

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985
(AS AMENDED), SECTIONS 19 (2A), (2B) & 20C
AND
THE LANDLORD AND TENANT ACT 1987 (AS AMENDED) SECTION 24

Case Nos: CHI/19UE/NSI/2003/31
CHI/19UE/NAM/2003/001

Property: Clare House
Deansleigh Park
Shaftesbury
Dorset

Applicants: Mr & Mrs M P Sherwin

Respondent: Hopkins Bros Developments Ltd

Date of Application: 4 August 2003

Members of the Tribunal: Mr L H Parkyn, Lawyer (Chairman)
Mr P G Harrison FRICS
Mr A J Mellery-Pratt FRICS

Date decision issued:

1. **Introduction**

- 1.1 These were Applications relating to Clare House, Deansleigh Park, Shaftesbury, Dorset ("the Premises") to the Tribunal under Sections 19(2A), (2B), and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for the Tribunal to determine:-
- The reasonableness of service charges incurred for the year ending 31 December 2002 (s19(2A))
 - The reasonableness of service charges to be incurred for the year ending 31 December 2003 (s19(2B))
 - The limitation of the Respondent's costs (s20C)
 - The appointment of a manager (s24)
- 1.2 The Applicants had also made an application under Article 8 of the Leasehold Valuation Tribunals (Fees) Order 1997 ("the 1997 Order") for the Tribunal to make an Order requiring the Respondent to reimburse the fees paid by the Applicants when lodging the applications for the Tribunal's determination.
- 1.3 Following receipt of the Applicants' notice dated 3 July 2003 under Section 22 of the 1987 Act, concerning the Applicants' intention to apply to the Tribunal for the appointment of a manager, the Respondent acknowledged by letter dated 8 July 2003 observing "... (we) will expect to answer the points raised to the Tribunal in due course". In the event, the Respondent did not respond to the Applications under either the 1985 Act or the 1987 Act but, in response to enquiry from the Tribunal's office, the Respondent replied by letter dated 17 November 2003 as follows:-

"Further to this matter and in particular to our conversation of today we confirm it is not our intention to attend the hearing scheduled for 18th November(sic). Instead we confirm our willingness to accept the Tribunal's decision in and to abide by it".

2. **Inspection**

2.1 The Tribunal inspected the Premises on 20 November 2003 in the presence of the Applicants.

2.2 During the course of the inspection, the Tribunal had drawn to its attention that:-

- the hall, landing and stairs had then recently been redecorated
- not all the lights worked: one on the second floor landing was said not to have worked since September 2002
- the Applicants were not aware of the emergency lighting system having been tested
- the top course of bricks on the retaining wall for the access to the rear fire door was damaged
- a section of the rail fence along this access needed replacing
- some of the panel fencing surrounding the bin store was damaged
- there was weed growth and a lack of wood chippings in the landscaped areas
- there were two slipped/missing tiles on the tile hung fascias adjacent to the main entrance to the Premises.

2.3 The Tribunal noted that the Premises formed a three-storey detached block of 12 self-contained flats the construction of which was said to have been completed in the early part of 2001.

3. **Hearing**

3.1 The hearing was also held on 20 November 2003 with Mrs R M T Sherwin presenting the Applicants' case supported by evidence from Mr Bill Reilly BSc MA of Gilyard Scarth Lettings, the proposed manager.

3.2 As a preliminary, and to narrow the issues, the Tribunal:-

- established that the issue concerning the insurance for the Premises had been resolved to the Applicants' reasonable satisfaction albeit after some delay

- the only service charges to be considered by the Tribunal concerned the management fee of £5,000 (i.e. £416.66 per flat) charged for the year ended 31 December 2002 and the interim service charge of £450 per flat proposed for the year ended 31 December 2003
- informed the Applicants that it had no jurisdiction to determine the reasonable cost of redecorating the hallways, landing and stairs at the Premises as the charge for these works had not yet appeared in any management accounts or elsewhere
- informed the Applicants that the Tribunal had no jurisdiction to vary the leases within the applications under consideration
- established that all the leases were in the same form and had not been varied.

