

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD & TENANT ACT 1985 : SECTION 27A & 20C  
LANDLORD & TENANT ACT 1987 : SECTION 24**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No:** CHI/23UE/LSC/2005/0028

**Property:** Flats 1-3 (other than 2c and 3c)  
Montpellier Mews  
Montpellier  
Gloucester GL1 1LF

**Appearances**

**Applicants:** Mr & Mrs Chesterton (Flat 1a)  
Mr J R Hockenhull (Flat 1c)  
Mr Baker of C & T Lettings (for am only)  
Mr Robson (Flat 1b)

**Respondent:** Mr C Lutton, Solicitor of Luttons Dunford and  
Director of Gloucester &  
County Site Improvements Ltd

**Date of Application:** 24 March 2005

**Pre-trial review hearing:** 10 May 2005

**Hearing:** 11 October 2005

**Members of the Tribunal:** G C M Young MA LLM (Chairman)  
M J Ayres FRICS  
I R Perry BSc (Est Man) FRICS

Clerk: Miss N Bennett

**Date decision issued:** 10<sup>th</sup> November 2005

The hearing followed an inspection of the property by the Panel which was accompanied by Mr and Mrs Chesterton, Mr Hockenhull and Mr Baker.

**1. The Issues**

These were Applications by the tenants

- a) under Landlord & Tenant Act 1985 Section 27A for the refund of management fees and service charge for the flats.
- b) under Landlord & Tenant Act 1987 Section 24(1) for the Appointment of a Manager.
- c) under Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 Reg 9 for the reimbursement of fees payable under those Regulations.
- d) under the Code of Practice approved by the Secretary of State as to whether the 2003 and 2004 insurance rent was payable .
- e) whether the fees for the certification of the account were reasonable, recoverable and payable.

2. The Tribunal had a considerable amount of material to consider. The Applicants had prepared an extensive preliminary case extending to 72 pages in response to which the Respondents replied with a bundle extending to 41 pages. The Applicants then prepared a "Final Statement" which with supporting documents, went to p135. At the hearing the Respondents (in spite of the Directions) produced a letter from Bruton Knowles indicating they would accept the appointment of manager together with what was described as a Summary of the work they had done (much of which was covered by the papers already submitted) extending to 17 pages and a copy apparently sent to the office but not previously seen by the Panel of certificates by Mitchell Glanville Ltd that they had prepared accounts without carrying out an audit. The Summary was not found to be helpful to the Panel at that late stage and in any event it was regretted that these documents imposed a heavy burden on the Tribunal on the day.

3. At the outset of the hearing (after the preliminary matters had been dealt with by the Chairman) the Respondent stated that as to the question of a new Manager the situation had now clearly arisen that there had been a breakdown of the normal relationship between the Company as a Manager and the Tenants and he would not

resist the appointment of a new Manager but preferred Bruton Knowles. Having considered the matter during the hearing and over the lunch time adjournment the Applicants said they would (still) prefer to nominate Windsor Wright & Co with whom they had had preliminary meetings and with whom they felt they could work in the future. The hearing continued with examples given by the Applicants which they contended justified the change of Manager.

4. The Tribunal were then given examples which the Applicants asserted were unreasonable delays in properly carrying out the management function and effectively dealing with problems including the repair of the roof above Mr Hockenhull's flat and a lock on a front door.

5. The Tribunal also heard evidence from the Applicants about the fees charged for preparation and certification of accounts and the cost of the application for the LVT. The Respondents gave their account of the matter and their perception of problems when dealing with the Applicants.

6. The evidence by the Applicants lasted from about 10.30 am to 12.45 pm and then again for ½ hour on the resumption of the hearing. Much of the Applicants' case rested within the documents but also by detailed questioning of Mr Lutton.

7. After the lunch adjournment Mr Lutton gave his own evidence to the Tribunal from about 2.00 pm to 2.45 pm.

8. At that stage all the persons present indicated they had nothing further to add. The Tribunal therefore concluded and the Panel considered their findings.

