

## **RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL**

**Decision of the Eastern Leasehold Valuation Tribunal on an application under section 27A of the Landlord and Tenant Act 1985 in respect of 2,Swanshope, Loughton, Essex, IG10 2NA**

**Applicant : Burney Drive Management Company Limited**

**Respondent : Miss E. J. Jackson**

**Appearances Mr John Price of John Price & Company for the Applicant  
Mr R. L. Jackson for the Respondent**

**Case number : CAM/00UH/LSC/2006/0039**

**Date of Hearing 23 October 2006**

**Tribunal Members Mrs Judith H. Lancaster BA Barrister-at-Law  
Chairman  
Mr Raymond Humphrys FRICS  
Mr John M. Power MSc FRICS FCI Arb.**

### **INTRODUCTION**

**1. John Price & Company act as managing agents for the Applicant for a block of 30 flats, of which the subject property (the 'Property') is one. John Price & Company (the 'Agent') made an application under section 27A of the Landlord and Tenant Act 1985 (the 'Act') for the Tribunal to make a determination regarding the service charges payable by the Respondent for the years ending 30 June 2002, 2003, 2004, 2005, and the year beginning 1 July 2006.**

### **THE PROPERTY**

**2. The Property is a ground floor flat in a modern block of flats (the 'Building') located in a residential area close to the centre of Loughton. The Building is of brick and tile, with render on the some lower parts of the walls. The window frames were originally of wood, but some have been replaced with UPVC units. There is a parking area for residents, but it is not allocated. The Property is approached via a communal hallway, and has a hall, living room, kitchen, bathroom/WC and double bedroom. There is no central heating; hot water is via an immersion heater.**

### **THE HEARING**

**3. The Chairman asked if there was a written agreement between the Agent and the Applicant. Mr Price said the agreement was oral only.**

4. Both parties agreed that the Tribunal could rely on the service charge details in the certified annual accounts for the years ending 30 June 2002, 2003, 2004 and 2005 (the 'years in question') which had been included in the documents provided to the Tribunal.

#### **THE APPLICANT'S CASE**

5. Mr Price stated that the Agent had only been acting for the Applicant since October 2005, and the Tribunal had been supplied with all the relevant documents supplied to the Agent by the previous managing agents, Equity Asset Management, and their successors, Johnson Cooper. Johnson Cooper had been owned by the same people as Equity Asset Management, and the same staff had dealt with the affairs of the Applicant.

6. Mr Price said that all the sums claimed for the years in question in the application to the Tribunal were taken from the certified annual accounts, the accuracy of which he had no reason to doubt.

7. Mr Price understood the Respondent was only querying some of the items in the service charge for the years in question, and therefore she should have paid the undisputed items.

8. Mr Price had no information regarding the items queried by the Respondent apart from that passed on to him by Equity Asset Management and Johnson Cooper. However, his letter of 8 June 2006 shows that he has tried to deal with the Respondent's queries as well as he can.

9. Mr Price said that the Estate Management fees charged by Equity Asset Management were quite low, and therefore justified in spite of the Respondent's complaints about the standard of service provided.

10. Mr Price said that the Company Secretarial fees charged by Equity Asset Management were quite high, but no other tenants in the Building had raised this issue.

11. Mr Price believed it would not be equitable to treat the Respondent differently from the other tenants in the Building, who had paid the service charges as demanded. Some of the flats will have changed hands over the last four years and it may not be possible to contact previous tenants. He asked the Tribunal to determine that the Respondent should pay the service charges for the years in question as shown in the annual accounts, to ensure uniformity between all the tenants.

12. In response to a further question about the nature of the Agent's agreement with the Applicant, Mr Price said the terms of appointment were set out in a letter, and agreed to let the Tribunal have a copy of this letter within 24 hours.

