CHI/43UG/LSC/2008/0074

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

Address:	Flat 1, Collingwood Court, 46 Eastworth Road, Chertsey, Surrey, KT16 8DB
Applicant:	Ultrahomes Ltd
Respondent:	Mr G. Meriano
Application:	31 July 2008
Inspection:	8 October 2008
Hearing:	8 October 2008
Reconvene:	3 December 2008

Appearances:

Landlord

Mr P Pogoriller	Solicitor of Altermans, Solicitors
Ms C. Cherriman	Michael Richards & Co, managing agents
	For the Applicant

Tenant

Mr G. Meriano	Leaseholder
	For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr N. Robinson FRICS
Mrs J. Herrington

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UG/LSC/2008/0074

IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF FLAT 1, 46 EASTWORTH ROAD, CHERTSEY, SURREY, KT16 8DB

BETWEEN:

ULTRAHOMES LIMITED

Applicant

-and-

MR GINO MERIANO

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application by the Applicant for a determination of the Respondent's liability to pay and/or the reasonableness of various unpaid service charges incurred in each of the service charge years from 2004/05 to 2007/08. The total service charge arrears claimed by the Applicant as at 1 October 2008 was £980.15.

2. The Applicant is the freeholder of the property known as Collingwood Court, 46 Eastworth Road, Chertsey, Surrey, KT16 8DB ("the subject property"). The present managing agents appointed by the Applicant in December 2004 are Michael Richards & Co ("Michael Richards"). Prior to this, the subject property had been managed on behalf of the Applicants by a firm of managing

agents known as DGA plc although it is noted that the accounts for 2005 and 2006 signed by Glazers, Chartered Accountants refer to Harman Healy. Throughout this Decision we use the names of both Harman Healy and DGA according to the discussions during the hearing and the associated paperwork..

3. The Respondent is the leaseholder of Flat 1 in the subject property by virtue of a lease dated 24 February 1993 granted jointly to him and Caroline Anne Meriano by Woodsted Properties Ltd for a term of 99 years from 25 March 1987 ("the lease").

4. The Applicant had initially commenced debt recovery proceedings in the Staines County Court to recover the service charge arrears owed by the Respondent. The Respondent filed a Defence disputing the entire amount claimed by the Applicant on the basis that he had been discharging his service charge liability by making instalment payments of £25 per month. By an order made by District Judge Trigg on 31 July 2008, the proceedings were transferred to the Leasehold Valuation Tribunal for a determination of the Respondent's liability to pay and/or the reasonableness of the service charges being claimed against him. The Tribunal's determination is made pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").

The Issues

5. Both in an undated letter filed in the County Court proceedings and in his statement of case dated 2 September 2008 served in these proceedings, the Respondent set out the service charges disputed by him. These can be conveniently summarised as follows:

	Y/E: 24.03.05	Y/E: 24.03.06	Y/E: 24.03.07	Y/E: 24.03.08
Gardening	807	796	768	732
Management fees of Harman Healy (inc. VAT)	361.38			
Management fees of Michael Richards (inc. VAT)	183.59	822.50	940	1,028.13
Repairs/Maintenance		120	140	641.38

Communal Electricity			91.87	165.81

6. Moreover, in the course of the hearing the Respondent asserted that he had never received any of the relevant service charge demands. A limitation point under section 20B of the Act, therefore, arose and it became necessary for the Tribunal to issue Directions regarding the filing of further evidence on this issue. Both this point and the disputed service charges are considered in turn below.

The Relevant Law

7. Section 20B of the Act provides, *inter alia*, that:

> *"(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred."*

8. Section 27A of the Act provides, *inter alia*, that:

> *"(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.*
>
> *(2) Subsection (1) applies whether or not any payment has been made.*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

9. Any determination made under section 27A subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or be carrying out works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*

Inspection

10. The Tribunal inspected the subject property on 8 October 2008. The property comprised a detached purpose built modern block of five flats presumed built around 1987 with brick elevations under a pantiled roof. The building generally appeared in fair condition. There was a small front garden area to the right hand side of the property as one looked from Eastworth Road with driveway to the left leading, through an archway under part of the property, to open parking and a further small communal garden area at the rear. The front garden area was very shaded with moss rather than grass and the remains of a tree stump / roots visible. The rear garden area was noted to be in better condition.

