



Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 (the Act)
Sections 20C and 27A**

Ref: LON/00AK/LIS/2005/0120
LON/00AK/LIS/2005/0121
LON/00AE/LSC/2005/0372

Properties: (1) 26-84 Waverley Road & 1-7 Vermont
Close, Enfield HA3 9BY
(2) 1-7 Cunard Crescent, Winchmore Hill,
London N21 2PV
(3) St Anne's, 123 Salusbury Road,
Brondesbury, London NW6 6NL

Applicants: (1) Oaklands Rise Residents Co. Limited
(2) Halliwick Gate Residents Co. Limited
(3) St. Anne's Court Residents Co. Limited

Represented by: Turner & Debenhams, Solicitors

Respondent: Reverter Plus Limited

Represented by: Hatchers, Solicitors

Date of Hearing: 11 April 2006

Date of Decision 19 April 2006

Tribunal: Mr John Hewitt Chairman
Mr Anthony Mellery-Pratt FRICS
Mr David Wills ACIB

Decision of the Tribunal

Decision

1. The decision of the Tribunal is that it does not have jurisdiction to determine the applications made by the respective Applicants pursuant to s27A of the Act nor the applications made pursuant to s20C of the Act.
2. The findings of the Tribunal and the reasons for its decisions are set out below.

Background

3. Each of the Properties, the subject matter of these applications comprises residential developments laid out by Laing Homes Limited in the mid 1990s.
4. The Tribunal has been provided with a sample lease from each Property from which it appears the lease structure is broadly in common form. The parties to the lease are the landlord, a resident's company and the tenant. The tenant is obliged to become a member of the resident's company and to transfer such membership to any assignee of the lease.
5. Clause 3 of the lease comprises a number of covenants given by the tenant to the resident's company. Clause 3(4) is a covenant to pay a proportion of expenditure incurred by the resident's company. Clause 5 comprises a number of covenants given by the resident's company, effectively to run and manage the development and carry out repairs and redecorations as may be required. Included is a covenant to effect insurance. We shall return to this covenant in more detail later. Clause 6 comprises covenants given by the resident's company and the tenant to each other and sets out the regime whereby service charges shall be ascertained, accounted for and contributed to by each tenant.
6. Evidently the reversions expectant on the expiry of the leases have been assigned by Laing Homes Limited and were vested in the Respondent in or about May 2002.
7. All three applications are in common form. They are made pursuant to s27A of the Act and each includes a related application pursuant to s20C of the Act. The description of the question which the Applicant wishes the Tribunal to decide is given as:

'The application relates to clause 5(6) (a) of the lease as highlighted on the copy attached.

The landlord says there is an obligation to insure through the landlord's agency.

The questions to be decided are:

1. *Is the alleged obligation to insure through the landlord's agency independent of the obligation to insure with Royal Insurance or other insurer reasonably approved by the landlord? and*
2. *If the insurance is placed with Royal Insurance or other 'approved insurer' does the insurance have to be placed with the landlord's agency?*

3. *Can the landlord compel tenants to insure through landlord's agent when the landlord has been unable to demonstrate any cost/benefit to the tenants of insuring through the landlord's agent?'*
8. An oral pre-trial review was held on 10 January 2006. The Applicants were represented by Mr Fain of Playfield Management and the Respondent represented by Miss Shea of counsel. It was identified that the dispute turned on the construction of the lease and whether clause 5(6) (a) obliged the Applicants to effect buildings insurance through the Royal Group or some other insurance agent nominated by the Respondent.
 9. Evidently in recent years the Applicants have not insured the buildings with Royal Insurance or through the Respondent's agency. The Respondents have alleged breach of covenant and have threatened to commence county court proceedings to recover damages for that breach. The Respondent says the damages are the amount of commission they would have received had the insurance been placed with Royal Insurance or other nominated insurer through its agency.
 10. At the pre-trial review it was intimated to Mr Fain that what in effect was being sought was a declaration as to the effect of clause 5(6) of the leases (there was no specific service charge payable by a tenant in issue) and that the Tribunal did not have the power to grant declaratory relief and thus might not have jurisdiction to determine the applications. It was suggested to Mr Fain that it might be more appropriate to seek the declaratory relief claimed in the county court proceedings contemplated by the Respondent.
 11. It was further intimated to Mr Fain by the Chairman conducting the pre-trial review that he was minded to dismiss the applications for lack of jurisdiction but that he was unable to do so as he was sitting alone and dismissal could only be effected by a full tribunal having heard evidence and submissions from the parties on the question of jurisdiction.
 12. Directions were given which allowed the Applicants a period of time to reflect and decide whether to withdraw the applications. In the event the applications were not withdrawn, directions were given for the question of jurisdiction to be determined as a preliminary issue.
 13. Notification was given to the parties that the preliminary issue would be determined on the papers without an oral hearing. The parties were reminded of their right to request an oral hearing and that such request may be made at any time before the question was determined.
 14. The applications have not been withdrawn. Each party has submitted written representations in compliance with the directions given. Neither party has requested an oral hearing.
 15. Finally, by way of background we should mention that each of the application forms cites the relevant resident's company as the Applicant *'and nominated lessees (to be notified)'*. By letter dated 10 April 2006 the Applicant's solicitors, Turner & Debenhams, sent to the Tribunal a copy of a letter of the same date to the

