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HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 27A of  
The Landlord and Tenant Act 1985 (Service Charges)

Case Number: CH1/00HE/LSC/2011/0072 and  
CH1/00HE/LIS/2011/0058

Re: 5-13 and 38, 39 and 40 Jadeana Court Albert Road St Austell  
Cornwall PL25 4TQ

Between: Ms S Teague and Mrs E Pearson Applicants  
and

Ocean Housing Limited Respondent  
and

Between: Ocean Housing Limited Applicant  
and

Jadeana Management Limited Respondent

Dates of Hearings – 19<sup>th</sup> August 2011 and 28<sup>th</sup> February 2012

Appearances – 19<sup>th</sup> August 2011 Ms Teague in person  
Nathan Cousins and Danielle Lamb for Ocean Housing Limited

28<sup>th</sup> February 2012 Nathan Cousins and Nicola James for  
Ocean Housing Limited

Karen Ross for Holman Property Management Company Limited

Other property owners had been joined in as interested parties and the  
following attended in person

Mrs Carter – Number 25  
Mr George – Numbers 34 and 37  
Mr Bullen – Number 20  
Ms Teague – Number 39 and  
Mrs Klimek – Numbers 27 and 31

**Members of the Leasehold Valuation Tribunal – D Sproull LLB (Chairman)**  
R Batho MA BSc LLB FRICS

**Background**

1. By Directions dated 1<sup>st</sup> September 2011 these two cases were consolidated.
2. The first application had been made by Ms Teague and related to the reasonableness of the service charges payable by her to Ocean Housing Ltd ("Ocean") from the commencement of her lease. Mrs Pearson (Number 38) had been joined in as an interested party. Following a Hearing and inspection on the 19<sup>th</sup> August 2011 it became apparent that Ocean were doing no more than to seek payment of charges initiated by Jadeana Management Limited (JML), and that the Tribunal had insufficient evidence on which to make a determination. Ocean said that they had been minded to refer the charges levied against them to the Tribunal, and accordingly that case was adjourned and a Direction made that Ocean would by 26<sup>th</sup> August 2011 lodge an application with the Tribunal in respect of the reasonableness of the service charges demanded by.
3. Following Ocean's application, which was duly made in accordance with the Direction referred to above, the following persons were joined in as interested parties with the number of their particular property listed alongside.

Mr Govier - Number 17

Mr Barton – Number 32

Mrs Klimek – Numbers 27 and 31

Mrs Carter – Number 25

Mr Jenkins – Number 26

Mr Bullen – Number 20

Mr George – Number 34 and 37

**The Property**

1. Jadeana Court is a mixed development of some 40 units in St Austell, with some social housing managed by Ocean, some privately owned properties mainly let by their owners to private tenants and some properties which had been sold by Ocean on a shared equity basis.
2. The estate had originally been constructed by Wombwell Homes (St Austell) Limited ("Wombwell"). The Tribunal inspected Mrs Teague's flat and the layout of the whole estate prior to the Hearing on 19<sup>th</sup> August.
3. The sample Lease before the Tribunal, dated 18<sup>th</sup> December 2006, was made between Wombwell as Landlord, JML (a company with the same registered office as Wombwell) as Management Company, and the tenant. Part Two of the Fourth Schedule set out the Management Company's obligations, and gave them the right to employ managing agents if they thought fit. such agents

being able to charge a reasonable management fee "which may be 10% exclusive of VAT of the total expenditure of the Management Company."

4. Although it was not included in the pre-hearing documentation presented by any of the parties, during the hearing on 28th February Ms Ross put before the Tribunal a copy of a Management Agreement between JML and Holman Property Management Company Limited ("Holman") (a company with the same registered office as Wombwell and JML.), whereby Holman was appointed as managing agent.

### **The Issues**

5. To decide the reasonableness of the service charges for six years from 2006/2007

### **Submissions**

6. The Tribunal had before it written submissions from both the Applicants and the Respondent

### **The Lease**

7. All leases relating to Jadeana Court were said in evidence to be on the same terms. The sample Lease referred to above contained provisions for the payment of service charges in the Fourth and Fifth Schedule which the Tribunal duly noted.

