SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number: 0031/06

In the matter of sections 20 and 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Re: 69 Marina, St Leonards on Sea, East Sussex

Between:

Ms M A Robinson and others — Applicants

and

Mr M A Y Ghoorun and Mr J Oram — Respondents

Reasons for decision

Hearing: 17th April 2007

Date of Issue: 12th June 2007

Tribunal:

Mr R P Long LLB (Chairman)
Mr B H R Simms FRICS MCIArb
Miss J Dalal

Decision

1. For the reasons set out below the Tribunal has determined:

   a. that it is reasonable for the requirements of section 20 of the Act to be dispensed with in relation to the works that have been carried out at the property between December 2005 and November 2006 the subject of the invoices set out in the list in paragraph 24 below;

   b. that the Respondents are each responsible (subject to proper demand according to the terms of the lease first being made) for the proportion of the sum of £17691-36 represented by the proportion that the rateable value of the flat in question bears to the rateable value of all the flats in the building for service charges, and

   c. that upon the snagging works (which in particular include works to exterior decoration and blown rendering) being completed within six months of the date of this decision (but not otherwise) the Respondents will further become liable upon receipt of proper demand for the like proportions of the sum of £1000-00 which is the Tribunal's estimate of the value of the snagging work required to establish that the standard of the work is reasonable in all respects.

Reasons

2. There were two applications before the Tribunal, both of which were made by Ms M A Robinson, Miss K L Simpson, and Mr E Palmer and Ms K Mullaniff. They were:

   a. an application pursuant to section 20 ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act") for a retrospective dispensation from compliance with the requirements of section 20 of the Act in respect of works that have been carried out at the property during 2006 and of minor works presently required to complete them, and
   b. an application pursuant to section 27A of the Act for a determination pursuant to section 27A of the Act whether a service charge is payable for the period (as defined at the hearing by Mr Menzies) 18 October 2005 to 30 September 2007 for the basement flat whose lessee is Mr Oram, and the lessee of flat 5 Mr Ghoorun.

3. Unless otherwise stated, any reference to a page in this note is a reference to the number of the page in the numbered bundle of documents that was before the Tribunal.

Inspection

4. The Tribunal inspected the property before the hearing in the presence of those who subsequently attended it. It saw an inner terrace, Victorian building situated on the sea front road in St Leonards on Sea converted into six self-contained flats. One flat has been created in the basement, and on each of the

ground and four upper floors. The property has cement rendered brick, or brick and flint elevations, with a pitched, tile-covered, roof behind a parapet wall at the front. The rear has several additions of varying heights with flat roofs. The Tribunal was enabled to see a portion of the front roof from the balcony of a neighbouring property. The building is in part built against a steep cliff face that is faced with a concrete retaining wall into which the ground floor addition is set. Mr Oram drew the Tribunal's attention to a number of features of the work that has recently been done that he said amounted to poor workmanship.

The Leases

5. The leases of both flats the subject of the section 27A application were granted in 1986, and demise a term of ninety-nine years from 16th July 1985 subject to the payment of a yearly ground rent of £35. A further rent is payable in order to defray the cost of the performance of the landlord's obligation. Summarised, the obligations are those of the repairing, maintaining and insuring the property that are contained in the leases, the payment of surveyors' fees, rents rates taxes water gas and electricity charges payable in respect of common parts, in providing other facilities and complying with any of the covenants entered into by or imposed on the landlord by operation of law. The lessee is to pay to the landlord such amount as shall be a just and fair proportion of the cost of these items.

6. The mechanism provided by the lease for recovery of those sums is that the amounts payable for the matters mentioned in the last paragraph are to be assessed by the landlord's surveyor or agent, and a demand for the just and fair proportion of that amount is then sent to the lessee. A proviso to clause 1 of the leases lays down that the "just and fair proportion" shall be such sum as the rateable value of the flat in question bears to the total rateable value of all the flats in the building.

7. The leases indicate that all the leases in the building are intended to impose similar covenants and conditions to those that are contained in the leases themselves. However, Mr Oram's lease contains a provision that he is not to be liable to contribute towards the cost and maintenance of the internal communal parts of the building other than those shown edged blue on plan number 2. There is no evidence before the Tribunal to show the extent of the land edged blue on plan 2 because the Tribunal's copies of the plan were not coloured. The Tribunal understood that otherwise the leases of flats at the property are for all material purposes in similar form. It is pertinent that the windows and window frames are included in the demise of each of the flats.

The Law

8. Whilst the Tribunal has of course worked from the precise wording of the relevant statutory provisions, the following is a brief summary of the primary provisions so far as they are relevant to the instant case.

9. Section 20 of the Act relates, so far as is relevant the instant case, to the position where the cost of works to be carried out exceeds £250 per flat. That sum is the maximum amount that can be recovered in respect of those works unless the relevant consultation requirements set out in Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") have been complied with or have been dispensed with in relation to the works by or on appeal from this Tribunal.

10. By section 20ZA of the Act, where an application is made to this Tribunal for a determination to dispense with all or any of the consultation requirements relating to qualifying works, the Tribunal may make the determination if it is satisfied that it is reasonable to dispense with them.

11. By section 27A of the Act, an application may be made to the Tribunal for a determination whether a service charge is 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 at or by which it is payable, and
    e. the manner in which it is payable.

