

IN THE LEASEHOLD VALUATION TRIBUNAL  
UNDER S27A LANDLORD & TENANT ACT 1985

DECISION AND REASONS

Case No	CHI/43UE/LIS/2009/0070
Property	2 Archway Mews Dorking Surrey RH4 1BX
Applicants	(1) Archway Mews Residents Association Ltd Represented by Mr Roger Stone (2) Mr Alan Chandler, No.11 Archway Mews (3) Mr David Hicks, No.8 (4) Mr J Baker, No.5
Respondent	Mr Robin Gould, No.2 Archway Mews
Date of hearing	22 October 2009
Date of decision	29-10-2009
Members of the Tribunal	Ms H Clarke (Chair) Mr J N Cleverton FRICS Miss J Dalal

**1. APPLICATION**

The Applicant asked the Tribunal to determine that certain sums were payable by the Respondent in respect of service charges for the years 2006, 2007, 2008 and 2009.

**2. DECISIONS**

The Tribunal determined that the Respondent and the Applicant were bound by the terms of the Lease dated 18 November 1983 and that the Applicant was entitled to demand and the Respondent was liable to pay to the Applicant service charges as provided by the said Lease.

3. The Tribunal determined that the Respondent was not liable to contribute towards the cost of pollarding a tree and the sum of £19.88 was therefore not payable and should be deducted from the sums demanded.
4. The Tribunal determined that solicitors' costs incurred in 2005 and 2008-9 by the Applicant or its directors could not be recovered from the Respondent as service charges, and the relevant amounts should be deducted from the sums demanded.
5. The Tribunal determined that the Respondent was not liable to make payment of service charges towards a reserve fund, and the relevant amounts should be deducted from the sums demanded.

6. The Tribunal determined on the evidence and submissions made that the sums demanded for insurance, management fees, general repairs and accountancy fees were due from the Respondent for the years in question.

7. The Tribunal made no decision concerning ground rent as this fell outside its jurisdiction.

#### 8. INSPECTION

The Tribunal inspected the exterior of the property immediately prior to the hearing. The flat owned by the Respondent constituted the lower part of a two storey converted building, probably constructed in the late 19<sup>th</sup> century and converted in the late 20<sup>th</sup> century, with private gardens. The Respondent's flat was known as 2 Archway Mews. The building containing the Respondent's flat was annexed to another dwelling of similar age known as the 'Old Coach House', also with its private garden. Adjacent to the gardens was a shared car parking area and two buildings, probably constructed in the late 20<sup>th</sup> century, containing respectively 4 and 6 houses with private gardens. These 10 houses together with the Respondent's flat, the flat above it, and the Old Coach House together constituted Archway Mews. The whole area was bounded by a combination of fences and walls with various access points and paths.

#### 9. THE LEASE

The Tribunal was shown a copy of a Lease dated 18 November 1983 between J Stephen Obank Ltd and Peter Martin Thursby which created a lease of 99 years from 24 June 1983 of premises known as the Ground Floor Maisonette forming part of 16A Church Street Dorking (hereafter referred to as "the Lease").

10. The Lease included the following definitions; 'The Building' referred to the property known as 16A Church Street, said to have been edged blue on the plan. 'The Estate' referred to an area surrounding the Building and said to have been edged green on the plan, and registered at the Land Registry under 2 title numbers. The Tribunal was not provided with original or colour copy plans. The undisputed evidence was that the building formerly known as 16A Church Street had been converted into 2 flats and had been re-named and re-numbered as 2 and 3 Archway Mews.

11. The Lease provided for the Tenant to pay on demand a due proportion of the Landlord's cost of insuring the Building; to pay a due proportion of estimated service charges, to be paid on account in two instalments annually, the balance to be adjusted after the end of each year; and for the Landlord to maintain the common parts of the Building and to maintain and cultivate the parts of the Estate over which the Tenant has right of way; and to decorate the exterior of the Building. The service charge shall include either managing agents' charges or a management fee of 15%.

12. The Tribunal was shown a Deed of Variation of the Lease dated 2 September 1985 but this was concerned with rights of way and had no bearing on the matters presently before the Tribunal.

#### 13. THE LAW

Landlord & Tenant Act 1985:

s18. *Meaning of "service charge" and "relevant costs"*.

(1) In the following provisions of this Act "service charge" 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 or insurance or the landlord's costs of management, and  
(b) the whole or part of which varies or may vary according to the relevant costs.  
(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

**14. Section 27A. Liability to pay service charges: jurisdiction**

(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 person by whom it is payable,  
(b) the person to 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.

