RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

In the matter of Applications under Sections 20C and 27A of the Landlord & Tenant Act 1985

Case No. CHI/45UH/LSC/2005/0065

Property: Flats at Wells, Chichester, Exeter, Litchfield, Norwich, Truro, and Worcester Courts, Pevensey Garden, Pevensey Road, Worthing, West Sussex, BN11 5PQ

Between:

Pevensey Garden (Worthing) Limited
("the Applicant")

and

The Lessees of
Flats 3-12 Wells Court and
Flats 3-12 Chichester Court
("the Respondents")

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr B.H.R. Simms FRICS MCIArb
Miss J. Dalal

Date of the Decision: 8th December 2006

THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

1. **The Tribunal determines under Section 27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act") that the works proposed to be carried out as set out in a document from Britton Price Ltd dated 12th June 2006 (referred to on Pages 241 and 142 of the Hearing Bundle) in the sums of £11,898.00 and £895.00 for each lift are the liability of the Lessees of Flats 3-12 of Wells Court and 3-12 of Chichester Court alone and the amounts payable will be in accordance with the percentages set out in Clause 2(30) of their respective Leases, and not by the Lessees of the other Flats on the estate. Such decision is subject to subsequent Section 20 consultation procedures taking place and does not prevent the Landlord or any Lessee making a future Application under Section 27A of the 1985 Act after the works have been carried out.**

2. **The Tribunal determines under Section 27A (1) of the 1985 Act that the two Invoices from Peter McAllen & Associates dated 17th March 2006 in the sum of £737.31 and from Lift Consultancy Services dated 23rd June 2006 in the sum of £500 are not payable from the Service Charge Account and none of the Lessees of any of the Flats on the estate are liable to pay**

any proportion of these amounts. The Lessor's Managing Agents are to credit the Service Charge Account with these amounts forthwith.

3. **The Tribunal declines to make any determination as to any future work to the Lifts in Wells Court and Chichester Court and declines to say at present whether such works will be interpreted as repairs or renewals under the terms of the Leases.**

4. **Section 20C Application**
   The Tribunal declines to make such an Order.

REASONS FOR THE TRIBUNALS DECISION

1. Background to the Application
   In July 2005 the Applicant made an Application to the Tribunal for a determination as to whether the Lessees of Flats 3-12 Wells Court and 3-12 Chichester Court should be liable to pay for the costs of certain works to the Lifts in those two blocks (being 1/10th share), or whether such costs should be payable by the Lessees of all the Blocks on the estate (being 1/68th share).

2. Two Pre Trial Review Hearings took place on 8th September 2005 and 26th January 2006 when Directions were given as to the preparation and exchange of various documents with a view to preparing for a full Hearing of the Application. In particular the issue to be decided was whether the wording of Clauses 2(30) or 3(2) of the Leases applies to the proposed works to the Lifts. As the issue might include consideration of Case Law on the subject of repairs and renewals, Directions were given requiring Skeleton Arguments as to the Law be prepared and exchanged prior to the Hearing.

3. In particular, at the Pre Trial Review Hearing held on 26th January 2006, the Tribunal made a Direction (in paragraph 5) reciting that some Lessees of Wells Court and Chichester Court had already joined in the proceedings as Respondents and they had instructed the same Firm of Solicitors to represent them, and that if any of the remaining Lessees of those Blocks wished to participate in these proceedings they should write to the Tribunal confirming that they wish to join in the proceedings as Respondents. That Direction also provided that if they failed to do so, it would be assumed without further notice that they have chosen not to participate in these proceedings.

INSPECTION

4. The Tribunal carried out an Inspection of the Lifts at Wells Court and Chichester Court on the morning of the Hearing on 27th November 2006. The two Blocks are identical and each had six storeys. The lifts are accessed from the ground floor lobby of each Block and serve floors 1,2,3, and 4. There is a wooden door in each of the ground floor lobbies of each Block and on each of floors 1,2,3 and 4 which give access to the lift from the lobby. When the lift button is pressed, the lift arrives at the floor and the wooden door can be opened. The lift cars each have the same folding metal grill gate which can be slid open. The walls of each lift car are blue melamine which can be easily

wiped clean. The floors of the lift cars are covered with thermoplastic tiles. There are lights and emergency lighting units in the ceiling of each lift car. The lifts worked satisfactorily on the day of the Tribunal's inspection. The lift cars were in an acceptable state of repair and condition.

