REF LON 00AQ/LSC/2005/0322

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A AND SECTION 20C

AND IN THE MATTER OF Flat 4 WillowCourt Fulbeck Way Harrow HA2 6LH

Applicants	**Willow Court Management Co.(1985) limited**
Represented by	**Mr P Valentine Secretary of the company** **Mrs B Beaber of Paige and Petrook Managing Agents** **Mr C Summer of Paige and Petrook Managing Agents**
Respondent	**Ms Ratna Bhambhani**
Represented by	**Mr P John of Counsel** **Instructed by Malcolm Dear Whitfield Evans LLP Solicitors**

The Tribunal
Mr P L Leighton LLB (Hons)
Mr D D Banfield FRICS
Mr D J Wills ACIB

Hearing Date	**11th and 12th September 2006**
Date of Decision	**20th October 2006**

Introduction

1 This case in which the Applicants originally claimed the sum of £2630 by way of service charge arrears from the Respondent in respect of the leasehold interest of Flat 4 Willow Court Fulbeck Way Harrow HA2 6LH ("the property") was transferred to the Tribunal from the Watford County Court by order of District Judge Davis dated 14th November 2005

2 Following a hearing on 11th January 2006 directions dated 23rd January were given for the future conduct of the proceedings in which the Applicant was to file its statement of case by 31st March 2006 and the Respondent to reply by 29th April 2006. The hearing was fixed for 16th and 17th May 2006

3 The Applicants filed its statement of case on 28th March but the Respondent did not reply either in time or at all. It appears that the Respondent suffered a bereavement and had to spend some time in India between 4th and 12th April and shortly thereafter became ill with what was a suspected kidney infection but which turned out to be Hepatitis and an application was made to adjourn the hearing date.

4 The hearing of 16th May was adjourned until 14th June but a further application was made for an adjournment on the grounds of the Respondent's ill health. This application was deferred by a procedural chairman pending the production of medical documents in support of the Respondent's application.

5 A medical certificate dated 31st May 2006 was produced from the Respondent's GP which stated that she was suffering from Hepatitis and that she was unable to deal with paperwork for a period of 2 months.

6 As a result of the medical evidence and the representations of Ms S Beecham of counsel who appeared on `14th June the Tribunal reluctantly granted an adjournment of the hearing until 11th September on strict conditions including permission for the Applicants to increase their claim up to the level of the present arrears and gave further directions for the conduct of the adjourned hearing.

Inspection

7 The Tribunal inspected the premises on 14th June 2006. The property is situated in a 3 storey block consisting of 10 flats, one bedroom, two bedroom

and one three bedroom. The block is set on the corner of a residential street in Harrow. The block is surrounded by a grass area and there are parking spaces at the rear of the building for the residents .

8 There was a metal gate at the side of the premises which was opened by means of a key and a rubbish bin which was available for use by residents.

9 The main entrance to the block was controlled by an entryphone system and the hallway was carpeted throughout. The interior of the block seemed rather dark as the walls were brick and there was limited natural lighting inside the building.

10 At the time of the Tribunal's visit the Respondent whose flat was on the first floor was not available so that the Tribunal did not inspect her flat internally but the Tribunal found that the block was generally well maintained and in reasonable condition and the grass areas appeared to be well tended.

The Hearing

11 At the hearing Mr John of counsel appeared for the Respondent.in place of Miss Beecham and the Applicants were represented by Mr Valentine, Ms Beaber and Mr Summer. Since the adjourned hearing the Respondent had produced a statement of case and a witness statement with exhibits and the Applicant had put in an answer to the statement of case. In addition Ms Beaber was given permission to produce additional documents relating to three of the issues.

12 After considering the issues with the parties the Tribunal heard evidence from Mr Valentine and Ms Beaber for the Applicant and from the Respondent. The witnesses were questioned by the opposing party and by the Tribunal and closing submissions were made.

The Lease

13 The Applicant holds the property on a lease of 99 years from 24th June 1985. There is a further lease of the common parts from the freeholder Willow Court (Harrow) Limited to the Respondent Willow Court Management Limited for a term of 99 years from 24th June 1985. At the present time the Respondent holds 50% of the shareholding in the freehold company. Each of the leaseholders in the block is a shareholder in the Applicant company which is responsible for managing the block and operates under a Memorandum and Articles of Association as a company limited by guarantee.

