

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER
Section 27A LANDLORD AND TENANT ACT 1985 AS AMENDED

Applicant: Hewetts Quay Management Company Limited

Respondent: Dr E Omoregie

Re: 112 Hewetts Quay, Abbey Road, London IG11 7BU (the
"Property")

Hearing Date: 22 November 2006

Appearances: Paper Hearing

Members of Leasehold Valuation Tribunal: Mrs J S Pittaway LL.B
Mr M Mathews FRICS
Mr E C Goss

Application Dated: The case was transferred from Dartford County Court by an
Order of District Judge Glover dated 11 August 2006

Directions: 18 September 2006

Date of Hearing: 22 November 2006

Date of Tribunal's Decision: 11 January 2007

INTRODUCTION

1. An application by the Applicant for service charge arrears of £524.35 in relation to the Property, together with interest of £19.88 was transferred to the Tribunal by Order of District Judge Glover from Dartford County Court on 11 August 2006.
2. A Pre-trial review on 18 September 2006 identified that the issue for determination in respect of the Property was "service charge" of £524.35 and set the Application down for hearing on 23 November 2006. It directed that the Respondent should set out in a written statement an indication of what items of service charge were in dispute with the reasons with the Applicant to make a written response.
3. The Respondent has made no application under Section 20 (c) Landlord and Tenant Act 1985.

WRITTEN REPRESENTATIONS

1. By a letter addressed to Derrick Bridges & Co dated 25 October 2006 the Respondent objected to the service charge on the basis that there had been a "massive increase" without due notification to him. He further stated that the original bill for 2004/2005 had not been sent to him. The letter also set out objections to legal fees charged to the Respondent and charges in respect of 38 Hewetts Quays.
2. The Applicants responded to the Respondent's letter of 25 October by way of a Response from their solicitors, Derrick Bridges & Co dated 13 November 2006.

They stated that the estimated service charge demand for £1048.00 was sent to the Respondent on 14 February 2005 and that following non-payment solicitors were instructed to recover the outstanding amount, increased by £30 due to "Recovery action" by the managing agents on 2 August 2005. They notified the Respondent of the Applicant's intention to add to his service charge account administration and legal charges arising out of the non-payment.

On 5 October 2005 the Respondent sent a cheque for £700 to the Applicant's solicitors.

On 12 April 2006 the Applicants started proceedings to recover £524.35, stated to be made up as follows;

| | |
|--|----------|
| Service charge | £1048.00 |
| Recovery Action by managing agents | 30.00 |
| Instructing solicitors to commence recovery action | 41.13 |
| Solicitor's charges-letter before action | 55.22 |
| Payment on account of solicitors' disbursements | 50.00 |
| Paid on account by Respondent | (700.00) |
| | <hr/> |
| | £ 524.35 |
| | <hr/> |

The claim filed was for £610.98, credit being given for the sum paid on account of disbursements but with interest, the Court Fee and Fixed Costs on Summons being added to the above sum.

On the Respondent's claim that there had been a massive increase in the service charge the Applicant pointed to the Respondent's right to challenge the 2005 estimated service charge, which he had not done.

As to the Respondent's claim that the original bill had not been sent to him the Applicant supplied a copy of a letter from Arkleygate, expressed to be for and on behalf of the Applicant, dated 14 February 2005 addressed to "All leaseholders, Hewetts Quay" This had attached to it the service charge budget for 2005, showing the annual service charge contribution for Flat 112 to be £1048.00.

The Applicant submitted that the reference to Flat 38 was irrelevant by reason of the Respondent having paid the arrears in respect of that Flat and because he no longer owned it.

3. The bundle of documents supplied to the Tribunal includes a letter from the Respondent dated in manuscript 11 October 2005 to Derrick Bridges & Co which refers to the Respondent's objection to the service charge of over £1000, being an increase from the previous year's service charge of £800, without there having been "due consultation with leaseholders". In the same letter the Applicant stated his intention to pay the outstanding amounts of service charge before the end of the financial year but that he was not prepared to pay for subsequently added fees and legal charges.

