RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**2 Linen Court, St. Marys Street, Canterbury, Kent CT1 2QP**
Applicant	:	**Mary Teresa Mariasy**
Respondent	:	**Linen Court Management Co. Ltd. (Caxtons – Managing Agents)**
Case number	:	**CAM/29UC/LSC/2006/0026**
Date of Application	:	**1st March 2006**
Type of Application	:	**For determination of liability to pay service charges (S. 27A Landlord and Tenant Act 1985)**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. J. Raymond Humphrys FRICS Mr. Roger Rehahn**
Date of Hearing	:	**7th September 2006 at The Falstaff Hotel, St. Dunstans Street, Canterbury CT2 8AF**

DECISION

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1. (a) All the service charges challenged by the Applicant are reasonable and payable
   (b) No Order is made pursuant to Section 20C of the 1985 Act
   (c) No Order is made to remit any fees paid or for any compensation to be paid to the Applicant

REASONS

Introduction

2. The Applicant is the lessee of the property under the terms of a lease for 999 years from the 1st May 2001. This 2 bed-roomed flat is part of a complex of 11 flats ("the building") and, as with many modern developments of flats, the building is managed by a management company set up by the developer with the lessees as the shareholders

and officers of the company. In this case, the management company is also the landlord and has delegated the day to day management to Caxtons who are a firm of professional property managers.

3. The application was lodged with the Southern Panel of the Leasehold Valuation Tribunal ("LVT"). At the time, the Southern Panel was recruiting members and, entirely by co-incidence, a partner in Caxtons had applied to be a member. He was in fact appointed. In order to avoid any conflict of interest or perception of bias, the papers were transferred to the Eastern Panel and a Tribunal from that Panel has adjudicated in this matter.

4. The partner in Caxtons appointed to the Southern Panel of the LVT is not known to any member of the Tribunal hearing this case. It should also be noted that the Applicant has lodged a complaint suggesting that she is not happy about this person and the fact that he/she was appointed. The members of the Tribunal dealing with this case are all very experienced in dealing with disputes of this nature and have put these matters entirely out of their minds.

5. In her application, Mrs. Mariasy says that "this application is generated by 2 letters received yesterday from managing agent which worry me considerably". The letters were dated 25th February and 27th February 2006 and stated, respectively, that Caxtons was moving its Accounts Department to Gravesend and that Mrs. Mariasy was being refused a 'further' visit to their premises to examine the paperwork relating to the maintenance of the building. Thus there appears to be a doubt at the outset about whether she was actually disputing particular service charges.

6. The application then goes on to set out Mrs. Mariasy's complaints about the management of the building. Most of these were complaints about alleged breaches of the terms of the lease. In view of this a letter was written to the Applicant stating that she would have to be specific about what service charge she was actually challenging. She wrote on the 14th June 2006 stating that she was challenging (a) repairs and maintenance at £1,520.19, (b) cleaning of common parts/yard at £1,704.00 , (c) window and ledge cleaning at £1,080.00 and management charges of £2,009.26.

7. As it was presumed that some of these were being challenged because the Applicant had not seen the supporting documentation, a Pre-Trial hearing was fixed for the 23rd June 2006 when the chair explained to her the limited jurisdiction held by an LVT. Very specific directions were given for Caxtons to disclose all documents relating to those items in the maintenance accounts which she disputed or about which she had a problem.

The Law

8. Section 27A of the Landlord and Tenant Act 1985 ("the Act") states that an application may be made to an LVT for it to determine whether a service charge is payable. Section 19 of the Act enables an LVT to determine whether a service charge has been reasonably incurred and it can also determine whether monies requested on account for future service charges are reasonable.

9. Section 18 of the Act defines a service charge as being *"an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for*

services, repairs, maintenance, improvements or insurance or the landlord's costs of management".

10. An LVT does **not** have the jurisdiction to decide whether covenants in the lease are being complied with or whether a building is being properly managed except in so far as it has a bearing on the amount of a particular element of service charges. Generally issues about whether a party is complying with the terms of a lease have to be resolved in the County Court.

The Lease

11. By a combination of Clause 6 of the lease, the Particulars and the Definitions, the lessee agrees to pay to the management company an interim maintenance charge in advance on the 31st March and 30th September in each year being 9.65% of an amount which the management company or the managing agents *"acting reasonably from time to time or at any time specify at its or their discretion to be a fair and reasonable sum".*

12. Clause 6 then goes on to say that at the end of the year, service charge accounts have to be prepared and certified by auditors. Any amount paid on account which exceeds the actual expenditure can be refunded or held on account of future charges and the lessee has to reimburse any underpayment.

