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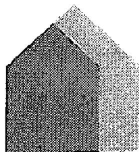


Residential
Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 20C AND 27A OF THE LANDLORD AND TENANT ACT 1985

Reference number:	LON/00BK/LSC/2005/0291
Premises:	Flats 500 and 726 Clive Court, Maida Vale, London W9 1SG
First Applicant:	Ms M Volosinovici (Flat 726)
Second Applicant :	Ms M Abdel-Mahmoud (Flat 500)
Respondent:	Corvan (Properties) Ltd
Appearances:	For the Applicants: Mr J Graham and Mr H Kearney, quantity surveyor For the Respondent: Mr K F Munro, a barrister and Mr N Benson, solicitor with Rawlison Butler LLP
Applications received:	18 October 2005
Tribunal members:	Mr A J Andrew Mrs V T Barran BA (Oxon)
Hearing:	14 March 2008
Decision:	19 March 2008

DECISION

1. We dismissed the applications pursuant to regulation 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 ("the 2003 regulations") as an abuse of the tribunal's process.

2. We made no order for costs pursuant to paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("CLARA").

CHRONOLOGY

3. The chronology of these proceedings is set out below. In respect of the period from 18 August 2005 to 29 March 2006 it is mainly taken from the Lands Tribunal decision of 16 July 2007, referred to below.

4. *18 August 2005* - Respondent commenced proceedings in the Central London County Court against the First Applicant claiming arrears of ground rent and service charge in the sum of £17,400.34.

5. *18 October 2005* – First Applicant applied to the LVT under sections 20C and 27A of the Landlord and Tenant Act 1985 ("the Act").

6. *16 November 2005* - Pre-trial Review at which the LVT issued directions including directions requiring the First Applicant to serve a full statement of her case. The wording at the end of the order included a statement of possible consequences of non-compliance with the directions which, in the case of any non-compliance by the applicant, could result in dismissal of the application.

7. *9 December 2005* – At her request Miss M Abdel-Mahmood is joined as an applicant in accordance with Regulation 6 of the 2003 Regulations.

8. *16 December 2005* - Further directions from the LVT giving further time to the First Applicant (pursuant to a request on her behalf from Mr Graham who was assisting and representing her).

9. *January 2006* - First Applicant through Mr Graham seeks more time.

10. *1 February and 7 February 2006* - Respondent's solicitors write to the LVT complaining regarding the First Applicant's delay and asking that the claim be struck out alternatively that some form of unless order be made.

11. *9 February 2006* – The LVT writes to Mr Graham stating *"the Tribunal wishes it to be known that it is minded to dismiss the application as vexatious unless the applicant complies with the Directions by Monday, 13 February 2006. If there is no response by that date a preliminary hearing will be listed for Monday 6 March 2006 when the Tribunal will consider dismissing the application."*

12. *6 March 2006* - Hearing before the LVT at which it considered the Respondent's application to strike out the application. The LVT observes that the First Applicant had had more than 4½ months since making her application to particularise her case but had failed to do so. The LVT reminded itself that the Appellant was a litigant in person represented by a lay person and also that the Respondent appeared to concede that there had been some short comings regarding the management of the property during the period to 24 June 2002 (when the management was transferred to the current managing agents) and had offered a discount of 10% on service charges relating to that period to all the lessees. The LVT decided it was appropriate to allow the First Applicant one final opportunity fully to particularise her case. The hearing was adjourned to 30 March 2006 at which, if a completed six column Scott Schedule had not been received, the tribunal would consider dismissing the application.

13. *29 March 2006* - A Scott Schedule is served in respect of each service charge year giving, as regards certain disputed items, a figure in dispute and giving, as regards certain other items, a figure in dispute of a nominal amount of £1 or £2.

14. *30 March 2006* – The LVT *"struck out"* those service charge items recorded in the Scott Schedule as being disputed in the nominal sums of £1 or £2 and amended the directions of 6 March 2006.

15. *19 April 2006* – Mr Graham on behalf of the First Applicant applies to the LVT for permission to appeal.

16. *26 April 2006* – Permission refused.

17. *23 May 2006* – Permission to appeal renewed to the Lands Tribunal.

18. *23 August 2006* – Leave granted by the President of the Lands Tribunal.