The bundle also contains a letter from the Respondent to Derrick Bridges & Co of 5 May 2006 refers to the incorrect addition by Arkleygate of the sum of £176.35 to the service charge account for the Property and that the service charge "is only due 2006". This letter refers to a letter from Arkleygate, which is not in the bundle, containing different figures, and also refers to 38 Hewetts Quay.

4. On the date upon which the Tribunal considered the Application and in addition to the prepared bundle two additional letters from the Respondent were placed before the Tribunal. That received from the Respondent on 9 November

2006 addressed to the Tribunal and which the Tribunal understands was also copied to the Applicant, refers to both Flat 38 and the Property and legal fees of £1376.00. It does not identify to which of the two Flats these relate and this is not apparent from the statement attached to the letter. Because this letter referred to dates that the Respondent could not attend a Hearing the Tribunal sought and obtained confirmation from the Respondent that he was content for the matter to be dealt with as a paper determination and without a Hearing.

The second letter dated 14 November 2006, addressed to Derrick Bridges & Co, objects again to the amounts of the legal charges and recovery action fees, stating that the bulk related to Flat 38 and refuting Derrick Bridges & Co's claim that Flat 38 is irrelevant.

THE RELEVANT PROVISIONS OF THE LEASE

The lease of the Property is dated 7 July 2004 and made between Rialto Homes Limited (the "Landlord") (1) Hewetts Quay Management Co Limited (the "Company") (2) Edamwen Monday Omoregie (the Tenant) (3) and River Walk (Hewetts Quay) Management Co Limited (the "Association") (4)

By Clause 4 the Tenant covenants to pay the Service Charge (being a proportion of the Annual Expenditure (both terms being defined in the Lease)) on demand. By Clause 5.1 this is payable to the Company. By Paragraph 8.2 of Part B of the Fifth Schedule the Tenant is responsible for a payment on account of service charge on 1st January in every year. The Services and Additional Items which form the Annual Expenditure are set out in Part C and D of the Fifth Schedule.

By Clause 5.9 of the Lease the Tenant covenants to pay the Landlord and the Company and the Association on an indemnity basis costs properly and reasonably incurred in relation to "the necessary or attempted recovery of arrears of rent service charge or other sums due from the Tenant."

THE LAW

Section 27A Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002 provides

(1) An application may be made to a leasehold valuation tribunal for a determination 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 by which it is payable; and
- (e) the manner in which it is payable

(2) Subsection (1) applies whether or not payment has been made

DECISION

1. Whilst the Respondent's statement and subsequent correspondence referred to Flat 38 Hewett's Quay this flat was not the subject of the County Court Claim transferred by Dartford County Court to the Tribunal. There is therefore no application before the Tribunal in respect of Flat 38 and the Tribunal's decision is therefore confined to the Property.
2. The Tribunal's jurisdiction under Section 27A Landlord and Tenant Act 1985 as amended is limited to service charge, of which £348 remains outstanding in respect of the Property. Its jurisdiction also extends to the sum of £700 already paid by the Tenant in respect of the service charge year in question.
3. The Tribunal's jurisdiction under Section 27A does not extend to sums payable under the Lease other than service charge. Its jurisdiction therefore does not extend to sums payable by the Tenant under Clause 5.9 of the Lease.
3. No evidence has been provided by the Respondent to substantiate his claim that the service charge demanded on account for the year from 1 January 2005 was unreasonable; his main objection to the amount of the service charge appears to be that he was not forewarned of the increase. The Respondent has not objected to any particular item of service charge in any of the correspondence before the Tribunal.
4. On the face of the budget provided the Tribunal does not consider that any individual item is unreasonable.
5. The Tribunal therefore determines that the interim service charge of £1048 demanded on account for the service charge year from 1 January 2005 for the Property is payable by the Respondent to the Applicant.

Chairman:

Date:

Jim Pittaway
14 January 2007