

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/24UJ/LSC/2009/0039**

**DECISION AND REASONS**

**Application** : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Leaseholders** : Mr Victor Ellis (Apartment 19) and Mr Donald Manning (Apartment 20)

**Respondent/Landlord** : Mr Peter James Hall

**Respondent/Warden** : Mrs Daphne Jane Wright

**Building** : Pyrford Gardens, Belmore Lane, Lymington, Hants, SO41 3NR

**Apartments** : the apartments in the Building

**Date of Application** : 4 March 2009

**Date of Provisional Directions** : 1 April 2009

**Date of Directions Hearing** : 28 April 2009

**Date of substantive hearing** : 7 July 2009

**Venue** : Stanwell House Hotel, High Street, Lymington

**Appearances for Applicant/Leaseholders**: Mr Manning and Mr Ellis

**Appearances for Respondent/Landlord**: Mr Hall and Mrs Wright

**Also in attendance** : Mr Wright, Mr R Rowlands, Unison Trade Union Representative, and Mr and Mrs Nyland, Apartment 22

**Members of the Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D L Edge FRICS, and Mrs M Phillips

**Date of Tribunal’s Reasons** : 15 July 2009

**Introduction**

1. At the directions hearing on the 28 April 2009 the following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, namely,:

- a. in relation to the items in the service charge accounts for the years ending the 31 December 2006, the 31 December 2007, and the 31 December 2008 headed “residential manager”, whether the sums of £13,976, £14,603, and £15,058 (“the Respondent/Warden’s charges”) were reasonable sums
- b. in relation to the items in the service charge accounts for the years ending the 31 December 2006, the 31 December 2007, and the 31 December 2008 headed “communal areas”, whether the sums of £4,427, £4,683, and £5,200 for “maintenance and cleaning wages” (“Mr Wright’s charges”) were reasonable sums
- c. in relation to the references in the application and subsequent papers before the Tribunal to a claim for libel, which Mr Manning stated was not connected to the service charge issues, whether the Tribunal had jurisdiction to hear and decide such a claim; this would be dealt with as a preliminary issue before, but on the same day as, the hearing of the service charge issues
- d. whether, and, if so, to what extent, the costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders

2. No dispute has been raised concerning :

- a. the identity of the person by whom the service charges are payable, the person to whom they are payable or when or in what manner they are payable
- b. the fact of payment by the Respondent/Landlord of the sums in issue
- c. the standard of services provided

### **Statutory Provisions**

3. Section 19(1) of the 1985 Act provides as follows :

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable 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;

and the amount payable shall be limited accordingly

### **Documents**

4. The documents before the Tribunal are :

- a. the Tribunal’s bundle, comprising papers submitted by the parties, pages 1 to 245
- b. a letter from Richard James Management Co dated the 9 June 2009 submitted by Mr Hall at the substantive hearing, and endorsed with signatures

5. References in these reasons to page numbers are to pages in the Tribunal’s bundle

### **Inspection**

6. The Tribunal inspected the Building on the morning of the hearing on the 7 July 2009. Also present

was Mrs Wright

7. The Building comprised a 2-storey Edwardian house with a substantial extension at the right hand side and at the rear, comprising 23 Apartments, including the Respondent/Warden's Apartment. The original house was of rendered pebble-dash finish, with a slate pitched roof. The extension was brick-finished on the ground floor, with a tile-hung finish on the first floor at the front, and a synthetic fibre-slate pitched roof
8. The Applicant/Leaseholders Apartments were adjacent to each other on the first floor of the original house. The Respondent/Warden's Apartment (number 6) was on the ground floor, beneath Mr Manning's Apartment
9. The Tribunal inspected the grounds all the way round the Building, the separate laundry building, and the adjacent bin enclosure
10. The Tribunal also inspected the interior of Apartments 6, in which Mr Wright was present, 7, in which Mrs S J Keavy was present, and 23, which was vacant
11. The Tribunal considered the condition of the Building, the Apartments inspected, and the grounds, to be immaculate

**The lease of Apartment 20 (pages 58 to 79)**

12. For the purposes of these proceedings the material parts of the lease are as follows :

***Recitals (page 59)***

*(1)(b) "the Building" means the building erected or to be erected on the Estate.....comprising of [sic].....22 apartments and a Warden's apartment*

***Clause 4 [Lessee's covenants] (page 67)***

*(b)(i) to contribute and pay one twenty-second part of the costs expenses outgoings and matters mentioned in the Fifth Schedule hereto*

***Fifth Schedule [costs expenses outgoings and matters in respect of which the Lessee is to contribute] (page 77)***

*(1) the expenses incurred by the Lessor in carrying out its obligations under Clause 5(b)  
(d) (e) (f) (g) (h) (i).....*