**15. S30: In the provisions of this Act relating to service charges;**

"landlord" includes any person who has a right to enforce payment of a service charge;

"tenant" includes

(a) a statutory tenant, and

(b) where the dwelling or part of it is sub-let, the sub-tenant.

**16. HEARING**

A hearing took place on 22 October 2009 at Redhill. Directions were issued by the Tribunal, and each party submitted a written witness statement, documents, and submissions. By further order of the Tribunal, the matter proceeded on the basis that the Applicant was Archway Mews Residents Association Limited. The Applicant was represented by Mr Roger Stone, Director of the Applicant company. The Respondent appeared in person. The Tribunal also directed that three further persons be added as additional Applicants, at their request; Mr Alan Chandler (director and tenant of No 11 Archway Mews); Mr David Hicks (No 8); and Mr J Baker (No 5). Mr Chandler attended the hearing in person and adopted the First Applicant's representations.

17. At the invitation of the Tribunal, the Applicant also produced copies of the Land Register for title numbers SY523043, SY53994, and SY552160. After the Respondent had an opportunity to look at these the Tribunal decided, on submissions from both parties, to admit these documents into evidence without a further adjournment.

**18. REASONS FOR DECISIONS**

It should be noted that where the Landlord & Tenant Act 1985 uses the expression 'Tenant' this includes the owner of a long leasehold interest who may in other contexts be described as 'Lessee'. In this decision therefore the expression 'Tenant' bears the same meaning as it does in the Act.

The Applicant's evidence was that it was a limited company of which the shares were exclusively owned by the tenants of Archway Mews. It had been established by the developer of Archway Mews, J Stephen Obank Ltd, and in due course the freehold

reversion to the flats and the leasehold houses had passed to the Applicant. Some of the original deeds and documents had been mislaid, and it appeared that J Stephen Obank had on occasion loosely used different company identities to deal with the land.

19. The Applicant submitted that the Respondent had not paid service charges since 2005, a total sum of £1984 being due. All service charges were apportioned evenly between the properties, by dividing by 13. This sum included the Respondent's contribution to the insurance premium, which was placed as a block policy for all the properties in Archway Mews. The Applicant's broker took the insurance to the market each year. The sums demanded from the Respondent also included his share of the cost of pollarding an overgrown lime tree in about 2005. This tree was growing out of the wall at the edge of the private garden belonging to No 4 and was drooping over a footpath. If the Applicant had not acted, the local council might have done the work and sent a bill. The Applicant had advised the tenant of No. 4 that future maintenance of the tree was his responsibility. The demand also included the Respondent's share of solicitor's costs incurred in 2005, at which time the Respondent had issued a county court action against the Applicant to recover sums which he had paid, and in 2008-2009, to get advice about the Respondent's service charge arrears. However the Applicant did not provide the Tribunal with a copy of the solicitor's invoice nor any itemised bill showing what had been charged and what work had been done. The service charge demands for the relevant years also included payments for management fees, general repairs and accountancy fees, and a contribution towards a reserve fund.
20. The Respondent objected to paying any service charges to the Applicant on three primary grounds. He submitted that as he was a shareholder of the Applicant company (as were all the lessees) then effectively he was an owner of the freehold reversion to the Lease which, to use his terminology, 'superseded' the Lease. He maintained that this had the effect that he was released from any obligations created under the Lease.
21. He also submitted that the Lease was established by the developer, J Stephen Obank Ltd, for the specific purpose of creating tenancies for what he called 'DHSS tenants'. As he was not in this category, and did not rent but owned the flat, the Lease did not apply.
22. The Respondent further submitted that it was unlawful by reference to the Applicant's own constitution and/or Articles to take action against him for an unpaid debt because these did not give the Applicant company the authority to do so. He had been a Director of the Applicant company until 2003 and had investigated the position at that time.
23. With regard to the sums claimed, the Respondent made three specific objections. He said that the costs of pollarding the tree ought not to come from the service charge account as they were the responsibility of the tenant of that property, the tree being located within the private garden of 4 Archway Mews. He said that he should not have to pay any solicitors' costs because it had been unlawful to pursue him for service charge arrears in any event, and he did not know what the costs related to. He objected to paying his portion of the costs of insuring the properties

because insurance was solely required by a mortgage company. Where a property was not subject to a mortgage, the owner (ie himself) was free to choose whether or not to insure the property at his own risk. If his flat was destroyed it was up to him whether he arranged for reinstatement. The Respondent did not challenge any other specific item demanded from him.

