

**REF LON 00AY/LIS/2006/0138**

**IN THE LEASEHOLD VALUATION TRIBUNAL**

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

**AND IN THE MATTER OF 138/140 HAILSHAM AVENUE  
LONDON SW2 3AJ**

**Applicants**

**London Borough of Lambeth**

**Respondents**

**(1) Ms Lesley Parsons  
(2) Mr Michael McKone**

**The Tribunal**

**Mr P Leighton LLB (Hons)  
Mr L Jacobs FRICS  
Mr O N Miller B.Sc**

**Date of directions**

**23<sup>rd</sup> November 2007**

**Hearing Date**

**14<sup>th</sup> February 2007**

**Date of Decision**

**14<sup>th</sup> February 2007**

## Introduction

- 1 By an application dated 12<sup>th</sup> October 2006 the Applicants applied to the Tribunal for a determination of the Respondent's liability for service charges in respect of building works carried out to the property of 138/140 Hailsham Avenue London SW2 3AJ("the property") of which the two Respondents are leasehold owners Ms Parsons of 140 the first floor flat in the building and Mr McKone of 138, the ground floor flat.
- 2 Directions were given originally for a paper determination but it was decided quite properly that an oral hearing was needed in this case having regard to the issues raised between the parties .
- 3 The property is a two storey mid terrace house with attic accommodation built about 1900 and has a pitched roof.
- 4 The sums claimed by the Applicant relate to the years 2002/3 and 2003/4 and relate to works carried out over that period to rectify serious problems as follows
  - (a) Scheme 1809 emergency dry rot repairs
  - (b) Scheme 1746 emergency roof repairs
  - (c) Scheme 1718 dry rot infestation and associated works
  - (d) The amounts claimed against each of the leaseholders in respect of these works are as follows :-

Ms Parsons	Mr McKone
1809 £4152	£3280
1746 £3795	£2998
1718 £9368	£9252
Total <u>£17,315</u>	<u>£15,530</u>
- 5 The Landlord sought a determination as to whether the Council's offer to reduce the figures which they had claimed to £984 for 138 and £1,245.60 for 140 Hailsham Avenue were reasonable. The Respondents in their statement of case alleged that because of the historic neglect of the property and the poor quality of the workmanship the service charges should be disallowed in their entirety. In the

alternative they contended that if the tribunal found that there was a liability under section 27A that the Tribunal should make a determination and transfer the matter to the county court for decision in the light of a substantial counterclaim which would be presented by the Respondents

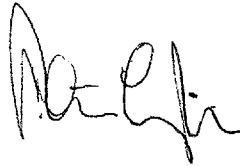
- 6 The matter came before the Tribunal on 14<sup>th</sup> February 2007 when the Applicant was represented by Ms M Vernon Ellington and the Respondents appeared in person .the Applicants sought an adjournment of the hearing for two weeks on the ground that they had not had the opportunity to seek legal advice on the issues raised by the Respondents and also to carry out an inspection of the property. .
- 7 The Tribunal was reluctant to adjourn the proceedings particularly since the Applicant had received the Respondents statement of case on 8<sup>th</sup> January 2007 and was minded to make a determination of the “payability” of the amounts claimed in the application and to transfer the issues raised by way of “equitable set off “to the county court since it raised a substantial sum by way of counterclaim far in excess of the amount claimed and for which the Tribunal would not have jurisdiction to award damages for disrepair. In addition the Respondents contended that there was still a large amount of work to be done to repair the property and the Tribunal had no power to order the carrying out of such works
- 8 The Tribunal invited the parties to discuss together the way in which they felt the matter could best proceed and the Tribunal would then decide what course to adopt..
- 9 The parties retired to discuss the question and on return invited the Tribunal to remit the application to the county court. Whilst the court has power to transfer proceedings to the Tribunal the Tribunal has no reciprocal power to transfer a matter to the court However, the Tribunal has power to stay the proceedings pending either party making an application to the court which is clearly intended here.
- 10 The Tribunal had considered the guidance given by His Honour Judge Rich in Continental Property Ventures –v- White and White LRX60/2005 from which it was clear that the Tribunal had jurisdiction to try the issue of equitable

set off but having regard to all the other features of the case such as the size of the counterclaim and the possible need for an order to carry out further works the Tribunal considered that the most appropriate course would be to stay the proceedings pending an application to Lambeth County Court

- 11 If at any future stage the county court required the Tribunal to consider any outstanding details relating to the service charges it would be open to it to do so but at this stage it was more convenient that the court should deal with the other matters and the parties recognised this fact
- 12 Accordingly the Tribunal stayed the proceedings before it pending an application to the Lambeth County Court and has set out its reasons for so doing to assist the court in dealing with the issues outstanding between the parties The proceedings will be stayed for 28 days in the first instance to enable either side to commence proceedings. The Tribunal should be notified if proceedings have been issued at which point it will stay the application until the court has disposed of the matter.

Chairman

Peter Leighton



Date

14<sup>th</sup> February 2007 .