RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00LC/LSC/2009/0138
Premises: 48 Ringlet Road, St Mary's Island, Chatham, Kent. ME5 8YE
Applicants: Dr M. Jones and Dr B. Vonau
Respondents: Solitaire Property Management Co. Ltd. and Countryside Maritime Ltd.

Tribunal
Mr D. R. Hebblethwaite (Lawyer Chairman)
Mr. R. Athow FRICS MIRPM (Valuer Member)
Ms L. Farrier (Lay Member)

DECISION

1. On 28 September 2009 the Applicants issued an application for a determination of liability to pay service charges in relation to the Premises under section 27A of the Landlord and Tenant Act 1985 (this will be referred to in this Decision as "the Act" and a reference to a section means a section of the Act unless otherwise stated). The application showed the Respondent as the first of the Respondents named in the heading to this Decision and the Second Respondent was added at a pre-trial review on 10 November 2009, which also dealt with the making of directions. In the application the Applicants asked the Tribunal to make a determination for the past years "2002 to date" and for current or future years "indefinitely".

2. Section 19 reads:

   (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.

   (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

3. The matter was originally listed for Inspection and Hearing on 8 March 2010 but shortly before that date the Applicants requested an adjournment on the ground that the parties were in negotiation. Subsequently they asked for it to be re-listed as no agreement had been reached. Accordingly the Inspection and Hearing were listed for 15 July 2010.

4. The Premises are situated on the St Mary's Island development in Chatham Maritime, north of the town centre. The development is a large estate of residential properties which have been erected over the past few years with large areas of communal open land and footpaths. The immediate surrounding area to the Premises comprises a terrace of five freehold houses with two groups of three purpose built flats, each of two storeys and one at

either end of the terrace ("the Scheme"). This gives a total of eleven dwellings which jointly have rights of access over the car parking areas and grounds to the rear. These also carry obligations to pay contributions into an account which funds the maintenance of this part (the "car barn" is excluded from this as it only serves the freehold houses). Additionally, the three flats at the northern end, in which the Premises are situated ("the Block") have a separate account into which they contribute, the purpose of which is to maintain and insure the structure of the Block. Two of these flats (46 & 48) share a common entrance door, hall, stairs and landing via which the flats, which are on the first floor, are accessed. These two flats carry obligations to pay money into an account which funds the maintenance and upkeep of these common parts, as well as lighting the area.

5. On Inspection the Tribunal found the grounds to be generally clean and tidy. In terms of "garden" there is a bed (this is marked with dots on the lease plan) of relatively small size. This needed cutting back and had almost concealed an outdoor light set within it. A second bed, outside the block in which the Premises are situated, on its north side and beside the road, Island Way East, was tidy. The car port on the ground floor of the Block (the Applicants have a right to park on one of the marked spaces) looked a bit untidy where another flat owner was using the rear of his space to store various items. The Tribunal was shown the gates from Ringlet Road which were in an open position. These are the electric gates and were later referred to at the Hearing.

6. Later the Hearing took place at Lordswood Leisure Centre, Chatham. The Applicants appeared in person (Dr Vonau having to leave part way through) with a witness, Mr M. D. Allen a freehold owner at the Scheme, and the Respondents were represented by Mrs Khan, a solicitor from the legal department of Peverell Group, the parent company of the First Respondent, who was accompanied by Ms Bethan O'Donnell, the First Respondent's Area Property Manager and who had been the property manager for the Scheme from June 2008 to March 2009. The Tribunal had read the documents in the parties' respective bundles beforehand. It noted that there is an estate rentcharge payable to Chatham Maritime Estate ("CME") to cover the costs of maintaining the communal areas in the overall development. Insofar as these are passed on to the flat owners (apparently the freehold owners get billed direct) there appears to be no complaint by the Applicants. The service charges are divided into three sections, with a different percentage payable by the Applicants in each case – see by the heading "Fraction" on the page of the lease headed "Particulars" which gives a separate fraction for the services provided under the three Parts of Schedule 5.

