

LON/00BH/LWS/2004/0002

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

FLAT 4, 22 HEATHCOTE GROVE, LONDON, E4 6RT

Applicant: Marrev Management Ltd

Respondent: Mr Fadime Dogan

Application: 27 September 2004

Inspection: N/A

Hearing: 23 December 2004

Appearances:

Mrs Linda Dunton
Mr C Dunton
Mr Gordon Hughes (Solicitor)

For the Applicant

Mr Fadime Dogan

For the Respondent

Members of the Tribunal:

Mrs F R Burton	LLB LLM MA
Mr P A Copland	BSc FRICS
Mr T W Sennett	MA FCIEH

4 TRINITY COURT, 22 HEATHCOTE GROVE, LONDON E4 6RT

BACKGROUND

1. This was an application, dated 5 August 2004, under s 27A of the Landlord and Tenant Act 1985 to determine the reasonableness and/or liability to pay service charges for the years 2003 and 2004, in relation to insurance and maintenance costs. The Applicant had sought to have the case heard on the Tribunal's paper track without a hearing. The Tribunal issued its standard Directions on 26 October 2004, and having regard to the complexity of the issues to be determined, assigned the case to the fast track and set it down for hearing on 23 December 2004. The subject property is a 2 bedroom flat in a 1960s block held by the Respondent as assignee of a Lease from Marrev Management Limited dated 1 September 1967 for a term of 999 years from 24 June 1965.

THE HEARING

2. At the hearing of the application, the Respondent leaseholder did not appear, and nothing had been heard from him either by the Tribunal or by the Applicant management company. It appeared that he had ignored the Directions, had not supplied any response to the Applicant's case (as directed by the Tribunal in its formal Directions) and had not assisted in the agreement and preparation of a joint bundle of documents for the hearing as the standard Directions had also required. After a brief delay in order to determine whether the Respondent might be on his way to the Tribunal, the hearing therefore commenced in his absence.

3. Mr Hughes, the Applicant's solicitor, indicated that the Applicant was the Lessor and management company of the flats in the block known as Trinity Court, which issued its shares to the owners of the twelve flats in the block, each lessee being entitled to one share, and being liable to pay one

twelfth of the costs of the management company. Despite numerous letters and demands for the payment of his service charges, the Respondent had never paid anything since he had acquired the flat (in respect of which his title had been registered in May 2003). The flat was not sublet, he was present at the address, and there appeared to be no explanation for non-payment other than that the Respondent was ignoring all communications. Copies of the Applicant's letters of 20 May 2004, 15 June 2004 and 30 July 2004 were provided in the bundle before the Tribunal. The position was that at no time had the Respondent either queried the charges demanded or made any contact with the Applicant management company.

4. Mr Hughes said that the Respondent was liable under Clause 22 of the Sixth Schedule of the Lease, a copy of which was on the file, to pay the service charges which comprised the cost to the management company of performing its obligations under the Seventh Schedule of the Lease. The Applicant did not employ a managing agent but dealt with the management of the block themselves. The management charge had for some time been fixed at £75 per quarter, which the Respondent had never queried, and occasionally there was a "one off" levy agreed by the Directors of the management company, for example recently there had been a charge of £50 for drainage work (a copy of the invoice for which was in the bundle before the Tribunal).

5. Mr Hughes submitted copies of the Respondent's current statement of account, showing a balance outstanding of £877.10, and copies of the Financial Statements (statutory accounts) which had been audited and signed by Knight Wheeler & Co, Chartered Accountants, as giving a true and fair view of the company's affairs as at 24 June 2003. The Tribunal was also provided with copies of an unaudited, unsigned, Financial Report for the year ended 24 June 2004. It emerged in evidence that the previous lessee of Flat 4 had paid the service charge due for the period up to 24 June 2003 so that the application related solely to liabilities accruing since that date. The Tribunal took note of the Financial Report for the year to 24 June 2004 but was unable to make any determination in the absence of a Financial

Statement (such as that which had been provided for the previous year) properly audited and certified. They therefore requested Mr Hughes to have the auditors' certificate for the year ending 24 June 2004, together with details of the current insurance cover recently renewed, forwarded by 14 January 2005.

6. The Tribunal examined the Respondent's statement of account and the management company's accounts for the relevant years, and noted that the insurance charge seemed high, being over £3 per £1,000 insured. However the sum insured, £967,961, did not appear out of the way for a block of the age and type of the subject property, in respect of which there was said to be no special feature. In answer to questions from the Tribunal, Mr Hughes indicated that the management company had not specifically "shopped around" themselves in an effort to reduce the premium, but as they had used a broker they considered that he would routinely have done so.


7. The Tribunal further queried an item in the accounts for Bank Charges, in respect of which Mr Hughes said the Applicant relied on paragraph 11(i) of the Seventh Schedule of the Lease which permitted recovery of "the said total amount of the said costs charges and expenses actually incurred by the Lessor" in the performance of its obligations.

DECISION

9. Upon receipt of the further documentation referred to in paragraph 8 above, the Tribunal determines that the total service charges of £6007 for the year to 24 June 2004 are reasonable and have been reasonably incurred and that the Lessee of Flat 4 is liable for one twelfth part thereof (i.e. £500.58). However this liability only arises so long as the Respondent has been served with a demand complying fully with the requirements of s 20B of the Landlord and Tenant Act 1985 and is subject to set off by way of any credit which may have been brought forward from the accounts of the previous year. In relation to the interim service charge for the current year due in

advance on 24 June and 29 September 2004 the Tribunal is unable to make a determination but if the Applicant were to supply the Respondent with a budget (i.e. such sum as may be determined by the Lessor of the sum properly and reasonably required) for the year in question supporting their application for payments on account in accordance with para 22(a) of the Sixth Schedule of the underlease dated 1 September 1965 (and so long as s 20B is fully complied with) that would be prima facie evidence of liability to pay. In passing this comment the Tribunal notes from the papers later submitted that the insurance premium for the current year, which is by far the largest item of expenditure on the service charge account, became payable on 16 December 2004.

10. In view of the fact that no irregularity of any kind has been discovered in the amount, preparation or submission of the service charge payable by the Respondent, further that he has not at any time or in any way queried the amounts demanded nor appeared before nor communicated with the Tribunal to make any representations on any matter, the Tribunal is of the view that the Applicant Lessor should not have been put to the trouble and expense of applying to the Tribunal for determination of the reasonableness and payability of these service charges. The Tribunal therefore determines that the Respondent shall, pursuant to regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 (as set out in the Directions made on 26 October 2004), reimburse the Applicant with the whole of the fees paid to the Tribunal in these proceedings.

Chairman.....

Date.....11. 2. 05