13. In response to a question from the Tribunal, Mr Price said that, on the Agent's appointment in October 2005, Johnson Cooper had sent the Agent £15,000.00, being the funds they held for the Applicant, but no details were given as to how much of this came from a reserve fund account and how much from a general maintenance account. He had therefore put £11,000.00 into a reserve fund account for the Applicant and the balance into a general maintenance account for the Applicant. Mr Price was not able to explain how this tallied with the annual accounts for the year ended 30 June 2005, which show an amount in the reserve fund of £19,579.00. (This figure should be £22,087.00 if the Tribunal is right in thinking that there is a mistake in the figures; see paragraph 14(e) below). It is not clear from the annual accounts what had happened to any interest which had accrued on monies held in the reserve fund account prior to the Agent's appointment, and Mr Price had no information on this. Mr Price was not able to tell the Tribunal how much there was in Applicant's reserve fund account and general maintenance account as at the date of the hearing, but he undertook to fax copies of the bank statements within 24 hours.

#### **THE RESPONDENT'S CASE**

14. Mr Jackson said the Respondent did not dispute any items in the service charge expenditure projections for the year beginning 1 July 2006. The items the Respondent disputed in the other years were;

a) Estate Management fees for all four years. The Agent had provided calculations showing that these had been calculated on the basis of a flat fee of £80.00 per annum plus VAT for each flat in the Building, i.e. £2,400 plus £420.00, £2,820.00 per annum. No analysis of time spent had been provided to justify the level of fees, and it was not possible to ascertain whether this fee was reasonable. However, the service provided to the Respondent by Equity Asset Management and Johnson Cooper had been extremely poor, as evidenced by;

- i) the late filing of annual accounts for the years ending 30 June 2003, 2004 and 2005;
- ii) the failure of Equity Asset Management to reply substantively to the letters of the Respondent dated 31 July and 21 August 2002 or letters from her solicitors dated 28 October and 5 November 2002 and 19 and 20 March 2003, querying items in the service charge, but none the less issuing a Notice of Forfeiture of Lease under section 146 of the Law of Property Act 1925 on 15 October 2002, and copying this to the Respondent's mortgage company.

b) Company Secretarial fees for all four years. The Agent had supplied figures showing a different flat fee, plus VAT, for each of the years in question - £225.00, £224.68, £233.19 and £242.55 - but had not explained how these had been calculated. No analysis of time spent had been provided to justify the level of fees, and it was not possible to determine whether the fees were reasonable. However, the Company Secretarial

services provided by Equity Asset Management and Johnson Cooper had been extremely poor as evidenced by;

- i) the fact that the Respondent had not received notice of Annual General Meetings in any of the years in question
- ii) the late filing of the annual accounts detailed above;

c) the sum of £164.50 claimed in the year ending 30 June 2003 as a result of a Notice issued by Equity Asset Management and a further claim for the same amount for sending a copy of this Notice to the Respondent's mortgage company. The issue of this Notice was not reasonable, see paragraph 14 (a)(ii) above;

d) a penalty of £250.00, included in the service charge for the year ending 30 June 2003, and one of £100.00 included in the service charge for the year ending 30 June 2004 paid to the Inland revenue for late filing of the Applicant's annual accounts. It is unreasonable that the applicant should pay for the failure of Equity Asset Management to file the annual accounts in time. The accounts for the year ending 30 June 2001 were not sent to the Applicant for signature until 31 May 2002, a month after they were due to be filed with the Inland Revenue.

e) Redecoration Provisions for all four years. The Respondent, and subsequently her solicitors, wrote a number of letters to Equity Asset Management, commencing in July 2002, asking for an explanation as to the annual Redecoration Provision. From the annual accounts these are as follows;

Year to 30 June 2002 - Redecoration Provision	£ 6,000.00
Year to 30 June 2003 - Redecoration Provision	£10,460.00
Year to 30 June 2004 - Redecoration Provision	£ 6,000.00
Year to 30 June 2005 – Redecoration Provision	£ 3,492.00

(Having inspected the annual accounts for the year to 30 June 2005, the Tribunal queried whether there had been an error, and the figure shown for the redecoration provision, £3,492.00, and the figure shown for redecoration charges, £6,000.00, had been reversed. However, there was no evidence before the Tribunal to determine this point).