7. Dr Jones submitted that the First Respondent had always been in breach of its lease covenants to provide the services set out in Schedule 5. He emphasized the particulars of breach set out in the Applicants' statement of case at para. (v). He stated that the billing arrangements were not clear and that accounts were not signed by a chartered accountant. There was an admission of shortcomings in the letter from the First Respondent dated 1 April 2009. He was not withholding all payments. He and his wife had paid over £5,000. They had seen no evidence to justify management charges, no "service activity". They were happy to pay a reasonable, fair service charge. He referred to the joint witness statement signed by himself and his wife dated 10 January 2010 and went on to comment on the witness statement of Bethan O'Donnell (unsigned and undated but confirmed by Ms O'Donnell at the Hearing). He felt that not carrying out certain services, e.g. cleaning, and not billing for them was an admission of failure; he particularly thought para. 10 was an admission that the First Respondent was not doing its job, "the entire basis of our argument". Regarding para. 9 he informed the Tribunal that court proceedings had been instituted against him and his wife which they had not known about until judgement had been entered in default. They

had then obtained the setting aside of the judgement and the claim had been stayed by the court to enable the Applicants to make an application to the Tribunal (the Tribunal saw court papers relating to this and were satisfied that procedurally everything was in order).

8. Mrs Khan told the Tribunal that the accounts were signed by Websters chartered accountants. She then informed the Tribunal that the 1 April 2009 letter had been sent to owners at all Solitaire developments and did not amount to a full admission of default. The main problem at the Scheme was that the majority of the owners of the eleven units had been withholding payments of service charge. There was currently £118 in the bank. Credit control was now under way. It had been a "Catch 22" situation, which led to the First Respondent trying to negotiate with the owners. She said that this was still ongoing. Nevertheless the utilities and the insurance were still being paid, if necessary using overdraft facilities (the lease permitting borrowing by the management company). The electric gate was not being used as there was no money to get it repaired. The March 2009 balance sheets (pp. 224 & 241 of Respondents' Bundle) show the level of arrears ("amounts due from lessees"). Mrs Khan said that the First Defendant gets the Scheme inspected monthly (quarterly pre-April 2009) but Dr Jones and Mr Allen disputed this, as they did not see any evidence of such inspections, in the same way that they saw no evidence of gardeners or cleaners. Ms O'Donnell has never visited the site before. On going through the accounts in the bundle Mrs Khan made a number of concessions (see under the Tribunal's consideration in paras. 8 & 9 below). Of particular concern were the large electricity bills in 2008/09. Belatedly the First Respondents were sending someone to the Scheme to locate the relevant meter and do a reading. The First Respondent had never entered into a maintenance contract for the electric gates as there were no funds to pay for it. Mr Allen was emphatic that he had been doing the gardening, or landscape maintenance, as no one had come to do it. The owners had asked to be let know if anyone came and had received no such communication. Some other individual entries on the accounts were commented on by both sides (see under the Tribunal's consideration below where the Tribunal thought the points relevant). On her firm's management fees Mrs Khan said that these were not based on a percentage but were comparable to other developments that they managed. Mr Allen gave an example of poor management, in that a few months ago a refuse vehicle had driven into one of the gate posts, causing damage. He had reported it to Peverell, but despite several phone calls from him nothing had been done. Eventually he himself had taken the matter up with the local authority and now, at last, an insurance claim was under way. The First Respondent had done nothing.

