THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.27A & S.20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	**CHI/21UD/LSC/2009/0011**
Property:	**The Colonnade Marina St Leonards on Sea East Sussex TN38 0BG**
Applicants:	**Mr D Berriman (Flat 9) Mrs S Bettney (Flat 14) Mr R Chapman (Flat 27) Mr B Critchley (Flat 15) Mr T Ellingford (Flat 8) Mr D J Fielder (Flat 26) Mr T Howe (Flat 19) Key Trading Ltd (Flat 24) Miss H Raynsford (Flat 6) Mr & Mrs T Rigby (Flat 16) Mr D J Merrifield (Flat 13)**
Respondent:	**Finch (UK) Plc in liquidation**
Appearances for the Applicants:	**George Okines & Mr D Berriman lessee of flat 9**
Appearances for the Respondent:	**No representation**
Date of Inspection /Hearing	**3rd August 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS FICPD (Valuer Member) Mr P A Gammon MBE BA (Lay Member)**
Date of the Tribunal's Decision:	**25th August 2009**

THE APPLICATION

The applications made in this matter are as follows;

1. For a determination pursuant to section 27A of the Act of the Applicants' liability to pay service charge for the years ending the 30th September 2003 to the 30th September 2008 inclusive.

2. Pursuant to section 20C of the Act that the Respondents costs in these proceedings are not relevant costs to be included in the service charge for the building in future years.

3. The Tribunal is also required to consider, pursuant to regulations 9 of the Leasehold Valuation Tribunal (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicants in these proceedings.

DECISION IN SUMMARY

4. The Tribunal determines, for the reasons set out below, as follows:-

   i) No service charges are payable for the years ending 30th September 2003, 2004, 2005 and 2006.

   ii) No service charges are payable for the year ending 30th September 2007.

   iii) The following amounts are payable by way of service charge for the year ending the 30th September 2008: -

a)	Communal TV maintenance	£148.03
b)	Door entry maintenance	£250.00
c)	Lift maintenance	£357.20
d)	External repairs	£275.00
e)	Survey for water damage	£220.00
f)	Plumbing works	£130.00
g)	General maintenance	£832.23
h)	Cleaning	£2,106.00
i)	Insurance	£5,592.40
j)	Management fees	£500.00
k)	Accounting	£345.00
l)	Electricity	£1,897.92

   iv) The Respondent to give credit to each Applicant in respect of the on account service charge payments made by them to the Respondents in each of the challenged years.

5. An order is made under section 20C of the Act precluding the Respondent from recovering its costs of these proceedings from future service charges.

6. An order is made directing that the Tribunal fees incurred by the Applicants in these proceedings be repaid by the Respondents.

JURISDICTION

Section 27A of the 1985 Act

7. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable.

8. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE

9. The Tribunal had a copy of the lease relating to Flat 9, The Colonnade Marina, St Leonards, East Sussex. The lease is dated 10th October 2003 and is for a term of 99 years from 29th September 2002 at an annual rent of £100 rising after the first 33 years of the term.

INSPECTION

10. The Tribunal inspected the property before the hearing in the presence of Mr Berriman and Mr Okines. The Colonnade is a substantial Victorian building which has been converted into 27 flats. It occupies an exposed position facing the sea front and main coast road. The building is on five floors plus accommodation within slate hung mansards at roof level. The elevations are rendered and painted. External paintwork is deteriorating including flaking paint to several timber surfaces and rusting metal downpipes.

11. The Tribunal inspected the internal common parts where decorations are badly soiled and there is graffiti on several walls of the staircase. There is a leisure area in the basement. A Jacuzzi has been removed and although a sauna exists, the Tribunal was told that it has never worked. The gymnasium has some equipment and appears to be operational. The front basement was originally intended to be another leisure area. There is no natural light or ventilation and there is a strong odour to the area. There are signs of water penetration, which the Tribunal was told was the result of work carried out by the Council over 18 months ago to replace rotten timber at the perimeter of the building.

PRELIMINARIES / ISSUES IN DISPUTE.

12. The Tribunal had previously held a Pre Trial Review when it was identified that Mr Okines might have a conflict of interest insofar as he held management instructions from the freeholder whilst at the same time he was also assisting the lessees in their case against the Respondent. At the hearing Mr Okines confirmed that he still wished to represent the lessees notwithstanding the fact that he still held informal management instructions from the Respondents until the 11th August 2009 when management would be handed over to the RTM company. In these circumstances the Tribunal arranged for the Respondent's solicitors to be contacted to see if they objected to Mr Okines assisting the Applicants and presenting evidence on their behalf. The Tribunal received assurance from the Respondent's solicitors that they had no objections. The solicitors confirmed that they had no instructions to attend the hearing and that their clients, the liquidators of the Respondent, would not attend the hearing as they had no personal knowledge of the property and were not in a position to make any representations.

THE HEARING

13. Mr Okines opened his clients' case by contending that the service charges for the building had not been properly demanded for any of the service charge years ending the 30th September 2004, 2005 and 2006. Whilst demands for payments on account were sent out and collected, annual accounts as required by the lease were not produced for four years. This was despite the fact that clause 4 of the lease required the Respondent to serve annual statements of account in each year.

14. He contended that section 20 b of the Act applied to these years because the expenditure was now more than 18 months old, which meant that the service charges were historic and no longer recoverable. Mr Okines contended that no notices were issued pursuant to section 20 b (2) of the Act, which contained a mechanism to preserve historic service charges when demands were likely to be delayed beyond an 18 month period.

15. Mr Okines contended that section 20B of the Act also applied to the service charge year ending 30th September 2007.On or about the 12th January 2009 the Respondent had produced consolidated annual accounts for the period 1st October 2003 to the 30th September 2007. He contended that these accounts should be rejected as they failed to isolate the 2007 expenditure from previous years. There was no separation between the expenditure incurred in 2007 and previous years and accordingly it was not possible to identify what expenditure had been validly incurred in the year ending the 30th September 2007. In these circumstances he contended that section 20B also applied to the expenditure for the year ending 30th September 2007 because this expenditure had been incurred more than eighteen months ago and no Section 20 b notice had been sent to the Applicants.

16. In summary what had happened was that money was collected each year on account based on an estimated budget, which was prepared in 2003. There had never been an attempt to revise the budget and all that the Applicants had received were half yearly demands on or about the 1st October and the 1st April in each year in which an on account payment of £469.04 had been requested. His clients had never received any demands or annual service charge accounts detailing actual expenditure.

17. Mr Okines told the Tribunal that even if the Tribunal did not accept his submissions in relation to the application of section 20b of the Act, his clients wish to dispute the following items of expenditure for the years in question:-

18. **CLEANING:** Just over £22,200.00 had been claimed for the years 1st October 2003 to 30th September 2008. This came to approximately £400 per month which in his opinion was excessive. The property was currently being cleaned once a month at a cost of £90.00 which his clients contended was a reasonable charge. This would amount to £5,400.00 over the five year period. It was also his clients' contention that the standard of cleaning fell short to the point where some lessees had to take it upon themselves to carry out their own cleaning to their landing areas.

19. **WINDOWS:** A charge of over £1,500 had been made to the repair of windows. However there were only two communal windows and there was no evidence that any repair work had been carried out. In any event any repairs should have been carried out under guarantee and as a result Mr Okines considered that no amount should be charged under this category.

20. **INSURANCE:** £30,549.88 had been charged over the period, which Mr Okines considered was greatly excessive. The building was currently insured for £2,800,000 at a cost of approximately £2,711.00 and his clients contended that this was a fair price to pay. Applying this premium over the years in question, he contended that the Applicants had been overcharged by a little under £17,000.00 and he invited the Tribunal to confirm that the insurance cost should be no more than £10,844.00 for the four year period and £2,711.00 for the year ending the 30th September 2008 making a total of £13,554.40.

21. **GAS:** £6,150.39 had been claimed over the years even though the boiler had never been made to work. Mr Okines contended that none of the gas costs had been reasonably incurred.

22. **BT CHARGES:** £827.45 had been charged. However, it was his clients' contention that the BT phone in the lift had never worked and it might even be the case that it had never been connected. In these circumstances no charges should be payable.

23. **ACCOUNTANCY FEES:** £1,100 had been charged. The Applicants' contended that the accounts were not compliant with the provisions of the lease and in these circumstances it was unreasonable for the Applicants to pay for non-compliant accounts.

24. **MANAGEMENT FEES:** £19,046.30 had been billed over the period in contention. This related to the in-house management charges made by the Respondent. It was the Applicants' contention that there was no provision in the lease allowing for in-house management charges to be made and accordingly they invited the Tribunal to disallow the charges in total. Even if it were found by the Tribunal that the lease provisions enabled in-house management charges to be made, Mr Okines considered that the amount charged was disproportionate to the actual amount of work undertaken.

THE TRIBIUNAL'S DELIBERATIONS

33. The Tribunal first reminded itself of the terms of Section 20b of the Act which reads as follows:-

Section 20B

(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 sub-section 2), the tenant shall not be liable to pay so much of the service charge as reflects the cost so incurred.*

(2) *Sub section (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

34. The consequences of the landlord failing to comply with the above are stark. The landlord must either properly demand the costs of services within 18 months of them being incurred or, within the same period notify the lessee that costs have been incurred for which the lessee will be liable to contribute by way of service charge. Failure to comply with this legislation will result in the cost being irrecoverable.

35. The Tribunal concluded that the evidence before it demonstrated the following facts:-

i) A budget had been prepared by the Respondent in 2003 which formed the basis of all future service charge demands for 2003, 2004, 2005, 2006 and 2007.

ii) Money collected by the Respondent in each of the years referred to above was based on the estimated budget for 2003 which was not updated.

iii) Service charges were demanded by the Respondent on account twice yearly on or about the 1st April and the 1st October. The amounts demanded rarely fluctuated from the sum of £494.04

iv) All the leases in the building provide for the Respondent to prepare and serve annual service charge accounts containing a summary of expenditure incurred. This was not done.

v) A consolidated service charge account was finally produced by the Respondent in January 2009 for the period 1st October 2003 to 30th September 2007. The consolidated account fails to identify or segregate expenditure incurred in any individual year.

vi) No valid service charge demand has been served on the Applicants following the consolidated account referred to above.

36. The above facts were established on the basis of the written evidence submitted by the Applicants as confirmed by Mr Berriman in his oral evidence. The Tribunal found Mr Berriman's evidence to be helpful and credible. Whilst he did not have answers to all the questions put to him, the hearing bundle broadly substantiated his oral evidence. These

documents showed that the Respondent had managed the building over the years with scant regard either to the terms of the leases or to statutory requirements. The Tribunal noted with regret that no one on behalf of the Respondent saw fit to attend the hearing or indeed comply with any of the directions. Accordingly no defence had been filed with the Tribunal to rebut the case made by the Applicants of mis-management continuing over a five year period.

37. Bearing in mind the facts established, the Tribunal had no difficultly in finding that section 20b does apply to all the service charges claimed by the Respondent for the years ending the 30th September 2006. There is no evidence that the service charges were quantified and subsequently demanded and no evidence that the Respondent availed themselves of the protective measures set out in section 20b (2) of the Act.

38. The Tribunal has concluded that the provisions of section 20b also cover the service charge for the year ending the 30th September 2007. The consolidated accounts in themselves do not provide details of expenditure for the year ending the 30th Sept 2007 and there was no evidence before the Tribunal that a valid demand for these charges had been made by the Respondent. Likewise no evidence that the Respondent sought to protect their position by serving a section 20b (2) notice. As the 18 month period has now expired the Tribunal holds that no service charges are payable for the year ending the 30th September 2007.

39. The Tribunal next turned its attention to considering the known service charges for the period not covered by a section 20b of the Act. These are considered below.