3.3 In presenting the Applicants' case, Mrs Sherwin relied on the written statements she had submitted to the Tribunal the main thrust of which could be summarised as follows:-

- The management fee for the Premises in 2001 amounted to £210 (i.e. at £17.50 pf) which was increased to £5,000 (i.e. at £416.67 pf) in 2002 without prior notice, a totally unreasonable increase for premises the Applicants considered to be "very poorly managed". Mrs Sherwin suggested that a more realistic management fee for 2002 would be £420 (i.e. £35 pf).
- The interim service charge of £450 per flat for 2003 was unreasonably high even when an allowance was made for "...an increase in management duties in respect of the organising of the redecoration of the internal communal areas, contract cleaning of the same and one weed killing visit". Mrs Sherwin suggested that the interim charges should be no more than £150 per flat or, alternatively, no interim charge should be made for the year.
- To support her contentions, Mrs Sherwin drew the Tribunal's attention to the fact that Gilyard Scarth Lettings and Sherwoods, both independent property letting and management agents operating in the area, proposed to charge between £50 and £100 per flat, plus VAT, if appointed to manage

the Premises and that Dorset Lettings charged a fee of £220 plus VAT for managing, in their entirety, Courtyard Flats at Shaftesbury.

- Although she doubted that the Respondent would have incurred any significant costs in connection with the applications before the Tribunal, for the avoidance of doubt and further difficulty, Mrs Sherwin urged the Tribunal to make an Order that the Respondent's costs (if any) were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenants for the Premises.

3.4 In support of the application for the appointment of a manager Mrs Sherwin relied on the Applicants' notice served under Section 22 of the 1987 Act and in particular:-

- The Respondent's demands for unreasonable management fees
- The Respondent's breach of obligations as landlord under the lease for cleaning, keeping the garden areas properly tended and keeping the Premises in good and substantial repair
- The Respondent's failure to follow the Residential Management Code ("the Code") of the Royal Institution of Chartered Surveyors, approved by the Secretary of State pursuant to the Leasehold Reform Housing and Urban Development Act 1993, and

The unnecessary redecoration of the hall, landing and stairways at the Premises (which works commenced on 25 June 2003 when, in a letter to Mr M K Smith (Lessee of Flat 6) dated 12 May 2003, the Respondent observed:-

"7) Redecoration of Common Areas

Our Contracts Manager considers the present state of the area does not warrant the considerable cost of redecoration, but he will continue to appraise the condition"

but to which Notice the Respondent had made no substantive response.

3.5 In answer to questions from the Tribunal, Mrs Sherwin stated that three separate issues had, in effect, triggered the applications to the Tribunal:-

- (a) The increase in the management fee to £5,000 in 2002 without consultation or explanation.
- (b) The works of redecoration following the Respondent's categorical statement that such works were unnecessary.

- (c) Difficulties encountered by a lessee (due to arrears of service charge) and seeking to remortgage
- 3.6 In connection with the application for the Respondent to be ordered to reimburse the Applicants' application fee of £650, Mrs Sherwin submitted that this was a significant fee for applications which would not have been necessary had the Respondent carried out its management functions in accordance with the provisions of the lease and the Code.
- 3.7 Mr Reilly confirmed his willingness to be appointed Manager of the Premises, should the Tribunal so decide and, in response to questions from the Tribunal confirmed :-
- Gilyard Scarth Lettings held professional indemnity insurance producing the policy issued by Dickinson Manchester Indemnity (Policy No P103D113767) on 17 April 2003 for a period of 12 months providing an indemnity limit of £500,000 with an excess of £1,000 for the business of estate agents, property managers and letting agents;
 - he was satisfied that an initial management fee of £50 plus VAT per flat would provide a reasonable level of remuneration for the work involved;
 - no charge would be made for inspecting the Premises or for supervising work;
 - he was familiar with the Code and fully prepared to work within its terms;
 - he had perhaps submitted a relatively low management charge to secure the business although as his agency also managed flats at the Premises the two responsibilities would be complementary; and
 - if the Tribunal decided to appoint him as manager, he would be willing to assume responsibility with effect from 1 January 2004.