13. The services for which charges are payable are defined as the amount incurred by the management company in carrying out the covenants contained in the 4th Schedule. This commences at page 191 in the bundle. It is comprehensive and includes all the items in the service charge accounts in this case.

The Inspection

14. The members of the Tribunal inspected the building in the presence of the Applicant and Mrs. Lilley and Ms. Parrish from Caxtons. The Applicant's daughter, Mrs. Mirsky, also observed much of the inspection. The members of the Tribunal found the building to be a nicely presented development with a rather poorly designed courtyard at the rear which is completely enclosed making general maintenance such as exterior decorations and cleaning windows extremely difficult.

15. The Tribunal noted during the inspection that there appeared to be a dispute between the Applicant and Caxtons about whether this courtyard is included within the basement flats or whether it is part of the common parts. Unfortunately the Tribunal was unable to come to a view about this because it was not shown the leases of the basement flats. All that can be said is that at page 148 in the bundle, there is advice from Bradleys, solicitors, which states that the basement flats have this area within their leases. If that is right, then it is up to the basement flats to keep this courtyard clean. The additional advice from Bradleys, which the Tribunal has no reason to doubt, is that those leaseholders must allow access to the other tenants to clean windows etc.

The Hearing

16. Mrs. Mariasy, Mrs. Mirsky, Mrs. Lilley and Ms. Parrish attended the hearing. Whilst Mrs. Mariasy did address the Tribunal from time to time, much of her case was presented by her daughter.

17. At the commencement of the hearing the Tribunal attempted to clarify with the Applicant exactly what service charge(s) she was now wanting the Tribunal to adjudicate upon, now that she had seen the papers. She told the Tribunal that she could not give a specific reply to this question. In essence, she was saying that in view of what she perceives to have been unprofessional and bad service on the part of Caxtons over the years there should just be a reduction. The Tribunal Chair pointed out that this did not really help and perhaps they did not fully appreciate that the Tribunal could only adjudicate upon specific items of expenditure.

18. Mrs. Mirsky then said that she wanted to address the Tribunal to give some background information. She said that she realised the problem about jurisdiction, but had understood that the Tribunal could make comments which would be extremely helpful in trying to resolve issues. She then addressed the Tribunal for some time and gave a history of extreme problems her mother had had over the years getting things done. She complained that Caxtons had been unprofessional and had not complied with the various codes of good practice including that published by the Royal Institution of Chartered Surveyors.

19. She cited such matters as Caxtons not having a designated bank account for this building, of people from Caxtons being discourteous, of Caxtons not having a complaints procedure etc. Mrs. Lilley said that Caxtons did have a separate client account, she denied that there had been discourtesy and pointed out that their complaints procedure was in the bundle (page 147). Mrs. Mariasy, in turn, said that she had not appreciated that this procedure applied to this sort of case.

20. On being asked specifically whether the facts, as opposed to allegations and opinions, were agreed, Ms. Parrish from Caxtons said that the external decorations had been undertaken in a different month to that stated by the Applicant. Otherwise, it seemed that the facts were not in dispute as to the delays in dealing with matters and that Mrs. Mariasy had clearly been upset about what had gone on over the years.

21. On a close examination of the papers, it was clear to the Tribunal that the service charges themselves were reasonable and the amounts of individual service charges were not actually in dispute. As far as the management charges are concerned, for example, they are quite modest compared with many seen by the members of this Tribunal and Caxtons' office is very close to the building which is very convenient for the tenants.

The Real Problem

22. Mrs. Mirsky asked the Tribunal to make comment on what has gone on in the hope that this would resolve the problems which her mother seems to have. It is not certain that she will appreciate these comments but, for what they are worth, they are set out hereafter.

23. In many blocks of flats, particularly older ones, the landlord is a remote individual or company which delegates all management responsibility to managing agents. Such agents take all the management decisions and simply collect the service charges and ground rent. There is no problem with the agent obtaining instructions and the agents stand or fall on their performance.

24. In modern times, there has been a tendency for developers to create leases which give all management responsibilities to management companies of which the tenants are members. As soon as the last flat is sold, the developer then effectively transfers all responsibilities to the management company by handing over the freehold title to that company.

25. This is absolutely fine in theory. It effectively creates a commune. In fact this trend was developed further by the creation of commonhold title although this is rarely used. The problem comes, as in this case, when the tenants either do not agree or have sublet and are not on the premises.

26. The Tribunal has seen the minutes of recent annual general meetings of the management company and it is absolutely clear that it has dealt with matters properly and that the appointment of Caxtons and the budgets for the ensuing years have been agreed by the company.

