

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALAUTION TRIBUNAL**

In the matter of Schedule 11 of the Commonhold & Leasehold Reform Act 2002

and in the matter of 24 Ely Place Swindon Wiltshire

Case Number: CHI/00HX/LAC/2006/0003

BETWEEN

Sovereign Housing Association Limited

Applicant

and

Hazelvine Limited

Respondent

The matter was dealt with by the Tribunal upon consideration of written representations on 9th March 2007

Decision

Issued : 12th March 2007

Tribunal

Mr R P Long LLB (Chairman)

Mr J B Tarling MCMI

Decision

1. The Tribunal has determined for the reasons set out below that it has no jurisdiction to entertain this application.

Reasons

2. This is an application by Sovereign Housing Association (“the Applicant”) to the Tribunal to determine the liability to pay for an administration charge. It is made under paragraph 3 of Schedule 11 of the Commonhold & Leasehold Reform Act 2002 (“the Act”). At the request of the parties the Tribunal dealt with the matter upon consideration of written representations and without an oral hearing.
3. The facts of the matter as they appear from the papers provided to the Tribunal by both parties and from their written representations are these:
 - a. On 23rd December 2003 the Applicant acquired premises at 24 Ely Court Swindon together with other property from Linden Homes (Western) Limited. The whole of the property transferred comprised one block of six flats. An incomplete copy of the Land Registry Transfer dated 23rd December 2003 (“the Transfer”) that gave effect to the transaction has been provided to the Tribunal. It has not seen a copy of the Land Register entries providing details of the title.
 - b. The Transfer does not expressly state whether the property transferred is freehold or leasehold. It specifies extensive rights and exceptions, and in paragraph 3.1 and 3.2 of Schedule 3 to the Transfer the Applicant covenants to pay to “the Company” a fair and reasonable proportion of the cost of renewing conducting media and to pay a maintenance charge.
 - c. Since part of paragraph 12 and the whole of paragraph 13 up to paragraph 13.12 of the Transfer are missing from the Tribunal’s copy (being presumably page 2 and possibly also a third page), it has inferred from the representations it has received from Hazelvine Limited that the reference in the Transfer to “the Company” is a reference either to Linden Homes Western Limited or to its appointed management company. It is not relevant for the Tribunal to know the precise make up of the maintenance charge for the purpose of determining this application.
 - d. Hazelvine Limited is a property management company appointed by Beaufort Place Property Management Limited to manage the property comprised in the Transfer and, it appears, other property in respect of which maintenance charges are payable by the Applicant to Linden Homes Western Limited or its successors or appointees. The relationship between Beaufort Place Property Management Limited and Linden Homes Western Limited has not been explained to the

Tribunal, but it appears to be common ground between the parties that the demands that have been made are properly payable.

- e. At a time in 2004, said by Hazelvine Limited to be on 16 April 2004 but the copy lease supplied by the applicant is undated, the Applicant granted a shared ownership lease of 24 Ely Court to Mr R D Newitt and Ms S E Shears for a term of ninety-nine years from 31st March 2003 subject to the payment of the rents and other sums reserved by that lease.
- f. It appears from the papers before the Tribunal that during 2005, or perhaps in 2004, the Applicant formed the habit of paying the service charge demands for this and for other properties managed by Hazelvine Limited by means of bulk transfers made through the Banks Automated Clearing System (BACS”).
- g. On 23rd February 2006 Hazelvine Limited wrote to the Applicant and said that the method of payment through BACS caused them a problem. That was because the Applicant paid sums in respect of several sites that they managed by that means, and this presented an administrative burden for them in having to separate the payment received into the various separate accounts that were maintained for each of the different sites. They asked for individual cheques, and pointed out that they had a policy of charging individuals an administration fee of £25 where they paid cheques or transfers that combined different accounts in one amount. The Applicants replied on 24th July 2006 that they would not accept such a charge.
- h. On 8th June 2006 Hazelvine Limited sent a demand to the Applicant for £506-91. That sum was expressed to be for ‘service charges’ in respect of 24 Ely Court, and was accompanied by a form of account setting out various relevant receipts and expenditures for the year to 31 December 2005. The demand bore a statement that Hazelvine Limited was acting as agent for Beaufort Place Property Management Limited, and also bore a notice in the form required by section 48 of the Landlord & Tenant Act 1987 giving an address of Wroughton Management Limited who were stated to be the Landlord.
- i. The Applicants paid the demand with others through the BACS system. A document bearing the legend “App 5” from amongst the copy documents submitted by the Applicant shows what appears to be a list of payments and has the date 3rd October 2006 and illustrates the procedure adopted. However, it seems that another earlier BACS payment had been made in June 2006, because a demand for £35-00, described as ‘administration charge’ was served by Hazelvine Limited on the Applicant on 13th September 2006. The Applicant refused to pay it and referred the matter of the payability of the sum demanded to the Tribunal by means of an application dated 17th October 2006.