5. The Tribunal members also inspected the lift motor and switchgear which was situated in motor-rooms on the fifth floor of each of the two Blocks. The motor-rooms were clean and tidy and the condition of the apparatus seemed to be clean and functional. The Tribunal observed the operation of the motor and switchgear while one of the lifts was in use. The switchgear appeared to the Tribunal to be the original installation and although there had been repairs and replacements it remained of the mechanical relay type.

HEARING

6. A Hearing took place at the Richmond Room, Worthing on 27th November 2006. The Tribunal had before it a Hearing Bundle of 256 pages. The Applicant was represented by Mr J. Donegan, of Osler Donegan Taylor, Solicitors of Brighton. The Respondents had previously instructed Messrs Coole & Haddock, Solicitors of Worthing to represent them but at the Hearing they were not represented. The following Respondents attended the Hearing:

   Mr M.R. Butcher (Mr Butcher) of 6 Wells Court
   Mr B.J. Spickett (Mr Spickett) of 8 Chichester Court
   Mr & Mrs J.M. Roper (Mr & Mrs Roper) of 7 Wells Court

   Miss Lange of Flat 7 Chichester Court also attended the Hearing. She said she had previously been unaware of the Tribunal proceedings and had only recently purchased her flat. Mr Butcher however confirmed that he was speaking on behalf of himself and not as a representative of other flat owners.

7. At the beginning of the Hearing, in response to an enquiry from the Tribunal, it was reported that some limited agreement had been reached. Mr Butcher, Mr Spickett and Mr & Mrs Roper had all agreed the following with the Applicant: **That in respect of the proposed repair works to the Lifts of both Blocks as set out in a document from Britton Price Ltd dated 12th June 2006 (referred to on Pages 241 and 142 of the Hearing Bundle) in the sums of £11,898.00 and £895.00 for each lift are to be payable by the Lessees of Flats 3-12 of Wells Court and 3-12 of Chichester Court alone in accordance with the percentages set out in Clause 2(30) of their respective Leases, and not by the Lessees of the other Flats on the estate.**

8. Miss Lange of Flat 7 Chichester Court was asked if she also wished to agree those matters, but she declined to do so as she said she wished to take legal advice. Mr Donegan, on behalf of the Applicants, said that even though three Flats out of the twenty Flats had now agreed the matter, he was asking the Tribunal to make a determination in respect of all twenty of the flats. As none of the remaining seventeen flat owners were either present at the Hearing or represented by a Solicitor at the Hearing, he wished to proceed with the Hearing and ask the Tribunal for such a determination.

9. Mr Donegan then proceeded to address the Tribunal and called Deborah Cowley from Countrywide Property Management, the Managing Agents, to give evidence. Ms Cowley gave evidence in accordance with her written Statement (Pages 77 -80 of the Hearing Bundle). The Tribunal and Mr Butcher asked her various questions about her evidence. Ms Cowley told the Tribunal about the history of the matter. 64 out of the 68 flat owners were shareholders in the Freehold Company. The Directors of the Company were Lessees themselves, although not all of the Directors lived either in Wells Court or Chichester Court. It had become clear at an early stage that Mr Butcher and others were querying their liability under their Leases to pay for the proposed renewal of the Lifts. The Landlords had taken advice from the Solicitors who had drafted the Leases originally. That advice had taken a year to be produced.

10. Ms Cowley said she had called meetings of Lessees to discuss the proposals, but very few people attended the meetings. One of the meetings had been called at short notice as the Lift Consultant, Mr Burchfield (Lift Consultancy Services LSC), had to have a hospital operation and would have been unavailable for some time thereafter. In reply to a question from Mr Butcher she agreed that meeting had been called at short notice and this may have been why so few people attended. The original plan proposed by the Board of Directors in 2003 had been for complete lift renewals in both Blocks and Mr Burchfield had produced a Report giving a number of options. He had advised that complete refurbishment of both lifts would be the better long-term option.