27. It is also clear that there is a proper agreement in force between the management company and Caxtons and authority has been delegated to Caxtons for expenditure up to £500. It also appears clear that the company chairman, Mr. Gascoyne, has actual or ostensible authority to give instructions to Caxtons on behalf of the management company. Caxtons are certainly entitled to presume that he has. Mrs. Mariasy clearly disagrees with this and complains that no-one has produced any evidence of authority to give instructions. However, as a matter of law, someone contracting with the chairman of a limited company is entitled to rely on instructions being given as being those of the company. This is known as ostensible authority.

28. An obvious example of ostensible authority working is where the purchasing manager of a manufacturing company orders components for use in a manufacturing process. The component producer is not entitled to see what authority that purchasing manager has. If there is a dispute about whether the manufacturer is bound by the contract, a court will always decide in favour of the component producer. Anyone in their position is entitled to assume that a purchasing manager has the necessary 'ostensible' authority to bind the manufacturer.

29. Thus the real problem is not with Caxtons but with Linen Court Management Co. Ltd. One can well understand that Caxtons are cautious about accepting instructions from one tenant without checking with the person from whom they believe that they are to take instructions. Mrs. Mariasy simply does not like the way this happens. However, a limited company is like a democracy. People have votes but if they are outvoted, they have a grievance unless they are prepared to accept the decision of the majority.

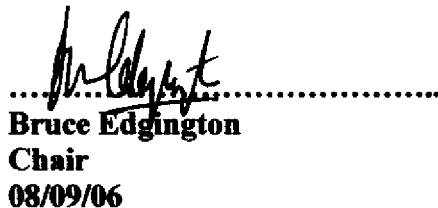
30. The Tribunal suspects that the position is exacerbated by the fact that a member of Caxtons appears to be Company Secretary. Also Mrs. Mariasy may have been viewed as a 'troublemaker' and, hence, her requests for work to be done have not been acted upon quickly whereas requests from others may have been. The incident over the door entry system is clearly a case in point. Unfortunate language has been used on both sides e.g. Mrs. Mariasy saying that she was writing a book when she asked to see the management records and Mr. Harbridge from Caxtons apparently suggesting that Mrs. Mariasy goes and eats an ice cream. Both incidents involved offence being taken whereas it appears to the Tribunal that offence was not intended.

31. It would not be constructive to suggest that Mrs. Mariasy simply tries to galvanise the other company members into changing the position or that she just moves. Both would solve her problems but are clearly not what she wants. One cannot see Caxtons, Mr. Gascoyne or the other tenants feeling particularly happy if Mrs. Mariasy felt so intimidated that she was forced out of her home.

32. What needs to happen here is that a line needs to be drawn under what has happened in the past. After all, the property is looking well maintained now. Mrs. Mariasy needs to understand that it is better for her in the long run for instructions to pass to Caxtons in an easy way through one person so that they do not have to increase their management fees to cover the cost of work over and above that normally anticipated. On the other hand, Mr. Gascoyne should realise that Mrs. Mariasy is apprehensive about things and needs more reassurance and communication. Perhaps a regular newsletter from him to all the tenants setting out what problems there are and how the budget is going would be a good idea. Certainly there should be some reassurance from Mr. Gascoyne that he will listen to Mrs. Mariasy and take on board issues she raises. The problem over the state of the courtyard is an example of Mrs. Mariasy clearly having to put up with something unsightly for a long time without her position being adequately considered.

33. Whether it would be feasible to have the sort of job number and job sheet idea suggested by Mrs. Mirsky is not known. This would certainly help but may be very labour intensive and could force up management fees.

34. As to costs, the Tribunal does not make a Section 20C Order because there would be no point. Caxtons clearly incurred expense for this hearing and this will have to be paid by the tenants either as tenants or as members of the landlord company. In the Tribunal's view there has not been any misbehaviour in connection with these proceedings which would warrant a punitive costs order or a return of fees. The Tribunal has no power to award the county court fee or general damages for distress by way of compensation.



Bruce Edgington
Chair
08/09/06

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DECISION

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   (b) No Order is made pursuant to Section 20C of the 1985 Act
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REASONS

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2. The Applicant is the lessee of the property under the terms of a lease for 999 years from the 1st May 2001. This 2 bed-roomed flat is part of a complex of 11 flats ("the building") and, as with many modern developments of flats, the building is managed by a management company set up by the developer with the lessees as the shareholders

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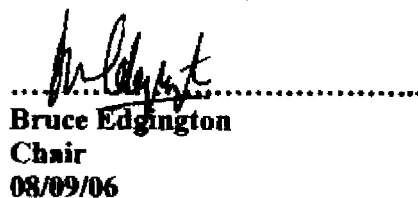

Bruce Edgington
Chair
08/09/06