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LON/00AY/LSC/2007/0018

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985.**

Address Flat 11, Cedars House, 48-50 Acre Lane, London SW2 5SP

Applicant Mr Nathaniel John Smyth

Respondent Kensington Vale Properties

Hearing date 10th May 2007

Date of Decision 11th May 2007

<u>Appearances</u>	Mr Nathaniel John Smyth	For the Applicant
	Mr Greg Rack, Director, Kensington Vale Properties Ltd	For the Respondent

The Tribunal Mrs J S L Goulden (Chairman)
Mrs A Flynn MA MRICS
Dr A M Fox PhD MCI Arb

REFERENCE: LON/OOAY/LSC/2007/0018

**PROPERTY: FLAT 11, CEDARS HOUSE, 48-50 ACRE LANE, SW2
5SP**

1. The Leasehold Valuation Tribunal ("the Tribunal") is dealing with an application under Section 27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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

2. The Applicant in the case before the Tribunal is Mr N J Smyth. The Respondent is Kensington Vale Properties Ltd.

Background

3. The service charge years in dispute are for the period 1 January 2002 to 31 December 2006.

4. The Applicant, Mr Smyth, advised that he had purchased the long leasehold interest of the ground floor and basement maisonette, Flat 11, Cedars House, 48-50 Acre Lane, SW2 5SP ("the flat") in the early part of 2002. A copy of the lease which was provided to the Tribunal was undated, however the parties were Haviland Trading Ltd (1) and the Applicant, Mr N J Smyth(2). The lease is for a term of 125 years from 29 September 2000 at the rents and subject to the terms and conditions therein contained.

5. Due to non payment of service charges, Haviland Trading Ltd. issued proceedings against Mr Smyth in the Lambeth County Court on 29 August 2006. Haviland Trading Ltd. was therefore the Claimant and Mr Smyth the Defendant in those County Court proceedings.

6. Following a hearing at Lambeth County Court on 11 January 2007 which the Claimant did not attend and at which Mr Smyth appeared in person, and by an Order of District Judge Zimmels dated 18 January 2007, the Haviland Trading Ltd. claim was dismissed and Mr Smyth's counterclaim was transferred to the Tribunal.

7. On 26 January 2007, the managing agents, Urban Spectrum Property Management Ltd wrote to the Tribunal to advise that Haviland Trading Ltd had disposed of its freehold interest in 48-50 Acre Lane and the new freeholders were Trident Corporate Services (Bahamas) Ltd.

8. On 1 February 2007, the Tribunal wrote to Trident Corporate Services (Bahamas) Ltd. No response was received.

9. On 14 February 2007, an oral Pre Trial Review was held by the Tribunal. There were no appearances by or on behalf of either Mr Smyth or Trident Corporate Services (Bahamas) Ltd.

10. On 17 February 2007, and after the Pre Trial Review had taken place, Urban Spectrum Property Management Ltd. wrote to the Tribunal to advise that the freehold interest in 48-50 Acre Lane had been sold on 7 November 2006 to Kensington Vale Properties Ltd.

11. In Directions issued to the parties, a Direction was made that Mr Smyth would be treated as the Applicant and Kensington Vale Properties Ltd as the Respondent in respect of the matters now before the Tribunal.

Inspection

12. 48-50 Acre Lane London SW2 5SP("the property") was inspected by the Tribunal on the morning of 10 May 2007 in the presence of Mr N J Smyth.

13. The property was a substantial Victorian building, originally a music school, which had been converted into fourteen flats in 2002. The property was set back from a busy road, which was also a bus route. Entrance to the gravelled forecourt (where some cars were parked) was by electronic security gates. The property comprised a

central three storey building plus basement, attached to which (and forming wings) were two storey buildings plus basement, one on each side. There were two entrances, one to each of the two storey wings. Access was via entryphone. As at the date of inspection, it was clear that some recent work had been undertaken. External decorations were generally good, although some paintwork was poor, with flaking to cills.

14. The Tribunal was invited to inspect the common parts (accessed through a replacement front door) which led to that part of the property which housed the Applicant's flat. These common parts were spacious and in good order, although the light coloured carpeting was marked in places and worn in other places and the walls, which were painted plaster, showed some markings consistent with normal wear and tear.

15. The front and rear gardens were well cared for with shrubs planted amongst areas of paving.

16. The members of the Tribunal were invited to inspect the Applicant's flat and in particular two rooms, the first of which showed evidence of damp to the rear structural wall and the adjacent second room (the boiler room) which showed no evidence of damp, but which had been replastered and had new exposed pipework and a wall hung boiler.

Hearing

17. The hearing took place on 10 May 2007.

18. The Applicant, Mr N J Smyth, appeared in person. The Respondent, Kensington Vale Properties Ltd was represented by a director, Mr G Rack.

19. An adjournment was given at the commencement of the hearing in order that the parties could endeavour to resolve their differences or narrow the issues, but this did not prove to be successful.

Jurisdiction of the Tribunal

20. At the commencement of the hearing, the Tribunal explained that its jurisdiction in this case flowed directly from the County Court and the only matters which could be considered by the Tribunal (since no separate application had been made to the Tribunal) were those matters which had been transferred by the County Court to the Tribunal. The matter transferred was the counterclaim in the County Court proceedings, the substantive claim having been dismissed.

21. Mr Smyth's counterclaim was stated to be for "*works outstanding*" and the reasons for making the counterclaim were stated to be "*Urban Spectrum/Haviland undertook to repair tanking work which was done incorrectly before I bought the leasehold. This work has still not been completed ie pipework not secured and cladding not replaced. Also, other tanking has failed*".

22. Mr Rack argued that the only matter which had been referred to the Tribunal was the counterclaim, which related solely to the tanking and not to service charges. He also drew the Tribunal's attention to Mr Smyth's comments in his defence to the original claim, which stated "*the issue of poor service will be dealt with seperately (sic)*".

23. Mr Smyth contended that the question of service charges was a live issue. Mr Smyth insisted that at the hearing at the County Court on 11 February 2007 (which he alone had attended) , he had made it clear to the District Judge that he was also disputing service charges, and this had been accepted by the District Judge. He said that he had told the District Judge that he intended to make a separate application before the Tribunal in respect of service charges, but had been assured that that would not be necessary in the circumstances.

24. In the view of this Tribunal, and from the evidence provided by Mr Smyth, it may well have been the intention of the District Judge to transfer all outstanding matters (including service charge matters) to the Tribunal. However, the wording of the Order of 18 January 2007 is specific in that it states only "*counterclaim transferred out to Leasehold Valuation Tribunal*". The counterclaim refers only to tanking and to no other matters, and what may or may not have been in the District Judge's mind has not been borne out by the specific wording in his Order.

25. The Tribunal determines therefore that it no jurisdiction to deal with the service charge issues. Whilst the Tribunal acknowledges that its determination does not resolve all the issues between the parties, and is therefore unsatisfactory to that extent, it does not, of course, prevent Mr Smyth making an application to the Tribunal for a determination on service charge matters.

26. For the reasons as stated above, the only matter before the Tribunal relates to the matter in the counterclaim, namely tanking.

Tanking

27. There is no evidence before the Tribunal that the tanking (which took place in 2002 and 2003) appears on any of the service charge demands provided to the Tribunal. Accordingly there is no evidence that the tanking was a service charge expense to be paid for by all the tenants at the property. It appears that this is a contractual matter.

28. The Tribunal is of the view that it has no jurisdiction to make a determination under this head. Mr Smyth may wish to take legal advice if he wishes to pursue this matter further.

CHAIRMAN.....

DATE..... 11 May 2007