CHI/29UN/LSC/2009/0001
CHI/29UN/LSC/2009/0002
CHI/29UN/LSC/2009/0007

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON THE PRELIMINARY ISSUE OF JURISDICTION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	Flats 19, 21 and 27 Sandpiper Court, Fort Hill, Margate, Kent, CT9 1PD
Applicant:	Milesahead Properties Limited
Respondent:	(1) Ms Anil Rekhi (2) Mr Hicham Abbad
Dates of Transfer:	16 & 18 December 2008
Hearing:	27 April 2009

Appearances:

Landlord
Did not attend and was not represented

For the Applicant

Tenant
Mr V Ratnasingham

For the Respondents

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr R Athow FRICS MIRPM

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/LSC/2009/0001
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IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF flats 19, 21 & 27 SANDPIPE COURT, FORT HILL, MARGATE, KENT, CT9 1PD

BETWEEN:

MILESAHEAD PROPERTIES LIMITED

Applicant

-and-

(1) ANIL REKHI
(2) HICHAM ABBAD

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. On various dates in November 2008, the Applicant issued three claims in the Northampton County Court against the First Respondent (8QZ18958, 8QZ18562 and 8QZ18962) and two claims against the Second Respondent (8QZ18981 and 8QZ18988) for arrears of ground rent and service charges together with administration and agency fees. The Defences filed by the Respondents pleaded primarily that the Applicant was not the freeholder and, therefore, not contractually entitled to recover, under the terms of their leases, the amounts claimed and was put to strict proof. In other words, the Applicant

had no *locus standi*. Subsequently, those claims were transferred to the Croydon County Court.

2. Pursuant to orders made by District Judge Mills on 16 and 18 December 2008, the claims against the First and Second Respondent respectively were transferred to the LVT for determination.

3. On 22 January 2009, the Tribunal issued Directions disposing of those parts claims for arrears of ground rent for lack of jurisdiction. The Tribunal also directed, at paragraph 6(1) of the Directions, that the Applicant file and serve evidence that it is the freehold owner of the property by 20 February 2009. Upon receipt of any such evidence, the Tribunal would consider the matter of jurisdiction to determine the matter. The Applicant failed to comply with that Direction.

4. On 23 February 2009, the Tribunal wrote to the Applicant's managing agent, Circle Residential Management Ltd ("Circle"), who represent it in this matter, reminding them of the Tribunal's direction and requested that the evidence required be filed within 7 days. Again, neither the Applicant and/or Circle have complied with the Tribunal's Direction or at all in this matter.

5. On 20 March 2009, the Tribunal wrote to the parties informing them that a jurisdiction hearing had been set down for 27 April 2009. On 16 March 2009, the Tribunal received a letter from Circle informing it of the unavailable dates of Applicant's representative, Mr Paine. Those dates did not include the hearing date.

6. On 6 April 2009, the Tribunal wrote to the parties informing them of the venue at which the hearing would take place. By a letter dated 21 April and received by the Tribunal on the following day, Circle informed the Tribunal that Mr Paine was no longer available to attend the hearing on 27 April and enclosed further dates where he was unavailable. No express application was made by Circle to adjourn the hearing. Nevertheless, the Tribunal treated the

letter from Circle as an application to adjourn and refused it for the following reasons:

(i) The hearing had been listed on a date convenient for Mr Paine on the basis of the information provided by Circle.

(ii) Circle and/or Mr Paine had been aware of the hearing since 20 March 2009.

(iii) The application was made very late with no explanation for Mr Paine's unavailability and was in any event unsupported by any evidence.

(iv) The Tribunal did not consider the absence of Mr Paine prejudiced the Applicant's position because alternative representation could be arranged.

Decision

7. The hearing in this matter took place on 27 April 2009. The Applicant did not attend and was not represented. The Respondents were represented by Mr Ratnasingham, who said he was advising and assisting them in a lay capacity.