14 The Tribunal was informed that the leaseholders in the block are at present in the process of acquiring the freehold interest and that an order of the court has been made vesting the property in them for the sum of £8,500 although the transaction has not as yet been completed.

15 By Clause 3(g) of the lessees' leases the lessees covenanted to pay the maintenance charge *"the yearly sum of £100 or such sum as may be substituted therefor as hereinafter provided (...the Maintenance Charge" being 1/10th of the charge to the lessor of :-*

(1) the lighting heating cleaning repairing decorating maintaining and renewing(as may be necessary) of the communal parts ,the reserved parts of the structure and the reserved services (each of which is defined in Clause 1 of the lease)

(2) the maintenance of the surrounding premises including the mowing of grass and the care and replacement where necessary of trees bushes hedges fences and footpaths

(3) such sum as shall be certified by the Landlord's surveyor to be held in a "sinking fund" for such future maintenance and expenditure as may be due under the terms of this lease.

And it is expressly agreed and declared that so long as the Association performs and observes the lessor's covenants and obligations contained in clause 4 hereof, the Association shall receive and collect the Maintenance Charge as if the words "the Association " were substituted for the words "the Lessor" wherever these words appear in this paragraph such yearly sum to be paid and recoverable as rent in advance on each quarter day in each year ..... PROVIDED HOWEVER that if in any year ending on the twenty fourth of June such cost and expense to the lessor shall be more or less than the said sum of £100 then the difference shall be certified by the Lessor's surveyor whose decision shall be final and binding on the parties.... and any balance shown by such surveyor's certificate as being in excess of the said sum of £100 charged shall be paid by means of a single payment on the quarter day next following the date of the Surveyor's Certificate together with the quarterly instalment due on that quarter day and PROVIDED FURTHER that in every year of the said term the Lessor may by prior notice in writing increase the maintenance charge to an amount which the Lessor's Surveyor certifies as

being the future estimated cost and expense to the Lessor of fulfilling its obligation....and 1/10th of the amount so certified shall be substituted for the said sum of £100 PROVIDED FURTHER that if the Surveyor's certificate shall show that the said sum of £100 exceeds the amount actually expended by the Lessor the difference shall be credited against the next quarterly payment of maintenance charge

(4) the management and general administration work and expenses incurred in connection with the above terms

The Issues

16 The issues were set out in the defence of the Respondent dated 15th June 2005 in the county court proceedings and repeated and slightly expanded in the Respondent's statement of case undated but delivered in July 2006.

17 The issues raised by the Respondent were as follows :-

(a) That no sum exceeding £100 per annum was recoverable under the terms of the lease because the resolutions passed by the company to increase the annual maintenance charge were not sufficient for this purpose because none of them were certified by a surveyor as required by clause 3(g) of the lease. . The Respondent contended that even though an accountant had certified the accounts and even though during the period when the Respondent was a director of the company up to 1999 the annual maintenance charge had been fixed at £150 per quarter, without the certificate of a surveyor, the lease had not been complied with as the increase from £100 per year had not been certified by a surveyor. In addition she maintained that if the Annual General Meeting was eligible to put up the service charge payment she had been given insufficient notice of the meeting.

(b) Secondly the Respondent contended that no maintenance charge since September 2003 was payable because the demands were invalid in that they did not comply with the provisions of Section 21(B)(I) of the Landlord and Tenant Act 1985 which was brought into effect by Section 156 of the Commonhold and Leasehold Reform Act 2002 with effect from that date.

(c) The Respondent then contended that if the two preliminary points failed that certain items in the service charges themselves were irrecoverable or unreasonable as follows:-

18 (1) The Applicant's legal and valuation costs incurred in pursuing the application for the enfranchisement of the freehold of the property. The respondent was one of two non-participants in the application for the freehold. and it transpired that although part of the costs had been incurred by the eight participants a figure of about £500 had been paid out of the service charge account. The Applicants at the hearing conceded this point and would arrange for the deficit on the service charge account to be made good by the eight participants

19 (2) The Respondent contended that the Applicants should have charged lessees individually for the cleaning of windows or should have charged residents according to the size of their flats and the number of windows in accordance with the terms of the lease or an agreement made between lessees allegedly in 2000.

20 (3) The Applicants have charged for the installation of a gate at the front of the premises which is unnecessary and is an improvement not authorised by the lease

21 (4) The Schedule of arrears includes the balance of legal fees incurred in the service of a section 146 notice on the Respondent, the respondent alleging that her solicitors had paid the amount in full.