11. A subsequent Report had concluded that as the lift pits were not deep enough, it was not possible to renew the lifts completely and hence repairs and refurbishments were the appropriate conclusion. Accordingly the Applicants were now asking the Tribunal to approve the proposed works as set out in the document from Britton Price Ltd dated 12th June 2006 (referred to on Pages 241 and 142 of the Hearing Bundle) in the sums of £11,898.00 and £895.00 for each lift. That Report contained the following comments "Although the lifts are now forty years old we believe that the main areas where works are required to improve the reliability are the control system, wiring, switches and push buttons and as such we do not consider that all the works detailed in your specification are necessary. Our engineers have previously taken apart the drive/gearbox and found that the existing drive system and mechanics are still in good serviceable condition equipment and many of the areas of work identified in the tender forms are not essential at this stage." In summary they advised that the works now to be carried out were the controller should be changed, the lift cables rewired, and the installation of a new car top controller, new car operating panel and new landing push buttons. The Estimate for those works for each lift was £11,898 and the estimated cost of the new safety check after the works were carried out would be £895.

12. Mr Butcher advised the Tribunal of the service history of the lifts and the Tribunal were also directed to the call-out history Reports (on Pages 153 and 154 of the Hearing Bundle). Between 1st January 2002 and 13th January 2006 there had only been 3 call-outs for Wells Court and 12 call-outs for Chichester Court. Some of those call-outs were for repairs and inspections, so the number of times when people were actually trapped in the lifts was not excessive. Ms

Cowley said that once these works were carried out it was likely that the number of call-outs would reduce. The lift maintenance engineers charged every time there was a call-out, but she could not remember how much these were.

13. Mr Donegan also produced two Invoices relating to professional fees which had already been incurred and paid out of the Service Charge Accounts for Wells Court and Chichester Court. One was dated 17th March 2006 from Peter McAllen & Associates in the sum of £737.31 and was for "carrying out survey and report relating to the Lifts in both blocks. The Fee Invoice included the sum of £67.50 plus VAT for travelling expenses charged at 45p per mile. The second Invoice was dated 23rd June 2006 from Lift Consultancy Services in the sum of £500 and was for "preparing and forming a specification for major repairs to the lifts."

14. Mr Donegan then addressed the Tribunal regarding the Case Law relevant to the matter of repairs and renewals. Copies of extracts from Woodfall were included in the Hearing Bundle as were copies of the following Cases:
    London Borough Council v. Griffin & Anor (Lands Tribunal) 2000
    Fluor Daniels Properties Ltd v. Shortlands Investments (Chancery Division) 2001

15. In respect of the Respondents Application under Section 20C of the 1985 Act, Mr Donegan made a number of representations on behalf of the Applicant. He reminded the Tribunal that the Applicant was a Limited Company whose shareholders were the Lessees themselves. There had been plenty of consultation but few Lessees had challenged the proposals. In respect of the LVT proceedings, 13 out of the 20 Lessees had instructed Messrs Coole & Haddock to advise them. However only a few of the flat owners had attended the Hearing. Out of those few, 3 flat owners had already agreed the proposals and the others had chosen not to attend the Hearing or be represented. He had arranged for copies of the Hearing Bundle to be delivered to all 20 Lessees so that they would have an opportunity to read the papers before the Hearing. In view of the doubt as to the liability to pay raised by Mr Butcher and others, it was entirely reasonable for the Applicant to commence these proceedings so that a decision could be reached as to who pays what. Only two of the Blocks had lifts and it seemed reasonable that the Lessees who used those lifts would have to pay for the lift repairs. He maintained that the Applicant and the Managing Agents had acted entirely reasonably and that they had no choice but to make the Application. For these reasons he asked that no Order under Section 20C should be made by the Tribunal.

16. In summary Mr Donegan asked the Tribunal to make determinations regarding the following matters:
    (a) That all 20 Lessees of Flats 3-12 Wells Court and 3-12 Chichester Court be solely responsible for the cost of the works and associated costs of the repairs works to the Lifts in both blocks and that they should share these costs in accordance with the proportions set out in Clause 2 (30) of their respective Leases. This had already been agreed by Lessees of 3 of the Flats in the two blocks

(b) A determination that the two Invoices from Peter McAllen & Associates and Lift Consultancy Services are payable by the 20 lessees of the two Blocks in the proportions as set out in clause 2 (30) of their respective Leases.
(c) A determination that at some time in the future, when the Lifts had to be replaced, such replacement would be interpreted as a renewal under the terms of the Leases, and that the liability for payment of the costs of such renewal would be payable by the 20 Lessees of Wells Court and Chichester Court under Clause 2 (30) of their respective Leases, and not shared by the other Lessees on the estate.
(d) That no Order should be made under Section 20C of the 1985 Act.

