

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 (as amended)

**CERTIFICATE PURSUANT TO PARAGRAPH 18(2)
LEASEHOLD VALUATION TRIBUNAL (PROCEDURE)(ENGLAND)
REGULATIONS 2003 (SI 2003/2099)**

Case Number: CHI/00ML/LIS/2008/0034

Property: Janeston Court, 1-2 Wilbury Crescent, Hove
East Sussex BN3 6FT

Applicant: Mr T Clarke (Flat 9) (tenant)
Joined Applicants:
Miss A Balogun (Flat 4)
Mr M S Dover (Flat 6)
Mr B Clarke (Flat 17)
Mr M Edmonson (Flat 27)

Respondent: Anstone Properties Limited (landlord)

I certify that there is an error in the Decision of the Leasehold Valuation Tribunal in this matter issued on 24 July 2009.

The name and address of one of the joint applicants was wrongly recorded as Ms A Bologun of Flat 24.

The correct name and address is Miss A Balogun of Flat 4.

Dated 13 August 2009

A handwritten signature in black ink, appearing to read 'J Talbot'.

**Ms J A Talbot MA
Chairman**

Southern Rent Assessment Panel
Leasehold Valuation Tribunal

Applications under Sections 27A and 20C of the Landlord and Tenant Act 1985

DIRECTIONS

Case Number: CHI/00ML/LIS/2008/0034

Property: Janeston Court, 1-3 Wilbury Crescent, Hove BN3 6FT

Applicant: Mr T Clarke (Flat 9) (tenant)
Joined applicants:
Mr M S Dover (Flat 6)
Mr B Clarke (Flat 17)
Ms A Bologun (Flat 24)
Mr M Edmonson (Flat 27)

Respondent: Anstone Properties Limited

Application: 4 August 2008

Directions: 6 August & 18 September 2008

Pre Trial Review: 16 October 2008

Further Directions: 20 October 2008

Hearing & Adjournment: 08 January 2009

Consideration (no hearing) 05 June 2009

Decision 24 July 2009

Tribunal

Ms J A Talbot (Chairman)
Mr N Robinson FRICS
Mrs J Herrington

Background

1. The parties are referred to the tribunal's Directions following the Pre-Trial Review dated 20 October 2008, and further Directions and Note of Adjournment dated 8 January 2009, for the procedural background to this case, which it is not necessary to set out again in detail here.
2. In summary, the application was made on 4 August 2008 by some of the tenants at Janeston Court in respect of service charges for the years ending 29 September 2003 to 2007 inclusive. The issues in dispute relate to charges incurred for management and surveyors fees for those years. An explanation was also sought for a heading in the accounts listed as "prepayments".
3. At the hearing on 8 January 2009 the tribunal was informed that the parties had accepted an expert report prepared by chartered surveyor Mr G Holden analysing the sums in dispute and reached agreement on the reasonable amount of management and surveyors fees. As a result it was agreed between the parties that the landlord would credit back to the service charge account excessive management and surveyors fees. This element does not require further consideration by the tribunal. This left outstanding the question of the "prepayments", and the tenants' application under Section 20C of the 1985 Act.
4. As recorded by the tribunal, the respondent agreed by 9 February 2009 to re-draw the accounts for the years in question, and to prepare an additional account for the period to 28/02/2008 (when the RTM company took over). The applicants agreed to prepare final account for the period 29/02/2008 to 28/09/2008. It was anticipated that the parties would then reach agreement on any outstanding issues, failing which the tribunal would deal with any such issues on the papers on receipt of skeleton arguments.
5. Unfortunately there were delays in the accounts being supplied by the respondent. Final versions of the re-drawn accounts was not provided until 20 May 2009, and were not agreed by the applicants for two reasons: first, the revised accounts do not reflect that sums were actually owed to the service charge account, and second, the prepayments for the year ending 2007 are not included. No agreement was reached on the S.20C application.
6. After several requests for further adjournments the tribunal reconvened on 5 June 2009 to consider the outstanding issues on the papers. Both parties provided skeleton arguments which the tribunal took into account along with all documents previously supplied.