40. **CLEANING:** The Tribunal broadly agreed with the submissions made by the Applicants namely that one visit a month at a cost of £90 per visit is adequate for a building of this kind. The Tribunal therefore allows a total of £1,080 for the year.

41. **WINDOWS:** The Tribunal accepted the evidence of the Applicants that repairs to the windows should not have been necessary and therefore disallows this charge.

42. **INSURANCE:** Whilst the Applicants contend that comparable cover is available for approximately £2,700, the Tribunal did not have the full terms of the two insurance policies and was therefore unable to verify that comparable cover had been obtained. The premium of £5,592.40 claimed by the Respondent at just under £2 per £1000 of cover is at the high end of what might be a range of premiums to be expected for a building of this kind. However a landlord is not obliged to obtain the cheapest quotation; their duty is to ensure that they obtain cover in the open market with an insurer of repute and on reasonable commercial terms. In the absence of documentation enabling the Tribunal to carryout a detailed comparison of the two quotations, the Tribunal does not feel able to disturb the premium claimed by the landlord. The figure demanded is therefore upheld subject to the production to the Applicants of the policy document together with a receipted invoice demonstrating the payment of the premium demanded.

43. **GAS:** The Tribunal accepted the evidence that the boiler had not worked for many years and therefore determines that no service charge is payable in respect of this item.

44. **BT CHARGES:** The same determination is made in respect of the BT charges for the passenger lift.

45. **ACCOUNTANCY FEES:** The Tribunal accepts that the consolidated account does not accord with the lease provisions and accordingly it is not reasonable for the lessees to pay for non-compliant accounts. The costs of £1,100 are therefore disallowed.

46. **MANAGEMENT FEES:** £3,146.30 is claimed for the year. The evidence before it establishes that the Respondent failed right from the beginning to manage the building responsibly or in accordance with the terms of the leases. The Respondent failed to enter into adequate or acceptable dialogue with the Applicants and failed to deal with the many complaints, which were put to them. Moreover the evidence suggests that the Respondent, who was carrying out its own management in-house, failed to adequately protect and hold in trust service charge monies paid to them by the Applicants. Bearing in mind the very low level of service given to the Applicants, the Tribunal is bound to look at the charges made for management critically. The amount charged equates to just under £120 per flat which in itself is not excessive and would have been acceptable had an adequate service been maintained. However, as the service has been manifestly unacceptable, the Tribunal considers that only a token payment of £500 should be payable reflecting the failure to carry out compliant management.

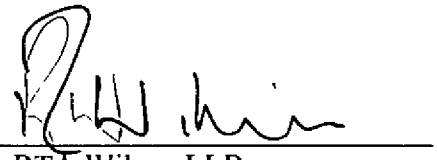
SECTION 20C APPLICATION AND REIMBURSEMENT OF FEES

47. Both of these matters can be taken together as the Tribunal's considerations in relation to both are largely the same. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.

48. The Tribunal first reminded itself that the Applicants had been overwhelmingly successful in challenging the vast majority of service charges claimed over a five year period. This fact, in the absence of any other reasons was a prime facie reason for the Tribunal making an order preventing the Respondent's costs from being recoverable as service charge.

49. The Tribunal noted a letter from the Respondent's solicitors contending that the application had been made prematurely and inviting the lessees to make individual claims against the Respondent, which is in liquidation. The Tribunal rejects the assertion that the application made was premature. The application was necessary to bring certainty as to the proper amount payable by the Applicants by way of service charge. This coupled with the fact that the Applicants case has largely been successful leaves the Tribunal to the view that it would be manifestly just and equitable for an order to be made preventing the Respondent from claiming their costs of these proceedings against a future service charge account and it so orders.

50. The Tribunal also makes an order that the Respondent repays the application and hearing fees of the Applicants bearing in mind the outcome of the hearing, the fact that the Respondent failed to comply with the directions and failed to file a defence or attend the hearing.

Chairman 

RTA Wilson LLB

Date 25th August 2009