Respondent's solicitors, Hatchers, specifying the 'nominated lessees' as:

St Anne's Court - Mr N Wood of flat 14
Halliwick Gate - Mrs Jean Adams of 2 Braikenridge House
Vermont Close - Marie Page of 10 Vermont Close

The Lease Term in Issue

16. As noted above the specific lease term in issue between the parties is clause 5(6)(a), a covenant given by the resident's company to the lessor and to the lessee, which, so far as material to the issues before the Tribunal, is in the following terms:

'To keep the Managed Buildings insured in Royal Insurance Group or some other insurance office reasonably approved by the Lessor against all risks...through the agency of the Lessor or such other agency as it may direct in a sum equal...'

17. The service charges payable by the lessee to the resident's company include the cost of insurance effected pursuant to clause 5. See clause 6 B.(3).

The Statutory Framework

18. In the context of the current applications the Tribunal's jurisdiction is contained within the Act. The relevant provisions are set out in the Appendix hereto which forms part of this decision.
19. It will be seen that first there must be a service charge payable by a tenant of a dwelling as part of or in addition to rent. See s18(1). Insurance is certainly included. See s18(1)(a).
20. In general service charges are only payable to the extent that they are reasonably incurred and reasonable in amount for work or services of a reasonable standard. See s19(1).
21. S27A provides that where an amount is alleged to be payable by way of service charge, an application may be made to a leasehold valuation tribunal for a determination whether or not it is payable, and if it is as to the amount payable, when, how, by whom and to whom. See s27A(1).

The Applicant's Case

22. The Applicants' case is set out in its written representations submitted on 20 February 2006 by their solicitors.
23. In essence the Applicants draw attention to the draft Particulars of Claim prepared by the Respondent in respect of two out of the three Properties. In the drafts the Respondent asserts an entitlement to sums equal to the commission it would have earned had the insurance been placed through its agency. The Applicants calculate that the commissions claimed vary between 41.84% and 93.92% of the actual cost of insurance incurred by the Applicants.
24. The Applicant's make submissions as to the true construction of the relevant clause in the leases and as to the intentions of the parties

when the leases were granted. Without prejudice to their construction argument the Applicants allege that in respect of some years the Respondent has acquiesced in the placing of insurance and aver that the Respondent is only entitled to commission in respect of the years 2005 and onwards.

25. The Applicants do not make any submissions on the preliminary issue, which is whether the Tribunal has jurisdiction to determine the applications.

The Respondent's Case

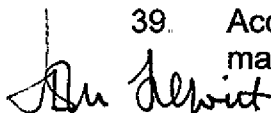
26. The Respondent's case is set out in written submissions prepared by Miss Shea of counsel. It is pointed out that the Respondent has no right to recover from individual lessees contributions to the costs of insurance or commissions and does not seek to do. It avers a right to recover from the respective Applicants damages for breach of the Applicants covenant to insure the Properties through an agency of the Respondent. Such damages as it may recover from the companies are not in the character of service charges payable by a tenant of a dwelling.
27. Submissions are made that the Tribunal does not have jurisdiction to determine the issues raised by the Applicants in applications specifically made pursuant to s27A of the Act.

