



**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

LON/LSC/00AH/2006/0254

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT
1985.**

Applicant:	Mrs Greta Sohoye						
Respondent:	Maringrove Limited (In Liquidation)						
Property:	St James's Court, St James's Road, Croydon, CR0 2SE						
Date of Application:	20th July 2006						
Date of Hearing:	6th November 2006						
Venue:	10 Alfred Place, London WC1E 7LR						
Appearances for Applicant:	Mrs Greta Soyhoe						
Appearances for Respondent:	Mr Sol Unsdorfer, Parkgate-Aspen (Managing Agents)						
Also in Attendance:	None						
Members of the Tribunal:	<table><tbody><tr><td>Mr John Hewitt</td><td>Chairman</td></tr><tr><td>Mr Ian Holdsworth</td><td>BSc MSc FRICS</td></tr><tr><td>Mrs Shirley Baum</td><td>JP</td></tr></tbody></table>	Mr John Hewitt	Chairman	Mr Ian Holdsworth	BSc MSc FRICS	Mrs Shirley Baum	JP
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Mr Ian Holdsworth	BSc MSc FRICS						
Mrs Shirley Baum	JP						
Date of Decision:	7th December 2006						

Decision

1. The decision of the Tribunal is that:
 - 1.1 the service charges payable by the Applicant for the year ended 31st March 2005 are those certified by Carroll & Co in its certificate dated 4 August 2004.
 - 1.2 the service charges payable by the Applicant for the year ended 31st March 2006 are those certified by Carroll & Co and sent under cover of Parkgate-Aspen's letter to lessees dated 12 September 2006
 - 1.3 it refuses the Applicant's application for an order under s20C of the Act.
 - 1.4 it refuses the Applicant's application for an order that the Respondent reimburses her fees paid by the Applicant to the Tribunal.
2. The findings of the Tribunal and the reasons for its decisions are set out below.

Background

The Parties

3. The Applicant is the lessee by assignment of flat 10 St James's Court (the Flat). The Respondent is the current head lessee and is responsible for the management of St James Court and for the provision of the services specified in the lease.
St James Court is a 1930s development of some 57 flats laid out in three buildings.

The Lease

4. The lease (the Lease) of the Flat is dated 13th October 1989 and was granted by Daejan Properties Limited to Nicholas David John Berry for a term of 99 years from 25th December 1974 at a ground rent of £75 per year, subject to review as set out in clause 1(a)-(f).
5. Clause 2(2)(a) contains a covenant by the lessee to pay a service charge in fairly standard form and to contribute to the expenditure incurred by the lessor listed in clause 2(2)(i)-(xv). The list is comprehensive. The service charges payable are service charges within the meaning of s18 of the Act. There is no issue between the parties as to the proportionate part of the expenditure payable by the Applicant.
6. Clause 2(2)(b) contains a regime for ascertaining the amount of service charges payable; for the certification of the sum due; for the payment of quarterly payments on account and for a reconciliation following the service of the year end accounts and certificate. The service year runs from 1st April in one year to 31st March in the following year.

The Application

7. The Applicant has made an application dated 20 July 2006 pursuant to s27A of the Act in which she seeks a determination of service charges payable for the years ended 31st March 2005 and 2006 and the reasonableness of the budget for the year ended 31st March 2007 and hence the amount of the quarterly payments payable on account.
8. A directions hearing was held on 9th August 2006 and the Applicant attended. The Respondent was not represented. The issues were clarified and the first direction made was:

'1. The Applicant shall ...send to the Respondent's agent – Parkgate-Aspen- a statement setting out in detail the items of expenditure she disputes for the years in question, with her proposed alternative cost and the reasons for the dispute, with any supporting documents and witness statements.'

The Applicant did not comply with that direction

The Respondent did not thus serve a statement in reply pursuant to direction number 2.

The Applicant has however lodged a trial bundle which contains some material documents but where the Applicant challenges the reasonableness of certain items of expenditure she does not explain the challenge or specify the figure she contends would be reasonable and the reason for that assertion.

Prior to the hearing Mrs Sohoye had visited Parkgate-Aspen's office to inspect the accounts and the supporting vouchers and receipts.

9. The application came on for hearing on 6th November 2006. The Applicant appeared in person and represented herself. The Respondent was represented by Mr Sol Unsorfer a director of Parkgate-Aspen, the Respondent's managing agents.

The Issues

10. The issues were clarified. Mrs Sohoye stated that she no longer challenged the reasonableness of the budget for 2006/7 and confirmed that she did not require a determination to be made in respect of it or the quarterly payments on account for that year.
11. The gist of Mrs Sohoye's case was that where expenditure had increased from one year to the next it was de facto unreasonable and the increase should therefore be reduced, but that where expenditure had gone down generally there was no challenge. In general Mrs Sohoye was not able to support the reductions sought with any evidence and her recurring theme was that reductions simply must be found. Mrs Sohoye explained to us that she like several of the lessees

lets her flat out. She is not able to achieve an increase in rent from her tenant and she says that the rental income is insufficient to cover her mortgage repayments and the services charges demanded by the Respondent.

