CHI/43UK/LIS/2007/0038 | CHI/43UK/LDC/2008/0011

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985: SECTION 27A, AS AMENDED

Address:	43 Treetops, Hillside Road, Whyteleafe, Surrey, CR3 0BY
Applicant:	Hillview Court Limited
Respondent:	Mr V Rubbino
Application:	19 November 2007
Inspection:	13 March 2008
Hearing:	13 March 2008

Appearances:

Landlord

Ms E Gibbons	Counsel
Ms T Trinder	Solicitor, Charles Russell LLP
Mr P Cobb	Managing Agent, Heritage

For the Applicant

Tenant

Mr V Rubbino	Leaseholder (Flat 43)

For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)
Mr J N Cleverton FRICS
Miss J Dalal

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/43UK/LIS/2007/0038 / CHI/43UK/LOC/2008/0011

IN THE MATTER OF SECTIONS 27A & 20ZA OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF SECTION 168(4) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

AND IN THE MATTER OF 43 TREETOPS, HILLSIDE ROAD, WHYTELEAFE, SURREY, CR3 0BY

BETWEEN:

HILLVIEW COURT LIMITED

Applicant

-and-

MR VITO RUBBINO

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. The Applicant makes three applications in these proceedings. These are:

   (a) pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondent's liability to pay and/or the reasonableness of service charges arising in each of the service charge years from 2005 to 2008 ("the service charge application").

   (b) pursuant to section 20ZA of the Act to dispense with a consultation requirements imposed by section 20 in relation to qualifying works ("the section 20ZA application").

(c) pursuant to section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the section 168 (4) application").

All of these applications arise directly from the replacement of the existing windows with uPVC double glazed units in or about 2004. Each is considered in turn below by the Tribunal.

2. Treetops Freehold Company Limited is the freehold owner of the subject property having acquired this interest in or about 2006. A head lease is held by Hillview Court Limited, the Applicant in this matter and the Respondent's immediate lessor. Mistakenly, these proceedings were commenced in the name of the freehold company. However, at the hearing the Tribunal granted permission to amend the name of the Applicant to Hillview Court Limited instead. All of the lessees on the estate, of which the subject property forms part, are shareholders in the Applicant company. The Respondent is the lessee of the subject property pursuant to a lease dated 31 March 1987 ("the lease").

The Lease

3. In relation to the applications made by the Applicant, the relevant lease terms are as follows:

Clause 3

The lessee covenants with the lessor to perform the stipulations obligations and restrictions set out in the Sixth and Seventh Schedules of the lease.

Clause 4

The lessor covenants with the lessee to perform the obligations set out in Part I of the Eighth Schedule and the Seventh Schedule.

Seventh Schedule

Paragraph 1 of this Schedule makes the Respondent liable to pay the maintenance charge. This is defined in the lease as being *"one sixtieth of the total maintenance expenses paid during or in respect of an accounting period"*. The maintenance expenses are defined as *"the costs charges and expenses incurred by the Lessor in respect of the property in carrying out all*

or any of its obligations under Part I of the Eighth Schedule... and any amount charged to the maintenance fund by the exercise by the Lessor of its powers under Part II of the said Eighth Schedule".

Paragraph 3 of the Seventh Schedule goes on to provide for an advance payment on account of the maintenance charge of £150 or such other amount in the lessor's absolute discretion. Paragraph 10 also gives the lessor an absolute discretion to divide the advance payment into two or more payments on such dates as it determines.

Eighth Schedule

Paragraph 3 of this Schedule obliges the lessor to:

> *"..... keep the reserved property... in a good at substantial state of repair and decoration and condition including the renewal and replacement of all worn or damaged parts...".*

In the Second Schedule of the lease, the reserved property includes:

> *"...ALL THOSE the main structural parts of the buildings (including the garages) forming part of the property including the roofs foundations and external parts thereof (but not balconies or patios forming part of any flat nor the glass of the windows or doors of the flats nor the interior faces of such of the external walls as bound the flats and garages....."*

Fifth Schedule

This Schedule sets out the rights to which the demise is subject. Paragraph 2 provides for:

> *"Such rights of access to and entry upon the premises by the Lessor and the owners of the other flats at reasonable times and upon reasonable notice (except in emergency) as are necessary for the proper performance of their obligations hereunder...."*

Sixth Schedule

Paragraph 14 of this Schedule provides that:

"The Lessee shall permit the Lessor and the owners of the other flats to have access to and enter upon the premises as often as it may be reasonably necessary for them to do so in fulfillment of their obligations hereunder...."

Inspection

4. The Tribunal inspected the exterior of the block and the internal parts of the subject property on 13 March 2008. The property was a second floor flat in a complex of 60 flats in three blocks, each of three storeys in a quiet private estate with landscaped grounds and extensive lawns with ample parking space. The blocks are constructed of brickwork with some rendered panels and tile hanging. The roofs are tiled and the windows are double glazed with painted softwood frames.

Decision

5. The hearing in this matter also took place on 13 March 2008. The Applicant was represented by Ms. Gibbons of Counsel. The Respondent appeared in person. Regrettably, the Respondent had not complied with all or any of the Directions issued to by the Tribunal in this matter. Nevertheless, the Tribunal was prepared to hear the oral submissions made by the Respondent and the Applicant did not object to this course of action.

(a) The Service Charge Application

6. The service charge arrears being claimed by the Applicant were:

2005	£1,023.96
2006	£539.29
2007	£690
2008	£690
Total	**£2,943.25**

7. The Applicant also sought to recover an additional sum of £93.79, being interest on the service charge arrears. However, this does not fall within the meaning of "service charges" under section 18 of the Act. The Tribunal,

therefore, has no jurisdiction to make a determination in relation to this head of claim.

8. It was the Tribunal's understanding that, of the service charge arrears being claimed, the Respondent only sought to challenge the sum of £1,023.96 for the 2005 service charge year. This service charge contribution was being claimed by the Applicant solely in relation to the cost of major works incurred for the installation of replacement double glazed windows and external decorations in or about 2004 ("the major works").

9. By way of background, the installation of the double glazed windows was the subject matter of an earlier application made to the Tribunal. In a decision dated 2 July 2004, that Tribunal determined that the Respondent was entitled to replace the existing windows with the uPVC double glazed units because the windows fell within the definition of "reserved property" within the meaning of the Second Schedule and, therefore, also fell within the Applicant's repairing obligations under paragraph 3 of Part 1 of the Eighth Schedule of the lease. That Tribunal also determined that the cost of replacing the windows was reasonably incurred and that any such expenditure so incurred was recoverable as relevant service charge expenditure under the Seventh Schedule.

10. As the Tribunal understood it, the Respondent submissions amounted to disputing the earlier Tribunal's decision as being wrong. He contended that the Tribunal had wrongly construed his lease and he still maintained that his windows did not fall within the definition of reserved property within the meaning of the lease. It was not the Respondent's case that the cost of the external decorations did not fall within the Applicant's repairing obligations. He also submitted that his human rights under Articles 6 and 8 of the Human Rights Act 1998 had been infringed.

11. The Tribunal had little difficulty in rejecting the Respondent submissions regarding the windows. The earlier Tribunal had determined that the Applicant was entitled to replace the windows in the subject property and that

any such expenditure so incurred was reasonable. That decision had not been appealed by the Respondent and he remained bound by its findings. It was, therefore, not open to this Tribunal to revisit this matter because it was now subject to the legal principle of *res judicata*.

12. As to the reasonableness of the costs being claimed by the Applicant, the Respondent had not made any express submissions and had not adduced any evidence regarding this matter. Although the Respondent had raised issues about damage to the roof of his block caused by the installation of satellite dishes, this was in the nature of an allegation of breach of covenant on the part of the Applicant and was not relevant to these proceedings. It was not the Applicant's case that any service charge costs in issue were being claimed in relation to repairing this alleged damage.

13. As to the Respondent's contention that his human rights under Articles 6 and 8 had been infringed, to the extent that this was correct, it was not for this Tribunal to make such a finding, as it did not fall within its jurisdiction to do so. The Respondent's remedy, if any, lay elsewhere.

14. The Tribunal was satisfied that the Applicant had properly tendered for the cost of replacing the windows and had accepted the lowest tender. There was no evidence from the Respondent upon which the Tribunal could make a finding that the costs were not reasonable in quantum. Accordingly, the Tribunal found the sum of £1,023.96 to be reasonable and recoverable by the Applicant against the Respondent.

(b) The Section 20ZA Application

15. It was a matter of common ground that, although the Applicant had commenced statutory consultation required by section 20 of the Act in relation to the major works, this had not been correctly completed. Therefore, the cost recoverable as a service charge contribution was, at present, limited to £250 per lessee. Pursuant to the Tribunal's directions given at the conclusion of the hearing, the Applicant subsequently issued this application to dispense with the consultation requirements imposed by section 20. Again, pursuant to the

Tribunal's direction, the Applicant filed a statement of case in support of this application. The Tribunal also directed the Respondent to file and serve a statement reply by 3 April 2008, if the application was opposed. The Respondent has failed to do so. In the circumstances, the Tribunal must assume that the Respondent does not oppose this application.