Looking at the annual accounts and invoices supplied by the Agent, the total redecoration costs incurred for the Building during the period from 1 July 2001 to 30 June 2005 appear to have been £3,547.00 for the year ending 30 June 2003, and £3,715.00 for the year ending 30 June 2004. The Building is due to be redecorated every 3 years. Therefore the redecoration provisions are significantly higher than necessary. Mr Jackson suggested that an annual provision of £3,000.00 would have been quite adequate.

15. The Respondent had stated when writing to Equity Asset Management by letters dated 21 July and 31 August 2002, that she had no wish to fall into arrears with service charge payments, but before making payment she needed an explanation as to how the Redecoration Provision had been spent, and why additional Redecoration Charges were necessary. Her solicitors notified Equity asset Management in a

letter of 28 October 2002 that the information was being requested under section 21 of the Act, but no satisfactory answer had ever been received. The Agent had been asked for this information by letter dated 5 May 2006, but the Respondent had still not had a satisfactory answer.

16. In a letter to Equity Asset Management dated 21 August 2002, the Respondent had repeated that she was not prepared to set up a direct debit for the full service charge claimed, £124.13 per quarter, until her queries had been addressed, but offered to set up a standing order for £30.00 per month in the meantime. Equity Asset Management had not responded to this offer. On two further occasions the Respondent had tried to settle this dispute, but without success.

#### **COSTS**

17. Mr Price asked that the Respondent be required to pay the following costs;

Tribunal fee	£250.00
Cost of obtaining a copy of the lease of the Property	£ 20.00
Land registry search fee	£ 6.00
Copying 1,950 sheets of paper @25p per sheet	£487.50
Mr Price's time on day of hearing plus 4 hours	£500.00
	<b>Total £1,263.50</b>

Although these costs could be added to the service charge for all the tenants of the Building under the terms of their leases, Mr Price thought that this would not be fair to the other tenants. The Respondent had acted unreasonably in withholding all payment of the service charge for the years in question, when only some items were in dispute, and in continuing to withhold payment of service charges for the period commencing 1 October 2005, which are not in dispute

18. Mr Jackson stated that the Respondent had done all she could to resolve the dispute, but had been unable to do so, and therefore it would be unfair to award costs against her. He submitted a schedule of costs, all of which were in connection with the Tribunal proceedings.

#### **THE DECISION**

19. Under section 19 of the Act, items of expenditure can only be taken into account in determining the amount of a service charge payable to the extent that they were reasonably incurred, and, where they are incurred on the provision of services only if the services are of a reasonable standard.

20. Estate Management fees. The Tribunal did not accept that the fee of £2,400 plus VAT per annum charged by Equity Asset Management had been reasonably incurred, or that the service provided had been of a reasonable standard to justify that amount, in light of the evidence of the Respondent set out above. The Tribunal noted that, in a letter to the Tribunal dated 16 October 2006, the Agent had stated that 'our

predecessors were Equity Asset Management followed by Johnson Cooper neither of whom seemed to be adept at providing a reasonable service or at record keeping and the documentation handed over to us was very light'. The Tribunal determined that the Estate Management fee payable for the years in question should be reduced to £50.00 per flat per annum plus VAT, a total of £1500 per annum plus VAT, of which the Respondent's share is £40.00 per annum plus VAT.

21. Company Secretarial fees. The Tribunal did not accept that the level of fees charged had been reasonable, for the same reasons as set out paragraph 20 above, and determined the Company Secretarial fees should be reduced to £150.00 per annum plus VAT of which the Respondent's share is £4.00 per annum plus VAT.

22. Section 146 Notice. The Tribunal determined that the charges related to the issue of a Notice under section 146 of the Act are administration charges, as defined in schedule 11 of the Commonhold and Leasehold Reform Act 2002, and do not come within the definition of items which can be included in a service charge, as defined in section 18 of the Act. Therefore they cannot be included as items in the service charges. However, the Tribunal noted that they did not consider that Equity Asset Management had acted reasonably in issuing this Notice, given the matters as set out in paragraph 15 and 16 above.