9. After the parties had left the Tribunal proceeded with its consideration. References to page numbers now are in the Respondents' Bundle. First, confirming something stated by the Tribunal at the Hearing, the First Respondent cannot use its own funds to pay for services if leaseholders and freeholders are withholding payments. This is in response to a comment by both Dr Jones and Mr Allen that Peverell is a huge company with its own money. The Tribunal felt that it could not consider years prior to 04/05 as this was the first year for which accounts were before the Tribunal. Indeed, there was every reason to suppose that the 04/05 accounts were the first set produced as, on the accounts for the Block (p. 49), the insurance premium appeared to be for 2 ½ years. Leaving management fees to be considered as a whole later, it was noted that £41.13 for repairs & maintenance was credited in 2008. The cleaning item was supported by invoices. At this remove, and bearing in mind the Applicants' frequency of visits to the Premises, the Tribunal found this reasonable. On the accounts for the Scheme 04/05 (p. 75) it was noted that the amounts for common parts electricity, roadway expenses and water charges were all credited in 2006. Nothing else was challenged nor seemed exceptional to the Tribunal. It was not always

possible to reconcile the estate rentcharges with the invoices from CME. These are issued re. the six flats and on the first one in the Bundle (p. 70) it is noted in manuscript that it is divided 50/50 between the Block and the other block, £167.79 each. That figure appears in the Block accounts at p. 49 and that seems correct. In the following year, however, the copy invoice from CME appears at p. 117 and indicates a figure of £173 for the Block (i.e. £346.01 halved). No such item appears in the Block accounts (p. 91). Mysteriously, in the Scheme accounts (p. 101) the figure of £346 – no 1p - appears as "repair and maintenance" but there are no supporting invoices. Although this may indicate an error in posting the estate rentcharge, it is not for the Tribunal to speculate, and so the item of £346 on p. 101 has to be found as unreasonable. The Tribunal's only other comment on 05/06 is as to landscape maintenance (p. 101). Generally speaking there are supporting invioices in this and subsequent years. There have also been some credits/concessions by the Respondents. On balance, and accepting that Mr Allen has done some of this, it is felt that the charges are reasonable. Turning to the 06/07 Block accounts (p. 122) there is no supporting invoice to the estate rentcharge but the amount of £177.06 is in line with previous years and will be allowed. The Respondents conceded the account handling charge for this and all subsequent accounts. For the Scheme 06/07 (p. 132) there is a later credit against sweeping.

10. Moving on to 07/08 (p. 161), the issue of the huge electricity bills for the common parts enjoyed by the Premises and its neighbour (part of Group 3 and to be divided by 2) rears its head, and this is repeated in 08/09 (p. 222). The bills are based on estimated readings and are plainly many times what they should be. It was alarming to hear evidence that no one knew where the meter was in order to take readings, and that Ms O'Donnell only recently sent someone to locate it. This should have been picked up by the Respondents when the first large bill was received. Accordingly, the amounts in both 07/08 and 08/09 are wholly unreasonable and have not been reasonably incurred. The Tribunal will allow what it considers reasonable, namely £75 in each year; it adds a rider that when the correct readings have been taken and a rebate has been received from the supplier insofar as the resulting figure differs from £75 per annum the Respondents may make an adjustment in the next set of accounts, but this must be fully supported by documents. The 07/08 items for repair and maintenance are supported by invoices and basically relate to maintenance and repair of lighting installations by a local firm. Although these were criticized by the Applicants no alternative prices were put to the Tribunal, and in the circumstances they are found reasonable. On the Scheme accounts 07/08 (p. 185) the electricity item was conceded by the Respondents. Moving on to 08/09 for the Block (p. 222), with electricity already decided, it is noted that repairs and maintenance are for similar items as in 07/08 and the Tribunal finds the amounts reasonable but the figure of £221.23 should appear under "Group 2" and not "Group 3". For the Scheme (p. 239) the "Insurance – 3rd party & liability" was conceded. That completes the years for which the Tribunal has actual accounts and it has left the management fee to be considered as a whole for all years, noting the Respondents' offer to reduce all such fees by 25%. On reading the statements of case and hearing the parties it is the Tribunal's view that there has been some effective management and that the Applicants' assertion that there was no evidence to justify management charges could not be sustained. The Tribunal also understands Mrs Khan's point about the "Catch 22 situation" (see para. 7 above). The Respondents have been put in a difficult position by a high level of non-payment at the Scheme. Nevertheless, the Tribunal finds faults in the management and that these were in effect admitted in the 1 April 2009 letter. The Tribunal does not find the Respondents' rates excessive but believes that to reflect that the management services were not always of a reasonable standard the fees must be reduced by 33% in each and every year. It is also the Tribunal's view that the accounts could

be clearer, so that at least the element of not understanding parts of the accounts is eliminated.