    The provisions apply whether or not a payment has been made but an application may not be made where the lessee has agreed or admitted the sum due.

Facts

12. A short adjournment was necessary at the beginning of the hearing since it transpired that Mr Holden did not have a copy of Ms Robinson's statement. He was given time to read and consider it, after which time he indicated that he was content to proceed to deal with the matter without further delay.

13. There was little dispute about much of the underlying basis of the issues before the Tribunal, and it is convenient to summarise the facts that it was able to derive from the evidence that was put before it.

14. The freehold of the property was acquired originally in or about 1993, and the lessees of five of the flats, namely John Oram, Margaret Robinson, Kim Simpson, Eugene Palmer and Mr Ghoorun are presently entitled an equal share of the freehold. Because the law allows no more than four persons (acting as trustees) to hold a legal estate in land, the position since 2003 has been that the registered freeholders are John Oram, Margaret Robinson, Kim Simpson and Eugene Palmer. In somewhat non-technical terms, they hold the property upon trust for themselves and Mr Ghoorun so that the owner(s) of each flat is/are entitled to a one fifth share. The lessee of flat 1 does not participate in the freehold ownership arrangement. The Tribunal was told that there is no trust deed or any other formal arrangement relating to the freehold ownership, but that by informal arrangement the lessees of the flats participating in it do not pay ground rent. There is no evidence before the

Tribunal that any alterations have been carried out at the property since 1st April 1990, and indeed on inspection the property appeared to be both laid out and constructed as it would have been at the time when the leases described above were granted.

15. Except for an episode in 2004 when it was realised that no one had insured the property, and hasty arrangements had to be made to rectify the situation, the management of the property appears to have proceeded informally, but fairly smoothly until 2005. The Tribunal understands that the lessees have all paid equal contributions to the insurances that have been effected, and that the property is now insured, although it did not enquire into the nature or amount of the cover since the matter was not in issue before it. Mr Oram and a previous owner, a Mr Thompson, dealt with such repair work as was needed and billed the other lessees for equal shares of the cost.

16. Problems began to arise in mid 2005. At that time Ms Robinson noticed that ceilings in rooms in her flat were showing signs of water penetration. She discussed the matter with Miss Simpson who said that her flat also showed signs of water penetration. They urgently arranged to ask builders to inspect the property and to give an estimate for the cost of remedying the problem. It appears from a quotation of which a copy appears at pages 141 and 142 that BEM Builders and Decorators Limited ("BEM") attended at the property on 20th June 2005. Their quotation for the work that they considered needed to be done was a £17644.25 exclusive of VAT (page 142). It allowed only for checking the main roof, chimneys, firewalls, flashings and gutters but not for work to any of them. Quotations for rather different work at a slightly higher total price were obtained at about the same time from Above Board Limited (pages 136-139).

17. An informal meeting of lessees was held in mid July as a result of the quotation being received to discuss the situation. It was attended by the applicants and by Mr Oram, but not by Mr Ghoorun. A further quotation was obtained in September, apparently as a result of that meeting from D&S Construction Limited ("D&S") for more restricted work in the sum of £7945 exclusive of VAT. That quotation covered the erection of scaffolding at front and rear, preparing the front and rear elevations for decoration, decorating sash windows at the rear, repairing rear elevation mouldings clearing front and rear main gutters and clearing the site. Mr Ghoorun made a note that was communicated to the Applicants on his copy of the estimate that he did not agree that the work needed doing.

18. A further meeting was held in October that agreed to start maintenance work. It was again attended by all parties except Mr Ghoorun, although the Tribunal is satisfied that he was made aware of it and of its outcome. Finally at a meeting on 12 November 2005 attended by everyone except Mr Oram and Mr Ghoorun it was agreed that each flat would contribute £3000 towards the cost of the maintenance work. The builder referred to in the minutes of that meeting is D&S.

19. No question was raised at this time by anyone whether or not advice should be sought about the extent of the work that would be required to the property, but those attending the meeting relied upon the estimate that was before them and appear to have assumed that the builders would be able to identify whatever needed to be done. There does not seem to have been any discussion at the meeting about whether any further work might be required.

20. The parties, including Mr Dean who is the lessee of flat 1 but excluding Mr Oram and Mr Ghoorun signed "agreements" on 16 November 2005 after the meeting on 12 November whereby they each agreed to contribute £3000 per flat towards the work at the property. It was not suggested before the Tribunal that these agreements were binding in nature. Similarly it was not suggested that Mr Oram and Mr Ghoorun they were unaware of the meeting on 12 November or of its conclusions. It was at around this time that Mr Oram suggested in conversation with one or more of the parties that he could do the work himself more cheaply. Mr Oram was anxious to impress upon the Tribunal that he had not agreed to supervise the works although it was not until after a meeting on 11th March 2006 that any he seems to have registered any formal objection in the matter. He did so then because the minutes of that meeting described him as 'building manager'.