Hearing

11. The hearing in this matter also took place on 8 October 2008. The Applicant was represented by Mr Pogoriller of Altermans, Solicitors. The Respondent appeared in person.

Section 20B

12. During the course of the hearing, the Respondent had asserted that he had not been served with any of the service charge demands from 25 December 2004 until 25 December 2006. This assertion raised a fundamental issue as to whether the Applicant could recover any of the service charges claimed for this period of time because of the effect of the 18 month limitation period imposed by section 20B of the Act. To enable the Applicant to deal with this point, the Tribunal gave further Directions at the conclusion of the hearing as to the filing of further evidence by both parties. The Tribunal reconvened on 3 December 2008 to consider that evidence and to make a determination on this issue without the requirement for a further hearing.

13. It was the Respondent's case that he had been paying his service charges by monthly instalments of £25 from 13 June 2005 until the present time. He contended that because he had not received any correspondence from Michael

Richards until their demand dated 25 January 2008, he had concluded that he did not have any service charge arrears.

14. Copies of the relevant service charge demands from 25 December 2004 until 25 December 2006 were exhibited to a supplementary witness statement prepared by Mrs Cherriman and filed on 22 October 2008 pursuant to the Tribunal's directions. The Respondent submitted that he could not have received the relevant demands because they had been incorrectly addressed to him in two ways. Firstly, they had been addressed to 46 Eastworth Road instead of just Eastworth Road. Secondly, the correct postcode should have been RT16 8DB and not KT12 8DP.

15. In her witness statement, Mrs Cherriman accepted that although the lease simply referred to Eastworth Road, nevertheless, office copies of the leasehold title of the Respondent's flat referred to 46 Eastworth Road. Mrs Cherriman contended that the Respondent must have received the relevant service charge demands for the following reasons. Firstly, that a physical inspection of the properties immediately adjacent to the subject property reveals that Collingwood Court is the only property located at 46 Eastworth Road and any mail would have been delivered by the local postman. Secondly, that any outgoing mail was franked by Michael Richards and any undelivered letters would have been returned to the firm. No such letters addressed to the Respondent had been so returned. For the same reason, the incorrect postcode was not material. Again, if this had resulted in the correspondence to the Respondent being undeliverable, they would have been returned to Michael Richards and this had not occurred. Thirdly, the correspondence address used in the County Court proceedings and these proceedings had used the address of 46 Eastworth Road and these had all been received by the Respondent.

16. If the Respondent's assertion that he had not received any correspondence from Michael Richards until 25 January 2008 was correct, then by virtue of section 20B of the Act the Applicant could not recover any service charge costs claimed (and possibly paid by the Respondent) for the 18 month period prior to 25 January 2008. The issue to be determined by the Tribunal was

whether or not the Respondent had received the relevant service charge demands for this period.

17. The starting position is that there is a rebuttable presumption that the Respondent had been deemed to have been served on the second day after the relevant demands had been posted to him by Michael Richards[1]. Was that presumption rebutted here? The Tribunal concluded that it was not. The reference to 46 Eastworth Road was not conclusive evidence that the Respondent had not been served. It was not his case that he had not received the invoice from the previous managing agent, DGA, dated 20 December 2006. In addition, the demand sent by Michael Richards dated 25 January 2008 was also addressed to 46 Eastworth Road and at the Respondent had received this letter. Moreover, the reference to Collingwood Court in the address was sufficient to identify the subject property even if the number 46 was included in the address. There is no other property referred to as Collingwood Court on that road. Furthermore, both the County Court and the Tribunal had addressed all correspondence to the Respondent at 46 Eastworth Road and this had been received by him.

18. As to the postcode, it is clear that the incorrect postcode of KT12 8DP had been used on the face of the relevant demands. Both the Applicant and the Respondent accept that this postcode does not exist. Was this sufficient in itself to prevent service from occurring? The Tribunal concluded that it did not. It accepted the evidence of Mrs Cherriman, which was supported by a statement of truth, that no letters or other correspondence sent to the Respondent prior to January 2008 had been returned to her firm. All such correspondence had been franked with a return address. On balance, the Tribunal concluded that the Respondent would have received the correspondence sent to him by Michael Richards. If the incorrect postcode was fatal to service, as the Respondent contended, then all or some of the correspondence sent to him would be returned to Michael Richards and there was no evidence before the Tribunal that this had occurred.