19. *16 July 2007* – Lands Tribunal decision (LRX/67/2006). The Lands Tribunal concluded that regulation 11 permitted the LVT to dismiss applications in whole or part notwithstanding that they may have been progressing for sometime. In paragraph 26 of the decision the Lands Tribunal concluded that, in considering a dismissal application, the LVT must:-

    a. Remind itself of the provisions of Regulation 11 and ensure that proper notice has been given under Regulation 11(2) and (3) to the applicant and ensure that any hearing required under Regulation 11 is held.

    b. Analyse the facts relating to the application under consideration and reach a conclusion as to whether the application (or some identified part of it) can properly be described as one or more of frivolous or vexatious or an abuse of the process of the tribunal.

c. Consider whether, if the application can in whole or in part properly be described as frivolous or vexatious or otherwise an abuse of process of the tribunal, the facts are such that the LVT should exercise its discretion to dismiss the application in whole or in part under Regulation 11.

d. Give clear and sufficient reasons for its conclusions.

20. In conclusion the Lands Tribunal allowed the appeal on the grounds that the LVT failed to comply with subparagraphs b, c and d.

21. *15 August 2007* – At the instigation of the LVT a pre-trial review was held following the publication of the Lands Tribunal decision. The First Applicant had still not fully particularised her case. On the basis of an assurance given by Mr Kearney, that the outstanding Scott Schedule would be completed by 30 November 2007, the LVT directed that the Scott Schedule should be sent to the Respondent by that date but otherwise in accordance with the directions of 6 March 2006. Mindful of past delays the LVT also gave notice of dismissal to be heard on 6 December 2007 with the intention that the dismissal would only be heard if the completed Scott Schedule had not been delivered to the Respondent. In the event of compliance, the hearing on 6 December 2007 would be used as a further pre-trial review and the parties were requested to provide a time estimate for the hearing and details of their availability for the period of two months from 6 February 2008.

22. *5 December 2007* – The completed Scott Schedule is received by the tribunal.

23. *6 December 2007* - The LVT declined to dismiss the application and issued further directions. A copy of that decision is annexed to this decision. The directions required the Applicants to submit their bundle of documents on or before 1 February 2008.

24. 31 January 2008 – By a letter of this date received on 1 February 2008 Mr Graham on behalf of the Applicants applied for an extension of time in which to submit their bundle of documents. In effect Mr Graham sought a variation of the previous directions to enable the Applicants to submit a third iteration of the Scott Schedule with 10 columns.

25. *4 February 2008* - The LVT rejects the application for an extension of time because (a) the issues raised by Mr Graham were considered by the LVT and taken into account when its further directions were issued on 12 December 2007 and (b) the Applicants had had 27 months to prepare their case. The delay was prejudicial to the Respondent and it was reasonable to expect the Applicant to comply with the tribunal's directions. The tribunal requested both parties to provide details of their availability, as previously directed, by no later than 12 February 2008.

26. *15 February 2008* – The Applicants having failed to lodge their bundle of documents, as previously directed, the LVT issued a notice of dismissal pursuant to Regulation 11 of the 2003 Regulations, on the application of the Respondent, to be heard on 14 March 2008. The LVT further directed that if, on that date, the applications were not dismissed they would be heard on 23 and 24 April 2008.

REGULATION 11

27. Regulation 11 of the 2003 Regulations provides:

> *"(1) Subject to paragraph (2), where –*
>
> *(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal; or*
>
> *(b) the Respondent to an application makes a request to the Tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of the process of the tribunal,*
>
> *the tribunal may dismiss the application, in whole or in part.*
>
> *(2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).*
>
> *(3) Any notice under paragraph (2) shall state –*
>
> *(a) that the tribunal is minded to dismiss the application;*
>
> *(b) the grounds on which it is minded to dismiss the application;*
>
> *(c) the date (being not less than 21 days after the date that the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.*
>
> *(4) An application may not be dismissed unless –*
>
> *(a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3)(c); or*
>
> *(b) where the applicant makes such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application."*

APPLICANTS' SUBMISSIONS

28. Mr Graham provided written submissions which were supported by witness statements from both Applicants and Mr Kearney that were

prepared for the Lands Tribunal hearing but were not ultimately used. At the hearing both Mr Graham and Mr Kearney expanded upon the written submissions.