21. D&S began work at the end of 2005 or the beginning of 2006. They advised at that time that surveyors be asked to report on the condition of the front roof area. The purpose of this appears to have been to seek to deal with the water ingress problem. Messrs Adams John Kennard were instructed to carry out a visual inspection of that area, which they did on 16th January 2006. They advised:

    a. that the cement render to the fire walls be removed and the lead flashing be taken off. After raking out the existing brickwork should be re-rendered, and new lead flashing should be installed
    b. that asphalt patches should be taken off the party wall to the right, and a new rendered coat should be applied
    c. that the loose rendering on the front parapet should be replaced
    d. that the existing front parapet gutter should be cleared and redressed
    e. the bottom row of tiles should be lifted in order to check the felt covering and to lay reinforced felt

    Page 158 appears to be missing from the bundle supplied to the Tribunal and the Tribunal cannot be sure that there were no other items mentioned.

22. Further work was authorised in accordance with Messrs Adams John Kennard's recommendations. As far as the Tribunal was able to see when it inspected the property, albeit during a very dry period in April 2007, it seems to have been successful in curing the water penetration. By November 2006 however, a sum of £19087-13 had, according to the account on page 153, been paid to D&S for the work comprised in their original quotation and the additional work recommended by Messrs Adams John Kennard. That total includes £385 for surveyors' fees. In addition, Messrs Quality Touch had fitted a new front door at a cost of £700.

23. In September 2006 or thereabouts Messrs Menneers were instructed to advise the freeholders other than Mr Oram and Mr Ghoorun with regard to the shortfall in payment of sums demanded of them. Mr Oram had paid £1071-00 out of £3000-00 demanded and Mr Ghoorun had paid nothing. As a result of the advice that they received then the freeholders became aware for the first time of the section 20 procedures that they should have followed, and of the possibility of applying retrospectively to the Tribunal for dispensation from compliance with them. They appear also to have been advised of a need to make the application under section 27A of the Act, and both applications followed thereafter.

24. The work has now substantially been completed. There is no snagging list, and no one has formally inspected the work on behalf of the freeholders to see that it has been properly carried out. Ms Robinson said that it had not occurred to the applicants to do that. She could not say what more, if any, work would need to be done. To date the following payments had been made by reference to the list on page 153:

Date	Amount(£)	Payee	Page (in bundle)
19 01 05	2937-50	D&S	159
14 02 05	1797-75*	D&S	163
07 04 05	2154-95	D&S	169
16 05 05	1175-00	D&S	173
06 10 05	700-00	Quality Touch	178
03 06 06	2103-25	D&S	180
19 06 06	2397-00	D&S	183
12 07 06	1277-81	D&S	187
23 08 06	2726-00	D&S	188
02 11 06	1762-50	D&S	199
Total	19031-36		

The item marked '*' includes the surveyor's fees of £385.

In addition a bill for £405-37 was received from Messrs Menneers in September 2006. The copy of it (page 192) is marked to indicate that of that sum only £305-50 has been paid. That amount is not included in the above figure, and so is not in turn deducted in paragraph 69.

25. Ms Robinson said that the Tribunal was not asked to deal at present with the costs of repairing the flat roof over the storeroom as that work had yet to be done. It was not expected that 'snagging' would incur any extra cost.

26. It is appropriate to add that there has subsequently been some delay because shortly before the hearing originally planned Messrs Menneers (by then Messrs Menneers Shuttleworth) became aware of a conflict of interest in that Mr Ghoorun has in the past been a client of theirs, and it became necessary for the applicants to instruct fresh solicitors.

The application for dispensation under section 20ZA

27. For the Applicants, Mr Menzies said that the essence of the consultation requirements is that notice is given of the nature of the works and that those affected have the opportunity of making observations, including making a nomination with regard to the contractor who is to carry out the work. Ms Putland's letter of 18 October 2005 (page 144) notifying residents of a meeting to be held on the following Saturday 22 October indicated the work that was necessary, and indicated that she had sent an estimate previously.

28. The matter was discussed in more detail at the meeting held on 22 October. The lessees all had the opportunity to comment at the meeting and/or to reply to the letter so that their input might be taken into account. Mr Ghoorun did comment by expressing his view as to the need for the works in his note, although he did not raise any other issues that he had. Since winter was approaching the matter was one of some urgency. Architects were called in because initially the cause of the water penetration was not apparent. Their report was produced and Mr Ghoorun was invited to attend the meeting at which it was discussed. He was offered a loan to assist him in contributing if ability to contribute was a problem.

29. In those circumstances he submitted that the requirements of fairness had been met, and that the actions of the Applicants were reasonable, especially in view of the clear time pressure in respect of matters that required urgent attention. The Tribunal should make its decision on the basis of what is fair and reasonable. He said that all parties were aware of and had the opportunity to comment upon what was intended. Mr Ghoorun indeed had gone so far as to make a note that he did not agree with the proposals. He had been given the opportunity to be involved at every stage but had declined it. It should not be appropriate for proper steps to be defeated by two people who simply objected and had offered no alternative.

30. For Mr Ghoorun Mr Holden said that in the present case the lessees had no opportunity to challenge the Applicants' proposals or to consult. Ms Robinson accepted in her statement (paragraph 10 at page 80) that the maintenance regime had never been followed. In his client's statement the proposition was advanced that the decided cases showed that the Tribunal's power to dispense had been used in an emergency. He relied for that proposition on page 221 of Davey & Bates on the LVT, and had no authority to offer. The Tribunal put to him that in the experience of the members of this Tribunal the power had been used in a wider context from time to time, and that the wording of section 20ZA(1) did not appear to imply the narrow interpretation that he sought to give it. Mr Holden did not seek to respond to that point. The Applicants' approach when seeking a substantial sum had been very informal, Mr Holden said. The Residents' Association could not in any event be the managing agents except with the consent of all lessees, and the Applicants had failed to demonstrate such consent.