### **Findings**

1. The unanimous view of the Tribunal was that Mr Lutton's time as Manager was in general unsatisfactory. Recently he had taken to keeping computerised records of all phone calls or letters but conceded that not everything was recorded even then. Before that the record keeping was manifestly inadequate and unreliable. An example was that over the lunch adjournment he then recalled further unrecorded details of the

problem with the front door lock. The Tribunal unanimously found that the history of the management of these flats was unsatisfactory and much of the Service Charge, which on the terms of the Lease was on account of the service management costs, was unjustified and should be reduced.

2. The appointment of a new Manager was requested by the Applicants and not resisted (except as to the identity) by the Respondent. In the view of the Tribunal it was well overdue.
3. Because of the general poor management the Tribunal found that a partial reimbursement of fees was justified.
4. The Tribunal found that, although there was poor record keeping and the delay in producing invoices was inordinate, nevertheless the properties were insured and the premiums must be met by the Tenants for the years 2003 and 2004.
5. The Tribunal found that the accounts (under the terms of the Directions) were certified and not audited, but the cost was not inordinately expensive, and indeed for the 3 years covered was in total little more than a wide ranging estimate put forward by the Applicants.

**The Order**, by the Tribunal, unanimously

1. There should be a refund or reduction of the fees for 2004 of 50% of the sum billed of £855 and of 50% of the estimated costs for 2005 of £900.00 i.e., £427.50 and £450.00 only was payable.
2. Mr Andrew Derrick of Windsor Wright should be and was appointed by the Tribunal as Manager for one year, his fees to be paid by the Tenants and not charged to the Landlords or to any funds under the control of the Landlords, such appointment to take effect from 11<sup>th</sup> December 2005.
3. 50% of the total sum of £400 in fees to the LVT by the Applicants is to be refunded by the Respondent.

4. The Insurance rent for 2003 and 2004 and the proportion of 2005 up to the change over of Manager is to be paid by the Applicants according to their liability for their individual flats.

5. The fee for certification of the accounts by Mitchell Glanville Ltd to date were payable by the Applicants within their Service Charge costs.

### **Summary and Reasons**

Having reviewed all the papers and the evidence given at the hearing the Tribunal was of the unanimous view that

a) In general the papers were well prepared by the Applicants and the evidence given by Mr and Mrs Chesterton supported by two other tenants at the hearing with further evidence from a letting agent for a tenant was reliable and measured in tone.

b) In general the papers prepared by the Respondents were not so well prepared and in spite of very clear directions a lengthy "Summary" was produced at the hearing. Further the letter from Burton Knowles, a firm of the highest repute was unhelpfully produced at the hearing. It came, curiously from their Birmingham office and there was no evidence that the day to day management functions would be dealt with locally which the Tribunal felt was essential. The possibility of interference with the independence of the firm – "Dear Chris" – and the lack of any attempt to introduce the Manager proposed by the Respondents to the Tenants contrasted with the careful steps taken in advance by the Applicant and weighed heavily, in the Tribunal's view, against Burton Knowles being selected and in favour of Mr Andrew Derrick, of a reputable and local firm, being appointed by the Tribunal.

c) In conclusion the Tribunal found, where there was a conflict between the evidence of the Applicants and the Respondents, they preferred the evidence of the Applicant. The records were well kept and their papers were well prepared. The Respondent's records were, in part, non existent and fell well short of the standards expected of a Managing Agent. There was also a clear confusion between Mr

Lutton's role as Solicitor, Managing Agent and Director of the Landlord Company which certainly at times confused the Tenants and did nothing to resolve difficulties which perhaps therefore inevitably developed into irreconcilable differences leading to the application to the LVT.

Dated: 11<sup>th</sup> October 2005

signed

G C M YOUNG (Chairman)