4. Decision

4.1 The Tribunal made the following findings of fact:-

- The Premises comprised a three-storey detached building containing 12 self-contained residential flats

- There were a number of relatively minor items of maintenance and repair with which the Respondents should have dealt under the terms of the lease although, at the time of the Tribunal's inspection, none would have had a seriously adverse effect on the tenants' interests.
- The hall, landings and stairs did not need complete redecoration in 2003
- The Respondent had not put in place a proper system for the general management of the Premises for the years in question as required by the lease and the Code.
- The Applicants' notice under Section 22 of the 1987 Act had been properly served.
- The Respondent had made no substantive response either to the Applicants' notice under Section 22(ibid) or to the Applications to the Tribunal.

4.2 Under Section 18 of the 1985 Act a "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent payable for services, repairs, maintenance or insurance or the landlord's costs of management and which varies or may vary according to the relevant costs or estimated costs. For this purpose "costs" includes overheads and:-

"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" (s18(3)).

4.3 Under Section 19 of the 1985 Act an application may be made to the Tribunal for a determination on whether costs incurred, or to be incurred, for services, repairs, maintenance, insurance or management are, or would be, reasonable (s19(2A) & (2B)).

4.4 Following the inspection of the Premises, the evidence and information given by Mrs Sherwin, and in the absence of any evidence to the contrary, the Tribunal concluded that the management of the Premises would be both simple and straightforward and could see no justification for increasing the management fee from £210 (the amount charged for the then preceding year) to £5000 for the year ended 31 December 2002 (plus VAT in each case).

Further, although the Tribunal found there was unlikely to have been much material difference in the cost of the management between these two years, the Tribunal accepted the Applicants' suggestion that a reasonable cost for the management for that year would be £420 (i.e. £35 per flat) plus VAT.

4.5 Similarly, the Tribunal could see no grounds for increasing the service charge for the year ending 31 December 2003 and, having received no evidence to indicate that there was likely to be any significant increase in the standing charges for the Premises did not consider the Respondent's proposed interim service charge of £5,400 (i.e. £450 per flat) to be reasonable for that year.

4.6 The Tribunal did not share Mrs Sherwin's view that there was perhaps a case for not making an interim service charge for the year ended 31 December 2003. So taking account of the charges for electricity, cleaning, repairs, insurance and management at the rate of £420, plus VAT, for the year, the Tribunal considered a reasonable interim service charge for the year ending 31 December 2003 would be £1,800 (i.e. £150 per flat).

4.7 Under Section 24(1) of the 1987 Act, a Tribunal may, on an application for an Order under that section, by Order appoint a manager to carry out such functions in connection with the management of any premises as the Tribunal thinks fit. However, the Tribunal may only make an Order under this Section where the Tribunal is satisfied that:-

- a) The landlord is in breach of an obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question.
- b) Unreasonable service charges have been or are proposed or likely to be made.
- c) The landlord has failed to comply with any relevant provision of the Code.
- d) It is just and convenient to make the Order in all the circumstances of the case.

(Section 24(2) of the 1987 Act)

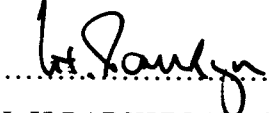
4.8 The Tribunal did consider the Applicants had established their case for the appointment of a manager and that it would be just and convenient for the Tribunal to make such an Order. In reaching this decision, the Tribunal took account of:-

- The apparently arbitrary increase in management costs from £210 per year in 2001 to £5,000 per year in 2002 without consultation or explanation and for no apparent change in management standard.
- Maintaining management costs at a similar level for 2003 indicated by a proposed interim service charge of £450 per flat
- Failure to comply with the Code, particularly in relation to the delays in providing details of the cost of insurance, despite repeated request;
- failure to prepare the budget for the cost of services and consult the tenants about them; and,
- failure to establish a procedure for regular inspection.

Accordingly, the Tribunal decided to appoint Mr Bill Reilly BSc MA of Gilyard Scarth Lettings as Manager of the Premises on the terms set out in the Order attached to this decision.