Decision on the Section 20 ZA application

31. The Tribunal is satisfied from the evidence before it that little had been done with regard to the management of the property for some years before 2005. The apparent suddenness of the onset of serious water ingress bears this out, as does the fact that the lessees collectively had managed to overlook the need to insure the property in or about 2004.

32. Once the water ingress problem became apparent, hasty steps were taken to seek a builder's advice. That was undoubtedly a step in the right direction, but it does not seem to have occurred to those concerned with the problem at that time that they might need to seek professional advice. Fortunately, following the July meeting they did at least seek the views of other builders, and eventually they decided for reasons that were not entirely apparent to the Tribunal (unless it was the fact that the amount shown on the first D&S estimate was less than that shown on the other estimates) to instruct D&S to undertake repair work.

33. However, the Tribunal was persuaded by Mr Menzies arguments that the parties had all been made aware throughout the period of the steps that were being taken, or were proposed, and that all of them were invited to attend the meetings that have been referred to and to participate in them, and were made aware of their outcome. As it indicated to Mr Holden, the members of this Tribunal are aware of cases where dispensation under section 20ZA of the Act has been granted in cases other than cases of emergency.

34. Mr Holden was unable to produce any authority for the proposition in Davey and Bates that the power to dispense is used only in emergency. The Tribunal doubts its accuracy. The wording of the Act simply requires the Tribunal to be satisfied that it is reasonable to make the determination. Despite the fact that the applicants approached the problems they faced in a rather amateur fashion (and they are, after all amateurs in such matters) they sought to deal with the problems that arose, to inform everyone else of what they were doing and to involve them in dealing with those problems.

35. Mr Holden did not raise any specific issue concerning any possible effect of Mr Ghoorun's note stating that he did not agree with the actions proposed at the November 2005 meeting. To the extent that that issue may be impliedly before the Tribunal, it considered that such an objection, if made in circumstances where the procedure required by Part II of Schedule 4 of the Service Charges (Consultation Requirements) England Regulations 2003 (SI 2003/1987) had been adopted, would be governed by paragraph 10 of that Schedule. The Applicants would have been obliged to have regard to Mr Ghoorun's observations. There is nothing before the Tribunal that suggests that they did not do so, even if they took no further specific steps with regard to them. Indeed they appear to have endeavoured to keep contact with him both about the proposed works and his possible contribution to them.

36. The Tribunal rejected Mr Holden's arguments about the need for the consent of all the parties for the reasons set out in paragraph 55 below. The work here was being organised by a majority of the landlords (four fifths of them for the period in which Mr Oram remained a party to the activities) on behalf of all of them. There is nothing in the lease to which the Tribunal's attention was drawn or indeed that it has been able to find that requires the management of the property to be carried out through managing agents. It was open to the landlords to do or to supervise the work themselves if they saw fit.

37. The Tribunal has therefore determined that in all the circumstances it is reasonable for the requirements of section 20 of the Act to be dispensed with in relation to the works that have been carried out at the property between December 2005 and November 2006 the subject of the invoices set out in the list in paragraph 24 above.

The application under section 27A

38. As to the reasonableness of the charges that had been incurred, Mr Menzies said that Mr Oram had complained about the standard of the work. It was the Applicants' contention that Mr Oram had been appointed to act as project manager at the initial meeting (page 145). He had inspected the work and reported to the association on 25 February 2006 (page 161). There was an issue about the lead flashings. Although Mr Oram complained that the minutes were wrong, he took issue with them only during the meeting on 11 March 2006 when he did not want to be shown as 'building manager'. He did not seek on 11 March to amend his conclusion that the work was done competently and was concerned only with the flashings.

39. As to the contractual liability to pay the charges, the lease made it clear, said Mr Menzies, that the service charge was payable, and was recoverable as rent. Mr Ghoorun's submission was that the service charges were not payable because the abolition of the rating system meant that the system of apportionment by reference to rateable value was no longer operable. That could not be correct as a matter of contract. He cited Chitty on Contracts (24-064 (edition not specified)) as support for the proposition that because the performance of a particular contractual obligation may be excused by a new circumstance that does not mean that the other provisions are frustrated.

40. The position was that whilst the abolition of domestic rating made the application of the provisions of the lease as to apportionment of service charges unworkable, that did not mean that the obligation to pay service charges was also unworkable. A court must imply terms as to the size of the contributions in the same way that it would imply terms into any other contract were the agreement is complete despite lack of detail (Chitty 2-104). He submitted that the approach whereby all tenants pay an equal share that the Applicants had sought to exercise would be implied.