***Clause 5 [Lessor's covenants] (page 70)***

*(a) to (c).....*

*(d) that the Lessor will maintain repair decorate and renew:*

*(i) [the main structure]*

*(ii) [pipes]*

- (iii) [common parts]
- (iv) [furniture and equipment in the community room and laundry room]
- (f) that the Lessor will so far as practicable keep clean and reasonably lighted the passage landings staircases and other parts of the Building and/or the Estate.....
- (g) that..... the Lessor will so often as reasonably required decorate the exterior.....
- (h) .....
- (i) so far as practicable to maintain the services of a Warden for the purpose of being reasonably available to the Lessees in the Building to render reasonable assistance in cases of emergency and to supervise the provision of services as aforesaid in the Building and Estate and to perform such other duties as the Lessor shall in its discretion stipulate

**The lease of Apartment 19 (pages 188 to 209)**

- 13. For the purposes of these proceedings the material parts of the lease of Apartment 19 are the same as those in the lease of Apartment 20

**The substantive hearing on the 7 July 2009**

**Preliminary issue – the claim for defamation**

- 14. The Tribunal noted that the Applicant/Leaseholders application referred to a claim by Mr Ellis against the Respondent/Warden for defamation, and that the Tribunal’s bundle contained correspondence and documents referring to the issue
- 15. At the substantive hearing the Tribunal invited the Applicant/Leaseholders to make submissions about the basis on which they were contending that the Tribunal had jurisdiction to deal with this issue
- 16. Mr Manning said that Mr Ellis had shown him a letter from Scott Bailey and had sought his help. Mr Manning had sought advice on his behalf, and they now wished the Tribunal to deal with the matter at the same time as the other issues before the Tribunal
- 17. Neither Mr Hall nor Mrs Wright made any submissions
- 18. The Tribunal, having adjourned the hearing for 5 minutes to enable the Tribunal to consider the matter, announced to the parties the following decision

**Tribunal’s decision on the preliminary issue**

- 19. Having considered all Mr Manning’s submissions :
  - a. the Tribunal had jurisdiction to deal with only those matters which Parliament had set down for the Tribunal to deal with
  - b. the Tribunal had jurisdiction to deal with the Applicant/Leaseholders’ application in relation to service charges by virtue of section 27A of the 1985 Act
  - c. however, the Tribunal did not have jurisdiction to deal with a claim for defamation, which would, instead, be a matter for the court, and in respect of which no doubt the parties would seek separate advice

## **Water ingress to the Respondent/Warden's Apartment**

20. There were references in the papers before the Tribunal to the ingress of water to the Respondent/Warden's Apartment and to a claim against Mr Manning in that respect, but the parties agreed at the hearing before the Tribunal that these matters were not issues before the Tribunal in these proceedings

## **The Respondent/Warden's charges**

21. The Applicant/Leaseholders set out their case in this respect in the application form, and in Mr Manning's letters dated the 18 March 2009 (page 15), 29 March 2009 (page 81), 19 April 2009 (page 123), 24 April 2009 (page 153), 4 May 2009 (page 179), and 24 May 2009 (page 224)
22. The Respondent/Landlord and the Respondent/Warden set out their case in a statement at page 176, and in a letter dated the 12 May 2009 (page 218)
23. The Respondent/Warden's contract of employment dated the 1 December 1995 was at page 93. A supplementary agreement dated the 18 April 2002 was at page 97
24. Letters from accountants setting out the Respondent/Warden's hourly rates of pay for the years 2002 to 2008, the number of hours worked a week, and the annual and monthly equivalents, were at pages 98, 99, 100, 174, 101, 102, and 103 respectively
25. Service charge accounts for the years ended 31 December 2005 (incorporating the 2004 figures), 2006, and 2007, and draft accounts for 2008, were at pages 104, 109, 112, and 117
26. At the hearing, Mr Manning said that he was not challenging the Respondent/Warden's rate of pay for any year, nor was he suggesting that the Respondent/Warden's number of hours should be reduced, because it would not be practical to do so. However, the resident of Apartment 15 had written to the Respondent/Landlord asking for the Respondent/Warden's number of hours to be reduced
27. Mr Manning said that his challenge was on the grounds of affordability. The accountants had said that the high costs of the service charge were unaffordable. The high costs were inhibiting the sales of Apartments. It was difficult for leaseholders on restricted pensions to afford the charges. There was no money in the reserve fund
28. Mr Ellis said that he echoed Mr Manning's submissions
29. In answer to questions from the Tribunal Mr Manning said that the government, not the leaseholders, should pay the Respondent/Warden's charges. Mr Manning had not noticed the provision in the lease for a warden, and had not looked at the previous service charge accounts, before moving in 3 years ago, because it would have made no difference as he had had to move at the time. The question whether the Respondent/Warden's charges should be included in the service charge was a matter for the leaseholders, not the landlord, to decide. Clause 5(i) of the leases imposed an obligation on the landlord to provide a warden so far as practicable, but the leaseholders

had the final say about whether the charges should be included in the service charges. It was a matter of democracy