Consideration

7. The applicants' case was that it was for the landlord to explain the prepayments and to show that those costs were reasonably incurred, insofar as they represented bona fide advance expenditure. The restated accounts showed prepayments of £30,064 which had not been addressed by the respondent. They also showed adjustments in relation to the management and surveyors fees which the applicants referred to as overpayments, as follows: for 2003 - £2,689, 2004 - £8,747, 2005 - £6,374, 2006 - £13,719, 2007 - £25,286. The total sum which had been improperly charged as service charges was therefore £86,879 and the applicants sought a determination that this sum should be returned to the service charge account.

8. The respondent accepted that the total of the prepayments was £30,064. This was a cumulative total as analysed in the former skeleton argument provided for the hearing on 8 January. It was further accepted that the prepayments were to be treated as service charges. These sums had been claimed from the lessees on account of future expenditure by the former managing agent Mr C Basley, but it appeared that these sums had been improperly retained by him, rather than held in the reserve fund, and he had subsequently been made bankrupt on 9 July 2008.
9. The respondent argued that the tribunal's jurisdiction was limited under Section 27A to a determination of the applicants' liability to pay service charges and the question of how and when any overpayments should be refunded was a matter for the County Court. It was further contended that tribunal only had jurisdiction to make a determination on the liability of the five applicants themselves and not the other tenants who were not a party to the application, relying on *Barton v Accent Property Solutions Ltd LRX/22/20008*. The applicants did not agree but contended that the jurisdiction conferred on the tribunal by S.27A was wide and there was nothing in *Barton* to restrict it.
10. Rather than setting out sums due to be refunded, the respondent set out the service charges it considered were payable and reasonably incurred for each of the years in issue, as follows: 2003 - £21,381; 2004 - £27,075; 2005 - £29,996; 2006 - £28,454; 2007 - £37,860.
11. The respondent further indicated that it did not oppose the S.20C application provided the matter was dealt with on the papers without an oral hearing.

Decision

12. The tribunal agreed with the applicants that the revised accounts were only provided after unacceptable delay and were of little relevance or assistance, in that they merely re-stated the expenditure summary in the previous accounts. The only additional information was the expenditure from September 2007 to February 2008, and the annual adjustments for the already agreed reduction in surveyor and management fees. The total adjustments for these each year were characterised by the applicants as overpayments, as set out in paragraph 7 above.
13. The revised accounts shed no light on the question of the prepayments. The tribunal found that the respondent could not provide any adequate explanation as to how they arose. There was no evidence that they represented any genuine or reasonable advance payment. In reality it may never be possible to ascertain precisely what the prepayments related to, as it appears they were an improper accounting device used by Mr Basley. Plainly, therefore, the prepayments could not be justified as reasonably incurred or payable as service charges, and this was admitted by the respondent as long ago as the skeleton argument of 7 January 2009. From the evidence supplied the tribunal found that the total prepayment was the cumulative sum of £30,064.
14. The remaining area of dispute between the parties centred on the extent of the tribunal's jurisdiction. The tribunal was not persuaded by the respondent's argument that the tribunal could only determine the liability of the five applicants. S.27A allows the tribunal to determine whether a service charge is payable, and if so, by whom, to whom, when and in what manner. There is no restriction on who may bring such an application or on the scope of the determination in the way suggested by the respondent. In the tribunal's view, *Barton* dealt with the question of whether a managing agent and a tenant-owned freehold management company could properly be included as respondents to an application brought by a tenant, and did not

otherwise restrict the tribunal's jurisdiction. Therefore the tribunal has the power to determine a global figure for service charges payable and it is for the landlord to calculate any apportionments in accordance with the lease terms.

15. However, the tribunal agreed with the respondent that it did not have power to order the landlord to refund any sums to the service charge account, though this may well be the only reasonable and logical outcome in these unusual and regrettable circumstances. In principle the landlord has already agreed to do this.

Determination

16. In conclusion, the tribunal determines that the total sums payable as service charges by the lessees of Janeston Court were the adjusted totals set out in the revised accounts: 2003 - £21,382; 2004 - £27,075; 2005 - £29,996; 2006 - £28,454; 2007 - £37,860.
17. The prepayments of £30.064 are not payable or reasonably incurred.
18. As the respondents do not oppose the S.20C application and the applicants have succeeded in all elements of their application, the tribunal makes an order under S.20C as sought, that the landlord is prevented from recovering any costs incurred in connection with these proceedings as part of the service charge.

Dated 24 July 2009

**Ms J A Talbot
Chairman**

