

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/21UC/LIS/2008/0021

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985**

Property: Flat 5, 19 Jevington Gardens, Eastbourne,
East Sussex BN21 4HR

Applicant: Kenneth Zhou (tenant)

Respondent: Wavepearl Limited (landlord)

Application: 30 April 2008

Directions: 23 May 2008

Consideration: 17 September 2008

Decision: 20 October 2008

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr A O Mackay FRICS

Ref: CHI/21UC/LIS/2008/0021

Flat 5, 19 Jevington Gardens, Eastbourne BN21 4HR

Application

1. This was an Application received on 30/04/2008 made by Mr Kenneth Zhou, tenant of Flat 5, 19 Jevington Gardens, Eastbourne, pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination in relation to payability of service charges for the periods September 2006 – 2007, September 2007 – March 2008 and March- September 2008. The property consists of a first floor flat in a 5 storey block of 9 flats.
2. Directions were issued on 23/05/2008 to the effect that the tribunal proposed to deal with the matter on the papers. Neither party requested an oral hearing. Accordingly the tribunal considered the written evidence on 17/09/2008.

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 LTA 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Lease

4. The Tribunal had a copy of the lease of Flat 5. The Lease is dated 27 June 2006 between the respondent, Wavepearl Limited, and the applicant, Kenneth & Kiu Zhou and is for a term of 99 years from 29 September 2006 at a ground rent of £200 per year for the first 33 years and rising thereafter.
5. The provisions relating to the calculation and payment of the service charge are to be found in the Definitions and at Clause 3. The tenant's proportion of the maintenance charge is 11%. The payment dates are 29 September and 25 March and the maintenance year runs to 29 September each year. By Clause 3(B)(i) the tenant is to contribute the lessee's proportion "*of all monies expended by the Lessor in complying with its covenants in relation to the Block as set forth in Clauses 5(B) and 5(D) hereof*".
6. By Clause 3(B)(ii)(a)(I) the tenant is to pay to the landlord in advance on the payment days £495 for the first year and after that "*such greater sum as the lessor or its agents shall in their absolute discretion deem appropriate*".
7. The landlord is obliged by Clause 5(D)(vi)(b) "*as soon as practicable after 29th September in every year*" to prepare and deliver to the tenants "*a fair summary in*

writing certified by a suitably qualified person of the costs incurred and monies expended by the Lessor during the Maintenance Year immediately prior to the said 29th September in complying with its covenants", after which the tenant must pay the balance (or receive back from the landlord the difference) of service charges.

Consideration

8. The service charges disputed by Mr Zhou were for service charge payments on account set out by him in the Application as follows:

Sept 06-Sept 07	£725	paid
Sept 07-March 08	£450	paid
March 08-Sept 08	£450	unpaid

9. Mr Zhou contended that the service charges had been increased from £725 per year to £900 without any explanation. He had asked for a breakdown or summary of costs for 2007 but had not received this. Instead he had been sent a solicitor's letter threatening legal action, even though he had paid the sums demanded up to March 2008.
10. Mr Zhou enclosed with his application a copy of the letter from Dean Wilson Laing dated 17/04/2008. That letter made it clear that the landlord was obliged to provide a statement of account after 29 September each year, and that when Mr Zhou requested a service charge summary in August 2007, the landlord was not at that time required to provide it. The letter went on: "our client is in the process of preparing the summary of costs and expenses for September 2006 to September 2007 and will provide this as soon as he is able to".
11. The letter further demanded payment of £450 within 7 days for the outstanding service charges for the period 25 March to 29 September 2008 along with legal costs of £193.87. The tribunal has no jurisdiction over the legal costs in this application as they are not a service charge item but an administration charge for which Mr Zhou is separately liable under the terms of the lease.
12. Although there were in the tribunal's papers no copies of service charge demands, Zhou had not argued that the disputed sums had not been validly demanded. The tribunal was therefore prepared to accept that the service charges had been demanded in accordance with the terms of the lease.
13. It was clear to the tribunal that the landlord under the terms of this lease (as set out above) was entitled to demand payments on account in advance on 25 March and 29 September each year and had complete discretion to decide on the amount. Although it was regrettable in the tribunal's opinion that the landlord had not responded more co-operatively to Mr Zhou's quite reasonable request for an explanation of the sums demanded, an annual service charge contribution on account of £750 rising to £900 was not unreasonable given the nature, size and location of the property.
14. The tribunal noted that the annual accounts for the year ending 29 September 2007 had not been prepared by 17/04/2007, the date of Dean Wilson Laing's letter, and were therefore very late. There was no explanation for this in the letter. The threat of

legal action in these circumstances seemed premature and somewhat heavy handed. It is to be hoped that those accounts have now been provided to Mr Zhou.

15. It therefore follows that Mr Zhou cannot succeed in disputing the interim payments on account set out in this application. If, following the service of the accounts, he wishes to dispute the payability or reasonableness of any particular items of expenditure, this would have to be the subject of a fresh application.
16. The tribunal further noted from a letter dated 01/07/2008 from Wavepearl Ltd to Mr and Mrs Zhou that the freehold was sold to Auratus Developments Limited on 28/05/2008. The Director of Auratus, Mr Shimmin, confirmed to the tribunal office by letter dated 17/07/2008 that Auratus had "recently" purchased the freehold. Therefore any outstanding service charges are now payable to Auratus. It would appear from the papers before the tribunal that the sale of the freehold may have taken place without the tenants being given the right of first refusal under Part I of the Landlord and Tenant Act 1985 (to which they were legally entitled, assuming that there was at the material time the requisite number of qualifying tenants at the property).

Determination

17. **The tribunal therefore determines** in accordance with its powers under Section 27A of the Landlord and Tenant Act 1985, that the sum of **£450** is payable by Mr Zhou to Auratus Developments Limited within 14 days of the date of this Decision.

Section 20C

18. Mr Zhou made an application under Section 20C for an order that any costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be included in any future service charges payable by him. He has not succeeded in his application and given the terms of his lease in relation to service charge payments on account his application was bound to fail. Accordingly the tribunal declined to make an order under Section 20C.

Dated 20 October 2008

**Ms J A Talbot
Chairman**