23. Late filing penalties. The Tribunal determined that the penalties incurred for late filing of the annual accounts for the years ending 30 June 2003 and 2004 were not reasonably incurred, as the only evidence available suggests that they were not produced in a timely fashion by Equity Asset Management and that the penalties should not be included in the Applicant's service charge for these years.

24. Redecoration Provisions. In light of the evidence set out in paragraph 14(e) above, the Tribunal determined that a reasonable redecoration provision would be £3000.00 per annum for each of the years in question and that the Respondent's share is £80.00 for each year.

**25. Costs.**

a) Under paragraph 10, schedule 12 of the Commonhold and Leasehold Reform Act 2002 no party to a Tribunal can be required to pay the costs incurred in connection with the proceedings by the other party unless the Tribunal determines that the other party has acted 'vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings', or the application to the Tribunal has been dismissed. The Tribunal determined that these conditions had not been met in this case, and therefore neither party would be awarded costs against the other. In particular, the Tribunal did not accept that the Respondent had acted unreasonably in withholding payment of the service charges for the years in question. She had acknowledged that she was due to pay service charges for the years in question, once her queries had been addressed, and the Tribunal's determination above

has established that these queries were valid. The Agent has acknowledged that the services previously provided were not of a reasonable standard, and that the Agent was unable to resolve the queries due to lack of information (see paragraph 20 above).

b) Under paragraph 3(5)(b) of the lease of the Property the Applicant is entitled to recover from the Respondent two seventy-fifths of all costs charges and expenses incurred by the Applicant in performing and carrying out the Applicant's obligations under Part IV of the Schedule to the lease, which relates to the service charge to be paid by the Respondent. Part IV includes redecorating the Building at least once every three years, keeping proper books of account, and notifying the Respondent of the amount of service charge due. Part IV also states that the Applicant shall employ a professional managing agent to supervise the running of its affairs.

c) The Tribunal determined that the costs claimed by the Applicant as set out in paragraph 17 above were recoverable under the lease of the Property as part of the service charge and, with the exception of the charge for photocopying, were reasonable. Using their knowledge and experience the Tribunal determined that the amount claimed for photocopying was not reasonable, and should be reduced to 10p per sheet. The Tribunal therefore determined that the Applicant was entitled to include a sum of £970.00 in the service charge for the year ending 30 June 2007. The Respondent's share of this is £25.85.

26. Mr Price undertook to fax to the Tribunal a copy of the letter setting out the terms on which the Agent was appointed within 24 hours of the hearing date. To date this information has not been received, and there has been no explanation for this failure. The Tribunal noted that the members of Burney Drive Management Company Limited, the long lessees of the flats in the Building, do not appear to have determined exactly what level of service they wish the Agent to provide by means of a formal contract. The Tribunal would have thought that such a contract should be an agreement based on the Royal Institute of Chartered Surveyors Management Code or the Association of Residential Managing Agents guidance. The reason behind the setting up of companies such as the Applicant is the expectation that, by this mechanism, lessees will be able to discuss and agree the way forward without costly disputes, and with proper and effective management of the property. The Tribunal recommends that the long lessees consider how best to achieve this in the future.

27. As noted above, Mr Price undertook to fax to the Tribunal details of the Applicant's current statements of account within 24 hours of the hearing date. To date this information has not been received, and no explanation has been given for this failure. As set out in paragraph 13 above, there does appear there may a financial discrepancy on the evidence available to the Tribunal, and the Tribunal believes that the Agent has a duty to ensure that this matter is investigated. Section 42 of the Landlord and Tenant act 1987, as amended by the Commonhold and Leasehold Reform Act 2002, may be relevant here.

A handwritten signature in black ink, appearing to be 'JH Lancaster', with a large, stylized flourish above the name.

Judith H Lancaster  
Chairman

10 November 2006.