Residential Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00AB/LIS/2007/0060

47 HEWETTS QUAY, ABBEY ROAD, BARKING IG11 7BU

HEWETTS QUAY MANAGEMENT COMPANY LIMITED **Applicant**

MR A. OLUWA **Respondent**

Date of decision: 5 March 2008

Tribunal: Mr M. Martynski - Solicitor
Mr D. Banfield FRICS

Summary of decision

1. The sum of £1010.00 claimed on account for the service charge year 2007 is payable.

2. The sum of £90.00 claimed on account for the service charge year 2007 in respect of River Walk services is payable but not apparently claimable by the Applicant.

3. The variable administration charges totalling £182.14 are payable by the Respondent.

4. The non-variable administration interest charge of £56.86 is payable by the Respondent.

5. The Tribunal is unable to determine the payability of the sum of £369.16 as no details of the breakdown of this sum have been provided to the Tribunal.

6. The Tribunal does not have the jurisdiction to deal with the Respondent's claims against the Applicant.

7. An order is made that the Respondent reimburse the fee of £130.00 paid to the Tribunal by the Applicant.

Background

8. This case was transferred to the Tribunal by order of Deputy District Judge Solomon in the Barnet County Court dated 7 September 2007.

9. In the County Court proceedings the Applicant sought the following sums;
   - £1,100 interim service charge on account for the service charge year 2007
   - Administration charges relating to pursuing arrears totalling £182.14
   - Interest charges of £56.86
   - Balance of 2006 arrears £369.16

10. The Respondent admitted liability in the sum of £750.00 but disputed the balance on the following grounds;
   - He had paid all charges due from 2006 (although he went on to say that a cheque was sent but never received)
   - He challenged his liability to pay legal fees in respect of arrears
   - The interim service charge demand was unreasonable in that it represented an increase of 29.1% over service charges demanded in the previous year
   - He had counterclaims in respect of; (a) loss of rental income due to the condition of a stairwell floor; (b) the cost of a transmitter purchased due to delays in respect of an upgrade to a gate on the estate, and; (c) lost rental income due to the removal and non-replacement of a carpet in the communal area

The Tribunal's findings

Service charge on account

11. The terms of the Respondent's lease provide that the Respondent is each year liable to pay a service charge on account set by the Applicant. The amount demanded for the service charge year 2007 is broken down into two separate parts. First there is an amount totalling £1010.00 in respect of Hewetts Quay for which the Applicant is responsible. Second there is an amount of £90.00 in respect of River Walk for which a separate company, River Walk (Hewetts Quay) Management Company Limited is responsible.

12. Whilst the anticipated expenditure for the year 2007 is over 20% higher than the budget for the preceding year, the actual service charge expenditure for 2006 was £130,924. When this is compared to the budget for 2007 which was £132,000, the budget for 2007 represents a small yearly increase consistent with inflation.

13. Accordingly the budget for 2007 and the service charge on account demanded from the Respondent based on that budget is reasonable and payable.

14. It is strictly speaking a matter for the County Court but it appears to the Tribunal that the Applicant is only entitled to sue for the sum of £1010.00 due to the fact that the balance of £90.00 is due, not to the Applicant, but to River Walk (Hewetts Quay) Management Company Limited.

15. This decision does not affect the Respondent's right to challenge the reasonableness and payability of actual expenditure incurred during the year.

Administration charges

16. The Respondent's lease clearly gives the Applicant the right to levy variable administration charges in respect of recovery of arrears from tenants [clause 5.9].

17. The Applicant has sued for such charges amounting to £182.14 and has set out a summary of how each separate charge has been arrived at. The Tribunal concludes that these charges are reasonable and payable by the Respondent.

18. As to the claim for interest in the sum of £56.86, this is clearly recoverable under the terms of the Respondent's lease [clause 8.4]. It is not a variable administration charge as the amount of the charge is calculated in accordance with a formula set out in the lease. No application has been made to vary the lease on the ground that the charge is unreasonable and accordingly it is payable.

Charges from 2006

19. Finally, the County Court proceedings included a charge for £369.16 which were described as balance of 2006 arrears. The Tribunal is unable to determine the payability of this sum as no details of the breakdown of this sum have been provided.

The Respondent's counterclaims

20. The Tribunal does not have the jurisdiction to deal with a claim for damages and loss arising out of an alleged breach of covenant on the part of the Applicant. The Respondent's claim is not one that would come within the guidelines set out in *Continental Property Ventures Inc v White and another [2006] 1 EGLR 85.*

Fees

21. Given that the Tribunal has found substantially in the Applicant's favour, it orders that the Respondent reimburses the fees paid by the Applicant in the sum of £130.00.

..... Mark Martynski -Chairman