30. In answer to questions from the Tribunal, Mr Hall said that the words “so far as practicable” in clause 5(i) of the leases meant that if one warden left then the landlord would have to try to appoint a replacement, but that it might take time to do so
31. Mr Manning said that the words meant that if the present warden retired it might be difficult to replace her. If the leaseholders did not agree with it then it would not be practicable
32. Mr Ellis said that his concern was the number of hours worked by the Respondent/Warden, which should be no more than 2 hours a day, rather than 8. He agreed that her hourly rate was reasonable
33. Mr Hall said that he had no recollection of a letter from any resident asking for the Respondent/Warden’s hours to be reduced, and he had no such letter on file. On the other hand, he had produced, with his letter dated the 12 May 2009 (page 218), a number of letters from lessees with character references for Mrs Wright. He would also like now to submit at the hearing a survey of lessees views about the Respondent/Warden’s charges and number of hours worked and level of service which he had carried out by writing a letter dated the 9 June 2009, which had been signed by most of the lessees as being satisfied with the system as it stood
34. Mr Manning said that he had seen neither the letter dated the 12 May nor the survey letter of the 9 June before. The Tribunal gave him and Mr Ellis time to consider them. Having done so, Mr Manning said that he had no objection to them being produced and considered by the Tribunal, but submitted that they needed to be considered in the context of all the evidence
35. Mrs Wright said that she worked more hours than the 8 hours for which she was paid (at the minimum wage), and was on call 24 hours a day. There was an alarm in her kitchen and she carried a bleeper with her. On occasions when she was out or on holiday a central 24-hour call service would take lessees’ calls and would pass them on in the first instance to Mr Hall, who was only 15 minutes away. She and Mr Hall arranged their holidays so that they were not on holiday at the same time. She had been the warden for 18 years, and there had been no problems yet
36. Mr Manning said that he had no response to what Mrs Wright had said. This was an argument about money, not sentiment

### **Mr Wright’s charges**

37. Again, the Applicant/Leaseholders set out their case in this respect in their application form and in Mr Manning’s letters, and the Respondent/Landlord set out their case in the statement at page 176, and in the letter dated the 12 May 2009 (page 218)
38. In the Respondent/Landlord’s statement at page 176, the Respondent/Landlord stated that :
  - a. Mr Wright’s salary was suggested and introduced by the lessees as a response to a need for a variety of maintenance jobs to be addressed
  - b. it was agreed by lessees at the AGM on the 31 March 2006 to start on the 1 April 2006, with Mr Wright to be paid under the heading of maintenance at the rate of £10 an hour for 10 hours a week

- c. Mr Wright's duties included :
- domestic cleaning -- vacuuming, cleaning glass/brass in communal areas, including passageways, communal lounge, lift, laundry room, and exterior staircases and walkways
  - checking the condition of the Building, paths, drives and gardens, particularly with a mind to safety and clearing of leaves and snow
  - general maintenance, including painting, cleaning UPVC, repairs to fencing, and liaising with the management company daily
  - organising and cleaning/disinfecting dustbin and recycling area
  - checking laundry room cleanliness and tidiness and proper working of machines
  - checking and replacing communal light bulbs, internally and externally, gardens and driveway
  - minor repairs and odd jobs in individual Apartments, including replacing light bulbs, removing items to lessees' storage area, repairing or cleaning vacuum cleaners, fixing TV aerials, tuning TVs, clearing blocked pipes, sinks, showers, minor water leaks, moving furniture or cases
  - many other personal jobs needed by the ageing lessees, many of whom were over the age of 90 years, including regularly picking up pensions, prescriptions, glasses, and even mending false teeth
  - walking round the grounds late each evening to check their all is well before he retires
- d. Mr Wright was generally available 10 hours a day
- e. he would help in the case of illness, accident or emergency 24 hours a day if called on
- f. he would arrange emergency services and stay with an individual resident or relative if required for however long it took
- g. his salary of £100 a week was more than justified

39. Mr Manning said that he was not challenging the hourly rate, the number of hours, or the duties. Again his only challenge was affordability. If he and the other residents had plenty of money he would not be challenging the charges

40. Mr Ellis said that he agreed with Mr Manning

### **Section 20C**

41. Mr Hall and Mrs Wright said that neither of them would be including their costs of these proceedings in any future service charge

### **The Tribunal's findings**

#### **Defamation**

42. For reasons already given, the Tribunal finds that the Tribunal has no jurisdiction to deal with this issue

#### **The Respondent/Warden's charges**

43. The Tribunal has taken account of all the Applicant/Leaseholders evidence and submissions, both in writing and at the hearing
44. However, the Tribunal finds that :
- a. the Respondent/Landlord is under a duty "*so far as practicable to maintain the services of a Warden*" under clause 5(i) of the leases
  - b. the duty of the Respondent/Landlord in that respect is a contractual duty to each lessee under each lease, and, as such, is not dependant on, or subject to, the wishes of the lessees
  - c. the words "*so far as practicable*" in clause 5(i) are intended, as suggested by both Mr Hall and Mr Manning at the hearing, to limit the landlord's liability for breach of that covenant for a reasonable period between one warden leaving and another warden being appointed, and are not intended to indicate that the landlord's duty to maintain the services of a warden is limited by the lessees' willingness to pay or the lessees' ability to pay
  - d. the liability of each lessee under clause 4(b)(i) of the leases is a contractual duty to pay a share of the landlord's expenses referred to, including the expenses of maintaining the services of a warden, and, contrary to Mr Manning's submissions in that respect, is not subject to, or dependant upon, either the lessee's willingness to pay or the lessee's ability to pay
  - e. accordingly, the question whether or not an individual lessee is willing to pay or can afford to pay is not, as such, a relevant consideration under section 27A of the 1985 Act in assessing whether the Respondent/Warden's charges were payable
  - f. there has been no challenge by the Applicant/Leaseholders to the Respondent/Warden's hourly rates, which, in any event, the Tribunal finds to be reasonable
  - g. in relation to the number of hours charged in the service charges, namely 8 hours a day :
    - Mr Ellis suggested at the hearing that the number of hours should be reduced to 2 hours a day
    - Mr Manning said that the lessee of Apartment 15 had also suggested that the number of hours should be reduced
    - Mr Manning, for himself, said that it would not be practical to reduce the hours
    - the Tribunal finds, having considered all the circumstances, that it would not indeed even be possible for the Respondent/Landlord to comply with the landlord's obligations under clause 5(i) of the leases if the Respondent/Warden were to work for less than 8 hours a day, 5 days a week, let alone the 2 hours a day suggested by Mr Ellis
    - the Tribunal accordingly finds that the number of hours charged was reasonable
  - h. the Respondent/Warden's charges were accordingly reasonably incurred
  - i. in relation to the standard of service provided by the Respondent/Warden, the Tribunal has taken account of all the evidence submitted by the Applicant/Leaseholders, but, has also taken account of all the reference letters attached to page 218, even though some of those letters are not currently dated, and even though some do not purport to be from lessees at the Building, and having considered all the evidence in the round, the Tribunal is satisfied that the services provided were of a reasonable standard for the purposes of section 19 of the 1985 Act
45. Having considered all the evidence in the round, the Tribunal finds that the Respondent/Warden's charges for the service charge years 2006, 2007 and 2008 in the sums of £13,976, £14,603 and £15,058 were reasonable and were payable by way of service charge

#### **Mr Wright's charges**

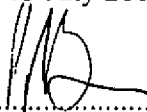


46. Again, the Tribunal has taken account of all the Applicant/Leaseholders evidence and submissions, both in writing and at the hearing
47. However, the Tribunal finds that :
- a. the duties of Mr Wright, as listed at page 176, fall within the definition of the landlord's duties under clause 5 of the leases
  - b. again, the duty of the Respondent/Landlord under clause 5 is a contractual duty to each lessee under each lease, and, as such, is not dependant on, or subject to, the wishes of the lessees
  - c. again, the liability of each lessee under clause 4(b)(i) of the leases is a contractual duty to pay a share of the landlord's expenses referred to, including, as the Tribunal finds, Mr Wright's charges, and, contrary to Mr Manning's submissions in that respect, is not subject to, or dependant upon, either the lessee's willingness to pay or the lessee's ability to pay
  - d. accordingly, the question whether or not an individual lessee is willing to pay or can afford to pay is, again, not a relevant consideration under section 27A of the 1985 Act in assessing whether Mr Wright's charges were payable
  - e. the Applicant/Leaseholders confirmed at the hearing that they were not challenging the hourly rate, the number of hours, or the duties, which, in any event, and having seen on inspection the immaculate state of the Building, the Tribunal finds to be reasonable in each case
  - f. Mr Wright's charges were accordingly reasonably incurred and were of a reasonable standard for the purposes of section 19 of the 1985 Act
48. Having considered all the evidence in the round, the Tribunal finds that Mr Wright's charges for the service charge years 2006, 2007 and 2008 in the sums of £4,427, £4,683 and £5,200 were reasonable and were payable by way of service charge

### Section 20C

49. In the light of the statements by Mr Hall and Mrs Wright that neither of them would be including their costs of these proceedings in any future service charge, the Tribunal makes an order that the costs incurred by the Respondent/Landlord and the Respondent/Warden in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders

Dated the 15 July 2009



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor