

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**Case No.** CHI/29UB/LSC/2010/0005

**Property:** Nos. 29, 31 and 33  
Guernsey Way  
Kennington  
Ashford  
Kent  
TN24 9LW

**Applicants:** Ms A. Parton  
Ms K.N. Clark  
Mr. J. Allen  
Mrs. A. Allen

**Respondent:** Magnus Design Limited

**Date of Hearing:** 19<sup>th</sup> April 2010

**Members of the  
Tribunal:** Mr. R. Norman  
Mr. R. Athow FRICS MIRPM  
Ms L. Farrier

**Date Decision  
Issued:**

**29, 31 AND 33 GUERNSEY WAY KENNINGTON ASHFORD KENT TN24 9LW**

**Decision**

1. The following payments are to be made:
  - (a) Within 28 days from the date of issue of this decision Ms A. Parton to pay to Countrywide Managing Agents (“the managing agents”) on behalf of Magnus Design Limited (“the Respondent”) £453.34 and on receipt of an invoice from the managing agents for £310.50 to pay that sum to the managing agents on behalf of the Respondent.
  - (b) On receipt of an invoice from the managing agents for £308.01 Mr. and Mrs. Allen to pay that sum to the managing agents on behalf of the Respondent.

(c) Within 28 days from the date of issue of this decision Ms Clark to pay to the managing agents on behalf of the Respondent £74.57 and on receipt of an invoice from the managing agents for £310.50 to pay that sum to the managing agents on behalf of the Respondent.

(d) Within 28 days from the date of issue of this decision the managing agents are to pay Ms Parton on behalf of herself, Mr. and Mrs. Allen and Ms Clark the sum of £250 being reimbursement of the fees paid in respect of this case.

2. The payment of those sums by Ms Parton, Mr. and Mrs. Allen and Ms Clark (“the Applicants”) will be accepted by the Respondent and the managing agents as bringing the Applicants’ payment of service charges up to date to 29<sup>th</sup> September 2010 and no further service charges demands will be made before 29<sup>th</sup> September 2010.

3. An order is made under Section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) that all the costs incurred, or to be incurred, by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

### **Background**

4. The Applicants applied for a determination of liability to pay service charges under Section 27A of the 1985 Act and an application for an order under Section 20C of the 1985 Act.

5. Ms A. Parton is the lessee of No. 31 Guernsey Way, Kennington, Ashford, Kent TN24 9LW which is Plot 16. Ms K.N. Clark is the lessee of No. 33 Guernsey Way which is Plot 17. Mr. J. and Mrs. A. Allen are the lessees of No. 29 Guernsey Way which is Plot 15. Nos. 29, 31 and 33 Guernsey Way are collectively referred to as “the subject property”

6. The Respondent is the freeholder and landlord of the subject property and the managing agents are representing the Respondent.

7. A Pre-Trial Review was held on 17<sup>th</sup> February 2010 and was attended by Ms Parton, Mrs. Allen, Mrs. C. Clark on behalf of her daughter Ms K.N. Clark, Mrs. M. Clayton assisting Mr. and Mrs. Allen and Mr. C. Turl and Ms. H. Harvey from the managing agents representing the Respondent.

8. The purpose of the Pre-Trial Review was explained with reference to Regulation 12 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003.

9. Those present confirmed their understanding that:

(a) The subject property is part of a block of four flats Nos. 27, 29, 31 and 33 Guernsey Way.

(b) There are two further blocks in Guernsey Way and the three blocks comprise a total

of thirteen dwellings.

(c) The lessees of Nos. 27, 29, 31 and 33 are each liable to pay one quarter of the block expenditure and one thirteenth of the property expenditure. The property comprises the thirteen dwellings in the three blocks.

(d) The plan on the copy lease of No. 33 Guernsey Way which had been included with the application did not show the correct block but Mrs. Clark by reference to another plan indicated the location of the block of which the subject property forms part.

10. Those present at the Pre-Trial Review said they had been able to agree some matters when they met before the start of the Pre-Trial Review and they were given the opportunity to discuss matters and see what could be agreed.

11. At the end of that discussion it was noted that there was agreement that:

(a) The lessees of Nos. 27, 29, 31 and 33 Guernsey Way should not be charged for electricity as their block has no communal electricity and any sums charged will be credited.

(b) The Applicants would not be charged for the 24 hour helpline service which had been in place from August 2009 and any sums charged would be credited. For the future the 24 hour helpline service would be removed.

(c) The £75.52 balancing charge in respect of No. 29 Guernsey Way would be cancelled.

(d) Mr. Turl would ask for the March 2008 accounts balancing charge to be recalculated to correct the misallocation of gardening invoices for that year.

(e) Mr. Turl would investigate the two invoices for £1,200 and £650 in respect of gardening in the year 2007/2008 and decide whether or not the Respondent wishes to continue to claim those sums. Mr. Turl stated that on the evidence produced he could not see how the lessees could be asked to pay the £650 or £1,200 bills for gardening but he would speak to the contractor and at the date of the Pre-Trial Review he could not say categorically that the Applicants would not have to pay them.

(f) In principle the quote of £2,685 per annum for gardening at the three blocks should be accepted if the proposed contractor produced to the managing agents his indemnity insurance and complied with health and safety requirements and that the lessees of the other two blocks agreed. If they did not agree then a new cheaper quote could be obtained from the same contractor to carry out the gardening at the block (Nos. 27, 29, 31 and 33 Guernsey Way). It was noted that the contractor wanted payment within 14 days but the managing agents could pay only within 30 days and then only if funds were available. It was agreed that the gardening contract should not be entered into until after the Tribunal had made a decision in this case.

12. Mr. Turl explained that it was difficult for a new managing agent to provide year end accounts when taking over from a previous managing agent when the accounts were not complete and the previous managing agent's accounts could be wrong.

13. The matters still in dispute were:

(a) The charges for gardening for the years September 2005 onwards.

(b) Ms Parton's balancing charge of £203.62 for year ended March 2005. She purchased

her flat in June 2005.

(c) Managing agent's charges

(d) Administration charges.

(e) The application for an order under Section 20C of the Act

14. Directions were made which included a direction that by 17<sup>th</sup> March 2010 the Respondent was to provide a statement of case dealing with specific items.

15. The Respondent and the managing agents did not comply with that Direction.

16. The Tribunal received a copy of a letter dated 3<sup>rd</sup> March 2010 from the managing agents to the Applicants in which the managing agents indicated that some but not all of the matters in dispute had been resolved and suggested that the contents of the letter would remove the necessity of any future involvement of the Tribunal. Understandably, the Applicants did not wish to abandon their application while there were still matters unresolved. On 25<sup>th</sup> March 2010 the Tribunal received a fax from the managing agents explaining that they were unable to show 'proof' that all the credits and reimbursements agreed with the Applicants had been given and that because of the internal processes of the managing agents it would take a while before the credits would show on the individual service charge statements. It was hoped to have the service charge statements correctly revised by 31<sup>st</sup> March 2010. That did not happen.

### **The Inspection**

17. On 19<sup>th</sup> April 2010 in the presence of Ms Parton and Ms Harvey the Tribunal inspected the exterior of Nos. 29-33 Guernsey Way and the other two blocks concerned and noted in particular the areas of garden which had been the subject of dispute.

### **The Hearing**

18. The hearing on 19<sup>th</sup> April 2010 was attended by Ms Parton, Mrs. Allen, Mrs. C. Clark on behalf of her daughter Ms K.N. Clark, Mrs. M. Clayton assisting Mr. and Mrs. Allen and Ms. H. Harvey of the managing agents representing the Respondent.

19. Ms Harvey accepted that the directions had not been complied with. Her only explanation was that this was because credits had not been put on the accounts until the morning of the hearing. She also accepted that the Applicants had not seen the accounts and she had only one copy of the accounts and other documents. Fortunately the Clerk to the Tribunal was able to have copies made and time was given for consideration and discussion of the accounts and documents which Ms Harvey had brought. After which the Applicants and Ms Harvey informed the Tribunal that agreement had been reached as to the sums to be paid. Those sums are set out above in paragraph 1 (a) to (c). Ms Harvey made it clear that the payment of those sums by the Applicants would mean that the Applicants would be up to date with their payments of service charges and that there would be no further demands for service charges until September 2010. She understood

that the date would be 24<sup>th</sup> September but the lease provides for payment of service charges on 25<sup>th</sup> March and 29<sup>th</sup> September each year.

20. Ms Harvey accepted that the managing agents should reimburse the fees of £250 paid by the Applicants in respect of this application and made no objection to an order under Section 20C of the 1985 Act.

21. The Applicants were curious as to the reserve fund mentioned in the documents provided. Ms Harvey stated that there was about £4,500 in total in the reserve fund and the sinking fund on a date in February 2010 and at the request of the Tribunal made enquiries by telephone and received an e-mail from her office indicating that there was at present £1,475.47 in the reserve fund and £3,000 in the sinking fund in respect of all 13 properties. She certified the e-mail as being correct and handed it to the Applicants.



R. Norman  
Chairman