### **The Statutory Provisions**

8. The relevant statutory provisions applicable to this application are as follows:-

Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). This provides that an application may be made to an LVT 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 which it is payable and
- (e) the manner in which it is payable.

#### Section 18 of the 1985 Act

This defines services charges as "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 landlords costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs

Section 19(1) of the 1985 Act

Section 19 (1) of the 1985 Act provides that relevant *service charge* costs shall be taken into account (a) only to the extent that they are reasonably incurred and (b) only if the works are of a reasonable standard

### The Evidence

9. Karen Ross on behalf of Holman explained to the Tribunal the interaction between the various companies. Under the leases originally granted by Wombwell, they appointed JML (a company of which Mr John Wombwell was a director) to deal with the day to day running of the estate. Under that agreement, JML were entitled to appoint managing agents and they had appointed Holman, by whom she was employed. Prior to that appointment she had dealt with matters as an employee of Wombwell. JML had no employees, and matters were decided for that company by Mr Wombwell in his capacity as director.
10. Wombwell, the original freeholders, had sold the freehold in the site in April 2010 to a firm called Leasehold Property Management, and Ms Ross believed that they in turn may have sold some or all of their interest to a company called Landmark, but the original agreement with JML remained, and theirs, in turn, with Holman. Holman managed 386 units on eleven sites. There are nine sites in Cornwall, one in Basingstoke and one in Minorca. There were a total of 386 units and the cost of her and her assistant's time, plus a fixed figure of £5,000, was divided equally between the units.
11. Nathan Cousins gave evidence on behalf of Ocean and a summary of his evidence is:-
  - (a) Management charges should be limited to 10% in accordance with the provisions of the Lease.
  - (b) Bank charges, payroll and legal professional charges should be included in the management charge and not charged separately, as had been happening.
  - (c) The window cleaning charge was too high and they had been working on a re-tendering exercise with reduced frequency. He thought the charge could be reduced by a third
  - (d) General maintenance was too high
  - (e) Landscape and gardening – this had been re-tendered now and he thought it had been over priced since 2008/9. He thought it should have been between £1,000.00 and £1,700.00.
  - (f) Signs – he was not clear what this charge was for. Apparently there had been damage to signs and they had to be replaced and there also had to be some frosting of glass which had not been completed in the original Contract.

(g) Painting – the dispute about service charges generally had been driven by a painting contract entered into by JML to paint the whole estate. The statutory consultation requirement had not been followed. Letters had allegedly been sent out giving details of an estimate that had been obtained but Ocean had never received such letter, and they in turn had not been able to write to their tenants. The statutory procedure had not been followed. As the painting company's bill has not been paid in full, a County Court Judgement has been obtained against JML which it is not in a position to pay. Ocean object to the addition to the service charge account of the legal fees for defending that action.

12. Mark George gave evidence on behalf of the interested parties and confirmed that he was the Chairman of the Jadeana Court Owners Group. The Tribunal had before it details of the Owners Group and the result of their various meetings. The Group represented 32 out of 40 owners, but those present were given the opportunity to comment, in addition to Mr George.

(a) Mr George submitted on behalf of the Group that the statutory procedure for consultation in respect of the painting contract had not been followed and that the maximum payable in respect of the painting should be £250.00 per flat. Some tenants had already paid more. There was some questioning of why painting had been considered necessary so early in the life of the building, in any event.

(b) Mrs Klimek and Mrs Carter spoke of having written to Holman seeking extra information but the letters had gone unanswered.

(c) The Group's main concern was that if JML was not able to pay the painting company's bill it would be forced into liquidation and that, even if the Tribunal concluded that there had been overpayment of service charges, there was little chance of recovery from JML.

(d) There was the further concern that, as the building was insured in the name of JML, if that company went into liquidation then the insurance would lapse.