17. THE TRIBUNAL'S CONSIDERATION
Following the Hearing the Tribunal retired to consider its decision. First of all it reviewed all the evidence it had seen, read and heard. There seemed already to be a large measure of agreement and 3 of the 20 Lessees had already agreed with the new proposals to repair rather than renew. The Tribunal decided to work through the items on which the Applicant wished the Tribunal to make a decision.

18. Item (a) – Whether the 20 Lessees of Flats 3-12 Wells Court and 3-12 Chichester Court should be solely responsible for the lift repairs.
Three out of the Twenty Lessees had already agreed. So far as the remaining 17 were concerned they had had plenty of time to take advice and had been given an opportunity to attend the Hearing to object. None of them had done so. Having reviewed the papers and using its own expert knowledge and experience the Tribunal agreed that the works that were now proposed fell within the term of "repair" and hence were caught by Clause 2 (30) of the Flat leases. So far as the amount of the cost of the proposed works, the Tribunal agreed that this seemed to be a reasonable amount for the work that was proposed. Certainly none of the Respondents had produced any alternative Estimates to challenge the amount.

19. The Application had changed from when it had originally been made. The Applicant had now decided to repair, rather than renew. Accordingly whilst the Case Law referred to was helpful, there was no longer any material dispute as the Applicant was no longer proposing to renew, but to repair. This meant that the wording of Clause 2 (30) of the twenty Leases was quite clear and said that those twenty Lessees were to be responsible for the costs of such repairs.

20. The Tribunal reminded itself that if these proposed works proceeded it would be necessary for the Applicant to serve a Section 20 Notice (or apply for dispensation) and comply with the statutory consultation requirements. This would give the twenty Lessees another opportunity to consider the proposals and the costs to be incurred. In any event after all the works have been concluded it would be open for the Applicant or any of the Respondents to make another application under Section 27A of the 1985 Act for a determination as to liability to pay if there was any dispute.

21. **DECISION – For the reasons set out above the Tribunal determines that all 20 Lessees of Flats 3-12 Wells Court and 3-12 Chichester Court be solely responsible for the cost of the works and associated costs of the repair works to the Lifts in both blocks and that they should share these costs in accordance with the proportions set out in Clause 2 (30) of their respective Leases. Such decision is subject to subsequent Section 20 consultation procedures taking place and does not prevent any Lessee, or the Lessor, making a future Application under Section 27A of the 1985 Act after the works have been carried out.**

22. Item (b) – Whether the two Invoices from Peter McAllen & Associates and Lift Consultancy Services are payable by the 20 Lessees of the two Blocks? The Tribunal reviewed all the evidence and reminded itself of the history of the dispute. The Board of Directors of the Applicant Company comprised people who were Lessees themselves. Not all the Directors were Lessees of Flats in Wells Court or Chichester Court. Any decisions that were made by the Board would normally have been on a majority vote. In this case any Director who was not a Lessee of one of these two Blocks might have had a vested interest in making a decision which would have placed a higher financial burden on the 20 Lessees than the remaining 48 Lessees of other flats on the estate. There was no evidence to suggest that this had happened, but there was a clear conflict of interest which ought to have been discharged by taking independent advice. Mr Butcher and others had raised the problem about the conflict of wording in the Leases at a very early stage. Attempts had been made to take legal advice, although the Tribunal were surprised by the length of time it had taken for such advice to be received. It appeared that no attempt had been made to seek Counsel's Opinion or resolve the conflict over the wording of the Leases in some other way, by an application to the court, or mediation or some other dispute resolution procedure.