12. The Tribunal went through the accounts with the Applicant and identified the expenditure she wished to challenge as follows:

Years ending 31st March

	2003	2004	2005	2006
Porterage	£25,526	£26,260	£25,793	£24,997
Electricity	£740	£1,231	£1,865	£1,330
Repairs and maintenance	£4,520	£13,014	£8,369	£6,749
Entry phone system	£141	£193	£197	nil
Professional fees	£993	£2,427	£1,698	£4,561
Pest control	nil	£240	£528	£626
Management fee	£14,541	£15,128	£15,167	£15,275

NB Expenditure for 2003 and 2004 is not challenged but is shown for ease of comparison.

On each item challenged Mr Unsдорfer gave us his explanation of the expenditure, Mrs Sohye questioned Mr Unsдорfer about it, gave us her argument and Mr Unsдорfer questioned Mrs Sohye. It is therefore convenient to deal with each item in turn and for the Tribunal to give its determination on it.

Porterage

13. Mr Unsдорfer explained that the expenditure covers the cost of employing and accommodating the resident caretaker and his wife, Mr & Mrs Williams and the associated expenditure. Mr Unsдорfer took us through the duties undertaken, the job descriptions, the hourly rates paid and the cost of cover for holiday/sickness absences.
14. Mrs Sohye was critical of the cost on mobile telephone charges, but Mr Unsдорfer's explanation that there was frequent contact with the office, contractors and the need to follow up information on the transient occupiers of some of the flats, we found to be satisfactory and we accept it. Mrs Sohye was not critical of the standard of service provided.

15. Initially Mrs Sohoje submitted that savings of at least £5,000 per year could and should be achieved. She later reduced this to £3,000 per year but was unable to suggest how the savings might be achieved. Despite several invitations Mrs Sohoje declined to say whether the number of hours worked should be cut or the hourly rates paid reduced.
16. The Tribunal accepted Mr Undorfer's detailed explanation and justification of the expenditure. We find it to be reasonable in amount. The hourly rates paid are low and the cost of the accommodation at £7,200 has been static for the past three years. We find the incidental expenditure on utilities including telephone and on cleaning materials to be well within what our experience leads us to conclude is reasonable for a development such as St James's Court.

Electricity

17. Mr Unsorfer gave an explanation of the charges and said that St James's Court comprises three blocks and the cost relates mostly to the internal and external lighting and powering the lifts.
18. Mrs Sohoje's case rested on the increase from 2003 onwards.
19. Mr Unsorfer explained that the bills do not always come in on time and some get carried from one year to another. The accounts are not prepared on an accruals basis he said. Further some bills are estimated and later adjustments required. For these reasons he said that it was to be expected there would be some variation or fluctuation year on year. He also said that Mrs Sohoje had had opportunity to review the supporting bills.
20. The Tribunal accepted Mr Unsorfer's explanation because it was credible and struck a cord with the member's experience. We thus find that the cost of electricity was reasonably incurred and is reasonable in amount.

Repairs and Maintenance

21. Mr Unsorfer gave a detailed explanation of the sort of work carried out and the sort of issues that crop up in a development of the age of that of St James's Court. He said that there was no such thing as a typical year. Mr Unsorfer also explained that water ingress damage was a constant problem partly due to the age of the installation but also the use of it by transient occupiers of some of the flats. Many of the flats are sublet, sometimes to quite large numbers of people who do not always respect the development and the environment which increases the amount of routine repairs and maintenance required.
22. Mrs Sohoje challenged the expenditure on the basic increase from the previous years but did not specify items of expenditure.

23. On the evidence provided to us the Tribunal is satisfied that the costs were reasonably incurred and are reasonable in amount.

Entry phone System

24. Mr Unsдорfer said that the system was inherited; it is aged and not subject to a service contract. Frequent repairs are required on an ad hoc basis. He says that the costs are event driven in that the more failures that occur the more calls out there will be and hence the cost will vary from year to year.
25. Mrs Sohoye was critical of the system and maintained that it did not work properly and was unreliable. Mrs Sohoye gave us some examples of her recent experience. In general terms Mr Unsдорfer did not disagree.
26. We accept Mr Unsдорfer's evidence. Clearly the system is not perfect. Until a new system can be installed the Respondent simply has to manage as best it can with the current system. In the circumstances we do not find the costs incurred to excessive; indeed they seem to us to be modest. We find they are reasonable in amount.

Professional Fees

27. Mrs Sohoye wanted to see a breakdown of the fees. Mr Unsдорfer did not have them available as he was not aware they were to be the subject of a challenge. Directions were given for Mr Unsдорfer to provide copies of the supporting invoices by 10th November, for Mrs Sohoye to make submissions on them by 17th November and for Mr Unsдорfer to reply by 24th November 2006. Copies have duly been provided and we have received representations on them from the parties.
28. For 2005 the sum of £1,698 comprises three invoices from Brooke Vincent Partners, Chartered Surveyors, in relation to professional advice on internal and external repairs and redecoration. Mrs Sohoye seems to believe that it was unreasonable to obtain such advice and that Aspen-Parkgate should have used its own expertise on these matters. Mrs Sohoye does not appear to appreciate that Parkgate-Aspen are managing agents and not Chartered Surveyors; nor that, even experienced managing agents, sometimes need to procure expert professional advice. We find that the fees were reasonably incurred and are reasonable in amount.
29. For 2006 the sum of £4,561 comprises several small legal invoices at a net cost of £308.61, Carroll & C0 £235 .00 in connection with the Reserve Fund tax return and Transthermal Asbestos Survey £4,018.50 (£60 per flat plus VAT). We find that the fees were reasonably incurred and are reasonable in amount.

