

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Nos: CHI/45UC/LIS/2008/0019 and CHI/45UC/LIS/2008/0025

**Re: Flats 17 and 3 & 25, Connaught House, The Esplanade, Bognor Regis,
West Sussex, PO21 1TS**

Applicant: Connaught House RTM Co. Ltd.

Respondents: Mr N. Smith (Flat 17) and Mr D. Rowley (Flats 3 & 25)

Additional Respondents, following applications to be joined as parties:

Mr P. Norman (Flat 12), Mr M. Ridgwell (Flat 9), and Mr R. Marshall (Flat 23)

Tribunal

Mr D. R. Hebblethwaite BA (Lawyer Chairman)

Mr B. H. R. Simms FRICS MCI Arb

Mr J. B. Tarling MCMI

DECISION

The referral to the Tribunal

1. These applications are before the Tribunal on transfer from Chichester County Court. The Applicant issued claims against the two Respondents respectively in that court for the recovery of unpaid service and other charges. The claim against Mr Smith was issued on 19 February 2008 under claim no. 8CI00369. On 16 April 2008 District Judge Levinson ordered that "the case be transferred to the LVT for determination of the reasonableness of charges raised". The claim against Mr Rowley was issued on 23 April 2008 under claim no. 8CI00860 and on 16 May 2008 District Judge Levinson ordered the claim to be transferred to the LVT to be considered with the earlier case. These orders constitute transfers under Schedule 12 to the Commonhold and Leasehold Reform Act 1985 ("CLARA") which provides in para. 3:

Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal the court may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question

2. The majority of the charges in each case are service charges. Section 19 of the Landlord and Tenant Act 1985 states that costs shall be taken into account in determining the amount of a service charge for a period –
 - (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

In both cases there are also "late payment charges" and in the case of Mr Smith an "administration charge". Both such items are "administration charges" within the meaning of Schedule 11 to CLARA. The essence of a complex provision is that an administration charge must be reasonable. The Tribunal took the view that the court only intended the Tribunal to concern itself with service charges and not administration charges. The court order did not define exactly what it was that the Tribunal should consider, but if the court intended the Tribunal to consider the administration charges there would appear to be no provision in the leases to allow such charges to be payable by a tenant. The Tribunal cannot, therefore, assist the court as to these, notwithstanding their description as "charges." (For completeness, there is also a claim against Mr Rowley for search fees, but this is also outside the Tribunal's powers.)

Directions

3. On 24 April 2008 the Tribunal made Provisional Directions in the case of Mr Smith, ordering that they would become substantive directions on 9 May 2008 in the absence of any written objection or request for amendment by any party. No such objection or request was received by the date given. On 23 May 2008 the Tribunal made Provisional Directions in Mr Rowley's case, to become substantive on 9 June 2008, and once again no objection or request for amendment was received. In those Directions the two cases were consolidated and a copy of the first Directions was attached.
4. The Directions required the Respondents to send to the Applicant and the Tribunal a statement in writing setting out in detail exactly which items of service charge they agreed and which they did not agree and why. No such statement was prepared by the Respondents within the time limit laid down in the Directions or at all. The Applicant was directed to send a written statement in reply within 21 days of receipt of the Respondents' statement. In the event there was nothing to reply to but on 21 July 2008 the Applicant nevertheless filed and served a bundle of documents comprising witness statements by Mr R. Stanley, a director, and Mr D. Dalton, company secretary, and a number of documents including correspondence and several sets of accounts.
5. With the case papers forwarded from the court was a document headed "Witness Statement" but set out as a letter to the court dated 10 April 2008 from Mr Rowley, the Additional Respondents and Mrs J. Atherton (Flat 10) supporting Mr Smith and saying that they had appointed him to represent them. The letter made some complaints about directors of the Applicant, but no specific detail of agreed/disagreed charges.

Written request for adjournment

6. On 14 August 2008 Mr Smith wrote to the Tribunal requesting an adjournment of the Hearing. He stated that he had not been provided by the Applicant's agent, Hobdens, with account details and that he was being "wilfully impeded". He sought the adjournment until he had been provided with these details and had a satisfactory amount of time to deliberate over these accounts and present his case. The Chairman refused this application, not only because it was made so close to the Hearing but also having regard to the fact that Mr Smith produced no evidence of unanswered requests for information. Further it seemed, having read the papers, that there was substantial information about the charges contained in the accounts.

The Inspection

7. On 21 August 2008 the Tribunal inspected the premises in the presence of two of the Applicant's directors and a representative of Hobdens, and both Respondents. All the common parts were seen, as well as the exterior, both front and back. The building, converted at some point from a seafront hotel, comprises small flats that were sold on long leases in the 1980s and overlooks the sea on The Esplanade in Bognor Regis. The hall, landings and staircases were clean and in good decorative order, save for some damp to the hall carpet, which the Tribunal was told had been caused by a leaking drain the previous day. There was automatic lighting throughout, and CCTV cameras. To the rear could be seen a fire escape, a bicycle store, a room containing electricity meters and the like and a bin area, all compact and tidily laid out. Internal and external signage was in good order. A new bank of letter boxes, one for each flat was seen; items can be posted from outside the front door and then accessed from the back, which is inside, with the use of an individual lock and key. Mr Smith demonstrated that it is possible to put a hand in a box from the front and pull out a letter posted earlier.

