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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**14 Chestnut Court, Vange, Essex SS16 4UB.**
Applicant	:	**Kevin John Napthen**
Respondent	:	**Chestnut Court Vange Management Company Limited**
Case number	:	**CAM/22UB/LSC/2010/0039**
Date of Application	:	**15th March 2010**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS MCI Arb**

DECISION

UPON these proceedings having been deemed to have been withdrawn because of the failure of the Applicant to pay a hearing fee

AND UPON the Respondent having asked for an order that its legal costs wasted by the application should be paid by the Applicant

IT IS DETERMINED that:-

1. The Applicant has behaved unreasonably in connect with these proceedings.

2. The reasonable costs of the Respondent incurred as a result of such behaviour are assessed at £220.31 and that this sum is payable by the Applicant to the Respondent forthwith.

Reasons

Introduction

3. The applicant for a determination of the reasonableness and payability of service charges claimed by the Respondent in respect of the property was dated the 15th March 2010. It challenged service

charges for the years 2006 to 2010. It contained much rhetoric but no detail of the exact nature of the allegations in respect of any specific service charge.

4. The application also said that court proceedings had been issued by the Respondent against the Applicant for recovery of service charges.

5. On the 1st June 2010 the Tribunal issued a directions order. The first direction ordered the Applicant to file and serve a statement attaching the relevant service charge demands. It ordered that the Applicant say, in respect of each service charge challenged, why it was being challenged. If it was being alleged that there was no liability in law or under the terms of the lease, the relevant legislation and/or the terms of the lease relied upon must be set out.

6. Although that direction was not complied with, it was felt that the case should be progressed and a hearing date was fixed for the 7th September 2010. The Applicant was notified of this in a letter dated 29th June 2010. This letter told the Applicant that a hearing fee of £150 was payable by him within 14 days of the date of the letter i.e. by at least the 13th July 2010. The letter also said:-

> *"If the fee has not been received 14 days prior to the hearing date the hearing will be cancelled. If the fee remains unpaid for a period of one month after the due date the application may be treated as withdrawn"*

7. The Tribunal sent reminder letters to the Applicant on the 12th July, 20th July and 2nd August. The last of those letters said:-

> *"If no payment is received by 16th August 2010 the case shall be treated as withdrawn"*

8. On the 16th August a further letter was sent to the Applicant saying:-

> *"If the Tribunal does not receive the hearing fee of £150 by Monday 23 August 2010, the above application will be treated as withdrawn"*

9. On the 26th August, the Applicant was told in a further letter that the application had been treated as having been withdrawn. The Respondent's solicitors now apply for costs alleging that the application was vexatious and frivolous. They say that their Grade C fee earner, claiming £125.00 per hour, has been incurred in 1½ hours of time, considering the application, advising the Respondent thereon and on the procedures and requirements of an LVT application and then liaising with the Respondent and the Tribunal following the failure of the Applicant to comply with directions and pay the hearing fee.

10. On the 27th August 2010 the Tribunal wrote to the Applicant enclosing a copy of the Respondent's application and asking for a response. It advised that the Tribunal would be considering the application for costs

on the basis of the written representations submitted i.e. without an oral hearing on or after the 20th September 2010. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004**, this letter also said that a hearing would be held if either party requested one before that date. A copy of that letter was sent to the Respondent's solicitors.

11. In order to complete the record of correspondence, a further letter was sent to the parties advising that the decision of the Tribunal was being deferred until on or after the 5th October 2010. Neither party has requested a hearing.

12. It should also be finally recorded that due to the Applicant's poor handwriting, the initial letters were sent to the Applicant at "230 Forteway House, Ongar Road, Brentwood, Essex CM15 9GB". These letters were an acknowledgement to the application and a letter written on the 23rd March 2010 asking for more information about the court proceedings. The latter letter was returned by Royal Mail with the words "not called for" endorsed on the envelope.

13. The Tribunal office therefore undertook a post code check which brought up the correct post code but the address as "Mail Boxes Etc, 14a Fortnay House". Thereafter the letters to the Applicant were sent to "230 Fortnay House, Ongar Road, Brentwood, Essex CM15 9GB" which included all the relevant letters recorded above. In retrospect, this was the address recorded by the Applicant on his application form as being his address. The Tribunal concludes that 230 is the number of the mail box.

14. No further letters were returned and no letters or telephone calls were received from the Applicant chasing the progress of the application. The Tribunal can therefore only conclude that all relevant letters have been received by the Applicant.

The Law

15. A Leasehold Valuation Tribunal only has very limited powers to award costs. Schedule 12, paragraph 10 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") says that a Tribunal can determine that a party shall pay costs incurred by another party up to a limit of £500 in circumstances where:-

> *"he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings"*

16. Regulation 7(2) of the **Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003** say that:-

> *"where a fee remains unpaid for a period of one month from the date on which it becomes due, the*

application shall be treated as withdrawn unless the tribunal is satisfied that there are reasonable grounds not to do so"

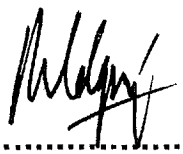
Conclusions

17. The Tribunal has no evidence or other information upon which it can base a finding that the Applicant has behaved, as alleged by the Respondent, in a 'vexatious and frivolous' way.

18. However, he issued proceedings and then failed to comply with directions or pay the hearing fee. Despite a number of reminders and being warned that the proceedings would be treated as having been withdrawn, no communication was received from the Applicant.

19. The Tribunal finds that this behaviour is in connection with the proceedings and is unreasonable. It has crossed the threshold set out in the 2002 Act.

20. As to quantum, the Tribunal finds that a Grade C fee earner is reasonable, that the rate claimed is reasonable and that a total claim of 1½ hours to include all time spend and all letters and telephone calls is reasonable. The claim of £220.31 inclusive of VAT is therefore allowed in full.



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Bruce Edgington
Chair
5th October 2010