[1] Civil Procedure Rule 6.7(1)

19. Taking all the above matters into account, the Tribunal concluded that the presumption of deemed service had not been rebutted and, therefore, section 20B had no application in this instance. The Tribunal then turned to consider the service charges in issue.

Gardening - All Years

20. The Respondent complained that the gardeners did not visit for three months in each year. When they did so, those visits occurred once a month when a blower was used on the rubbish, but this was not cleared. The law was mowed but the bare patches were not seeded. Weeding of the gravel path was not carried out. Therefore, the Respondent submitted, in terms, that the cost of gardening was unreasonably high.

21. Mrs Cherriman said that the gardening contractors made fortnightly visits all year at a cost of £30 per visit. She submitted that no contractor would carry out this task for less and that the cost was reasonable. She accepted that the lawn at the rear of the property was "very tired" and she had asked the gardening contractor to reseed this area. Mrs Cherriman further contended that the garden was a small site and as a result would not be subject to proactive gardening by the contractor. She had personally inspected the property in June 2008 and recommended the removal of a large tree at the front of the property in September 2008. She confirmed that this area would now be re-grassed.

22. The Tribunal concluded that the gardening costs claimed by the Applicant were reasonable. Those costs were £60 per month, which gave rise to a liability of £12 per month per lessee. Although the task of gardening was not large, nevertheless, most of the gardening costs would have been incurred in travelling and the provision of equipment by the contractor. The additional duties required such as reseeding and weed killing carried out by the contractor would attract an additional cost as these duties were outside the terms of a normal gardening contract. In addition, there was no evidence from the Respondent that the gardening costs were unreasonable.

Management Fees - All Years

23. The Respondent contended that the managing agents had not arranged for various maintenance works to be carried out in each of the disputed service charge years. These management failures included:

- The historic failure to remove the large tree at the front of the property and to reseed this area with grass.
- To effect brick repairs to the main outside wall.
- To repaint the sign at the front of the property.
- To repair the light switch under the archway.
- To clean and repaint the archway.
- To clear drains.
- To repair the Respondent's patio fences.
- To clear roof gutters.

In the circumstances, the Respondent submitted that the management fees claimed by the Applicant were unreasonably high.

24. The management duties performed by Michael Richards and the level of charging is to be found in the document appearing at Tab 5 of the hearing bundle. Mrs Cherriman said that the management duties carried out had been in accordance with those stated duties and had been reasonable. The painting of the archway was not overdue and not strictly necessary. She confirmed she had received quotations for repairs to the Respondent's patio fences but this had not been budgeted for the current service charge year. Mrs Cherriman did not accept that if the Respondent had been complaining in writing nothing would have been done to meet or deal with those complaints.

25. The Tribunal, on inspection, found that the garden, general maintenance and repairs carried out to be reasonable. It follows from this that the managing agent must have carried out its duties diligently. As to the other alleged management failures, the Tribunal accepted Mrs Cherriman's evidence that the complaints made by the Respondent were in relation to routine maintenance and that there was no evidence adduced by him of these alleged failures. The Tribunal found it surprising that none of the complaints made by the

Respondent were evidenced in correspondence. Even if the Respondent had made his complaints orally, it appears that he took no steps whatsoever to pursue those complaints. Accordingly, the Tribunal determined that the management fees, as claimed, were reasonable.

Repairs & Maintenance

(a) Y/E: 24.03.06

26. The sum of £120 claimed for this year was conceded as being reasonable by the Respondent.

(b) Y/E: 24.03.07 - £140

27. The Respondent said that the cost of £140 relating to the repair of an electricity switch in the archway had not been reasonably incurred because the repairs had not been carried out properly. Eventually, the Respondent said that he instructed his own electrician to effect the repair needed at a cost of £50. He submitted, therefore, that only £70 should be allowed as reasonable.

28. Mrs Cherriman said that the sum of £140 also related to the replacement of halogen fittings and not just the light switch as alleged. The cost of repairing the light switch and the proportion for repairing the light switch was in fact £20. She submitted that the cost was reasonable because the work had been carried out.

29. The Tribunal was satisfied that the cost of £140 challenged by the Respondent had been incurred in relation to the replacement of halogen fittings and not just the light switch as the Respondent had contended. The Tribunal was also satisfied that the work had been carried out and the Applicant had produced the relevant invoice. Accordingly, the Tribunal determined that £140 was reasonable.