The Hearing

8. There followed a Hearing at the Panel offices at 1 Market Avenue, Chichester, where the Applicant was represented by Mr Dalton and Mr Stanley. Both Respondents were present, but not any of the Additional Respondents, and Mr Smith spoke for them. Mr Smith was asked why he had not complied with Direction 5 (the written statement of agreement/disagreement). He said that he was unable to do so as he did not have enough information about the charges and that he had asked the Applicants for this. Mr Dalton said that he did not recall receiving a letter from Mr Smith but that he had spoken to Mr Smith and was simply unaware of what information Mr Smith wanted; the annual accounts had "an extra-statutory list of expenditure". Mr Smith then **asked for the Hearing to be adjourned**, in effect renewing his written application which had been unsuccessful but with an opportunity to expand on his reasons for seeking an adjournment. This was opposed by the

Applicant. The following are the main points made in the course of this application:

- Mr Smith wants a full breakdown of expenses.
- Mr Dalton believes there is sufficient information with the accounts; it sounds as if Mr Smith wants all contractors' charges broken down; Mr Dalton has receipts with him.
- Mr Dalton has the roof survey available.
- Mr Dalton said that the inaugural AGM of the Applicant (on 11 October 2007) had afforded an opportunity for lessees to ask questions; many had done so including Mr Smith. Minutes and a Directors' Report had been sent to all lessees soon after the Meeting with an invitation to contact Hobdens (Mr Dalton) with queries.
- There is an issue of repairing damage caused by sub-tenants; Mr Smith thinks the lessee should pay and not the lessees as a whole. Mr Stanley said that that was the Applicant's policy and that he had personally paid for damage caused by his sub-tenant; one of the Respondents had been approached but had not paid.
- Mr Rowley said there was no consultation. Mr Dalton said there was informal consultation but that no individual item of expenditure had been above the statutory threshold for mandatory consultation. The Tribunal agrees with this on the basis of the limit of £250 x 28 flats = £7,000.
- It was established that the latest accounts to March 2008 were sent to lessees on 21 July 2008. These are in the bundle. The Tribunal suggested that Mr Smith state at the Hearing today what items of expenditure he disagrees with.

Consideration of the application to adjourn

9. Considerable time having been allowed for the parties to make their submissions on Mr Smith's application, the Tribunal considered it. Regulation 15 (2) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 states:

Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –

- (a) the grounds for the request;*
- (b) the time at which the request is made; and*
- (c) the convenience of the other parties.*

The Tribunal decided that Mr Smith had no credible grounds for his application. The information provided by the Applicant was sufficient for the Respondents to decide which items they agreed or disagreed. The application was made at the hearing (the earlier written application only a few days earlier). The Applicant had submitted all its documentation in good time and two representatives, a director and the company secretary, were present and ready to proceed. The Applicant is a RTM company whose

members and directors are all lessees themselves. However, Mr Dalton is from the managing agents and his fees for attending today and at an adjourned hearing will have to be paid by the Applicant. The Respondents have wilfully disobeyed the Directions. Despite all this, there was still an opportunity for Mr Smith, during the lunch break which would follow the announcement on the adjournment application, to prepare himself to put his case orally when the hearing resumed. In addition to the above, the Tribunal was concerned that similar behaviour had been evidenced in another case involving Mr Smith (being Case No. CHI/45UC/LSC/2005/0011), albeit in that case the Applicant was the then freeholder Sarum Properties. The LVT Decision in that case (being a matter of public record) issued on 20 December 2005 clearly evidenced similar behaviour as had happened in the current case. In that case the Tribunal saw fit to make an order under Schedule 12 para. 11 of CLARA and ordered the Respondents (whom Mr Smith had represented) to pay the costs of the Applicant in the sum of £250 each. Mr Smith was clearly aware of what the Tribunal expected of him and he had wilfully refused to co-operate. For all the above reasons the Tribunal decided to refuse the adjournment.

10. This decision was announced to the parties at 12.50 p.m. The Tribunal repeatedly asked Mr Smith to identify what items he was disputing and he declined to say. It was suggested to Mr Smith that he could spend the lunch break considering the Applicant's information so that he could respond in the Hearing when it resumed. Mr Dalton agreed to make himself available throughout the break so that Mr Smith could approach him to discuss anything, inspect receipts, etc. Mr Smith stated that he felt he was being wilfully impeded. The Tribunal rose at 12.55 p.m. to resume at 2.00 p.m. leaving a break of over an hour.

The resumed hearing

11. When the Hearing resumed after lunch Mr Smith and Mr Rowley were absent. The Tribunal asked Mr Dalton if Mr Smith had approached him and he said that he had not but had left immediately the Tribunal broke for lunch. However, he and Mr Stanley had been approached by Mr Rowley who had said that he thought that what he'd heard this morning had been helpful; he was going to make an appointment to inspect receipts; he was minded not to challenge the charges but wanted to pay; and that he thought that Mr Smith had perhaps misled him and the Additional Respondents. The Chairman thanked Mr Stanley and Mr Dalton and explained that the Tribunal would now consider the application, whereupon they left.

The consideration and the decision

12. The Tribunal then went on to deliberate. It felt that the Applicant had provided full information. The Respondents had failed to state what items of service charge they do not agree, either in writing in compliance with the Directions or today at the Hearing when invited by the Tribunal to do so. The Respondents have simply not presented a case. The Respondents had been