24. The Tribunal examined the documents available. Land Register Title Number SY53994 showed the Applicant as the registered proprietor, with effect from 28 June 1990, of the Freehold interest in land lying to the east side of Meadowbrook Road, Dorking, identified edged with red on an attached plan. The copy shown to the Tribunal was not coloured, but it was very clear to the Tribunal that the area shown on the plan was the area of land comprising the Building converted into the 2 flats, the garden in front, and the car park area. It did not include the Coach House. The Title Register also recorded the Lease dated 18 November 1983, and another lease of 'the Upper Flat 16A'.
25. Land Register Title Number SY552160 showed the Respondent as the registered proprietor, with effect from 24 January 1991, of the Leasehold interest in the ground floor flat known as 2 Archway Mews under a Lease for 99 years from 24 June 1983 dated 18 November 1983 between J Stephen Obank Ltd and Peter Martin Thursby.
26. The Tribunal had little difficulty in concluding on this evidence that the Applicant was the owner of the freehold reversion on the Respondent's lease, or in other words that the Applicant was the Respondent's landlord.
27. The Lease featured on both the freehold title register and under its own title number. Whilst it was true, as the Respondent pointed out, that the copies of the Land Registry produced at the hearing were dated from October and January 2007 respectively, there was no suggestion that anything had happened to affect the ownership of the land since 2007. The Tribunal therefore concluded on the evidence available that the Respondent was subject to the obligations (and indeed enjoyed the benefits) of the Lease. The purpose for which the Lease may have been created did not affect the position. In any event, it appeared to the Tribunal that the Lease was in the familiar form to be expected of a document creating an interest in land including a dwelling house for a period of 99 years and containing the reciprocal obligations between landlord and tenant that might normally occur in such a document. It did not have the characteristics of a document intended to create short-term lettings.
28. The Tribunal rejected the Respondent's submission that as he was a shareholder in the Applicant company he was a part-owner of the freehold. It seemed to the Tribunal that the Respondent had overlooked the fact that as a Limited Company, the Applicant is a legal 'person' which is able to own property in its own right. Whilst as a general rule it is likely that the shareholders in a limited company own the company itself, the shareholders do not own the assets of the company either individually or collectively.
29. The Tribunal rejected the Respondent's additional submission, that the Applicant company was acting unlawfully and unconstitutionally by pursuing him for money. The Tribunal directed itself that a challenge to the validity of an act done by a

company could not amount to a defence in private law against an action for debt brought by that company. If the Respondent wished to contend that the company lacked lawful powers to bring the Application then his remedy (if any) would lie elsewhere.

30. In relation to the specific items challenged by the Respondent, the Tribunal decided as follows. The Tribunal decided on the evidence that it had not been proved that the tree lay within the parts of the area known as the Estate which the Applicant was liable to maintain under the Lease. It was unfortunate that neither party had drawn the attention of the Tribunal to the tree on the inspection. However, even on the Applicant's case, the tree was considered to be the responsibility of the tenant of No 4 and was described as growing 'in' the boundary wall of No 4. The Respondent was only liable to make such payments as the Lease required. The Lease did not require him to contribute to the Applicant's costs of maintenance of any boundary wall to a private garden demised to a tenant. It did require the Applicant to maintain the rights of way, and it seemed probable that the footpath which the tree was overhanging was one over which the Respondent had a right of way. However, on the evidence available, it could not be said that the footpath itself was being maintained by removing branches which hung over it. The Tribunal concluded that the terms of the Lease did not make the Respondent liable to pay for the work which was done to the tree.
31. The Tribunal also took the view that the Lease did not contain any provision which permitted the Applicant to claim solicitors' costs from the Respondent by way of service charge. The Respondent's proportion of those costs should therefore be deducted from the sum claimed.
32. However, in making its decision that solicitors' costs are not recoverable as service charges from the Respondent in this case, the Tribunal does not make a determination as to the liability of the Respondent to pay those costs on any other basis.
33. The Tribunal considered the question of the Respondent's liability to pay his portion of the insurance charges. The Lease makes explicit provision for the Landlord to insure the building against loss or damage by fire, public liability and such other risks as the landlord may deem expedient. It also makes separate and explicit provision for the Tenant to pay his due proportion of the sums paid by the Landlord for such insurance. These sums are reserved as rent. In the view of the Tribunal, there was no scope for any ambiguity in these clauses. The Applicant has arranged for the insurance and the Respondent must pay his due proportion, irrespective of his views about its benefit and irrespective of whether or not his property is subject to a mortgage.
34. The Respondent made no separate challenge to the sums charged for accountancy fees, management fees, and general repairs other than his general submissions about the legitimacy of all service charge demands. The Tribunal took the view on the evidence that the Applicant was entitled to demand these items under the terms of the Lease and there was no reason to think they had not been reasonably incurred. They were therefore payable.