- 4.9 Although the Tribunal considered it unlikely that the Respondent had incurred any costs in connection with the Applications, for the avoidance of doubt and for completeness, the Tribunal decided under section 20C of the 1985 Act that none of the Respondent's costs incurred or to be incurred in connection with the Applications were to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.
- 4.10 Finally, the Tribunal considered the application under the 1997 Order for an Order that the Respondent reimburse the Applicants' the fee of £650 paid on lodging the Applications and decided that as the Applicants had succeeded on each of the Applications, the Applicants were entitled to be reimbursed in full.
- 4.11 Thus, and to summarise, the Tribunal :-
- (a) found that the management charge for the year ending 31 December 2002 in the sum of £5000 was not reasonable and that a reasonable charge was £420 (i.e. £35 per flat) plus VAT
 - (b) found that the proposed interim service charge for the year ended 31 December 2003 in the sum of £5400 was not reasonable and that a reasonable interim service charge (including a management charge of £420 plus VAT) was £1800 (i.e. £150 per flat)

- (c) Ordered that Mr Bill Reilly be appointed Manager of the Premises in accordance with the terms of the attached Order
- (d) Ordered that none of the costs (if any) incurred by the Respondents in connection with the Applications were to be regarded as relevant costs and taken into account in determining the amount of any service charge payable by the tenants
- (e) Ordered the Respondents to reimburse the Applicants by 1 January 2004 the full fee of £650 paid when lodging the Applications.


.....
L H PARKYN (Chairman)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

**RE: CLARE HOUSE, DEANSLEIGH PARK, SHAFTESBURY,
DORSET (“the Premises”)**

Between

Mr and Mrs M P Sherwin

Applicants/Tenants

and

Hopkins Bros Developments Ltd

Respondent/Landlord

Order for the Appointment of Mr Bill Reilly as Manager

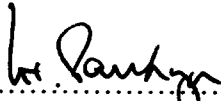
THE TRIBUNAL ORDERS that Bill Reilly BSc MA of Gilyard Scarth Lettings of The Old Coffee Tavern, Salisbury Street, Mere, Wiltshire BA12 6HA (“the Manager”) be appointed Manager of the Premises with effect from 1st January 2004 and that:-

- 1. HE** shall manage the Premises in accordance with:
 - a. **The** respective obligations of the landlord and the tenant under the various leases by which the flats at the Premises are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the repair decoration provision of services to and insurance of the Premises and
 - b. **In** accordance with the duties of a manager set out in the Service Charge Residential Management Code (“the Code”) published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
- 2. THE** Manager shall receive all sums whether by way of ground rent insurance premiums payment of service charges or otherwise arising under the said leases.

- 3. THE** Manager shall account forthwith to the landlord/freeholder for the time being of the Premises for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees hereby specified) in the performance of the covenants of the landlord contained in the said leases.
- 4. THE** Manager shall make arrangements with the present insurers of the Premises to make any payments under the insurance policy presently effected by the Respondent to him.
- 5. THE** Respondent shall :-
- (a) prepare by **1 February 2004** an account showing the expenditure since the date of the last annual account, all monies received by the Respondent in respect thereof and the amount payable by the tenants or due to the landlord;
 - (b) deliver copies of the account to each of the tenants and to the Manager by that date;
 - (c) Arrange for a cheque for the amount of any sum not expended to be paid to the Manager by **1 February 2004** and the Manager shall then place that sum in a separate designated account to be applied for the purposes of the management of the Premises.
- 6. THE** Respondent shall arrange for any documents relating to the continued management of the Premises to be delivered to the Manager by **1 February 2004**.
- 7. THE** Manager shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the Fifth Schedule of the said leases) namely such fee as may be agreed with the Applicants and the other tenants but not exceeding an annual fee of £100 per flat for performing the duties set out in paragraph 2.5 of the Code.
- 8. VALUE** added Tax shall be payable in addition to the remuneration mentioned in the preceding paragraph.
- 9. THIS** Order shall remain in force until varied or revoked by further Order of the Tribunal and the Applicants, the Respondent and the Manager shall each have liberty to apply to the Tribunal for further directions.

DATED

2003


.....
L H PARKYN (Chairman)