

Address of Property : 29 Katherine's Court, Katherine's Gardens, Ampthill, Beds
Applicant Tenant : Mr Geoffrey Nourish
Applicant's solicitors : Knowles Benning, Shefford, Beds
Respondent : Katherine's Court (Ampthill) Limited
Respondent's solicitors : Healds, Bedford

THE DECISION OF THE TRIBUNAL

Handed down : 7th October 2003

Tribunal : Mr G K Sinclair (Chairman), Mr J R Humphrys FRICS,
& Mr G R C Petty FRICS

The Applicant did not appear, nor was he represented

For the Respondent: Mr Mark Sefton, counsel, instructed by Healds, solicitors for
the Management Company

Hearing date : Wednesday 24th September 2003

The following applications were submitted for determination by the Tribunal :

By paragraph 1 of an order dated 22nd April 2002 made by District Judge Blomfield at Bedford County Court in Claim No BE012555 it was ordered that "such issues as may be referred to the Leasehold Valuation Tribunal shall be referred to them and the Defendant [the Applicant tenant] will make the necessary application to the Leasehold Valuation Tribunal forthwith."

On 7th February 2003 an application was submitted to the Tribunal pursuant to the Landlord and Tenant Act 1985 by the Applicant tenant seeking :

- a. the determination by the Tribunal of the reasonableness of service charges levied for the property for the 2001 accounting year [section 19(2A)]
- b. an order that the landlord's costs of the proceedings be limited or disregarded as relevant costs when determining the amount of service charges payable [section 20C]

In the Statement of Reasons accompanying the application the Applicant particularises the alleged deficiencies in the services provided (para 1), denies that the Respondent is entitled under the lease to recover administration charges (para 2), refers to the grounds set out in his Amended Defence in the County Court action (para 3), and states that he is applying under the Landlord and Tenant Act 1987, section 35, for the terms of the lease to be amended (para 4).

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Summary

1. The Applicant tenant is in dispute with the management company providing services for his block of flats. He disputes the adequacy of the services provided but is supported by none of his fellow tenants. In legal proceedings brought to recover payment of his arrears such issues in the action as are within the Tribunal's jurisdiction were referred to it by the court. For reasons explained below the Applicant declined to attend the hearing or to provide evidence in support of his case. The Tribunal considered the Respondent's evidence and declares that the service charges levied for the year 2001 were reasonably incurred. The application under section 20C is dismissed. None of the other issues raised by the Applicant are within the tribunal's current jurisdiction.

Background

2. This decision concerns the management of a small estate comprising three four-storey and two three-storey blocks of flats and maisonettes, 36 in all, with parking in front and to one side and quite an extensive, irregular shaped, sloping garden with grass and trees behind. The estate is situate in a residential area next to another small estate run by a housing association, and within several hundred metres of the main shopping area in the centre of Ampthill.
3. The leases for the various flats and maisonettes provide that services are to be carried out not by the lessor, S J Farrow Limited, but by a management company, Katherine's Court (Ampthill) Limited, the current Respondent. In fact the management of the estate

was placed by the company with professional managing agents, at one stage with the firm of Thornes but, since December 2000, with Wallace Property Management. All the tenants in this particular block save for the Applicant are content with the level and standard of service being provided by the company.