(c) Y/E: 24.03.08 - £641.38

30. The Respondent said that all these costs related to the repair of a light switch for a courtesy light in the archway of the subject property. He contended that the same contractor returned on five occasions to carry out repairs to the

switch when only one visit would have been necessary. He said that he had received to electrical shocks from the switch. He further contended that his electrician repaired the light switch on 8 July 2008 and charged him £50 for doing so. Prior to this date, the light switch had not been working and, therefore, all of these costs should be disallowed.

31. Mrs Cherriman confirmed that these costs could relate to the faulty light switch at the bottom of the communal stairway. She accepted that some of the costs appeared to be as a result of an emergency call out, but she did not know what time this occurred. She also accepted that the Respondent had complained that he had received electrical shocks from the light switch. Consequent, a contractor was sent to carry out repairs to the switch but he had been unable to find any fault. Nevertheless, as a precaution, the light which was changed at a cost of £95. A second visit by another contractor to carry out repairs to the same light switch involved to separate visits. The first visit was to investigate and purchase the necessary materials thereby requiring a second visit to effect the repair. Apparently, the light switch fitted on the first occasion had been replaced with a defective one. The total cost of this visit was £130. Subsequently, a third visit at a cost of £105 became necessary when it was found that the same light switch was arcing slightly when it was pressed slowly inwards. Mrs Cherriman submitted that all of these costs were reasonably incurred and the reasonable as to the amount.

32. The Tribunal determined that the emergency call out costs of £311.38 for the second visit to effect repairs to the light switch was excessive for what was in effect a straightforward matter. The costs were, therefore, not reasonably incurred. Using its own expert knowledge and experience, the Tribunal allowed the sum of £150 in total. As to the other costs, the Tribunal determined that these were reasonably incurred and reasonable as to the amount. Whilst at the Tribunal found the series of repairs on the same light switch carried out in quick succession to be surprising, nevertheless, they appeared to be reasonably incurred and there was no evidence from the Respondent that the costs were excessive. Moreover, the Respondent had

adduced no evidence that his electrician had carried out the necessary repairs at a cost of £50, save for his assertion in these terms.

Communal Electricity
Y/E: 24.03.08 - £165.81

33. The Respondent submitted that these costs were excessive because they flowed directly from the Applicant's failure to adequately repair the light switch above. These costs had been made greater by the light switch being left on permanently over four days.

34. Mrs Cherriman said that if the cost of communal electricity was averaged over four years it would equate to a standing charge of £70 per annum and actual electricity costs of £45 per annum. The Respondents liability was nine pounds per annum. She submitted that this cost was minimal and, therefore, reasonable.

35. For the avoidance of doubt, the Tribunal should make it clear that the Respondent had conceded that the communal electricity costs for the 2007 service charge here was reasonable. As to the costs in the 2008 service charge year, it was clear that the standing charge of £70 per annum was payable in any event. The only issue for the Tribunal to determine was whether the consumption was reasonably incurred. The Respondent's case was that additional electricity costs had been incurred in 2008 as a result of the faulty switch being left on for four days. Even if the Respondent's evidence was accepted about this, in the Tribunal's view, any additional cost was defrayed over the five lessees in the block and was *de minimis*. Accordingly, the Tribunal determined that the communal electricity costs had been reasonably incurred and were reasonable as to the amount.

Section 20C Costs

36. At the hearing, the Respondent made an oral application under section 20C of the Act to prevent the Applicant from recovering all or part of its costs it had incurred in these proceedings.

37. Section 20C provides the Tribunal with a discretion to prevent a landlord from recovering all or part the costs it had incurred in these proceedings where it was just and equitable to do so having regard to all the circumstances. In the present case, the Tribunal was satisfied that the Applicant had a contractual entitlement to recover its costs, as relevant service charge expenditure, under paragraph 2(b) of the Fifth Schedule of the lease. The Tribunal determined that it should make no order under section 20C preventing the Applicant from recovering its costs because it had almost entirely succeeded in this matter. It would, therefore, be neither just nor equitable to deprive the Applicant of its costs in the circumstances.

Dated the 27 day of January 2009

CHAIRMAN...

Mr I Mohabir LLB(Hons)