16. In any event, and for the avoidance of doubt, the Tribunal grants the application to dispense with the consultation requirements imposed by section 20 of the Act in relation to the major works. The Tribunal does so for the following main reasons:

(i) that the lessees had been informally consulted by correspondence in relation to the major works. Their opinions had been canvassed by means of a survey, which appears to have revealed overwhelming support for the proposed works. There had also been meetings to which the lessees had been invited and where the proposed works had been discussed. The minutes of these meetings had been circulated to all of the lessees. In addition, a presentation had been given in respect of the windows.

(ii) the Applicant had attempted, albeit invalidly, to informally consult the lessees.

(iii) the contractor, who had provided the lowest estimate, had been instructed.

(iv) the Respondent did not oppose the application.

(v) all of the lessees who had their windows replaced have paid the service charge contribution demanded for them.

(vi) the Applicant is a " tenant owned" company and if this application was refused, the cost of the major works would fall to be paid by the lessees, as shareholders, in any event.

(c) The Section 168(4) Application

17. In this application, the Applicant seeks a determination that the Respondent has breached the terms of paragraph 2 of the Fifth Schedule and paragraph 14 of the Sixth Schedule of the lease by failing to allow the Applicant or its

contractors access to the subject property to replace his windows as part of the major works.

18. At the hearing, the Respondent admitted that he has so far denied the Applicant or its contractors access to his flat on the basis that he does not want his windows replaced, that they do not fall within its repairing obligations and that he is entitled to "defend" his property under Articles 6 and 8 of the Human Rights Act 1998.

19. On the basis of the clear admission made by the Respondent, the Tribunal finds that he is in breach of paragraph 2 of the Fifth Schedule and/or paragraph 14 of the Sixth Schedule of his lease by failing to allow the Applicant or its contractors access to his flat to replace the windows. As to the contention that the Respondent is entitled to "defend" his home, the Tribunal's position remains as set out in paragraph 13 above and, in any event, does not provide him with a recognised defence to the allegation of breach. In the light of this finding, it may be prudent for the Respondent to seek independent legal advice about the potential consequences that may flow from this.

Other Matters

20. In the course of the hearing, the Respondent raised other matters that were not directly relevant. Whilst it is not incumbent on the Tribunal to deal with these matters, it took the view that it may assist the parties if it gave an indication as to its views.

21. The Respondent complained that payments he had made to the Applicant had not been credited to his service charge account. On the basis of the evidence before it, the Tribunal was satisfied that any payments that had been made by him had been credited to his account.

22. The Respondent also alleged, in terms, that the Applicant was seeking to "steal" his property by imposing unreasonable and unnecessary service charges and by seeking to purchase the freehold interest through Treetops Freehold Company Limited, of which he was not a shareholder as was the case

in the Applicant company. This allegation reveals a fundamental misunderstanding on the part of the Respondent of the difference between freehold and leasehold interests in land. Despite the freehold interest having been purchased by Treetops Freehold Company Limited, the leasehold interest in the subject property still vested in the Respondent and, as such, he still remained the owner of his flat.

Dated the 12 day of May 2008

CHAIRMAN.....

Mr. I. Mohabir LLB (Hons)

THE LEASEHOLD VALUATION TRIBUNAL for the SOUTHERN RENT ASSESSMENT PANEL.

CHI/43UK/OCE/2007/0088

SECTION 24 OF THE LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993

DECISION ON AN APPLICATION FOR PERMISSION TO APPEAL RE: 109 ELDON ROAD, CATERHAM, SURREY, CR3 5JU

Applicant: Mr Peter Savva

Respondent: Mr L Gorman, as Nominee Purchaser

1. The Tribunal has considered the Applicant's request for permission to appeal dated 3 July 2008 and determines that permission be refused on the basis that the grounds of appeal disclose no reasonable prospect of success.

2. The various grounds of appeal relied on all effectively turn of the same point, namely, that the Tribunal could not have reached the conclusions it did based on the evidence before it. The Tribunal does not consider that it had erred in its findings for the reasons set out in the Decision. Moreover, a number of the grounds of appeal concern those matters falling outside the Tribunal's jurisdiction and which are the subject matter of ongoing County Court proceedings. The Tribunal, therefore, make their findings in relation to these matters.

3. In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the Applicant may make further application for permission to appeal to the Lands Tribunal.

Tribunal: **Mr I Mohabir LLB (Hons)**
Mr D Lintott FRICS
Mr A O Mackay FRICS

Signed: J. Mohabir **Dated: 11 July 2008**

Chairman