4. In April 1999 solicitors acting for the liquidators of the lessor company served notice on the tenants of the Applicant's block, 23 - 30 Katherine's Court, of the proposed disposal of the freehold. The tenants decided to buy the freehold themselves and, led by Mr Nourish and advised by Mr Atkins of Knowles Benning (the solicitors now acting for him), Katherines Garden Limited (Reg No 3840559) was formed and the freehold acquired. It is noted that, despite all the other tenants having paid their share of the legal costs involved to Mr Nourish (the then sole director), as recently as 4th June 2003 Mr Atkins of Knowles Benning was writing to the present company secretary asking for payment of the firm's account.
5. Mr Nourish has been in dispute with both the Respondent management company and his fellow members of Katherines Garden Limited since at least 2000, and has failed to pay sums demanded of him (or allegedly to remit an amount due from him to other members of the latter company in respect of the premium paid on the purchase of one of the flats in the block and received by him in his capacity as director). On 7th September 2001 Katherine's Court (Amptill) Limited issued a claim seeking payment of arrears of service charges in the Bedford County Court (Claim No BE012555). Mr Nourish filed a Defence, raising a number of issues (but without setting out the factual basis for any of them), and asked for a variation of the terms of the lease under the Landlord and Tenant Act 1987.
6. Eventually, on 22nd April 2002, District Judge Blomfield made an order referring to this Tribunal such matters as are within its jurisdiction, and directing that Mr Nourish apply forthwith. Directions were also given for the amendment of the Particulars of Claim and for the filing by Mr Nourish of a response to a request for further information and any amended Defence by 20th May 2002. An Amended Defence was filed on 2nd September 2002. This application was made to the Tribunal in February 2003.

CLARA and adjournment of the hearing

7. Both before and since the making of this application the Applicant's solicitors have been in correspondence with the Tribunal office in Cambridge, enquiring about the coming into force of those provisions in the Commonhold and Leasehold Reform Act 2002 which greatly extend the jurisdiction of the Tribunal by transferring to it certain powers now within the sole jurisdiction of the courts. At the time that such enquiries were made no relevant Commencement Orders had been published.

8. On 20th June 2003 the Tribunal office informed the parties that the application would be heard on 31st July 2003. On 3rd July 2003 Mr Atkins of Knowles Benning wrote asking for an adjournment of the hearing, as :

The writer, who has the conduct of this matter on behalf of Mr Nourish, is out of the country on July 31st and Mr Nourish is unavailable. We should be grateful if an alternative date could be considered for this hearing. In the circumstances and having regard to the fact that from the 30th September 2003 the legislation concerning Section 136 Powers to Vary Leases [sic] will have given the Tribunal authority to deal with the variation application we should be grateful if the hearing could be listed after that date.

Despite objection from the Respondent the then Tribunal chairman agreed that the hearing should be adjourned and, by letter dated 11th July 2003, the Tribunal office asked both parties for dates during August on which they would be unavailable. No reason was given for the grant of the adjournment but, by the request for dates in August, the suggestion that the hearing be adjourned until after 30th September 2003 was impliedly rejected. Upon this being challenged by the Applicant's solicitors, the tribunal office wrote on 29th July 2003 that the then chairman was not agreeable to postponing the hearing until after 30th September 2003.

9. On 12th August 2003 the Tribunal office wrote to the parties to inform them that the hearing would now take place on 24th September 2003. This prompted a further letter from the Applicant's solicitors, dated 5th September 2003, in which (to summarise) it was suggested :
 - a. That the position concerning knowledge of the coming into force of the new Act had not changed

- b. That the Tribunal had already agreed to their request for an adjournment on the basis of representations made concerning the coming into force of the changes to the LVT jurisdiction
 - c. That the chairman, Mr Geraint Jones, had in his capacity as a barrister previously represented Mr Nourish in connection with various proceedings in the Bedford County Court and that it would not therefore be appropriate for him to sit
 - d. That it would be more appropriate for the matter to be referred to "a different area Tribunal"
 - e. That there should be a further adjournment.
10. Following that letter the then chairman agreed that he should stand down as chairman and the present chairman was appointed in his stead. The applications for transfer and adjournment were refused. By letter dated 18th September 2003 Mr Atkins of Knowles Benning again repeated his assertion that the Tribunal had previously agreed to adjourn the hearing pending the coming into force of the changes to the LVT's jurisdiction and that it was not open to the Tribunal now to change its mind. He was dissatisfied at the service provided and submitted :
- ...that this matter should be referred to another assessment panel and/or the administration of the case should be reviewed by the senior President of the RPTS and we should be grateful if you would forward this letter to the Senior President for lodgement as formal complaint.
- By letter dated 22nd September 2003 Mr Atkins further informed the Tribunal that his instructions were that neither he nor the Applicant would attend the hearing on 24th September 2003.
11. Neither Mr Nourish nor any legal representative of his was present during the Tribunal's inspection of the estate at 10:00 on the morning of the hearing. At the chairman's request the Tribunal clerk knocked on the door of the Applicant's flat but there was no response. Before the hearing began at Bedford Town Hall later that morning the clerk telephoned Knowles Benning and it was confirmed that no-one would be in attendance.