29. Mr Graham said that the nub of the dispute was the period 1998 – 2002 when Wetherby Management Services had been the managing agents. He said that the case was *"all about money laundering"* and he relied in part upon the Respondent's previous decision to offer a discount of 10% (approximately £300,000) on the service charges relating to Wetherby's period of management. That sum had been paid into the service charge account and made available for distribution to all lessees who agreed to accept it in settlement of any outstanding service charge claims. We were informed by Mr Benson, the Respondent's solicitor, that of the 140 independent long leaseholders all but 5 had accepted the Respondent's offer. The sum or percentage was apparently arrived at in negotiations with the chairman of the residents association after he had received a management audit (which had not been published) indicating overcharging of just over 8% during Wetherby's period of management.

30. Mr Graham said that it was a matter of intense personal embarrassment that he had failed to comply with the directions. The second iterration of the Scott Schedule, dated 29 November 2007, was not the one that he wanted to work from and he requested a further unspecified period within which to prepare a more comprehensive ten column Scott Schedule. He said that the cost of preparing such a schedule was formidable and that Mr Kearney's mistake had been to use a *"standard document"* that Mr Kearney simply intended to use as basis for negotiations with the Respondent. He was unable to say when this further document would be prepared and in such circumstances he requested to us to adjourn the case *"sine die with liberty to restore when the parties are ready"*. He considered that the case should be listed for a three week hearing.

31. Mr Kearney expanded upon the submissions made by Mr Graham in terms that could be considered intemperate. He informed us that the Respondent had operated *"a scam"*, that money had been *"blatantly stolen"* and that the lessees had been used as a *"cash cow"*. He explained the magnitude of his task. Approximately 7,000 documents had been provided during the discovery process and he had to analyse those documents and prepare a detailed analysis before he could properly formulate the Applicants' case. He had assumed that the Respondent would come to the negotiation table: in the absence of negotiations he considered that the eventual hearing would last some three months. Initially he was unable to say how long the task would take to complete although at the end of the hearing and after the submissions had closed he volunteered that it might be possible to complete the task within a further ten weeks.

THE RESPONDENT'S SUBMISSIONS

32. In a skeleton argument Mr Munro recited the chronology of this case. At the hearing he amplified his skeleton argument and drew our attention to

the serious allegations of criminality made by the Applicants that, he said, were unsupported by any evidence after a period of some two and half years.

33. The Respondent, he said, was prepared to come to the negotiating table but it could not do so until it understood the claim against it. He submitted that the Scott Schedule did not enable the Respondent to understand the Applicants' case. That claim could only be understood upon receipt of witness statements but the Applicants had failed to provide them in breach of the tribunal's directions.

34. In expanding upon his skeleton argument Mr Munro drew our attention to the practical difficulties faced by the Respondent not least of which was that it could not close the accounts for the disputed service charge years.

35. He also requested us to have regard to proportionality in terms not only of the tribunal's resource but more importantly the time and cost invested by the parties. The hearing times suggested by Mr Graham and Mr Kearney would not be tolerated by the commercial courts and he considered it wholly unreasonable that they should be contemplated by the tribunal. He considered that there had been a total failure on the part of the Applicants to explain their case or to conduct the litigation in a manner that would enable it to be disposed off at a reasonable cost and within a reasonable time.

36. He also suggested that we should have regard to the position of the other lessees. Although the costs in these proceedings could in the first instance be recovered from the Applicants they could ultimately be recovered from all the lessees through the service charge provisions of their leases. Mr Benson interjected to say that that other lessees were already complaining to the Respondent about their potential liability for the cost of these proceedings.

37. In conclusion Mr Munro said that there could not be a clearer case for dismissal and he invited us to dismiss the applications applying the test formulated by the Lands Tribunal and referred to above.

REASONS FOR OUR DECISION TO DISMISS THE APPLICATIONS

38. We use as our framework for this decision the subparagraph of the Lands Tribunal decision recited above.

39. Notice was given to the Applicants on 15 February 2008 that the tribunal was minded to dismiss the applications as an abuse of its process with the dismissal being heard on 14 March 2008. At the hearing Mr Graham, in answer to our question, accepted that the notice complied with regulation 11 and he took no issue on its validity.