41. Mr Holden made a number of general submissions that may conveniently be recorded here and then specific submissions about the service charges. His first general submission was that there is no trust deed. That being so all

trustees must agree to any decisions that were made (*Luke v South Kensington Hotel Company [1879] 11 Ch D 121* - no report supplied at the hearing). Mr Ghoorun either was not party to the decisions, or if he was he did not agree to them. There had been no notice of the change in ownership of the freehold in 2003 as required by section 3 of the Landlord & Tenant Act 1985. As it presently stood the lease gave no power to recover a service charge. The provisions (page 23 clause 3(1)(b) and the proviso to paragraph 3 (on page 24) were otiose as the provisions relating to rateable value no longer exist.

42. As to the service charge issues, Mr Holden said that that best practice is a benchmark for establishing reasonable cost. Here, however, there had been neither survey nor specification before works were commenced; work had been paid for without any idea whether or not it was reasonable as a matter of trust and no tendering exercise had been carried out when further substantial expense was found to be requisite. No work had been carried out on the property within Mr Ghoorun's demise.

43. Mr Holden contended that the service charge apportionment clause was not workable. The definition of a fair and just proportion in the lease could not be relied upon, and a fair proportion could never be more than the cost of the work to a tenant's flat (*Sutton Hastoe Housing Association v Williams 1988 1 EGLR 56* – no copy produced). Nothing had been spent on Mr Ghoorun's flat. The costs incurred and the manner in which they were incurred were not reasonable, and the Tribunal should dismiss both applications before it.

44. The Tribunal put it to Mr Holden that within its members' knowledge rateable values still existed, and were still used, for example, in calculating water rates. Mr Holden did not seek to comment upon the point.

45. Mr Ghoorun in his statement had indicated that he contended that he was entitled to a set off against any money that was found to be due from him. He referred to the decision in *Filross v Midgely 1999 31 HLR 465* (copy not provided). Mr Holden did not seek to develop this line of argument.

46. It was Mr Holden's contention that any cost of repair in this instance had been aggravated by the failure to attend to management of the property over a number of years. When invited by the Tribunal to comment in the context upon *Continental Property Ventures Inc v White [2006] 16 EG 148* where the Lands Tribunal considered both the effect on recoverable service charges of progressive neglect of a property and the LVT's ability to determine matters for the purpose of set off otherwise more properly dealt with by a County Court, Mr Holden said simply that this was a case of blatant neglect by those responsible for maintaining the property. Mr Menzies responded that Mr Ghoorun had been one of those able to do something about he problem of neglect and said that in practice all he had done was to seek to delay matters when work was eventually to be done.

47. In response to the set off point Mr Menzies submitted that *Filross v Midgely* has no application in this case. It was concerned with the definition of 'cross claims' and 'defences'. The only question before the Tribunal was whether the

sums claimed were reasonable, and Mr Ghoorun did not assert that that was not the case.

48. Finally, Mr Holden pointed out that his client had not been asked to make service charge contributions because the mechanism for apportioning them had failed. However, the lease was worded in such a way that this fact did not absolve the landlord from carrying out the repairing obligations in the lease. Mr Menzies accepted that latter proposition.

49. Mr Oram said that originally an estimate had been received for some £7480-00 plus VAT that was acceptable to all at the meeting (which was presumably the meeting in October 2005). He only saw the detail of the final expenditure when he received the bundle of papers from Messrs Menneers in January 2007. He had been amazed to see how much had been spent. He had not been given any accounts before but had contributed a sum of £1000 plus £71 for a chimney breast before that time. The standard of the work done was in his opinion awful. He instanced what was in his opinion the unnecessary removal of lead flashing from the roof and its replacement with other materials. The cost incurred was not reasonable for the standard of work that was done. He could not say what in his opinion would be reasonable because he did not know just what had been done. In reply to Mr Menzies he said that there had been staining on the ceiling of Miss Simpson's flat, but he did not recall that being discussed at the meeting in July 2005.

Decision on the Section 27A application.

50. No specific issue was taken at the hearing about the reasonableness of the cost of the work that had been done, given that Mr Oram's primary objection was to the standard of the work. It appeared to the Tribunal that the extent of the work that was done was summed up, in general terms at least, in the narrative to the various invoices listed in paragraph 24. The Tribunal was not able at the inspection to form any very clear impression of the detail of the work done, but it could see that this is a large building on a number of floors where much of the work done would require extensive scaffolding.

51. There was no specific evidence before the Tribunal on which to base a finding of unreasonableness. Mr Oram had stated that he thought the cost of the work was unreasonable but had not sought to substantiate that statement other than by reference to the standard of the work. When invited to say what he thought would be a reasonable cost that he could not say what it would be because he did not know what had been done, As an expert tribunal, the Tribunal is entitled to ask itself in such circumstances as a further test whether the cost that has been incurred for the work that it understands has been done appears to it be reasonable. It has concluded that it is reasonable both in the absence of specific evidence of unreasonableness and because it appears to it to be very likely that work of the nature that has been done to a building like this in the Hastings area would be likely to cost a sum approaching £20,000, not least in the light of the extent of the scaffolding that will have been necessary.

52. Mr Oram argued that the work is not of a reasonable standard. He instanced, amongst other matters, the fact that some of the new rendering is cracking and some has "blown". He showed the Tribunal instances where this has happened outside of his own flat at the inspection. The Tribunal accepts that there are matters where the work appears to require correction, and that the blown and cracked rendering is one of them. However, it was told by Ms Robinson that "snagging" has yet to be carried out, and that as part of the arrangement with the builders the problems will be corrected without further charge to the lessees.