The lease and relevant law

12. The Applicant's lease, dated 17th May 1978, is for a term of 99 years from 24th June 1977

at an initial rent of £30 per year payable by equal half-yearly payments in advance, free of all deductions whatsoever. The lease is tripartite, with covenants by lessee, lessor and management company. The relevant service charge provisions appear in clause 3(ii) [lessee's covenant to pay], clause 4(e) [lessor's covenant to insure], clause 5 [company's covenant to do works], and Schedules 4 [costs and expenses to which lessee is to contribute] and 5 [calculation and certification of amount payable quarterly].

13. On the subject of the company's ability to recover administration charges and legal costs, which the Applicant challenges, the Tribunal notes the provisions in paragraphs 6, and 10 to 13 of Schedule 4.
14. In paragraph 3 of his Amended Defence the Applicant also challenges the provision in clause 6((2) of the lease governing the rate of interest payable by the defaulting lessee on any sum in arrears for more than 21 days.
15. In paragraph 7 of the Amended Defence the Applicant applies under section 35 of the Landlord and Tenant Act 1987 for the terms of the lease to be amended to replace references to "the Company" with "the Lessor" or by such alternative term as he may agree with Katherines Garden Limited.
16. What is the role and jurisdiction of the Tribunal? In seeking an adjournment to a date after the LVT's jurisdiction has been extended by the Commonhold and Leasehold Reform Act 2002 the Applicant and his solicitors appear to assume that the Tribunal would have increased powers to deal with the various matters raised in his Amended Defence to the claim. They are sadly deluded.
17. Under article 2 of the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings)(England) Order 2003 the jurisdiction of the Tribunal is indeed extended as from 30th September 2003, and thereafter it can consider not only the reasonableness of amounts levied by way of service charge but also whether and by whom they are payable. However, paragraph 6 of the Savings in Schedule 2 makes clear that section 19(2A) does not cease to have effect, and paragraph 11 states that section

163 (which transfers the jurisdiction to vary the service charge provisions in leases from County Court to LVT) shall not have effect, in relation to any application made before that commencement date. In short, these applications having already been made, the Tribunal will never acquire jurisdiction to deal with them.

18. Insofar as the administration charges challenged come within the definition in section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 then the Tribunal has no jurisdiction in respect of any sums payable before the commencement date of 30th September 2003 : see paragraph 8 of Schedule 2 to the Order.
19. So far as the reasonableness of the service charge is concerned the relevant statutory provisions appear in sections 18 , 19 and 20 of the Landlord and Tenant Act 1985, as amended. Section 18(1) provides the definition for "service charge", section 19 imposes limits on the amount recoverable, and section 20 imposes certain limitations on the recoverability of service charges in the absence of estimates and consultation by the Lessor with the Lessee.
20. By section 20C of the 1985 Act a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. On such an application the Tribunal may make such order as it considers just and equitable in the circumstances.

The hearing and evidence

21. The Tribunal inspected the site at 10:00 on the morning of the hearing. The weather was warm, dry and sunny. The Tribunal walked around the perimeter of the site, noting the condition of the buildings, the manhole cover in front of the garages (which had been complained about by the Applicant), and the state of the gardens after a particularly hot, dry summer. The common parts of the Applicant's block were inspected. All appeared clean and in good order, although of course this demonstrates only the current standard of management and not that prevailing in 2000-2001. Officers and legal representatives

of the management company, and of Wallace Property Management, were present during the inspection but the Applicant was not.