40. We next had to consider whether the applications amounted to an abuse of the tribunal's process. In doing so we had particular regard to paragraph

24 of the Lands Tribunal's decision, which makes it clear that Regulation 11 permits us to dismiss an application notwithstanding that it may have been progressing for sometime and that we should take into consideration all the circumstances of the case including any failure to comply with case management directions.

41. The directions of 16 November 2005 required the First Applicant to provide a full statement of case by 14 December 2005. That direction was not complied with and on 16 December 2005 the date was extended to 23 January 2006. Again the Applicant failed to comply. In the decision and further directions of 6 March 2006 the First Applicant was afforded *"one final opportunity to particularise her case"*. This was to be done, with the agreement of both parties, by a six column Scott Schedule to be delivered to the Respondent by 29 March 2006. This direction was only partially complied with in that many of the listed items were disputed in nominal sums of one and two pounds.

42. Following the publication of the Lands Tribunal decision the applications came back to the LVT on 15 August 2007 at a pre-trial review. Although no progress had been made the tribunal again gave the First Applicant *"one further opportunity to fully particularise her case"* by sending the completed Scott Schedule to the Respondent by 30 November 2007. This direction was complied with and a completed Scott Schedule was received by the tribunal on 5 December 2007 together with a schedule of disputed invoices. It was apparent from Mr Graham's covering letter of 5 December 2007 and from the submissions made at the pre-trial review on the following day that this was the final version of the Scott Schedule upon which the First Applicant relied to state her case. Mr Graham proposed some directions which would have brought the applications to a hearing on 10 March 2008. The tribunal issued directions to bring the application to a hearing on a date to be notified but which would be after exchange of expert reports on 21 March 2008 thus allowing additional time for preparation. The first direction required the Applicants to lodge their document bundle by 1 February 2008. The only additional documents requiring preparation for this bundle were the statements of all witnesses of fact to be called at the hearing. No attempt had been made to comply with that direction and it was only on 31 January 2008 that Mr Graham requested an extension of time within which to prepare a further iteration of the Scott Schedule with ten columns.

43. In excusing these none-compliances Mr Graham relied heavily upon the Respondent's failure to provide full discovery, a point raised at paragraph 30 of the Lands Tribunal decision.

44. It could be said that it was reasonable to require any applicant to at least state a case before putting a respondent to the cost of extensive discovery especially in service charge cases where there is a statutory right to inspect documents upon the publication of service charge accounts. However even if that point was disregarded it was apparent, from Mr Kearney's witness statement, prepared in connection with the Lands

Tribunal appeal, that full disclosure of all documents relating to Wetherby's period of management had been given by 20 October 2006 and of all documents by 15 March 2007. We considered that a year later the Applicants could no longer rely upon any past failure by the Respondent to disclose documents.

45. We also reminded ourselves that the Applicants did not have legal representation. Nevertheless they were not unrepresented: Mr Graham is a retired chartered accountant and acknowledged that he had appeared in numerous LVT cases: Mr Kearney is a quantity surveyor of 36 years experience. Although they represented the Applicants free of charge we did not consider that the absence of legal representation excused the Applicants' failure to comply with the tribunal's directions.

46. We concluded that since the applications were made, some 29 months ago, there had been persistent failures to comply with the tribunal's directions that amounted to an abuse of the tribunal's process. Reverting to the Lands Tribunal decision we then had to consider whether it would be appropriate to exercise our discretion to dismiss the application. Again we considered it appropriate to take into account all the circumstances of the case.

47. Against dismissal was the prejudice that would result from the Applicants being denied the opportunity to contest the disputed service charges. In was clearly difficult at this stage to quantify the extent of that prejudice. That there were shortcomings during the period of Wetherby's management was acknowledged by Respondent. The Applicants had however had the opportunity to participate in a scheme that would have resulted in reimbursement of 10% of the service charge levied during those years: that they had declined to accept that offer was a matter for them and their professional advisers. Mr Graham said that the value of that concession to each of the Applicants was little more then £1,000. Over and above that figure the extent of any prejudice was entirely speculative and would depend upon the tribunal's decision if the applications went to a full hearing. It was however worth bearing in mind that during the relevant periods costs had been incurred in providing services and service charges would ultimately be payable.