Findings and Reasons

28. In general terms the Tribunal prefers the submissions made on behalf of the Respondent.
29. The Tribunal finds that s27A of the Act gives a leasehold valuation tribunal jurisdiction to determine whether or not a specific service charge is payable by a tenant of a dwelling, and if it is, how much is payable, when, how, by whom and to whom.
30. In the present cases the corporate Applicants are not tenants of dwellings, they simply have contractual obligations to manage the Properties. Included is an obligation to effect insurance in accordance with clause 5(6)(a) of the leases. The Respondent says it has not done so and claims damages for breach of covenant. In our view such damages are not service charges payable by a tenant of a dwelling within the meaning of s18 of the Act.
31. It would have been helpful to the Tribunal if the Applicants' solicitors had addressed the preliminary issue and made submissions on the question of jurisdiction. Unhappily they did not do so, but concentrated on what it seems they believe to be the merits of the case namely that the lease does not oblige them to insure through the agency of the Respondent, and if it did, the cost of insurance would have been much greater than they were able to achieve elsewhere.
32. At a late stage the Applicants' solicitors nominated three individual tenants to be joint Applicants. It is not clear why this was done. No

explanation has been given. We accept that the cost of insurance incurred by the Applicants will be passed on to the individual lessees who will pay their respective contributions and that such contributions will amount to service charges payable by them, but such service charges are payable to the Applicants, not to the Respondent. We find that joining a nominated individual lessee into these proceedings does not give rise to a service charge payable directly by a tenant of a dwelling to the Respondent.

33. We find that we do not have any jurisdiction to make a determination of or declare the meaning and effect of clause 5(6)(a) of the leases as requested by the Applicants in their applications and written submissions.
34. Any damages which the Respondent might recover from the Applicants if it establishes its breach of covenant case and the quantum of damages might be re-charged by the Applicants to individual lessees if the terms of the leases permit it, and to that extent it may be that, in due course, the individual contributions payable by lessees might become service charges payable by a tenant of a dwelling, but such service charges are payable by the tenant to the Applicants, not by the tenant to the Respondent.
35. Accordingly we do not see that the question raised in these applications relates to a service charge within the meaning of s18(1) and s27A of the Act payable directly as between any of the Applicants on the one hand and the Respondent on the other. The real issue between the parties is identified as the Respondent's allegation of breach of covenant on the part of the Applicants in failing to insure through the Respondent's agency and the damages claimed in relation thereto. We find that we do not have jurisdiction to determine that issue in an application made under s27A of the Act.
36. It follows that we also find that we do not have jurisdiction to make an order under s20C of the Act in relation to any costs which the Respondent may have incurred in these proceedings. We find that the leases do not provide for the payment of service charges by any of the Applicants direct to the Respondent and thus there can be no question of the Respondent putting any costs it may have incurred through any service charge account.
37. The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 do not empower the Tribunal to order one party to pay or contribute to the costs of another party. Generally each party in tribunal proceedings is responsible for their own costs.
38. The Respondent might have made an application for costs limited to £500 under paragraph 10(2) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 but has chosen not to do so.
39. Accordingly we find that we do not have any jurisdiction or power to make any orders as to costs and we thus decline to do so.



John Hewitt
Chairman
19 April 2006

The Appendix

Landlord and Tenant Act 1985

Section 18: Meaning of 'service charge' and 'relevant costs'

'(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent:-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose:-

- (a) 'costs' includes overheads, and*
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.'*

Section 19: Limitation of service charges: reasonableness

'(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 provision 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C: Limitation of service charges: costs of proceedings

'(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 court or leasehold valuation tribunal, or in connection with arbitration proceedings, 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) The application shall be made:-

- (a) *in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*
 - (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
 - (c) *in the case of proceedings before the Lands Tribunal, to the tribunal;*
 - (d) *in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
- (3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

Section 27A: Liability to pay service charges: jurisdiction

(1) *Where an amount is alleged to be payable by way of service charge, an application may be made to a leasehold valuation tribunal for a determination whether or not any amount is so payable and, if it is, as to:-*

- (a) *the person by whom it is payable,*
- (b) *the person to whom it is payable,*
- (c) *the amount which is payable,*
- (d) *the date on which it is payable, and*
- (e) *the manner in which it is payable.*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to:-*

- (a) *the person by whom it would be payable,*
- (b) *the person to whom it would be payable,*
- (c) *the amount which would be payable,*
- (d) *the date at or by which it would be payable, and*
- (e) *the manner in which it would be payable.*

(4) *No application under subsection (1) or (3) may be made in respect of a matter which:-*

- (a) *has been agreed or admitted by the tenant,*
- (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
- (c) *has been the subject of determination by a court, or*
- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having paid the whole or any part of an amount alleged to be payable by way of service charge.*

(6) ...

(7) ...