35. However, there did not appear to be any provision in the Lease for the creation of a reserve fund. The Tribunal was not told whether the Applicant company had made any decision to levy a charge on its member shareholders for a reserve fund, but in any event, the Tribunal was concerned with demands made against the Respondent in his capacity as a tenant. In the absence of any such provision, the Respondent did not have to pay any service charges towards a reserve fund.

Signed-----*AMC*-----

Dated-----*29.10.04*-----

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

**Case No: CHI/43UE/LIS/2009/0070**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL**

**On an application under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

Applicant: Archway Mews Residents Association Limited  
Mr Alan Chandler  
Mr David Hicks  
Mr J Baker

Respondent: Mr Robin Gould

Property: 2 Archway Mews, Dorking, Surrey RH4 1BX

Applicant's Application dated: 25<sup>th</sup> November 2009

Members of the Leasehold Valuation Tribunal:  
Mr B J C Mire BSc (Est Man) FRICS  
(Chairman)  
Mr N I Robinson FRICS (Valuer)

Date of Tribunal's determination: 29<sup>th</sup> March 2010



## **1 Background:**

By an Application dated 29<sup>th</sup> July 2009 made under S27A of the Landlord and Tenant Act 1985, the Applicant sought a Determination from the Tribunal of the reasonableness of the service charges which had been demanded for the four years 2006, 2007, 2008 and 2009.

The matter came before a Tribunal constituted for the purpose of determining that application on the 22<sup>nd</sup> October 2009.

That Tribunal reached its Decision and published its Determination by way of its Decision and Reasons of the 29<sup>th</sup> October 2009.

On an application by the Applicants of the 25<sup>th</sup> November 2009 the Tribunal was asked to determine if the Applicant's application fees to the Leasehold Valuation Tribunal were to be reimbursed by the Respondent.

The Tribunal issued its Directions on the 27<sup>th</sup> November 2009 which required, at direction 4, that the Applicant do "...no later than 14<sup>th</sup> December 2009, send to the Respondent and to the Tribunal copies of all correspondence, and other documents on which it seeks to rely in support of its Application...".

At direction 5 the Respondent was directed "...If the Respondent wishes to contest the Application he shall within 21 days of receipt of the papers referred to...send to the Applicant a Statement in writing saying why he contests the Application...".

## **2 Statutory framework**

Regulation 9(1) states "*...in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings...*"

## **3 Evidence**

The Tribunal received written submissions of the 7<sup>th</sup> December 2009 from Mr Roger Stones, Director of Archway Mews Residents Association Limited. It did not appear to have received any submissions on behalf of the Respondent.

The Tribunal read and considered at length Mr Stones' submissions and the extensive Decision and Reasons of the original Tribunal which they found clear and most helpful in assisting them in reaching their decision.

## **4 DECISION**

The Applicants through Mr Stones requested that the Tribunal consider making an order for the Respondent to them the application fee of £100 and the hearing fee of £150.

The arguments in support of the Application were very much as summarised in the original Tribunal's Decision and Reasons which gave rise to the rulings therein.

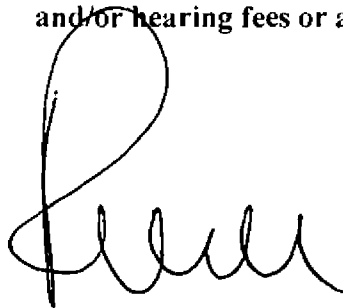
We do not believe that the Respondent acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings even if his reasons for contesting the application were unfounded and not in line with his actions when he was a Director of the Resident's Association.

The parties need to comprehend that the Tribunal system is a "low cost" and not a "no cost" form of dispute resolution and this Tribunal acknowledges that the Applicants may have incurred costs which are irrecoverable.

We do not make any findings as to whether or not the application fees are able to be added to the service charge as we were not asked to consider that aspect. That would be a matter for a future Tribunal to determine.

Nor do we find that our Decision herein estop the Applicants from making a similar application in any future proceedings before the Tribunal where a different Tribunal may make a different finding on the facts before it even if they are referred to this Decision by either party.

**The Tribunal does not intend to exercise its discretion under this Regulation and declines to make an order for reimbursement by the Respondent to the Applicants of the application and/or hearing fees or any part thereof.**

A handwritten signature in black ink, appearing to read 'Benjamin Mire', with a large loop at the top.

**BENJAMIN JC MIRE BSc (Est Man) FRICS  
CHAIRMAN**

Dated: 29<sup>th</sup> March 2010