4. The Tribunal's jurisdiction to deal with administration charges derives from Schedule 11 of the Act. Paragraph 1 (1) of that Schedule defines an administration charge as:

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

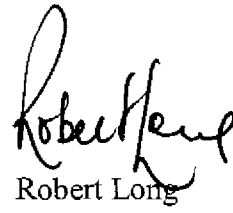
- a. for or in connection with the grant of approvals under his lease, or applications for such approvals,
- b. for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is a party to his lease otherwise than as landlord or a tenant,
- c. in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- d. in connection with a breach of a covenant or condition in his lease.”

By paragraph 1 (3) of the same Schedule a ‘variable administration charge’ is an administration charge payable by a tenant that is neither specified in the lease nor calculated by a formula specified in it, and by paragraph 2 a variable service charge is payable only to the extent that the amount of the charge is reasonable. Paragraph 5 gives the Tribunal jurisdiction to order whether an administration charge is payable, and if so the amount that is payable, by whom it is payable and to whom and in what manner it is payable.

5. It follows that in order for the Tribunal to have jurisdiction in this matter, the payment the subject of the application must be payable by a tenant of a dwelling as part of or in addition to the rent payable under his lease, and it must be payable in respect of a charge made under one of the four heads specified in paragraph 1(1) of Schedule 11 set out above.
6. The Applicant in its representations does not specify the nature of its own tenure. However, it argues that there is a relationship of landlord and tenant between itself and Beaufort Place Property Management Limited because section 30(1) of the Landlord and Tenant Act 1985 provides that the term “landlord” includes anyone who has a right to enforce payment of a service charge. Because the Transfer allows Beaufort Place Property Management Limited, for whom Hazelvine Limited are the agents, to demand a service charge in respect of the maintenance of the cost of the estate then the Applicant argues that the demand of that service charge implies that the Applicant is a tenant.
7. On behalf of Beaufort Place Property Management Limited, Hazelvine Limited argues that the Applicant is the freeholder of 24 Ely Place. As such the application related to premises of which it was not the tenant, and because of that the payment could not be an administration charge. The Respondent contended that the payment was of a purely contractual nature.
8. The Tribunal is satisfied upon the evidence before it that the Applicant is the freeholder, not a tenant, of 24 Ely Place. Therefore any payment made in

accordance with the Transfer cannot fall within the provisions of Schedule 11 of the Act. The argument it advances turning upon section 30 of the Landlord & Tenant Act 1985 is not sustainable. That is because section 18 of that Act defines a service charge for the purposes of sections 18 onwards of that Act as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent' for various heads of expenditure. The reference to a service charge in section 30 of the same Act therefore is a reference to a service charge as defined in section 18, and thus necessarily imports reference to payment by a tenant of a dwelling to a landlord.

9. Even if the Tribunal is wrong about that, the payment the subject of this application does not in any event fall within any of the four categories of payment set out in paragraph 1(1) of Schedule 11 of the Act. It relates to a payment for failure to split a composite payment into its component parts. That amount is not provided for anywhere in the transfer and it is not necessary for the Tribunal to express a view about whether or not it is a contractual payment as Hazelvine Limited assert in order to determine this application..



Robert Long
Chairman

12th March 2007