13. The Tribunal made it clear that it had no power to involve itself in how repayment of any overpayment could be achieved.

14. Karen Ross gave evidence on behalf of JML. She said that she did not know about the 10% cap on management charges. She did not have a copy of the lease and the management agreement made no reference to this provision. She agreed that the payroll charge should be disallowed. She said that there were various problem with the estate which made the service charge higher than one would expect. She gave an example of a smashed wall which had to be repaired, but she also spoke of cases where sub-tenants had done damage but their landlords (the head tenants) refused to accept liability for meeting the cost. She referred to considerable problems which arose with regard to the collection of rubbish.

15. She had re-tendered in respect of cleaning and gardening and the new figures were £2,400.00 and £998.00 respectively. So far as insurance was concerned, the Landlord has to insure and the best quote it can get is £4,481.00 per annum whereas JML would be able to get it insured for £3,896.00 per annum. Whilst she was willing to discuss that with the landlord, she would have to accept their instruction.
16. So far as the painting is concerned, she confirmed the position with regard to the County Court action where Judgement had been obtained against JML but an appeal has been lodged. The appeal is on the basis that she had told the painting company to delay the contract, which it was part way through, because the residents were objecting to payment, and the original trial judge had rejected JML's right to do that. She was not prepared to concede that £250.00 was the most that could be recovered.

### **Adjournment**

17. It had become clear from the evidence that JML were prepared to make various concessions in respect of the service charges and that the applicants did not dispute some of the figures. At the Tribunal's suggestion, therefore, an adjournment of 45 minutes was allowed to give the parties an opportunity to reach agreement in view of the difficulties which the Tribunal anticipated it would have in going through the detail of six years' service charge accounts with so little evidence. The parties were unable to agree, following the adjournment.

### **Section 20 Landlord and Tenant Act 1985**

18. During the adjournment the Tribunal considered whether the consultation requirements of the Act had been complied with and concluded that they clearly had not been. It therefore determined that the maximum amount that could be recovered from each lessee was £250.00 per property.
19. It followed from that that JML's legal costs in defending the action brought by the painting contractor were not properly recoverable, and that accordingly they would be disallowed.

### **Conclusion**

20. The Tribunal reviewed all the demands for the years in question. There was a lack of evidence in many respects: where there was disagreement between the parties the Tribunal made judgements on individual categories of expenditure in the light of such evidence as was available and had arisen from the retendering process described to it, and based on its own knowledge and experience, determined as follows as matters of fact:-

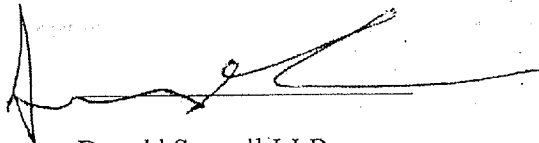
(a) Insurance - Figures shown in the accounts are adopted up to and including the year 2007/08 and for subsequent years are taken at the minimum quotation which JML has recently been able to obtain.

- (b) Insurance Claim - Figures shown in the accounts are adopted
- (c) Landscaping/Gardening and Window Cleaning - the figures shown in the accounts are accepted for the year 2006/07 and thereafter the figure obtained on re-tendering is adopted.
- (d) Cleaning Communal Areas - Figures shown in the accounts are adopted up to and including the year 2007/08 and for subsequent years are taken at the quotation which JML has recently been able to obtain.
- (e) General Maintenance - The figures shown in the accounts are adopted up to and including the years 2007/08. In the absence of full receipts a figure of £3,000pa is then adopted, but with the permitted decoration cost of £10,000 (40 flats at £250 per flat) added for the year 2010/11.
- (f) Under recovery - disallowed as lacking any reconciling explanation.
- (g) Telephone Costs and Payroll Expenses - disallowed as separate charges; to be included in management fee.
- (h) Management Charges - at 10% of total allowable expenditure, plus VAT at 17.5% to the year ending July 2010 and at 20% thereafter.
- (i) Bank Charges - disallowed as no evidence relating to them given, and part of management charge unless shown otherwise.
- (j) All other charges allowed in accordance with accounts as not disputed by tenants or not considered unreasonable by Tribunal.

