

**LEASEHOLD VALUATION TRIBUNAL
OF THE MIDLAND RENT ASSESSMENT PANEL**

BIR/31UB/LSC/2004/2005

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 20c OF THE LANDLORD & TENANT ACT
1985*

Applicants	Mr A J Kendall
Respondent:	Mr J P Matthews and Mrs A E Matthews (trading as London & Leicester Property Group)
Subject property:	Swan Yard High Street Whetstone Leicester LE8 6LQ
Date of Application:	16 th November 2004
Members of the LVT:	Mr D.B. Power FRICS Mr J Martin Miss B Granger
Date of determination:	24 th January 2006

Introduction

1. An application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of the reasonableness of service charges for the period 25th June 1998 to 4th April 1999 and for the years to 4th April 2000, 2001, 2002, 2003, and 2004 was made by the Applicant on the 16th November 2004. Following a hearing on the 31st of August 2005, the Tribunal made its determination on the 26th September 2005, reserving a decision on the issue of limitation of costs under section 20C which formed part of the original application.
2. Submissions on this aspect were invited and both parties made representations together with comments on those representations.
3. This determination relates solely to the outstanding costs issue.

Representations

4. The initial representations by the Applicant relied upon the general failure of the Respondents to be responsive and communicative and to deal with reasonable requests for information. The Respondents' behaviour and threats to forfeit the lease caused considerable anxiety on the part of the Applicant. The Applicant asked the Tribunal to make an order under section 20C of the 1985 Act that all of the costs incurred by the Respondents in respect of the proceedings before the Tribunal should not be regarded as relevant costs to be included in the service charge and to order the Respondents to reimburse the fees paid to the Tribunal for the application and hearing, totalling £350 plus a further £207.97 in respect of photocopying and £12.09 postage.
5. The Respondents submitted that no such order should be made and that the Applicant should not be entitled to recover the Tribunal fees. The basis for this was that the decision of the Tribunal turned on a strict interpretation of the lease in respect of which the technical point could only be determined by a decision of the Tribunal. Unreasonableness by the Applicant and unwillingness to compromise were claimed. The proceedings were instigated by the Applicant and the Respondents claimed to have shown patience in dealings with him.

Determination

6. Section 20C of the 1985 Act states:
(1) a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal..... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
(2).....
(3) the.... tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
7. Section 19 of the 1985 Act states:

*(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.*

8. The Leasehold Valuation Tribunals (Fees)(England) Regulations 2003/2098 states at Regulation 9;
*(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
(2)*
9. The process necessary for the Tribunal to reach its decision requires the following questions to be answered;
a. Does the lease provide for fees in connection with an application to the Tribunal to be a cost properly included within the service charge?
b. Is it fair and reasonable that an order be made under section 20C of the 1985 Act?
c. If the fees are payable, is the amount claimed reasonable under the provisions of section 19 of the 1985 Act?
d. Should an order for reimbursement be made under Regulation 9?
10. The Tribunal had careful regard for the submissions made by both parties in considering their decision.
11. Part 1 of the 7th schedule to the lease dated the 9th of February 1990 originally between Woodedge Properties Ltd and Michael David Biggs and Andrea Jane Beauchamp, sets out the works affecting the whole of the Building in respect of which the percentage of the cost to be paid by the Lessee is that mentioned in Part 1 of the 8th schedule. At clause 9 it includes;

to discharge all proper fees and disbursements levied by any Managing Agent Accountants Auditors or Professional Advisors appointed by the Lessor in connection with the running of the Estate.

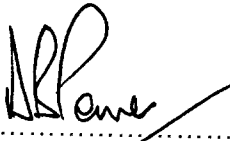
12. The inclusion of legal costs as a recoverable service charge will not be allowed in the absence of clear unambiguous words in the lease. There have been a number of cases of which the Tribunal is aware which assist in the interpretation of the clause. In the case of *Staghold v Hiko Takeda and Sue Matsue Takeda*, in Central London County Court (Chancery number CHY05027) where the wording of the lease referred to "The cost of employing...professional advisors," it was held that on the true construction of the lease it was proper for the claimant to seek the recovery as challenged. In *Iperion Investment Corp v Broadwater House Residents Ltd* (1995) 2 EGLR 47 CA the words "the proper cost of management" were held to include the legal costs of an unsuccessful forfeiture action. However, in *Sella House v Mears* 1989 21HLR 147 the court found that the wording of the relevant clause did not permit inclusion of legal fees for rent recovery in the service charge.

13. The Tribunal, after careful consideration, has, on balance, decided that the wording of the lease is sufficiently clear to allow the legal costs to be included in the service charge. The words "Professional Advisors" in relation to "the running of the Estate" indicates an intention to include costs over and above those costs directly incurred in maintenance and accounting functions.
14. Turning to the question as to whether it is fair and reasonable to make an order under section 20C (3) that the costs are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant, the Tribunal decides that, if the lease permits the inclusion of those costs, they are relevant costs and should be included in the service charge.
15. As to whether the costs are reasonable, in terms of section 19 (1) of the 1985 Act, the Tribunal does not have a specific statement as to what legal costs are claimed other than a reference in the letter addressed to the Tribunal and dated 28th November 2005 from the London and Leicester Property Group Ltd, at page 4 which indicates the costs of employing Counsel (Dov Oherenstein) amount to £5,500. Under section 20C (1) of the 1985 Act, costs have to be incurred, or to be incurred. If this is the amount claimed, the Tribunal finds this to be unreasonable having regard for the nature and extent of the amount disputed and the length of the hearing. The Tribunal determines that reasonable costs and disbursements should not exceed £2000 plus VAT if payable.
16. Because the Respondents could not progress in the threatened proceedings for forfeiture without a Leasehold Valuation Tribunal determining that the service charge costs were reasonably incurred, and it was due to this threat that the Applicant felt obliged to make application himself, the Tribunal directs that the application and hearing fees totalling £350 paid by the Applicant be reimbursed by the Respondents. There is no provision in the Regulations or elsewhere which allow the Tribunal to order a re-imbursement of the Applicant's photocopying and postage expenses.
17. In the Applicant's statement of case, the Tribunal was requested to make an order for costs under the provisions of paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 which enables a tribunal to determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings..... where that party.... has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Whilst there is evidence of a difficult relationship between the parties, the Tribunal decides that such behaviour does not fall into the category indicated and therefore no order is made in this respect.

Decision

18. The Respondents may recover costs incurred or to be incurred in connection with the application to the Leasehold Valuation Tribunal through the service charge provisions of the lease.
19. The amount recoverable by the Respondents shall not exceed £2000 plus VAT if payable

20. The Respondents shall reimburse the Applicant the sum of £350 being the application fee and hearing fee paid to the Tribunal.

Signed 
(Chairman)

Dated **1 4 FEB 2006**