53. Whilst therefore the Tribunal accepts that at the date of the hearing there were elements of the work that were not of sufficient standard it is satisfied that they will be brought up to the required standard without further cost to the lessees. If any further cost were to be incurred for putting right work within the present application that has already been done then of course such further cost could be the subject of a separate application the Tribunal.

54. Mr Holden's arguments turned upon the sufficiency of the mechanism to apportion the service charges and the element of agreement that he said must exist between the freeholders to enable any of this work to be done.

55. In his argument based upon *Luke v South Kensington Hotel Company* Mr Holden said that in the absence of a trust deed all trustees must consent to any action. Mr Ghoorun had not consented so that any action by the other owners of the freehold was not lawful without his consent. He was not party to any action they took, or if he was he did not agree with it, and indeed had indicated his disagreement in writing. Mr Holden did not produce a copy of the case, so that the Tribunal must rely essentially on his account of it.

56. Mr Holden said that all the trustees must agree. Mr Ghoorun is by definition not a trustee, but a beneficiary only, because he is the one freehold "owner" whose name is not on the Land Register. Thus, if Mr Holden's account of the case is accurate, his consent was not necessary. Mr Oram's consent no doubt was necessary, and at the time when the work was commissioned he appears to have been in agreement with what was intended. His dissent arose at a later date. The first sign of it seems to have been after the meeting in March 2006 when he said he did not want to be described as 'building manager' in the minutes of that meeting. Neither Mr Ghoorun nor Mr Oram can seek now to rely in this connection on Mr Oram's withdrawal of his express or implied consent (whether or not it was in writing) to have the work done after the work had been embarked upon and others had incurred financial liability in reliance upon his agreement.

57. Mr Holden's second point is that good practice is a good indicator of what is reasonable, and good practice was not followed here. The Tribunal accepted both of those propositions, but did not consider that they were determinative of the issues that arose. What the applicants did certainly did not amount to good practice, but the question that the Tribunal must decide is, in its judgement, whether the costs that they incurred were reasonably incurred, whether the work done was (or will have been) done to a reasonable standard,

and whether the cost of all that is reasonable. If all of that is achieved, then the fact that best practice was not followed will not of itself be material.

58. Mr Holden further argued that he service charge mechanism has failed because the method of determining the proportions in which the service charge is to be paid by the lessee(s) of each flat is no longer operable. He said that this has arisen because domestic rates were abolished in 1990, and therefore it is no longer possible to carry out the apportionment by reference to rateable value. The Tribunal did not accept his arguments on this aspect of the matter. Rateable values are still available, even if the domestic rates system itself has been abolished. They are, as Mr Holden appeared to accept, still used to calculate water rates, and sometimes for other purposes as for example apportionments of the sort that the leases in this case require. They are readily available, although no evidence of the relevant rateable values of the flats at 69 Marina has been adduced. There is, as indicated earlier, no evidence that 69 Marina has been altered in any way that might affect rateable values since April 1990 when domestic rates were abolished.

59. In the Tribunal's judgement therefore the mechanism in this case has not failed at all. The apportionment required is still to be determined by reference to the proportion that the rateable values of the flats at 69 Marina bear to one another. The parties can perfectly well obtain the relevant information and perform that calculation for themselves. If any dispute arises within six months of the date of this decision over the calculation of the proportions by reference to the rateable values they have leave to refer it to the Tribunal for determination within that period but since it is a factual matter it is to be hoped that no such dispute will in fact arise.

60. It follows that it is not necessary to consider Mr Holden's arguments turning upon *Sutton Hastoe Housing Association v Williams*. Mr Holden did not pursue the *Filross v Midgley* point so that again it is not necessary for the Tribunal to consider it. It observes that if it had been necessary to do so then upon the information that has been put before it to date (the point not having been fully argued) it would have accepted Mr Menzies submission that the case is not relevant here for the reasons that he gave. The fact that there was delay in maintaining the property, and the concomitant that had work been done earlier it might have been done more cheaply is not in the Tribunal's judgement relevant here. The position appears to be well covered by the decision in *Continental Property Ventures Inc v White*. There is no reason to suppose that the delay here is any more or less blatant than it was in that case, and in any event that decision does not appear to require a consideration of such elements.

61. The Tribunal further considered Mr Holden's argument that there had been no notice of the change in ownership of the freehold in 2003 as required by section 3 of the Landlord & Tenant Act 1985. No evidence was adduced on the point, but assuming it to be factually accurate the matter has no bearing on the recovery of service charges. So far as it may have relevance here, the section merely allows for the imposition of a fine on a landlord who does not comply with it upon conviction.

62. The Tribunal therefore concluded that the costs in this case had been reasonably incurred. It is plain that the property had been neglected and that serious problems of water penetration were starting to arise, and needed urgently to be cured, in consequence. The procedure whereby the costs were incurred left a lot to be desired but, so far as the Tribunal is able to establish the position from the relatively sparse information on the subject available to it, the costs appear to have been reasonable for what was done.