11. The Tribunal noted that the Applicants had not challenged contributions to reserves. However, the Tribunal believes that the position regarding reserves is not clear from the accounts and recommends that the Respondents write to the owners with a simple explanation of their policy on reserves, what they are being accumulated for with the expected cycles shown plainly, and what the current balances are. The owners should also be informed of the details of the bank account(s) in which the reserves are kept. That apart, it was clear from dealing with this application that communication by the First Respondent with the owners is poor and clearly needs to be improved if future applications to the Tribunal are to be avoided. By the same token it would now be prudent, following the Tribunal's Decision, for not only the Applicants but also the other owners to bring their payments up to date so that funds are available for the services to be fully provided.

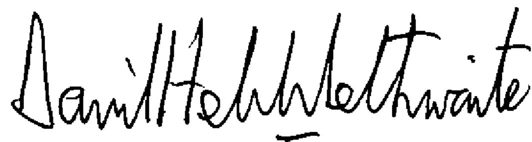
12. For current or future years it will be recalled that the Applicants asked for a determination "indefinitely". This is not possible. There is now a completed year (09/10) for which there are budgets in the Bundle (p. 250 et seq.). The actual accounts usually come out in September and so are imminent. It is the Tribunal's view that rather than adjudicate on estimated figures that might be out of date and are on the verge of adjustment, the right course is for the First Respondent to work through the accounts to date to provide revised figures in the light of their own concessions and the Tribunal's findings, and submit them for payment, which should be made by the Applicants within 28 days to allow for any genuine queries about the revised figures (i.e. the correct calculation, not to go behind the Tribunal's decision). At the same time the First Respondent should ensure that the 09/10 accounts have regard to the Tribunal's decision re. the years up to 08/09, where applicable. Finally to the current year 10/11. Here the Tribunal has not seen budgets or estimates and has nothing to adjudicate upon. However, once again the Tribunal hopes that its decision will inform the current and all future years.

13. Finally, a demand issued to the Applicants for legal fees was raised at the Hearing. Mrs Khan explained that these related to the claim against the Applicants for non-payment (see para. 6 above). No doubt the Respondents are relying on the Lessee's covenant para. 1.2 of Schedule 3 Part 1 to the lease. This does not come within the Tribunal's jurisdiction under the present application as it is not a service charge. However, the legal fees come within the definition of "administration charge" and, as such, can be referred to a Leasehold Valuation Tribunal under the provisions of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This would have to be by a separate application. The Tribunal would suggest that the parties wait to see what happens to the claim in the County Court which is currently stayed. It is envisaged that the Applicants will pay the revised figure following the Tribunal's decision so that the County Court claim can be discontinued by the Respondent. That will still leave legal costs at large but the Tribunal hopes that the parties can come to an agreement on this.

14. The Tribunal noted that the Applicants had ticked the "No" box in Part 9 of the application form, that is as whether they wanted to make an application under section 20C. The Tribunal has decided to give the Applicants an opportunity to change their minds and make such an application. If they wish to do so this will be considered on written submissions. The Applicants must send their submission to the Tribunal office and the First Respondent no later than 28 days after this Decision is sent to them, and the Respondents may send a

submission to the Tribunal and the Applicants no later than 14 days after receiving the Applicants' submission.

Decision dated 2 August 2010



....

David Hebblethwaite
Chairman