48. On the other wide of the equation a number of factors had to be considered.

49. We considered the position of the Second Applicant that had troubled the tribunal in its decision of 12 December 2007. She was now represented by Mr Graham and Mr Kearney: it was clear that she relied on the case advanced by them on behalf of the First Applicant and she was essentially in the same position as the First Applicant.

50. Lord Justice Judge in *R v Chaaban* [CA (CrimDiv) 2003] and *R v Jisl* [CA (CrimDiv) 2004] had indicated that it was reasonable to have regard to the court's finite resources. Those judgments were issued in the context of

criminal proceedings where the liberty of the individual was at risk and they must therefore apply with at least equal force where public funds are expended in the resolution of what are essentially private disputes.

51. The Applicants' repeated failures to comply with the tribunal's directions had already resulted in a disproportionate share of the Residential Property Tribunal's resources being allocated to this case. Given the proposed time estimates for the hearing advanced by Mr Graham and Mr Kearney (3 weeks to 3 months) and Mr Graham's request that we adjourn the case *"sine die with liberty to restore when the parties are ready"* the position could only deteriorate.

52. Equally it was appropriate to have regard to the cost implications for the parties themselves and for the other lessees. Mr Munro informed us that the Respondent's costs were recoverable from the Applicants under the terms of their leases otherwise than through the service charge. Those costs are likely already to exceed, by a substantial margin, any benefit that the Applicants were likely to derive from these proceedings. Ultimately there was the possibility that the costs would be recovered from the other lessees through the service charge provision of their leases: any order made under section 20C of the Act could only benefit the Applicants. Given the Applicants' failure to effectively manage the litigation and to comply with the tribunal's directions we considered it wholly unreasonable that the cost of this litigation should be visited upon other lessees, the overwhelming majority of whom had reached an accommodation with the Respondent and decided to move forward with new managing agents.

53. We also considered that the prolonged and continuing delay could prejudice a fair hearing of the issues. As Mr Graham pointed out the nub of this dispute was the period of Wetherby's management that lasted from 1998-2002. The tribunal would no longer be able to make any realistic assessment of the cost or the quality of any works on the basis of a visual inspection. There was the risk that records of that antiquity might be incomplete making it difficult for the tribunal to draw any firm conclusions from their unavailability. Many of the individuals responsible for the day to day management during the crucial period would almost certainly now be unavailable to give evidence.

54. Finally we considered it appropriate to have regard to the repeated allegations of serious criminality made against the Respondent and its agents for which, after a period nearly two and half years, no evidence had been adduced. Where such allegations are made, the burden of proof lies with those making them and it is not a burden that can be discharged lightly. In response Mr Graham relied upon the Applicants' witness statement prepared in connection with the Lands Tribunal proceedings but not relied on at the hearing. However having read those statements it was apparent that they did not, and indeed were not intended to, substantiate the allegations of criminality that had been made.

55. We considered that each of the factors set out in paragraphs 50 to 54 outweighed the potential prejudice to the Applicants and consequently we considered it appropriate to exercise our discretion to dismiss the applications.

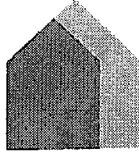
REASONS FOR OUR DECISION NOT TO MAKE A COSTS ORDER

56. Mr Munro, in his skeleton argument, sought an order that each of the Applicants pay the Respondent's costs to the maximum £500 allowed. This was opposed by Mr Graham.

57. The making of a cost order pursuant to paragraph 10 of Schedule 12 to CLRA again involved the exercise of discretion and required us to take into consideration all the circumstances of the case. The dismissal of the applications would normally justify a cost order. We were however informed by Mr Graham that the First Applicant's life had been devastated by these proceedings and this was confirmed by her in a short concluding address. She was now suffering from a stress related illness, she was unable to work and was now in receipt of state benefits including housing benefit. On the basis of the limited information available to us it was apparent that, in the context of court proceedings, she would have been eligible for legal aid. Although cost orders are made against such litigants they are not generally exercised without leave of the court. There is no such protection in tribunal proceedings and we were reluctant to make a cost order against a person in the situation that the First Applicant now found herself.