63. Some aspects of the work require further attention before they can be regarded as of a reasonable standard. The evidence before the Tribunal is that those aspects are to be dealt with at no further cost to the service charge payers. There is no contractual basis for Ms Robinson's statement to that effect, which the Tribunal has accepted at face value. Nonetheless it must allow for the fact that Ms Robinson's sincere belief that this will be done may not be borne out, and if that happens the Respondents will be prejudiced. It has little firm information upon which to base an estimate of the value of the snagging work that will need to be done, but accepts that there are a number of matters relating in particular to the rendering and the outside decoration.

64. Doing the best it can with the limited information before it, the Tribunal has put a value on that work of £1000. It considers that any snagging work must have been completed by the expiration of six months from the date of this decision. If it is not, it will have become difficult to see what is a defect arising from the original work and what is a matter of general wear and tear. Accordingly, the Respondents should not be liable to pay their proportions of that £1000 until the snagging work has been done so that the standard of work can then be said to be satisfactory in all respects.

65. The fact that no work was done (other than the general exterior redecoration) either to Mr Oram's or to Mr Ghoorun's flat is irrelevant. The lease makes them responsible for their due proportion of its cost as a matter of contract. There is no question but that the manner of establishing those proportions is intact and capable of being operated.

66. Because the windows and window frames fall within the demise of the individual flats the costs of work to windows of £70-00 in the invoice on page 169 and of £200 (for panes of glass) and £70-00 for extra work to windows in the invoice on page 188 all fall to be borne by the lessee of the flat to which the work in question was done rather than as part of the service charge. The exception in Mr Oram's lease relating to the interior common parts does not (unless it can be said to all within the land edged blue on plan 2, as to which the Tribunal has no evidence) appear to the Tribunal to absolve him from paying his proportionate share of the cost of the front door although he does not benefit from it. A front door is within the ordinary use of the expression a part of the building as a whole rather than the interior common parts.

67. Messrs Menneers' bill is not, in the Tribunal's judgement, capable of falling within the service charge cost. The general import of the decided cases upon the matter (other than *Iperion Properties Corpn v Broadwalk House Residents*

Limited [1995] 2 EGLR 47 (CA), which appears perhaps to be out of line with the general tenor of the decided cases, most recently, for example, *St Mary's Mansions v Limegate Investments Limited and Sarruf [2003] 05 EG 146 CA*) is that there must be clear and unambiguous words in the lease to justify the inclusion of legal fees in the service charge. It appears from the *St Mary's* case that some reference to lawyers or legal fees may be required to satisfy the "clear and unambiguous" test, and no such reference appears here. The surveyors' fees of £385 however have clearly been incurred for the benefit of the building as such (by reference to clause 1(b)(iv) of the leases in question) and in the Tribunal's judgement are recoverable as service charges accordingly.

68. Thus the Tribunal determines that, subject to formal demand under the terms of the lease, the sums claimed in the application as amplified by the list in paragraph 24 are payable as service charges by the respondents in the proportions determined by reference to the relevant rateable values of the flats as the lease requires, with the deductions only mentioned in paragraphs 64, 66 and 67. Without evidence of the rateable values before it the Tribunal is unable to carry out those calculations. They should be a matter of fact, and something that the parties can do without dispute arising as a result, but the parties have leave to apply to the Tribunal to determine any dispute arising only from the carrying out of the apportionment calculations within six months from the date hereof.

69. However, the sum (subject to demand) presently recoverable and to which the proportions described above are to be applied to discover the amount due from each flats is £17286-36, calculated as follows:

Total paid out in accordance with paragraph 24		19031-36
Less:		
Retention against snagging works	1000-00	
Works to windows	340-00	
		1340-00
		17691-36

Robert Long
Chairman

11th June 2007

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/21UD/LDC/2006/0031

In the matter of sections 20 and 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Re: 69 Marina, St Leonards on Sea, East Sussex

Mr M A Y Ghoorun and Mr J Oram — Applicants

Decision on application for Leave to Appeal

Issued: 14/9/07

Tribunal:
Mr R P Long LLB (Chairman)
Mr B H R Simms FRICS MCIArb
Miss J Dalal

Decision

1. For the reasons given below, the Tribunal is not prepared to grant leave to appeal in this matter. It is of course open to the applicants to renew the application to the Lands Tribunal within twenty eight days of the date of this decision. This Tribunal can entertain no further representations upon the matter.

Reasons

2. The decision in this matter was issued on 13th June 2007, but it transpired that the copy as issued had been missing one page. Copies of the decision in a complete form were issued on 21st June 2007 and 30th July 2007. The applicants wrote to the Tribunal on 27 June to say that their appeal in the matter was that the work still to be done at the property to which the decision referred should be rectified and completed in a tradesmanlike manner. Whether because the original decision referred to the need for the work to be done (paragraph 64 of the decision) "so that the standard of the work can then be said to be satisfactory in all respects" or for some other reason that letter was not notified to the members of the Tribunal and does not appear to have been treated as an application for leave to appeal.

3. The Applicants wrote again on 1st August and raised a number of points following receipt of the complete decision. Their letter does not state that it is an application for leave to appeal, and indeed appears at the end of it to suggest that they anticipate that the Tribunal may look further at the matter in the light of a survey report they had then obtained. The matter was put before the Tribunal when all were available, and they took the view that it is appropriate to treat the letter from the Applicants dated 1st August as an application for leave to appeal. They point out that having issued their decision, it is not open to them in any case further to consider the matter since they in doing so have exhausted their statutory function.