8. Mr Ratnasingham had, helpfully, provided the Tribunal with an up to date office copy of the Land Register relating to Sandpiper Court. The office copy was obtained on 27 April 2009 at 11:10:18 and clearly showed in the Proprietorship Register that the present freeholder is a Mario Joseph Carrozzo, who was registered as such on 18 May 2007. Mr Ratnasingham submitted that this was sufficient, in the absence of any other evidence, to prove that the Applicant was not the freeholder and that the claims made by it should be dismissed for want of jurisdiction.

9. The Tribunal was satisfied that the Applicant and/or Circle had been served with a copy of the Tribunal's Directions dated 22 January 2009 and had been notified of the hearing. At no stage did the Applicant and/or Circle assert otherwise. Service was, therefore, deemed to have taken place. Materially, the Applicant and/or Circle had failed to comply with the Tribunal's Direction regarding the filing of evidence of the Applicant's ownership of the freehold interest in Sandpiper Court. In the absence of that or any other evidence and, having regard to the office copy of the freehold title provided by Mr

Ratnasingham, the Tribunal was bound to conclude that the Applicant was not, at the present time, the freehold owner of Sandpiper Court. It follows from this that it is not contractually entitled to recover under the terms of the Respondents' leases to recover all or any of the sums claimed. Accordingly, the Tribunal determined that it had no jurisdiction in this matter and dismissed the claims made by the Applicant against the Respondent that are the subject matter of these proceedings.

Costs

10. At the conclusion of the hearing, Mr Ratnasingham made an application for costs against the Applicant pursuant to paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002, in the event that the claims against the Respondents were dismissed.

11. Mr Ratnasingham told the Tribunal that, as long ago as May 2008, when the Respondents received demands for ground rent, service charges and other costs from Circle, they had raised the issue of the Applicant's ownership of the freehold interest without success. Both of the Respondents had written to the Applicant and/or Circle on several occasions regarding this matter and had not received a single reply from either. He argued, therefore, that the Applicant had not been "ambushed" by the Respondents on this point. Nevertheless, the Applicant had, in November 2008, issued proceedings against both Respondents, which had resulted in them having to incur costs and time in defending the proceedings and it had also caused them personal distress. In the circumstances, he submitted that the claims made by the Applicant had been frivolous, vexatious or was otherwise an abuse of process and he sought an award of costs of £500 for each of the Respondents.

12. For the reasons advance by Mr Ratnasingham and because the Tribunal had dismissed the claims brought the Respondents, it had little difficulty in finding that the Applicant had acted frivolously, vexatiously and that bringing these proceedings was an abuse of process within the meaning of paragraph 10 of Schedule 12 above. On the basis of the office copy of the Land Register provided to the Tribunal, it was beyond doubt that the Applicant had never

been the freeholder and could never recover, as a matter of contract, the sums claimed against the Respondent. The issuing of proceedings against the Respondents that were bound to fail on this basis was, in the Tribunal's opinion, one of the clearest cases of conduct that was jointly or severally frivolous, vexatious and an abuse of process. The Tribunal fully accepted that the Respondents would have incurred both time and costs in having to defend the proceedings and, given that they have been dismissed, it is neither equitable nor just for them to be financially penalised by the Applicant's conduct. Moreover, the Tribunal had regard to the Applicant's failure to comply with it's Directions at all without explanation, which was followed by a late and unsupported application to adjourn the hearing. The Applicant's conduct had resulted in this matter having to be listed for a jurisdiction hearing. The Applicant should have withdrawn the claims prior to the hearing thereby avoiding the need for the Respondents to attend and to incur further costs. Having regard to all of these matters, the Tribunal, again, had little difficulty in concluding that the Applicant had, by it's conduct, also acted unreasonably within the meaning of paragraph 10 of Schedule 12 above. Therefore, it was entirely appropriate that the Applicant pay the sum of £500 to each of the Respondents within 28 days of this Decision being served on the parties.

Dated the 30 day of April 2009

CHAIRMAN..... I. Mohabir

Mr I Mohabir LLB (Hons)