58. Furthermore, if Mr Munro were right, the Respondent would ultimately be able to recover the costs under the terms of the Applicants' leases so that our refusal to make a cost order against either Applicant would not prejudice the Respondent. We considered that it would be more appropriate to consider the issue of costs in the round when the Respondent sought to recover those costs under the terms of the Applicants' leases. Consequently and for each of these reasons we declined to make the order sought.

Chairman:..(A J Andrew)



DECISION AND FURTHER DIRECTIONS BY THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 20C AND 27A OF THE LANDLORD AND TENANT ACT 1985

Reference number:	LON/00BK/LSC/2005/0291
Premises:	Flats 500 and 726 Clive Court, Maida Vale, London W9 1SG
Applicants:	Ms M Volosinovici (Flat 726) Ms M Abdel-Mahmoud (Flat 500)
Respondent:	Corvan (Properties) Ltd
Appearances:	For the Applicants: Ms M Volosinovici was assisted by Mr J Graham and Mr H Kearney. Ms Abdel-Mahmoud did not appear and was not represented For the Respondent: Mr G Van Tonder, a barrister instructed by Rawlison Butler LLP solicitors
Application received:	18 October 2005
Tribunal members:	Mr A J Andrew Ms Aileen Hamilton-Farey FRICS FCIArb
Hearing:	6 December 2007
Decision:	12 December 2007

DECISION

1. We declined to dismiss the application and made the further directions set out below.

BACKGROUND

2. The background to this application has been set out in previous decisions of this tribunal and in a decision of the lands tribunal of 16 July 2007. Subsequent to the lands tribunal decision further directions were issued on 15 August 2007. Those directions incorporated a notice of dismissal to be heard on 6 December 2007 if a completed Scott schedule was not delivered to the Respondent by 20 November 2007 in accordance with directions issued on 6 March 2006: those directions, amongst other things, required Ms Volosinovici to set out in the fourth column of the Scott schedule her reasons for objecting to the disputed expenditure. A completed Scot schedule was finally delivered to the Respondent prior to the hearing.

REASONS FOR OUR DECISION

3. The Scott schedule was technically complete in so far as it identified the disputed service charge costs and the extent to which each was disputed. However Ms Volosinovici's reasons for objecting to the disputed costs were wholly inadequate to the extent that it was extremely difficult for the Respondent to understand the case that it had to answer. Substantial major works costs were simply challenged and significant reductions proposed with no further explanation. In large measure Ms Volosinovici's case rests on the apparent failure of the receipts and invoices disclosed during the discovery process to match the heads of expenditure set out in the annual accounts that, Mr Graham accepted, had been certified by the Respondent's accountants. In a short introduction to the Scott schedule those assisting Ms Volosinovici made a number of apparently unsubstantiated allegations including *"that a cartel system was in operation sharing work among a small group of subcontractors"* and *"blatant fraud"*. Mr Kearney, who is to give evidence as Mrs. Volosinovici's expert, appeared to accept the inadequacy of the reasons contained in the Scott schedule when he said that if reasons had been provided they would run to many pages.

4. Having reviewed the documents placed before us it was apparent that the application had been made with little or no supporting evidence and that those assisting Ms Volosinovici have used the discovery process, during the intervening two years, in an attempt to establish a substantive case. We consider that the manner in which Ms Volosinovici has progressed the application and in particular the prolonged delays and requests for further time amounted to an abuse of the tribunal's process that would, in the ordinary course of events, justify dismissal.

5. However we have two reservations. The first relates to Ms M Abdel-Mahmoud who was joined as an applicant, at her request, on 9 December 2005. She was not assisted by Mr Graham. Although she was notified of the hearing it was apparent from the tribunal's file that she had not been fully informed of developments either by the tribunal or the other parties. She was clearly relying on the case being made by Ms Volosinovici and we consider that she would be prejudiced by a dismissal of the application without being given a further opportunity to make representations.

6. We were also troubled by Mr Graham's undisputed submission that the Respondent had settled a claim brought by the Residents' Association by payment of £300,000 to be distributed to individual lessees in accordance with their percentage service charge contributions. Although Ms Volosinovici had chosen not to participate in that scheme it nevertheless suggests that there is a justiciable issue. We did not know if the settlement had been endorsed by the Resident's Association, the number of participating leases or if it was still open to the Applicants to participate.