4. This note deals with the Tribunal's view of the points raised by the Applicants in their letter of 1st August using the same reference to paragraphs as are used in that letter together with a brief indication of the point raised, and finally with the point in the letter of 27th June as follows:

   Paragraph 1. The Applicants make the point that they did not sign an agreement form on 23 November 2005 nor did they return it. At this point the Tribunal is simply recording its decision for convenience. The point about the agreement forms recurs and is dealt with under paragraph 20 below.

   Paragraph 15. The point made seeks to explain why there was no building insurance at the point to which paragraph 15 of the decision refers. Mr Oram was present at the hearing and did not make the point there. In any event, the reason why there was no insurance has no bearing on the decision that the Tribunal made. Paragraph 15 records how the matter was dealt with.

   Paragraph 16. That Mr Oram raised the matter of the water ingress. What the Applicants say maybe true, but it merely adds to the narrative, and is not otherwise material. In the hope of assisting the Lands Tribunal if the matter

comes before it, the Tribunal understood at the hearing that Mrs Putnam is or was the occupier of Miss Simpson's flat.

Paragraph 17. That the last two lines of paragraph 17 are "totally false". Paragraph 17 simply records the evidence that was given, and was not challenged, at the hearing. Mr Ghoorun had notice of the hearing but did not attend it. The letter of 18 October 2005, a copy of which is attached to the letter to the Tribunal of 1 August 2007, may or may not be the communication that was being referred to. It was not before the Tribunal at the hearing.

Paragraph 18. "Never agreed and never signed by Mr Oram and Mr Ghoorun". The paragraph records that the meeting was attended by all except Mr Ghoorun and Mr Oram, and what was agreed by those who attended it.

Paragraph 19. "Nothing was discussed regarding anything over the amount of £7954 ex. VAT. Still not signed by Mr Oram and Mr Ghoorun". This statement appears to confirm what is recorded in the paragraph in question.

Paragraph 20.

a. That Mr Oram and Mr Ghoorun have not signed agreements. The paragraph does indeed record that the evidence was that they had not signed any agreement of the sort that had been proffered. The issue of the proposed agreements is irrelevant to the question whether or not service charges are payable. The contractual position is governed by the leases, and is described in paragraphs 5-7 of the decision.

b. "Mr Oram never said he could do the work cheaper than £7954". The Tribunal's notes indicate that this point was not challenged by Mr Oram at the hearing. In any event the point is not material to the decision.

Paragraph 21. Matters as to the date when work was commenced. This information merely adds detail that was not provided at the hearing to the narrative that this paragraph contains. It is not material to the decision that was made.

Paragraph 22. Assurances that the works to the roof would not be charged by the builders. The members of the Tribunal have no record between them of evidence to this effect having been given at the hearing. There is no indication that there is anything that would have prevented the point having been raised at the hearing.

Paragraph 24. Why no inspection was carried out before payments were made. There was no evidence that any inspections were carried out on each occasion, but the Tribunal saw the totality of the work done to date when it inspected to assist it in forming its view of its standard.

Paragraph 28. As previously indicated, this letter does not appear to have been before the Tribunal at the hearing, although Mr Menzies referred to it on Mr Ghoorun's behalf. In any event it is not material to the decision that was made save to the extent that it impinges upon the matters mentioned and dealt with in paragraphs 28-30.

Paragraph 29. That Mr Ghoorun had declined the opportunity to be involved. The Tribunal is here recording Mr Menzies argument, and no more.

Paragraph 31. That roof works had been carried out in 1998. The statement is not inconsistent with the contents of the paragraph in question, nor is it inconsistent with the point that the Tribunal makes there.

Paragraph 32. Receipt of estimates. The paragraph does not appear to imply that copies of the estimate were not provided.

Paragraph 36. "Never supervised any works by three freeholders and one leaseholder". This presumably refers to any supervision by Mr Oram. If so, it is not suggested in the paragraph in question that he carried out any supervision.

Paragraph 53. "The works are unreasonable" etc. Paragraph 53 expresses the Tribunal's view of the work that had been done, and certain reservations that it entertained about it. The offer of a the provision of a survey appears to be a request to introduce material that was not before the Tribunal and which could have been placed before it (either if it had been available at the time, or if the Applicants had thought fit to commission a survey ahead of the hearing in time to put it in evidence). It is not appropriate to re-open a decided matter in such circumstances.

In addition the letter of 27 June asked that the work still to be done at the property to which the decision referred should be rectified and completed in a tradesmanlike manner. The point is dealt with in paragraph 64 of the decision that provides for a retention to be made so that the standard of the work can then be said to be satisfactory in all respects".

In the opinion of the Tribunal the grounds of appeal advanced either

a. seek to correct minor detail that could have been corrected at the hearing (but was not) and which in any event does not go in any material way to the decisions that were made, or
b. seek to rely upon an inaccurate understanding of the contractual situation created by the lease, or
c. seek to rely upon the introduction of evidence that, had it been intended to rely upon it, could and should have been introduced at the hearing.

As such the Tribunal considers that any appeal upon any of the grounds advanced has no material prospect of success, and accordingly it is inappropriate for it to give leave to appeal.

Robert Long
Chairman
12. September 2007