22 (5)The schedule of arrears includes a sum of £60 for the fee of issuing county court proceedings against the Respondent which proceedings were discontinued. The Applicants at the hearing conceded this sum.

23 (6) The Respondent contends that the communal parts of the buildings and the gardens are unkempt, the common parts poorly lit and dirty, that the bins are not cleaned and that only patchwork repairs have been carried out to the roof

24 . (7) The Applicants pursued two sums by way of administration charge for non-payment by the Respondent of her arrears of service charge. These sums were claimed in December 2001 and January 2002.

25 (8) The Respondent disputes the sum of £180 charged by the Applicants for the removal of items of building rubbish left outside the flats in about February and March 2005. The Applicants wrote to the Respondent on two

occasions and asked her to remove the rubbish and in default of her doing so removed it in March 2005 at a cost of £180. The Respondent contended that this was unfair discrimination against her by the agents and included an allegation that that one of the lessees Mr West parked an undriveable vehicle on his parking spot and left it there for two years and the managing agents took no steps to have it removed.

26 (9) The Respondent contends that the Applicants failed to pursue efficiently an insurance claim on her behalf which she attributed to the incompetence of the managing agents.

27 (10 The Respondent complains that the managing agents have given no breakdown of their fees and that the sums charged are excessive.

28 In addition the Respondent applies for an order under Section 20C to disallow the Applicant's costs of the proceedings before the Tribunal..

The Tribunal's Decision

29 The first issue which the Tribunal has to consider is the construction of clause 3(g) of the lease and the submission made by Mr John that since there is no surveyor's certificate the only liability of the lessee is to pay the annual sum of £100.

30 It is clear from the evidence that from the inception of the leases neither Swingace nor the Applicants who are their successors in title have operated in accordance with the terms of the lease. Over a period of time the annual maintenance charge has been increased by resolution of the company passed in accordance with its Articles of Association. This has usually arisen on the consideration of the audited accounts and financial forecasts of the needs of the company to manage the block. In no case has a surveyor certificated the accounts or given a report to the company supporting the increase in the charge. At the time of the hearing the maintenance charge stands at £200 per quarter and is paid regularly by each of the lessees. It is also clear that at the time when the Respondent was Chairman of the company up to 2000 that the charge was £150 per quarter (see her letter to leaseholders at page 17).

31 At no time did she challenge the validity of the increase and accepted that it was necessary for this sum to be paid in order to manage the block. Further even in her evidence to the Tribunal she accepted that she should pay the service charge account subject to the exclusion of the specific matters which

were challenged. This included general maintenance, insurance, gardening electricity, cleaning of common parts She did not say to the Tribunal that she thought she should only pay £100 per annum for these services. She also accepted that she herself had vigorously enforced the service charge payments against defaulting lessees during her period of office.

32 Mr John in his submission accepted that there was no merit in the proposition that her liability should be limited to £100 per annum when the costs of maintaining the building as a whole came to about £9000 shared between 10 flats. If every one of the lessees in the block adopted a strict construction of the lease the total receipts would not exceed £1000. He stated however that the words of the lease were clear and that the Tribunal was stuck with them even though he accepted that the lease was seriously defective. He also submitted that even though there might in law be a situation akin to estoppel the Tribunal was not entitled to apply the doctrine as it did not possess an equitable jurisdiction and that such a remedy lay solely with the courts.

33 If the Tribunal had considered that Mr John's submission was correct it would have had no hesitation in referring the matter back to the court for consideration as it has power to do under Schedule 12 of the Commonhold and Leasehold Reform Act 2002. To do otherwise and to allow the Respondent to succeed on this point on the basis of a jurisdictional technicality would be an outrage and an affront to justice.

34 However, the Tribunal is satisfied that Mr John's submission in this respect is incorrect and that the Tribunal has jurisdiction under Section 27A of the Commonhold and Leasehold Reform Act 2002 to consider questions of law and equity which are not specifically within the terms of its jurisdiction provided that they relate to the "payability" of a service charge.

35 The Tribunal has been assisted in this regard by a decision of His Honour Michael Rich QC in the Lands Tribunal in the case of **Continental Property Ventures Inc –v- White and White re Flat 4 Buckingham Gate London SW1 LRA/60/2005**

36 That case was specifically concerned with the question as to whether a tenant could rely upon the landlord's historic neglect to repair a building to resist the increased cost being passed on in the service charge account. The judge held that the Tribunal was not only concerned with the necessity for the work and

the reasonableness of the costs but could consider the landlord's prior breaches of covenant in failing to repair by way of defence as an equitable set off applying the decision of the Court of Appeal **in Filross Securities –v- Midgley (C.A 21st July 1998)** and the earlier decision of **Hanak –v- Green (1958) 2 QB 9**

37 The learned judge then referred to his own decision in **Canary Riverside Pte –v- Schilling (LRX/65/2005)** in which he gave the following useful guidance

"*42 When the issue (as to the applicability of the of the Unfair Terms in Consumer Contracts Regulations 1999 was raised ...Mr Fancourt QC submitted that the LVT had no jurisdiction to consider the matter but Section 27A of the Act of 1985 ,inserted by Section 155 of the Act of 2002 provides , without limitation, that "an application may be made to the leasehold valuation tribunal for a determination whether a service charge is payable". Mr Fancourt raised before the LVT and before this tribunal a number of examples of issues which it would be hardly appropriate for the LVT to undertake to determine , at least if another more appropriate tribunal was seized of the matter. This however, does not mean that Parliament has not given the LVT jurisdiction to determine such issues.*

43 No doubt if a party to proceedings before a LVT takes proceedings for the determination of such an issue before what the LVT accepts is a more appropriate court , the LVT will, as it did in the course of the Service charges application adjourn its proceedings pending such determination. That this would be a reasonable and proper course if an issue were raised .....as to voidability for mistake, forgery or misrepresentation I do not doubt. Such matters are better determined under court procedures and by judges rather than by specialist tribunals encouraged to adopt comparatively informal procedures.

44 *I should take the same view where the LVT has jurisdiction to determine only one aspect of a matter better determined as a whole.....*(The judge then cited an example where it would be more appropriate where proceedings were pending in a court for the LVT to adjourn the application before it pending such a determination). He then proceeded

45 *"I can see no basis, however, for saying that the L VT lacks jurisdiction to determine any issue not expressly the subject of some other tribunal's exclusive jurisdiction if determination of that issue is essential to determining whether " a service charge is payable" That is the issue which S27A gives the LVT jurisdiction to determine <u>That must include any issue necessary for or incidental to such determination……"</u>*

38 On the basis of the above dicta the Tribunal is satisfied that it has jurisdiction to determine the question of estoppel by reason of the provisions of Section 27A since such a determination is necessary to determine whether the Respondent is liable to pay the service charges but it has a discretion as to whether to exercise such jurisdiction if the matter should be determined by a more appropriate body such as the county court.

39 In determining that question the Tribunal should have regard to the complexity of the issue, whether the issue is directly relevant to the issue of recoverability of the service charge as opposed to an independent cause of action, whether any proceedings are already pending before a court and the possible cost and inconvenience arising from the delay in transferring the proceedings to the court.

40 In this case the court has decided to transfer the action to the Tribunal for determination. Neither party asked the court to reserve any issues to itself as it had power to do and neither side has applied to the Tribunal for retransfer. Mr John has simply rested his case on the basis of a lack of jurisdiction.

41 Further it is clear from the Respondent' own evidence when she was asked by the Tribunal, that she indicated she was prepared to pay all the service charges due on the property except those which were specifically disputed because she accepted that without payment there would be no money to run the services for the block which she accepted that she benefited from.

42 Since the facts giving rise to the estoppel are in the view of the Tribunal clear and since the obvious merits of the case point to the

Respondent paying at least the sums which she herself was levying on the other leaseholders of the block before her dismissal the Tribunal is prepared to hold that she is estopped from denying that she herself is liable to pay the sum of at least £150 per quarter for service charges. This figure had been agreed by resolution of the company during her period of office0 and she supported and implemented it, notwithstanding that such payment does not literally accord with the provisions of the lease in that it has not been certified by a surveyor.

43 It appears to the Tribunal therefore that the point is simply one of technicality raised by the Respondent's lawyers rather than one raised by her on the merits. Whilst it is perfectly proper for the lawyers to take a technical point on the construction of the lease the Tribunal is satisfied that there is no major issue on the facts and the merits between the parties which justifies sending this matter back to the county court for determination, which will only result in delay and expense to the parties. Mr John himself conceded in argument that the point was unattractive but relied simply on the construction of the lease and submitted that the Tribunal was "stuck with it."

44 The Tribunal concludes therefore that it is justified in deciding that the Respondent is estopped from denying that she is liable to pay a maintenance charge of not less than £150 per quarter. The Tribunal is fortified in this view by the Respondent's admission that she was willing to pay for general maintenance, entryphone, accountancy electricity , gardening and somemanagement fees and the Tribunal concluded that if all the items which are disputed by the Respondent are taken into account for each of the service charge years the amount payable by her in each year would still exceed £600 in respect of services from which she has benefited and does not dispute.

45 The Tribunal has considered the further question as to whether she should be bound to pay the current figure of £200 per quarter on the basis of the further resolutions at the Annual meeting of 2002 (see p 104). It has decided, however, that it would be unsafe for it to do so. The Respondent was not present at the meeting and could not be taken to have agreed to the increased figure whether or not she could be

taken to have agreed to that particular mechanism for raising the service charge figure.

46 This raises a rather more complex issue on the question of estoppel, which would in the view of the Tribunal be more appropriate to be decided by a court if the Applicants wished to pursue it there.

47 The Tribunal is further of the opinion that the Applicants can rectify the absence of a surveyor's certificate and that upon such certificate being granted the amounts due would be payable. The Tribunal is also of the opinion that since such absence of certificate is a procedural bar only to recovery it can be cured retrospectively by the surveyor for previous years subject only possibly to the question of any issue of limitation, which would not appear to apply in the current case since none of the disputed service charges arose more than 6 years ago.

48 With regard to the second issue raised namely the application of Section 21(B)(1) of the Act the Tribunal is satisfied that the provision is not in force, no regulations have been promulgated and the matter is still the subject of consultation. No possible criticism could apply to the Applicants for failing to give a notice in accordance with this section.

49 The Tribunal therefore proceeds to consider the individual objections raised by the Respondent other than those, which have been specifically admitted by the Applicants.

50 **Window Cleaning**

The evidence was that the individual lessees generally undertook window cleaning and the Applicants occasionally arranged for a window cleaner to clean the windows in the common parts. These were included in the general cleaning costs and were payable by the lessees. The Respondent did not provide any figures which she contended should be deducted and the Tribunal concluded that if on any occasion charges had been made for individual lessees which was not proved, the amounts concerned would be minimal and the Tribunal considered that no deduction was to be made for this item.

51 **The Gate**

The Applicants had installed a gate at the front of the property as there had been complaints by leaseholders including the Respondent about the activities of children and young people causing a nuisance in the vicinity of the flats. The gate was installed by Harrow Fencing Supplies in December 2004 for the sum of £1386.50. Since its installation the incidence of nuisance and children running through the area at the back of the flats has been considerably reduced.

52 The Respondent objected to paying for the gate because she said that it was a waste of money and was unnecessary as the police had spoken to the children and that had caused them to stay away and the gate had contributed nothing to the position.

53 Mr John on behalf of the Respondent submitted that the gate was an"improvement " and not a repair. Accordingly it was not permitted under the terms of the lease which contained no covenant regarding improvements. He maintained that the matter had not been agreed by the Respondent and therefore she was not bound to pay.

54 The Tribunal considered that the action of the agents in installing the gate was entirely reasonable and that it had almost certainly contributed to the reduction of nuisance by children at the block. The Tribunal rejected the evidence of the Respondent that it was simply the action of the police in speaking to the children, which had eliminated the problem. Even if the police had spoken to the children there is no doubt that the managing agents and the committee acted entirely reasonably in installing the gates. Unfortunately, however, they did not consult the lease or take advice in connection with the provision of improvements and did not secure the agreement of all lessees.

55 Accordingly with considerable regret the Tribunal is bound to find that the installation of the gates was not authorised by the lease and that the cost is not recoverable as a service charge. The item is accordingly disallowed although the Tribunal considers on the evidence submitted that there was a moral obligation on the Respondent to contribute as it was largely her complaints which had prompted the action concerned.

56 **Legal Fees following a Section 146 notice**

This is not part of the service charge account as such it is for recovery of costs following the service of a Section 146 notice which is recoverable against the lessee under the terms of Clause 3(p) of the lease.