23. The Managing Agents, Countrywide, were the Managing Agents throughout the whole of the period of the dispute. It is not known whether they were asked to advise. However there is a high duty on a Managing Agent in circumstances such as this to give clear and decisive advice to their Client. Their Client comprised lay people who probably had little experience or knowledge of property management. The Tribunal reviewed the performance of the Managing Agent in handling the matter and reached the conclusion that things could have been handled better. By way of example, the original decision to instruct Mr Burchfield seems to have been taken without taking into account the problem of who was going to pay for any repairs or renewals of the lifts. The problem about the wording of the Leases had been known at an early stage. In the opinion of the Tribunal it may be have been better to resolve the liability to pay point before proceeding to incur the costs of a very wide-ranging Report. So far as the efforts as to consultation are concerned, the calling of meetings on only a few days notice with insufficient time for the Lessees to be able to attend, or to have sufficient time to digest what is being proposed or take advice, are to be regarded as poor management. In the opinion of the Tribunal the lack of clear thought at an early stage has caused the cost of these two additional Reports to be incurred. If the Applicant had made the decision to consult more carefully and take more time to discuss

matters with the twenty Lessees who were being asked to pay for the lift works it is possible that many of the problems might not have arisen.

24. In summary the Tribunal decided that the work carried out by the two Lift Consultants which was covered by the two Invoices in question could have been avoided and as it now turns out that work was unnecessary. The works which the Applicant now proposes are works to a reduced Specification and at a lower cost to the Lessees. In all the circumstances and for the above reasons the Tribunal makes the following Decision.

25. **DECISION - The Tribunal determines under Section 27A (1) of the 1985 Act that the two invoices from Peter McAllen & Associates dated 17th March 2006 in the sum of £737.31 and from Lift Consultancy Services dated 23rd June 2006 in the sum of £500 are NOT payable from the Service Charge Account and none of the Lessees of any of the Flats on the estate are liable to pay any proportion of these amounts. The Lessor's Managing Agents are to credit the Service Charge Account with these amounts forthwith.**

26. ITEM (c) A determination whether, at some time in the future, when the Lifts have to be replaced, such replacement would be interpreted as a renewal under the terms of the Leases, and that the liability for payment of the costs of such renewal would be payable by the 20 Lessees of Wells Court and Chichester Court under Clause 2 (30) of their respective Leases, and not shared by the other Lessees on the estate.

27. The Tribunal appreciates and understands why the Applicant wishes the Tribunal to make a determination on this point. However the Tribunal has considerable reservations in making such a determination at the present time. There are a number of reasons why it is reluctant to do so. First of all it is not known exactly what works are to be carried out. Secondly it has not seen any Specification or Tenders for those works. Thirdly the identity of the Lessees who are going to be asked to pay for the works are unlikely to be the same people who are the current Lessees. Some of the flats are likely to change hands over the coming years. Fourthly it is not known exactly when the works are proposed to be carried out. Any decision will have to be made in the light of the facts and any changes in the law which might change (by a change of Statute or Case Law) between now and the time when such a decision is to be made. Fifthly, it is a matter for the parties themselves to take advice at the time and attempts should be made to agree matters before resorting to requesting the tribunal to make a determination. For these reasons the Tribunal makes the following Decision on this item.

28. **DECISION - The Tribunal declines to make any determination as to any future work to the Lifts in Wells Court and Chichester Court and declines to say at present whether such works will be interpreted as repairs or renewals under the terms of the Leases.**

29. Item (d) Section 20C Application
The Tribunal reviewed the case generally and considered whether the Applicant had acted reasonably in bringing the proceedings. The Tribunal reminded itself that this Section of the Act related solely to the landlords costs **of the proceedings.** The major part of such costs is likely to be the landlords Solicitors costs. Having reviewed the history of the proceedings it was noted that the Applicant had instructed Solicitors some time after the Application had originally been made. At the two Pre Trial Review Hearings the Landlord had been represented by the Managing Agent and not Solicitors. Once the Landlord had instructed Solicitors, matters had progressed to a final Hearing and there had been an opportunity for the Respondents to take advice from their own Solicitors. Eventually three of the Respondents had consented to the matter and the others had failed to attend or be represented at the hearing or to continue to oppose it. It was quite clear to the Tribunal that in view of the difficulties over the wording of the Leases, it had been essential for the Applicant to instruct Solicitors to handle the Application and bring the matter to a conclusion. In all the circumstances it was fair and reasonable that the Applicant should be allowed to recover the costs of the proceedings from the Service Charge Account if the wording of the Leases allowed it to do so. Accordingly for these reasons the Tribunal makes the following Decision.

30. **DECISION - The Tribunal declines to make such an Order under Section 20C of the Landlord and Tenant Act 1985.**

Dated this 8th day of December 2006
J.B. Tarling
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John B. Tarling,MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor