

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No. CH1/00HG/LIS/2009/0102

Property: 1-5 Shepherd House, 1-6 Conrad House, 7-17 Aldrin House and 1-89 Armstrong House, 60 Exeter Street, Plymouth, Devon, PL4 0AP

IN THE MATTER OF an Application under Section 27A of the Landlord and Tenant Act 1985 (as amended)

BETWEEN:

MOON STREET MANAGEMENT
COMPANY LIMITED APPLICANT

AND

SIMON WALTER REID and DONNA REID (40 Armstrong House)
SHAWN PUTT (22 Armstrong House)
Mr M & Mrs S.WEBB (63 Armstrong House)

RESPONDENTS

TRIBUNAL:	MR. I. M. ARROW BA MR. T. SHOBROOK BSc FRICS MR. J. TARLING MCM1	Lawyer Chairman Valuer Member Lawyer Member
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HEARING: 9th March 2010

APPLICATION

1. The Applicant Management Company applied to the Tribunal on the 6th November 2009 under Section 27A of the Landlord & Tenant Act 1985 (as amended) to determine the liability to pay a service charge in respect of the 110 residential flats in Four purpose-built Blocks being 1-5 Shepherd House, 1-6 Conrad House, 7-17 Aldrin House and 1-89 Armstrong House, 60 Exeter Street, Plymouth for the years 1st April, 2007 – 31st March 2008; 1st April 2008 – 31st March 2009 and for the future year of 1st April 2009 – 31st March 2010.
2. The Applicants had provided the Tribunal with a full list of the names and addresses of the Lessees of all the Flats in the Four Blocks. In accordance with its powers under Regulation 5(2) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, the Tribunal gave notice of the application to all 110 Lessees of all of the residential flats in all four Blocks. In response to that notice, the following Lessees had applied to be joined in the proceedings as Respondents:

<u>Names</u>	<u>Address</u>
Shawn Putt	22 Armstrong House
Mr M & Mrs S. Webb	63 Armstrong House

3. Directions were issued on 18 November 2009 and 18 January 2010 when the above Lessees were joined as Respondents to these proceedings.

THE LAW

4. The statutory provisions primarily relevant to applications of this nature are to be found in Sections 18, 19 and 27A of The Landlord and Tenant Act 1985. The Tribunal has regard in making its decision to the whole of the relevant Sections as they are set out in the Act but here sets out what it intends shall be a sufficient extract (or a summary as the case may be) from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- b. the whole or part of which varies or may vary according to relevant costs"

"Relevant costs" are the costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression "costs" includes overheads.

5. Section 19 provides that:

"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 were incurred on the provision of services or carrying out of works only if the services or works are of a reasonable standard

and the amount payable shall be limited accordingly".

6. Subsections (1) and (2) of Section 27A of the Act provide that:

"(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to:-

- a. the persons to whom it is payable
- b. the person by whom it is payable
- c. the amount which is payable
- d. the date at or by which it is payable, and

e. the manner in which it is payable

(2) Subsection (1) applies whether or not any payment has been made.”

7. To such an extent (if at all) that the point is not implicit in the wording of the Act, the Court of Appeal has laid down in *Finchbourne v. Rodrigues* (1976) 3 AER 581 CA that it could not have been intended for the landlord to have an unfettered discretion to adopt the highest possible standard of maintenance for the property in question and to charge the tenant accordingly. Therefore to give business efficiency to the Lease there should be an implied term that the costs recoverable as service charges should be fair and reasonable.

THE LEASE

8. The Respondents Mr. and Mrs. Reid hold the property for the residue of term of years expiring on the 31st August 2160 granted by a Lease made the 2nd March 2007 between Barratt Homes Limited of the one part the Applicant of the second part and the Respondents of the third part subject to a yearly ground rent of £207.

The Respondents by clause 3 of the Lease in particular paragraphs 3.1 covenant to pay the rent which inter alia includes the service charge as defined by clause 1.27. The service charge is in respect of those services provided in accordance with the fourth schedule subject to the variations contained within paragraph 8 of the sixth schedule.

The Respondents also covenanted within clause 3.12 to meet the proper and reasonable costs and expenses incurred by the Landlord or the Applicant in relation or in contemplation of consents or licences.

It is understood the Leases for each flat in Armstrong House are in the same terms, subject to variation to reflect car parking or garage provision. It is understood the Leases in other blocks are broadly in the same terms subject to modification to reflect the absence of some common services, in particular the lifts.

INSPECTION

9. The Tribunal inspected the internal common parts of Armstrong House, 60 Exeter Street, Plymouth at 9.45 a.m. on Tuesday 9th March 2010. The Applicant's representatives Mrs Wisdom and Mr Simms were in attendance.

It was not possible to gain access to Flat 40.. The door bore a notice indicating it had been repossessed on 5 January 2010

The Tribunal saw that this was a modern block of flats accessed from a staircase and lifts rising from the ground floor. Outside was a car parking area in an enclosed courtyard.

The flats in the block inspected appeared to be in residential occupation.

The block generally gave the appearance of being in a good and proper state of repair.

The Tribunal Members also walked around the exterior of the other Blocks of flats, namely Shepherd House, Conrad House and Aldrin House which were all built at the same time and were found to be in the same style and condition as Armstrong House. There were some garages under the Blocks fronting Moon Street.

HEARING

10. A Hearing took place at the Valuation Tribunal Service, Farrer House, 73 North Hill, Plymouth on the morning of 9th March 2010 immediately after the Inspection. The Applicants were represented at the Hearing by Mr A. Simms, a Property Manager employed by Labyrinth Properties and Mrs S. Wisdom, from Leasehold Legal Services, engaged by the Applicants to present their case at the Tribunal Hearing. None of the Lessees of any of the Blocks, including those that had been joined in the proceedings, attended the Hearing.

The Applicant's case was set out more particularly on pages 40 and 42 of the Applicant's bundle. The Applicant in particular referred to a statement of account which is set out on pages 43, 44 and 45 of the Applicant's bundle.

A copy of the Lease in respect of Flat 40 Armstrong House was produced.

11. Mrs Wisdom outlined the Application and referred to the Applicants bundle. In particular she went through a document entitled "Applicants Statement of case which was numbered Pages 30 to 42 in the Applicants bundle. She indicated that it was accepted that the cost of recovery of arrears could not be charged to the account and the applicants sought a sum of £2,453.44.

The Tribunal dealt with each individual item on the statement of account set out on pages 43 and 44 of the bundle beginning with the entry at 1st October 2007 which was the point at which the account was last at zero. Even though none of the Respondents attended the Hearing, the Tribunal, in its role as an Expert Tribunal using its knowledge and experience, raised a number of matters with Mrs Wisdom and Mr Simms.

12. Cleaning:

The Applicants explained that during part of the period covered by the first years Service Charge the Blocks were still being built and there was a certain amount of extra dirt generated by the workmen.

13. Directors and Officers Insurance

No copy of the actual Policy was available to the Tribunal at the Hearing, but this was produced following the Hearing in accordance with the Tribunal's Directions. The Applicants explained that two of the Lessees of the Block

had volunteered to become “shadow Directors”, but that the sole Director of the Company Moon Street Management Company Limited was Mr N. Faulkner who was also an Employee of Labyrinth Properties Limited which was the actual Managing Agent. Neither the two Lessees nor Mr Faulkner attended the Hearing nor gave any direct evidence to the Tribunal. The Tribunal were unable to question them as to the facts nor satisfy themselves that there was a true “arms-length” business relationship between the Management Company and the Managing Agents. It subsequently was confirmed that only Mr Faulkner was registered at Companies House as a Director of the Company.

14. **SUMMARY OF DECISION**

(i) The following Decision is in respect of Flat 40:

The Tribunal-determined that the following amounts listed on Pages 43 and 44 of the Hearing Bundle were not Service Charges within the meaning of Section 27A of the 1985 Act and were not payable by the Lessees.

	Description	
16 June 2008	Administration Charge	£29.38
15 July 2008	Charge for breach of covenant	£58.75
21 July 2008	Letter before action	£94.00
4 August 2008	Letter to Mortgage Company	£100.00
28 November 2008	Administration Charge	£29.38
20 February 2009	Charge for breach of covenant	£57.50
9 November 2009	Application to LVT	£172.50
9 November 2009	LVT Application Fee	£350.00
9 November 2009	Obtaining Lease	£ 20.01
		£911.52

Reductions from account statement total £ 911.52

For the reasons set out in paragraph 15 (ii) the Tribunal made the following decisions:

Cleaning costs detailed on sheets 160, 161,162,163,164,165 were reduced by £1581.43. Applying the appropriate multiplier for flat 40 of 1.05% the service charge for the year 1st April 2007 to 31 March 2008 is reduced by £16.60.

In respect of the Directors and Officers policy issued by ACE European Group Ltd and a supporting e-mail from Paul Jacklin of Chambers and Newman Ltd.

The Tribunal decided that the

Premiums due for the policy are not payable as service charge by the tenants. The reasons are set out at 15 (iii)

The sums are £698.61 as set out at page 771 of the bundle and £708.38 as set out at page 769 of the bundle. The service charge for the total development is reduced by £1407.03. Applying the appropriate multiplier of 1.05% for the year 1st April 2008 – 31st March 2009 the service charge is reduced by £7.33.

In respect of the service charge for the year 1st April 2009 – 31st March 2010 the service charge is reduced by £7.43.

In the circumstances, the Tribunal found the balance due in respect of the flats in Armstrong House as at 9th March 2010 which included payments for the year 1st April 2007 – 31st March 2008; 1st April 2008 – 31st March 2009 and for the future years from 1st April 2009 – 31st March 2010 were:

Year beginning 1/4/2007	Ending 31/3/2008	£932.24
Year beginning 1/4/2008	Ending 31/3/2009	£941.51
Year beginning 1/4/2009	Ending 31/3/2010	£1322.75
Sub total for the three years		£3196.50

In respect of Flat 40 Armstrong House		
less sums paid	£474.42	
	£300.00	
		£774.42
Sum due and payable		£2422.08

(ii) Service charge due in respect of other properties within the development

The Tribunal having scrutinised the accounts for the years 1st April 2007 – 31st March 2008, 1st April 2008 – 31st March 2009, 1st April 2009 – 31st March 2010, the Tribunal is satisfied that for the reasons given and as arrived at by the summary calculation set out above the sums due for the respective years are:

Year beginning 1/4/2007	Ending 31/3/2008	£932.24
Year beginning 1/4/2008	Ending 31/3/2009	£941.51
Year beginning 1/4/2009	Ending 31/3/2010	£1322.75

where the Lease is in the same format as that produced in respect of 40 Armstrong House.

The specific sum payable for any other flat is arrived at by stripping out the cleaning costs as previously identified, stripping out the insurance policy for the directors and officers insurance as specified. Where they are not provided for a particular flat, stripping out those common services which are not provided and applying the appropriate percentage multiplier.

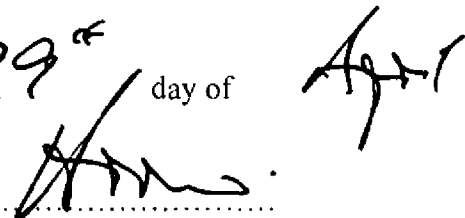
The Tribunal specifically considered the management charges which differed between management charge for a parking space and management charge for a garage and found them satisfactory.

REASONS

15. The Tribunal following its inspection, consideration of paper documents and considering the application before them was satisfied that subject to the matters set out below the service charges were properly due and the work had been carried out to a reasonable standard.

The Tribunals reasons are:

- (i) Ground rents are not for the Tribunal. No sums are due as service charges for enforcement of arrears. Credit is to be given for sums paid on account.
- (ii) For the period 5/3/2007 to 27/4/2007 the common parts of the block were cleaned more than once a week. The additional cleaning was necessary as a result of soiling created by building contractors carrying out works. A reasonable interval of cleaning is once a week. For this period the charge is reduced by 6/7.
- (iii) The policy is for the benefit of one individual Mr N Faulkner. He is not a shareholder. He is a professional manager. Neither Mr Faulkner nor either of the two lessees who were called "shadow directors", attended the Hearing so the Tribunal was unable to ask them questions to ascertain their true status. The Tribunal received no evidence that either of the lessees who are called "shadow Directors" were actually the same as Shadow Directors as defined by section 251 of the Companies Act 2006. Accordingly no benefit was derived from the policy by any lessee. For these reasons the Tribunal concluded that the policy premiums are not reasonable elements of the service charge.

Dated this 29th day of April 2010
Signed


Lawyer Chairman