57 The Applicant's case is that the Respondent's solicitors acknowledged liability to pay the costs and did pay a sum to the Applicant's solicitors in the sum of £1800 but this did not discharge the total liability and there was a balance due of £1,386.46. It was unclear from the accounts as to whether this had in fact been paid, as there were other figures for legal expenses, which might have reflected the payment. As a result Mrs Beaber produced further documents which demonstrated clearly that the balance had not been paid and it appeared that this was not seriously challenged by Mr John. However, for the sake of clarity the Tribunal finds that the balance of £1,386.46 remains due and is payable by the Respondent. This sum would be due irrespective of the Tribunal's findings on estoppel above as it falls outside the normal maintenance charge payment.

58 **Condition of the premises**

The Respondent complains that the corridors and the garden areas at the premises are unkempt and that the internal common parts are poorly lit and dirty, that the area around the bins is rarely cleaned and only patchwork repairs are carried out to the roof leading to leaks to the Respondent's premises.

59 The Tribunal on its inspection found the premises to be in a reasonable condition and the affidavit signed by 8 out of the ten residents states that the premises are well maintained and properly managed. It is accepted that the internal common parts are dark and the Applicants are in the process of considering installing new lighting, which would be an improvement and would require agreement from the lessees. It was also admitted that the roof was patched when leaks were detected. There was no complaint that work was not done and the Tribunal finds that the managers acted reasonably in arranging for patchwork repairs since the age of the property did not justify the complete replacement

of the roof. Indeed the surveyor Mr T Harris who inspected the roof thought it was generally in serviceable condition.

60 No complaints were received from any of the other lessees regarding the bin areas and the Tribunal was of the opinion that the work was generally carried out to a reasonable standard and that the services were provided. Mr John submitted that a total deduction of £175 should be allowed for a period of three years to reflect the poor standard of service but the Tribunal was of the opinion that this deduction was not justified and allowed the sum in full for these services.

61 The Respondent claims that the Applicants have charged two sums of £50 for letters sent by the agents chasing payment of arrears of service charge. The respondent was warned in correspondence that if she did not pay that an additional sum would be added. The charges were made in December 2001 and January 2002 .

62 Mrs Beaber agreed in evidence that the second sum was in the nature of a penalty, as she had not responded to the first charge made in December. The Tribunal was of the opinion that the original charge of £50 was justified on the basis of a number of letters which had been sent but that the second charge coming so soon after the first was not a genuine pre estimate of costs incurred but in the nature of a penalty

63 The Tribunal whilst having some sympathy for the position of the agents has a duty to ensure that only those administration charges which are reasonable should be allowed and that those charges in the nature of a penalty should be disallowed. Accordingly the first charge is allowed but not the second.

64 **The Cost of Removing Building Rubbish**

This is effectively a claim for breach of covenant or in trespass arising from the deposit of building rubbish at the side of the building by the Respondent's builder at the beginning of February 2005 leaving a note to the effect that they would be removed within a few days.

65 The rubbish was not removed and the agents wrote to the Respondent requesting removal on 25th February and asked for removal within 7

days. She replied on 1st March 2005 that the works were not yet finished and that the rubbish would be removed on completion.

66 On 16th March 2005 nothing further had been done and a further letter was written stating that if the rubbish was not removed within 7 days the agents would arrange for its removal and charge her accordingly

67 She then wrote a long rambling letter on 25th March giving eight examples of cases where the agents failed to act to remove a nuisance and an allegation that she was being discriminated against. She stated the rubbish would be removed when the work was completed but gave no date as to when that would be.

68 On 30th March the agents wrote that they had arranged for the removal of the rubbish and sent an invoice in the sum of £180 from Capital Cleaners which included a tipping fee of £128.The Respondent refused to pay.

69 The lease contains a covenant "*not to deposit refuse nor to discard or abandon anything of any nature in or on the building or the surrounding premises*"

70 The action of the Respondent in leaving the rubbish at a point which could be seen by the residents of other flats, though not from hers, was in clear breach of covenant and probably a nuisance and trespass as well. In the view of the Tribunal the agents acted entirely reasonably in arranging for its removal and the cost of the removal was also reasonable.

71 However, the Tribunal has concluded that the charge levied by the Applicants is not a service charge and as such the Tribunal has no power to order its recovery. However the Applicants would be at liberty to proceed in the small claims court for recovery of this sum as a claim in damages if they thought it appropriate to do so .

