

**IN THE LEASEHOLD VALUATION TRIBUNAL****IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985**  
**SECTION 27A**

<b><u>Property</u></b>	Flat 50, Abbey House, Abbey Road, London NW8 9BU
<b><u>Applicant</u></b>	Abbey House Limited
<b><u>Respondent</u></b>	Mr WJ Judd
<b><u>Hearing Date</u></b>	6 <sup>th</sup> August 2007
<b><u>Representatives</u></b>	Mr J Winfield (Counsel for Applicant) Mr T Burr (Managing Agent for Applicant)
	The Respondent was neither present nor represented

**The Tribunal**

Mr P Korn  
Mr T Sennett  
Mr O Miller

**Introduction**

1. This is an application for the determination of the reasonableness of service charge under Section 27A of the Landlord and Tenant Act 1985 as amended (the "1985 Act").
2. The sum in question is £4,629.97, being the service charge arrears outstanding in respect of the service charge years 2005-06 and 2006-07.

**Applicant's case**

3. On 17<sup>th</sup> October 1995, the Applicant, a lessee owned company, granted a 999 year lease (the "Lease") of the Property to Nussport Property Co Ltd. The Lease was assigned to the Respondent on 19<sup>th</sup> September 1996.
4. The Lease provides that maintenance of the external structure and common parts is the responsibility of a maintenance trustee and that the lessee is

responsible for the reimbursement of a proportion of the cost of such maintenance. The proportion payable by the lessee of the Property is 0.6140%. This percentage can be varied in certain circumstances but has not been. Mr Winfield, Counsel for the Applicant, referred the Tribunal to the relevant provisions of the Lease dealing with these matters.

5. The annual maintenance costs are set by budget and then audited accounts are later prepared (audited accounts for the latest service charge year are not yet available).
6. Mr Winfield referred the Tribunal to a breakdown of the service charge costs for the relevant years and referred to the provisions of the Lease on which the Applicant was relying for reimbursement of these costs. Mr Winfield also took the Tribunal through print-outs of the Respondent's service charge account and copy rolling invoices notifying the Respondent of the arrears.
7. In response to a question from the Tribunal concerning compliance with consultation requirements under Section 20 of the 1985 Act, Mr Winfield referred the Tribunal to a notice to lessees advising them of proposed major works and inviting observations, and to a follow-up letter later on.
8. Mr Winfield noted that the Respondent had not provided any defence to the application and he submitted that the Respondent had not at any time given any indication that he believed all or part of the service charge demanded to be unreasonable. The Respondent had belatedly sent to the Applicant six post-dated cheques for £1,000 each. The Applicant had recently tried to cash the first one – dated 1<sup>st</sup> July 2007 – but it had not cleared.

### **The Law**

9. Section 27A of the 1985 Act provides inter alia that “an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to ... the amount which is payable”.
10. Under Section 19 of the 1985 Act, “relevant costs shall be taken into account in determining the amount of a service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) ... only if the services or works are of a reasonable standard ...”.
11. Section 18 of the 1985 Act defines a service charge as “an amount payable by a tenant ... which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management and the whole or part of which may vary according to the relevant costs. It defines relevant costs as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with matters for which the service charge is payable”.
12. The Tribunal is satisfied on the basis of the above that it has jurisdiction to make a determination under Section 27A of the 1985 Act.

13. In the absence of any defence having been offered by the Respondent, Mr Winfield on behalf of the Applicant submitted that it is for the tenant to raise a prima facie case that the charges are not reasonably incurred and Mr Winfield drew the Tribunal's attention to the Court of Appeal decision in *Yorkbrook Investments Limited v Batten (1986) 18 HLR 25*. In his judgement, Wood J stated the following: "The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable".

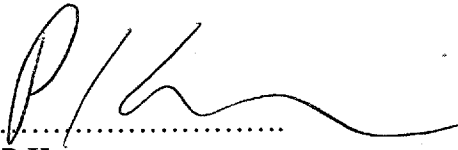
#### **Application of law to facts**

14. The Applicant has presented its case for the recovery of service charge arrears totalling £4,629.97. The Respondent has provided no defence at all and the Tribunal has seen no evidence that the reasonableness of the service charge and/or the standard of any work carried out is disputed by the Respondent. Indeed, it appears that the Respondent has purported to settle the service charge arrears by way of a series of post-dated cheques, albeit that the first cheque to be presented to the bank appears not to have cleared.
15. The Tribunal has not seen anything in the evidence placed before it to indicate that any element of the service charge is unreasonable or that any works have been sub-standard. Furthermore, the Tribunal agrees with the Applicant that it is not for a landlord to prove its case in detail if the tenant has not raised any argument as to why the service charge might be unreasonable.

#### **Determination**

16. The Tribunal determines that the service charge arrears of £4,629.97 are payable by the Respondent to the Applicant.
17. No application was made by the Respondent under Section 20C of the 1985 Act for an order that the Applicant's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining any service charge payable by the Respondent.
18. The Applicant has applied for reimbursement by the Respondent of the cost of its application to this Tribunal (£100) and the hearing fee (£150) under paragraph 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. In the circumstances of the Tribunal having found comprehensively in favour of the Applicant, and the Respondent having offered no defence and yet allowed the case to continue, this application is granted.
19. The Applicant has also applied for the Respondent to contribute towards the costs that it has incurred in connection with these proceedings under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. To find in the Applicant's favour on this point, the Tribunal would have to determine that the Respondent had "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably". In the Tribunal's view, whilst the Respondent has not offered a defence he has not acted in such a way as to

come within this provision. Accordingly, this element of the application is refused.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a 'K' and a long, sweeping horizontal line that ends in a small upward flick.

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Mr P Korn  
Chairman

6<sup>th</sup> August 2007