Pest Control

30. Mr Unsдорfer explained that this was again an event led expense. There are occasional and sporadic localised outbreaks which need to be attended to from time to time. Mr Unsдорfer said that if the problem was specific to a flat they would try to recover the cost from the lessee of it, but that this was not always possible. Mrs Sohoye appeared to accept the explanation but commented that she considered the cost would increase year on year.
31. The cost claimed for 2005 we find to be very modest and we have no hesitation in holding that the sum claimed was reasonably incurred and is reasonable in amount.

Management Fee

32. Mr Unsдорfer explained that the cost is £13,000 per year, exclusive of VAT. This is close to £225 per unit. He said that this level of fee is standard across his portfolio and that many of his clients are resident owned management companies. He further said that he has taken into account the fact that a resident caretaker is on site who undertakes some routine duties that might otherwise have to be taken up by his office.
33. Mr Unsдорfer also explained that many of the flats are multi-let, with overcrowding, noise/neighbour issues to deal with as well as the routine management of the dated blocks with attendant dated lifts, M&E and entryphone systems all which involve a good deal of day to day management.
34. Mrs Sohoye submitted that the bills were too high and in her view they should be reduced by 10% to reflect value for money. Mrs Sohoye said that she had not carried out any research into unit management fees for flats in the Croydon area and she did not appear to have any particular reason for choosing 10%, other than produced a unit fee of £205 which she claimed was reasonable. She alleged that the quality of service was not that good and that often there was sloppy management. Mrs Sohoye illustrated her argument with an issue concerning an assignment of a lease where Parkgate-Aspen (correctly in our view) refused to accept service charges from the assignee because proper notice of assignment had not been given. We considered the criticism to be unfounded. Mrs Sohoye was also critical of the roads, pathways and car parking areas although these are the responsibility of the freeholder; not the Respondent or Parkgate-Aspen. Mrs Sohoye also complained of the communications gap and the quality of the buildings. Mrs Sohoye conceded that the costs were becoming more reasonable.
35. The Tribunal recognises that the management fees are often contentious where a lessee considers that a development is not tightly managed. The Tribunal accepts Mr Unsдорfer's evidence that St James's Court is not the easiest to manage due in large measure to its

age, dated M&E and other plant and the multi-letting of some flats and the transient occupiers passing through. In the experience of the members of the Tribunal such a development can be labour intensive to manage. Mrs Sohoye was not complaining of no management; just sloppy management in her view. The Tribunal was not able to rely upon Mrs Sohoye's argument with confidence and we find that it was put forward to simply to achieve a reduction in the management fee.

36. The Tribunal noted that Mrs Sohoye did not undertake any research into management fees in the locality and that she had no real support for her view that a unit fee of £205 was appropriate.
37. The Tribunal also noted that the management has been static over the last three years. In our experience the fees charged are within the bracket of a reasonable fee for the type of development in question, albeit at the upper end of that bracket. In these circumstances we find the fees claimed are reasonable in amount but we should expect them to remain at this level in the short term.

The s20C Application

38. Mrs Sohoye has made an application under s20C of the Act. She seeks an order that no costs incurred by the Respondent shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by her.
39. Mrs Sohoye claimed that it was necessary for her to bring these proceedings because of wide spread feelings of lessees who are aggrieved about management and communication. She said that she has brought focus on the issues and that the lessees should not be penalised for doing so. Mrs Sohoye was, she said, looking for a better relationship with the company and she said its costs of these proceedings should be borne by the company using ground rent income.
40. Mr Unsorfer said that the Respondent's costs of the proceedings were £1,500 plus VAT to cover his preparation of the case and attendance at the hearing. He submitted that the Applicant's case was ill prepared and without merit. She had no evidence to support her case and had not carried any basic research to support her complaints. He also said that in some instances she had misread the information given to her.
41. Mr Unsorfer submitted that the costs of the proceedings were recoverable as service charges by virtue of clause 2(a)(xii) of the Lease.
42. We prefer the submissions made on behalf of the Respondent. We too find that the Applicant's case was misconceived and in the absence of any real supporting evidence it was without merit. In these circumstances we find that it would be wrong, unjust and inequitable to

make an order under s20C and thus we refuse to do so.

Reimbursement of Fees

43. The Applicant said that she had incurred fees of £250 and she sought an order that the Respondent reimburse her. For the same reasons as given in paragraph 42 above we refuse to make an order for reimbursement of fees.

A handwritten signature in black ink, appearing to read 'John Hewitt', with a stylized, cursive script.

John Hewitt
7th December 2006