

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL LEASEHOLD VALUATION
TRIBUNAL**

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A

Case No: CHI/24UF/LIS/2007/0007

BETWEEN:

TRADEWINDS (GOSPORT) MANAGEMENT LIMITED

Applicant

- and -

STEPHEN REX JEFFERIES

Respondent/Lessee

PREMISES: 35 Cornwell Close
Gosport
Hampshire
PO13 9QL ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MRS H C BOWERS MRICS
MR R T DUMONT

HEARING: 9th OCTOBER 2007

DETERMINATION AND REASONS

1. Background

- 1.1 On 4th March 2006 the Applicant issued proceedings against the Defendant in the Portsmouth County Court claiming arrears of service charge payable by the Respondent to the Applicant in the sum of £740.00, and £355.70 by way of legal costs and expenses and for a declaration that failure to pay the aforesaid sums rendered the Respondent in breach of his covenants under the Lease of the residential premises he occupied at 35 Cornwell Close, Rowner, Gosport, Hampshire (hereinafter referred to as the premises). On 11th August 2006 District Judge Jolly ordered that the matter be transferred to the Leasehold Valuation Tribunal for determination of reasonableness of the service charges. Although the Applicant appealed that decision the appeal was refused by His Honour Judge Ian Hughes QC on 25th October 2006.

2. Directions

2.1 Directions were given by the Tribunal on 2nd February 2007 and 12th July 2007. A statement of case and copy documents in support were received by the Tribunal from the Applicant but the Respondents made no submissions.

3. Inspection

3.1 The Tribunal inspected the premises immediately preceding the hearing on 9th October 2007.
3.2 The service charge relates only to the maintenance of the common areas of the estate including the roads, drains, landscaped areas, wooden barriers and lighting. All appeared to be well-maintained. The area was litter-free, the grass cut and everything was in a neat and tidy state.

4. The lease

4.1 By Clause 2a of the lease dated 26th October 1988 made between Blue Boar Property & Investment Company Limited (1) and Tradewinds (Gosport) Management Limited (2) and Adrian Smith and Ann Bridget Golding (3) the tenants covenanted to observe and perform the obligations contained in the Fifth Schedule to the lease.
4.2 By paragraph 3 of the Fifth Schedule the tenants covenant to pay to the Company (i.e. Tradewinds (Gosport) Management Limited) the Estate Service Charge which shall be the Estate Due Proportion applied to the Annual Estate Cost being reasonably and properly incurred by the Company in each Accounting Period.
4.3 The "Annual Estate Cost" is defined in paragraph f of the First Schedule to the lease as meaning, "the expenditure incurred by the Company in any Accounting Period in carrying out the Estate Service Charge Works....."
4.4 By paragraph O of the First Schedule "the Estate Due Proportion" means 1/124th part of the Annual Estate Cost.
4.5 By paragraph S of the First Schedule "the Estate Service Charge Works" is stated to mean "such services specified in Part A of the Ninth Schedule as the Company shall from time to time in its discretion provide".
4.6 Part A of the Ninth Schedule to the lease provides that the Company is entitled to charge to the Estate Service Charge for, amongst other things:-
(i) the costs and expenses reasonably and properly incurred in inspecting, maintaining, repairing, renewing, decorating, furnishing, soft furnishing, heating, lighting and cleaning:-
(a) the common access ways
(b) the conducts
(c) the parking areas
(d) any other parts of the Estate to which the public the tenant and other tenants have lawful access
(e)

- (ii) Contributing to the repair and maintenance of any road or footpath giving access to the Estate
- (iii) Contributing to the cost of disposal of refuse
- (iv) Cultivating planting and maintaining any garden or recreation in landscaped areas on the Estate
- (v) Insuring the Estate
- (vi) Making payments to the reserve fund for anticipated expenditure as the Company deems desirable
- (vii) Paying the fees and expenses of amongst other professionals, lawyers providing services to the Company and paying the costs of complying with the Landlord and Tenant Act 1985 in seeking declaration as to the reasonableness of the service charge.

5. The evidence

5.1 Mr Faulkner of Labyrinth Properties Ltd who manage the Estate on behalf of the management company gave evidence to the Tribunal as to the amount of service charges said to be owed by the Respondent for the service charge years 2005 and 2006. There was no appearance by the Respondent or anyone on his behalf.

5.2 The Tribunal went through every item of expenditure incurred by the management company for the years in question. These were as follows:-

For the year 2005:-

	£
Annual return	15.00
Accounting and certification	423.00
Company Secretarial fees	528.75
Drains	5,750.00
Grounds maintenance	5,598.88
Insurance	13,588.24
Insurance Directors and Officers	1,004.85
Management fees	10,927.48
Repairs and maintenance	305.00
Lighting, electricity and repairs	656.45
Sundry expenses	823.00
	39,621.72

There was transferred to reserve £1,620.00, making a total of £41,241.72 or a charge per unit of £360.00.

For the year 2006:-

	£
Annual return	30.00
Accounting and certification	423.00
Company Secretarial fees	528.00
Drains	3,238.90
Grounds maintenance	5,898.51
Insurance	17,032.22
Insurance Directors and Officers	858.44
Legal fees	1,050.55
Management fees	11,656.00
Repairs and maintenance	3,460.58
Lighting, electricity and repairs	1,031.37
Sundry expenses	433.75
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	45,642.07

Transfer to reserve £1,620.00 making a total of £47,262.07 making the service charge demanded per unit of £380.00.

- 5.3 Mr Faulkner explained that the drains were problematical. They were old and therefore was tree root infestation and interference from children, hence the expense each year on this item. The grassed areas were cut at least fortnightly in the growing season and the cost included litter picking three times per week. The insurance commission is split with the tenants. The item for legal costs in 2006 included the cost of the appeal from the District Judge's order referring the matter to the Tribunal. The Tribunal considered that it was reasonable for the Applicant to seek to recover this sum under the service charge rather than as against the Respondent solely as it was the Company's decision to pursue the appeal which was unsuccessful.

6. The Law

- 6.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable.

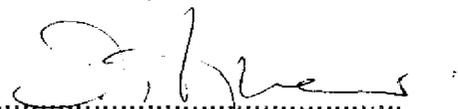
6.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

7. The determination

7.1 The Tribunal, having carefully scrutinised the expenditure for the years 2005 and 2006 found that all items were reasonably incurred and all services had been carried out to a satisfactory standard.

7.2 Consequently, the Tribunal determines that the Respondent is in breach of covenant under his lease to pay the service charges demanded and that he is liable to pay the Applicant the sum of £1,439.00 in respect of those outstanding service charges. This figure does not include any amount for the Applicant's costs of the County Court proceedings (other than the unsuccessful appeal costs) as this is an item which the Applicant is seeking from the Respondent alone in the course of those Court proceedings, rather than as a service charge item, and it is not therefore a matter within the jurisdiction of the Tribunal but is a matter for the Applicant to pursue through the Country Court. The interest claimed is also a matter for the Court to consider when the Applicant seeks to enter judgment.

Dated this 12th day of November 2007



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D. Agnew LLB, LLM
Chairman

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- 4.5 By paragraph S of the First Schedule "the Estate Service Charge Works" is stated to mean "such services specified in Part A of the Ninth Schedule as the Company shall from time to time in its discretion provide".
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 - (b) the conducts
 - (c) the parking areas
 - (d) any other parts of the Estate to which the public the tenant and other tenants have lawful access
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- (ii) Contributing to the repair and maintenance of any road or footpath giving access to the Estate
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Dated this 16th day of November 2007

Amended 18th December 2007

(signed)

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**D. Agnew LLB, LLM
Chairman**