimbursement of fees paid to the Tribunal.

.....
Jane Dowell
Chairman

Dated this 13th day of November 2006