22. The hearing commenced at 11:40 at Bedford Town Hall. Present were counsel and solicitor for the Respondent plus five witnesses, all of whom had made written witness statements which were before the Tribunal. The following witnesses were called and briefly questioned about their statements :

Helen Litt : director of the Respondent company since 22nd July 1999 and company secretary since 16th July 2002.

She gave evidence that on no occasion had Mr Nourish ever voiced any complaint about services either to her or to board of directors, nor had he ever attended a company AGM to discuss such matters. Her only contact with him concerned writing to him about his rusting van left abandoned on the estate for over 15 years. He never replied and the vehicle had to be removed by the council.

Ray Park : Company secretary of Katherines Garden Limited, and daughter of the lessee of flat 24.

She was involved in and gave evidence about purchasing the freehold, the formation of the company, its management, reasons for the removal of Mr Nourish as director, the contractual relationship under the leases with the Respondent management company, and the lessor's (and thus the lessees') satisfaction with the standard of services provided.

Hilary Wilson : director of Katherines Garden Limited since 21st October 2001.

She gave evidence concerning her purchase of flat 30 and her payment to Mr Nourish (as director) of her share of the cost of acquiring the freehold, such cost having previously been paid by the other lessees as members of the company. This money, although paid to Mr Nourish as fiduciary, had never been distributed by him amongst the other members. She also gave evidence that the legal fees of Knowles Benning incurred in acquiring the freehold had never been discharged, despite members of the company having paid their fair shares to Mr Nourish for that purpose.

Shirley Blanchard : director & chairman of the Respondent since August 1999

She gave evidence concerning the non-payment of service charges by Mr Nourish since December 1999, and concerning the allegedly broken manhole cover in front of the garages. It was not broken but, due to age, was replaced by a stronger version in July 2001.

Peter Fisher : proprietor of Wallace Property Management, a chartered civil engineer

He gave evidence that his firm took over management of the estate in December 2000, about the ownership of the two parts of the site, and about attempts to recover arrears of service charges from the Applicant.

23. The Tribunal also had before it a bundle of documents including correspondence, AGM Minutes, grounds maintenance and cleaning contracts, and accounts. The accounts and service charge statement for the year ended 31st December 2001 have been certified by Mills & Co, chartered accountants, on 11th June 2002.


Findings on points in dispute

24. In concluding his case Mr Sefton, the Respondent's counsel, invited the Tribunal to confine itself to items (a) to (h) listed by the Applicant in paragraph 1 of the Statement of Reasons annexed to his application when considering the reasonableness of the service charge levied. However, preferring to look at the evidence in the round, and applying its own knowledge and experience, the Tribunal considered the evidence of the witnesses and the accounts and service charge statement for the relevant year and concluded that the amount levied by the Respondent company, including the managing agents charges for managing the whole estate, were and are reasonable.
25. Whether the service charge levied includes items for administration charges, as defined in Schedule 11 to the Commonhold and Leasehold Reform Act 2002, is not clear from the evidence, but any dispute concerning this issue is outwith the present jurisdiction of the Tribunal. Likewise, those aspects of the Applicant's case concerning the level of interest sought to be recovered upon his arrears, and whether provisions in the lease concerning service charges can or should be varied under section 35 of the Landlord and Tenant Act 1987, are matters which remain within the jurisdiction of the Bedford

County Court in the existing proceedings.

26. As the Applicant chose neither to attend the hearing nor to adduce any evidence, and as the Tribunal has found in favour of the Respondent, the application under section 20C of the Landlord and Tenant Act 1985, namely that the Respondent company's costs of this application be disregarded as relevant costs when determining the amount of service charges payable, is dismissed.
27. The Tribunal so reports to the court.

Dated 7th October 2003


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Graham Sinclair, Chairman
for the Leasehold Valuation Tribunal