7. For each of these reasons we decided, with considerable reluctance, not to dismiss the application. We were fortified in our decision by the knowledge that if the Applicants fail to comply with our further directions it will be open to the Respondent to renew its application to dismiss.

8. The resources expended on this application have been wholly disproportionate to the sums in issue. The tribunal's resources are not limitless and in considering how the application is to be brought to a hearing it is reasonable to have regard to them. It is also reasonable to take into account the position of the other lessees who may, through their service charge contributions, find themselves contributing towards the Respondent's costs that, if the application proceeds in the way that it has done, will be considerable.

9. Given the gravity of the allegations made against the Respondent we consider that the Applicants should lodge a comprehensive hearing bundle incorporating the evidence upon which they intend to rely at the hearing so that the Respondent can fully understand the case that it has to answer. The directions set out below are intended to achieve that objective, although they allow more time for the parties to prepare for the hearing than that suggested by Mr Graham in his draft directions. The parties were requested to provide, by 14 December 2007, comprehensive details of their availability including that of their representatives and witnesses during the period of two and half months commencing 15 March 2008. Notice of the hearing dates will be issued shortly after 14 December 2007.

DIRECTIONS

10. The Applicants shall prepare a bundle of documents relevant to their case and shall on or before **1 February 2008** send four copies to the tribunal and one copy to the Respondent. The bundle shall include copies of the following:-

- The Scott schedule as currently completed
- All written requests made by the Applicants for inspection of accounts, receipts and other documents relating to the disputes service charge accounts
- The application form and accompanying documents
- The Applicants' leases
- All the tribunal's directions
- Statements, setting out the substance of the evidence of all witnesses of fact that they proposes to call at the hearing
- Any other documents upon which they wish to rely at the hearing

11. The Respondent shall prepare a bundle of documents relevant to its case and shall by no later than **7 March 2008** send four copies to the tribunal and one copy to each of the Applicants. The bundle shall include copies of:
    - A further copy of the Scott schedule with the "Respondents response" column completed
    - The service charge accounts for all the disputed service charge years
    - The disputed service charge demands sent to the Applicants
    - Statements, setting out the substance of the evidence of all witnesses of fact that it proposes to call at the hearing
    - Any other documents upon which it wishes to rely at the hearing

12. The tribunal may decline to hear evidence from any witness of fact who has not delivered a statement in accordance with the above directions.

13. Each party shall be limited to one independent expert witness. Expert witness reports shall be exchanged by no later than **21 March 2008**. The tribunal may decline to hear evidence from any expert witness whose report has not been prepared by that date.

14. The Applicants shall bring to the hearing all the copy invoices, supporting the disputed service charge costs, obtained during discovery: they shall be indexed, contained in lever arch files and presented in date order. The tribunal may refer to the invoices at the hearing.

15. The parties should note that the tribunal will consider whether the Respondent should reimburse the Applicants with the whole or part of the fees paid in these proceedings. The parties may make representations on this and on the section 20C application in their witness statements or at the hearing.

16. The application will be heard at **10 Alfred Place, London WC1E 7LR** on a date and time to be notified. The hearing is expected to last for no more

than two days. If the tribunal considers an inspection to be necessary it will make appropriate arrangements at the hearing.

17. If when the bundles have been submitted either party considers the time estimate to be unrealistic it shall write to the tribunal within seven days with a revised time estimate. If the parties fail to provide a revised time estimate they may, at the hearing, be time limited in the presentation of their cases.

18. No written communication should be sent to the tribunal unless it has been copied to the other parties and this is noted on the communication. In particular any written communications sent by one applicant should also be copied to the other applicant and any written communications sent by the Respondent or the tribunal should be copied to both Applicants.

19. **Non-compliance with the tribunal's Directions may result in prejudice to a party's case. In particular, failure to provide evidence as directed may result in the tribunal deciding to debar the defaulter from relying on such evidence at the full hearing. In the case of the Applicants non-compliance could result in dismissal of the application in accordance with regulation 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003.**

Chairman:..(A J Andrew)