72 **Failure to deal efficiently with an insurance claim**

This allegation is based on the alleged failure of the managing agents to deal with an insurance claim by the Respondent arising from water damage to her property from the leaking roof.

73 A claim was submitted by the agents and processed by them and the insurers entered into negotiations with the Respondent. They did not

agree to meet the whole of her claim, which was £1500 but agreed to pay the sum of £400. This sum was not accepted by the Respondent but she has not commenced proceedings against the insurers for recovery of the whole of the claim.

74 There was a suggestion in the correspondence that the insurers were not prepared to deal with the claim because the managing agents had not arranged for the proper repair of the roof but on further investigation it appeared that the source of this comment was the Respondent herself and there was no other evidence to support it.

75 The Tribunal is satisfied that there was no inefficiency in the handling of the claim such as to justify any reduction in the payment of the management fee. The managing agents merely had the duty to ensure that the claim was properly passed to the insurers and thereafter in the event of a dispute it was a matter between the claimant and the insurer.

76 **Management Fees**

There is a complaint that there was no proper breakdown of the management fee and that it was in any event excessive. By the date of the hearing the agents had provided a breakdown of the management fees for the service charge years and it amounted to £117.50 per unit per annum for the years up to April 2005 and thereafter £130.70 per unit

77 From its own knowledge and experience of similar blocks of flats the Tribunal does not consider the management charge to be excessive. Indeed it appears lower than many agents would charge for similar blocks where services are to be provided.

78 In the course of the hearing a question was raised by the Tribunal as to whether the lease itself contained a clause permitting the employment of a managing agent and the right to charge the fees as part of the service charge. Mr John adopted this argument in his submission that the lease did not and that it may not be recoverable although he did not strongly press the point as it was not part of his pleaded case

79 Clause 3(g)(iv) of the lease requires the lessee to pay towards the cost of "management and general administration work and expenses incurred in connection with the above terms". The Tribunal considers

that the clause is wide enough to include the employment of a managing agent if the Association considers it necessary to employ one and is prepared to allow the management fees in full for the service charge years in question.

Section 20C Costs

80 Mr John applied to the Tribunal for an order that the Applicant's costs of the application be disallowed under Section 20C of the Act. In the light of the findings of the Tribunal, it considers it would be highly inappropriate for such an order to be made. The Respondent by her conduct has put the other leaseholders in the block to considerable expense as a result of some of the issues, which she has raised.

81 The Tribunal was not persuaded that the Respondent acted reasonably in withholding large sums of service charge arrears, which placed a considerable financial burden on the other leaseholders. On the Tribunal's findings although she has been successful in some of the items, which she has challenged the Tribunal found many features of her evidence unsatisfactory and considered that her general approach was unreasonable.

82 In the view of the Tribunal the Applicants and the agents Paige and Petrook although mistaken in respect of some of the charges which were levied generally acted reasonably in the management of the block and the Tribunal considers that the Applicants acted reasonably in presenting the case themselves to save costs even though they were confronted by a number of technical legal submissions by counsel instructed by the Respondent. In the circumstances the Tribunal sees no reason to deprive the Applicants of the costs of pursuing the application ,which will of course be borne by the service charge account. They may, however, be entitled to recover the costs of the proceedings in the county court prior to transfer

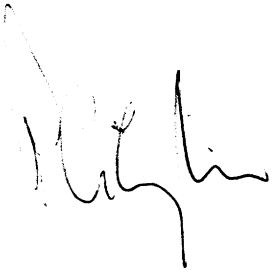
Conclusion

83 The Applicants are entitled to recover the service charges claimed in the application other than the legal and valuation costs relating to the enfranchisement, the costs of issuing a summons in proceedings which were discontinued, the second sum of £50 claimed by way of a penalty

for chasing the arrears, the sum of £180 for the removal of the rubbish, which is outside the Tribunal's jurisdiction but may be recoverable elsewhere and the cost of installing the new gates which constitute an improvement.

84 In addition the total liability of the Respondent is limited to £600 per annum for each of the years subsequent to 2000 in these proceedings without prejudice to any balance which may be recoverable at a later stage on the certification of the accounts by a surveyor in accordance with the terms of the lease.

85 In addition the Tribunal makes no order under Section 20C in relation to the Applicants' costs.



Chairman Peter Leighton

Dated 20th October 2006