21. Individual amounts and the resulting calculations are shown on the spreadsheet attached to this Decision, Accordingly the Tribunal found that the service charge per property for the years in question should be as follows:-

Date	Weekly cost per Unit
2006/07	£10.69
2007/08	£9.20
2008/09	£10.09
2009/10	£9.21
2010/11	£14.16
2011/12	£9.60

Chairman



Dugald Sproull LLB

Dated 9<sup>th</sup> March 2012

JADEANA COURT MANAGEMENT

	Original Budget	31/07/2007		31/07/2008		Year E 31/07/2009	
Insurance	£ 5,000	£ 1,151	£ 3,339	£ 3,339	£ 3,896	£ 3,896	£ 3,896
Insurance Claim			£ 250	£ 250	£ 250	£ 250	£ 250
Electricity - Light and Heat	£ 1,000	£ 194	£ 1,164	£ 1,164	£ 1,002	£ 1,002	£ 1,002
Water	£ 150		£ 90	£ 90	£ 55	£ 55	£ 55
Landscaping/Gardening	£ 4,500	£ 120	£ 1,000	£ 1,000	£ 1,000	£ 1,000	£ 1,000
Refuse Collection	£ 1,000	£ 780	£ 1,492	£ 1,492	£ 404	£ 404	£ 404
Window Cleaning	£ 3,500	£ 569	£ 2,500	£ 2,500	£ 2,500	£ 2,500	£ 2,500
Cleaning Communal Areas		£ 405	£ 2,195	£ 2,195	£ 2,400	£ 2,400	£ 2,400
Communal TV System	£ 250		£ 60	£ 60	£ 591	£ 591	£ 591
Fire Extinguishing		£ 1,900	£ 1,347	£ 1,347	£ 1,277	£ 1,277	£ 1,277
General Signs		£ 402	£ 598	£ 598	£ 80	£ 80	£ 80
General Maintenance	£ 2,000	£ 520	£ 1,409	£ 1,409	£ 3,000	£ 3,000	£ 3,000
Sinking Fund	£ 2,500				£ 2,000	£ 2,000	£ 2,000
Previous Under- recovery							
Telephone Costs							
Payroll Expenses							
Auditors, Legal and Professional Costs	£ 600	£ 423	£ 400	£ 400	£ 331	£ 331	£ 331
SUB TOTAL	£ 20,500	£ 6,464	£ 15,844	£ 15,844	£ 18,786	£ 18,786	£ 18,786
Management Charges inc VAT	£ 2,050	£ 760	£ 1,862	£ 1,862	£ 2,207	£ 2,207	£ 2,207
Bank Charges							
TOTAL	£ 22,550	£ 7,224	£ 17,706	£ 17,706	£ 20,993	£ 20,993	£ 20,993
Average No of Units	40	13	37	37	40	40	40
Annual Cost per Unit	£ 564	£ 556	£ 479	£ 479	£ 525	£ 525	£ 525
Weekly Cost per Unit	£ 10.84	£ 10.69	£ 9.20	£ 9.20	£ 10.09	£ 10.09	£ 10.09



inding

	31/07/2010	31/07/2011	31/07/2012
£	3,896	£ 3,896	£ 3,896
£	1,003	£ 894	£ 900
£	73	£ 74	£ 75
£	1,000	£ 1,000	£ 1,000
£	2,500	£ 2,500	£ 2,500
£	2,400	£ 2,400	£ 2,400
£	1,772	£ 317	£ 320
£	1,165	£ 881	£ 900
£	3,000	£ 13,000	£ 3,000
		£ 1,000	£ 2,500
£	338	£ 330	£ 330
£	17,147	£ 26,292	£ 17,821
£	2,015	£ 3,155	£ 2,139
£	19,162	£ 29,447	£ 19,960
	40	40	40
£	479	£ 736	£ 499
£	9.21	£ 14.16	£ 9.60