

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UB/LIS/2004/0013

**IN THE MATTER OF BLOCK 2, BEEHCROFT MANOR, OATLANDS
DRIVEE, WEYBRIDGE, SURREY, KT13 9NZ**

BETWEEN:

BEEHCROFT MANOR MANAGEMENT LIMITED

Applicant

-and-

LINTHAVEN LIMITED

Respondent

THE TRIBUNAL'S DECISION

BACKGROUND

1. This is an application made by the Applicant under s.27A of the Landlord and Tenant Act 1985 ("the Act") (as amended) for a determination of the liability of the Respondent to pay for insurance costs for the period 1998 to 2004 and also the cost of repairs carried out in relation to the patios and garages. This application is made only in respect of Block 2 on the Beechcroft Manor estate and the above costs incurred by the Applicant solely in relation to those premises. Control of the Applicant company was acquired by the lessees from the Respondent in the early 1990s. The Applicant company is run by the lessees for the benefit of the lessees. The Respondent company is the freeholder.

INSPECTION

2. The Tribunal inspected the subject premises on 28 October 2004. It is not necessary to set out here a description of the areas inspected for the reasons that will become apparent later in this decision.

HEARING

3. The hearing in this matter also took place on 28 October 2004. Mrs Birch appeared as the Applicant's representative. Also in attendance for the Applicant were Mr Garratt, the lessee of Flat 15, and Mr Norris who was the surveyor and expert witness instructed on behalf of the Applicant. Mr Unsдорfer of the firm of Parkgate-Aspen, property management, appeared for the Respondent company.
4. At the commencement of the hearing, and upon questioning by the Tribunal, Mrs Birch confirmed that the Applicant was not only seeking a determination of the Respondent's liability, under the various leases, to pay a contribution in relation to the costs that were the subject matter of this application, but also generally in relation to the costs incurred so far for the Phase 1 and Phase 2 works to the subject property. It is not necessary here to set out in any detail the nature and costs of these works for the reasons set out below. It has always been the Applicant's position that any payments made by the Applicant for these works has been on a without prejudice basis and it has reserved its position generally to seek a determination at a later stage as to the Respondent's contribution, if at all, to the cost of those works. The Tribunal was being asked to now make that determination. That determination was also

being sought in relation to the apportionment of the proposed cost of repairs to the garages numbered 10 to 34 that were appurtenant to the subject property and which belonged to the Respondent, as there was an issue as to where liability fell. A related issue the Tribunal was being asked to decide was the extent of the demises to Flats 20 and 21 as this had a bearing on the apportionment of the cost of repairs.

5. The Tribunal explained to Mrs Birch that the basis on which this application was brought raised a number of jurisdictional difficulties. A determination of the Respondent's liability, if any, for all or part of the costs incurred and to be incurred in respect of the subject property and also the extent of the demise to Flats 20 and 21 required the leases to be construed and declarations made to that effect. The Tribunal pointed out that it did not have any declaratory powers. Such a determination should be sought in the County Court. In any event, a determination of the Respondent's liability to pay a contribution, if any, towards the actual and anticipated cost of the works is not an application properly brought under section 27A of the Act, which is concerned with the liability to pay service charges. Section 18(1) of the Act defines "service charge" as an amount payable by a tenant and not a landlord. This application was limited to the issue of the extent of the Respondent's liability, if any, to contribute towards the actual and anticipated cost of the works. In addition, Mrs Birch confirmed to the Tribunal that no service charge accounts had been prepared by the Applicant in relation to any of the service charge years referred to in the application or at all and no service charge demands made to any of the lessees in the subject property or, indeed the Respondent. In view

of this, a separate issue was raised as to whether any amounts were payable within the meaning of section 18(1) of the Act. For the reasons set out above, the Tribunal declined jurisdiction to hear the application.

6. The Tribunal explained that the only issue in the application it could properly deal with were the buildings insurance costs. It seems that the parties had agreed those costs for the years 1998 to 2003. Only the insurance costs still in issue were in relation to the current year (2004). However, before the Tribunal Mr Undsdorfer and Mrs Birch agreed a premium refund of £1,350.78 for the current year on a pro rata basis. Mr Undsdorfer also agreed that the Respondent would match any alternative buildings insurance quotations provided by the Applicant in respect of the subject premises for future years.
7. Mr Undsdorfer, for the Respondent, stated that he had raised the same jurisdictional point by letter with the Applicant as long ago as 3 August 2004, which had not been accepted. He was now concerned that the significant costs incurred by the Applicant in bringing this application would now be added to the service charge account of the lessees in the subject property. He explained that he also acted for a number of those lessees and would like to make an application under section 20C of the Act for those costs not to be regarded as relevant costs in determining the amount of any service charge payable by his tenant clients. The Tribunal declined to entertain any such application from Mr Undsdorfer as it was not properly made. An application under section 20C could only be made by a tenant and he had at the very outset of the hearing

represented to the Tribunal that he was acting on behalf of the landlord only in this matter.

CHAIRMAN..... J. Mohan

DATE..... 8/11/04