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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Case Reference: CHI43/UD/LIS/2012/0037
CHI/43UD/LAM/2012/0006

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985 AND UNDER SECTION 24 OF THE LANDLROD AND TENANT ACT 1987

Applicant: MR. Q. REID & MS. A . CAVENDISH
AND
MRS. J. J. GAME

Respondent: BANNERMONT (ABBEYFIELD) MANAGEMENT LIMITED

Property: ABBEYFIELD, 9 LOWER EDGEBOROUGH ROAD
GUILDFORD, SURREY GU1 2 DZ

Date of Hearing 27TH AND 28TH SEPTEMBER 2012

Appearances
Applicant

MR. Q. REID AND MS. A. CAVENDISH

Respondent

MR. SHEFTEL (COUNSEL)
Ms. Joan Butler Director
Ms. Barbara Hamik Director
Mrs. P. Wilding Managing agent

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Miss C. D. Barton BSc MRICS
Mr. R. T. Dumont

DECISION

INTRODUCTION

1. This was initially a claim by the Owners of Flat 4 Abbeyfield Mr Quentin Reid and Ms Ashley Cavendish for a determination of the reasonableness of certain service charge amounts under section 27A and section 19 of the Landlord and Tenant Act 1985. This application is dated 13th March 2012. Subsequently the same Applicants also made an application under section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager. The Respondent in each application was the freeholder Bannermont (Abbeyfield) Management Limited. Ms Jennifer Game, the owner of flat 10, applied and was joined as an Applicant on both applications. Directions were issued and the matters were dealt with on successive days as a two day hearing.
2. The Tribunal had regard to various documents which had been filed including statements of case from each Applicant and the Respondent, various statements in reply and Scott Schedules prepared by the First Applicants. The Tribunal was also provided with an additional report from the proposed manager and certain other documents were supplied by the Respondent on the second morning of the hearing.

INSPECTION

3. On the first morning the Tribunal inspected the property Abbeyfield, 9 Edgeborough Road, Guildford. The property is an Edwardian house of brick built construction with a clay tiled roof comprising various elevations. The Tribunal were shown by the Applicants various external features and items of what they considered to be disrepair including flaking paintwork and water staining. The Tribunal was shown the roof to the rear left hand side of the building (looking from the roadway at the property) which had been replaced, we were told, in 2007. The Tribunal was also provided with access to flat 10 and flat 4. Access to these two flats included access to their respective loft voids to view items in dispute and to view areas where leaks have occurred.
4. It was clear to the Tribunal that some maintenance had been undertaken and certainly the internal common areas were in a good state of repair however the guttering and roof did appear from external inspection to require some repair and maintenance.

THE LAW

5. In respect of the application for reasonableness the law is contained in sections 19 and sections 27A of the Landlord and Tenant Act 1987:

Section 27A Liability to pay service charges: jurisdiction.

(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.

(3)An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,

(b)the person to whom it would be payable,

(c)the amount which would be payable,

(d)the date at or by which it would be payable, and

(e)the manner in which it would be payable.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5)But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or

(b)on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Also section 19 of the Landlord and Tenant Act 1985:

19 Limitation of service charges: reasonableness.

(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 the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2)Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

6. The law in respect of the appointment of a manager can be found in section 24 of the Landlord and Tenant Act 1985:

24 Appointment of manager by the court.

(1)A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a)such functions in connection with the management of the premises, or

(b)such functions of a receiver,

or both, as the tribunal thinks fit.

(2)A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a)where the tribunal is satisfied—

(i)that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(iii)that it is just and convenient to make the order in all the circumstances of the case;

(ab)where the tribunal is satisfied—

(i)that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii)that it is just and convenient to make the order in all the circumstances of the case;

(ac)where the tribunal is satisfied—

(i)that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the M1Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii)that it is just and convenient to make the order in all the circumstances of the case; or] .

(b)where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA)In this section "relevant person" means a person—

(a)on whom a notice has been served under section 22, or

(b)in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A)For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a)if the amount is unreasonable having regard to the items for which it is payable,

(b)if the items for which it is payable are of an unnecessarily high standard, or

(c)if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(3)The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4)An order under this section may make provision with respect to—

(a)such matters relating to the exercise by the manager of his functions under the order, and

(b)such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5)Without prejudice to the generality of subsection (4), an order under this section may provide—

(a)for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c)for remuneration to be paid to the manager by any relevant person , or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d)for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6)Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal .

(7)In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a)that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b)that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8)The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9)[F1A leasehold valuation tribunal] may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the M5Land Charges Act 1972 or the M6Land Registration Act 1925, [F1the tribunal] may by order direct that the entry shall be cancelled.

(9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a)that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b)that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10)An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11)References in this to the management of any premises include references to the repair, maintenance or insurance of those premises.

HEARING

7. The original Applicants Mr Reid and Ms Cavendish attended the hearing but Ms Game was not in attendance as she had returned to Australia. The Respondents were represented by Counsel and two directors and the managing agent were in attendance throughout.
8. At the start of the hearing the Tribunal reminded the parties that given the large number of documents and the fact there was not one single paginated bundle that whilst the Tribunal had read the documents if there was any particular document which the parties wished to rely upon they must refer the Tribunal specifically to the same. They should not assume the Tribunal would be aware of the document or its relevance to a parties case without explanation.

SERVICE CHARGES

9. It was agreed that the Tribunal would deal with the question of reasonableness of the service charges on the first day. The parties confirmed that the fundamental issues to be determined were as to the reasonableness of certain specified charges as set out in the original application and the payability of the same.
10. The Tribunal agreed to deal with particular aspects in turn.
11. The form of the lease was unusual. The relevant clause was 2 (20)(a) being the tenants covenants which provided that:

> 2(20)(a) Half yearly payments on account in advance (hereinafter called "the service payments") of EIGHTY SEVEN POUNDS FIFTY PENCE (£87.50) each or such other sum as shall be decided by the members of the Managers from time to time in general meeting by Special Resolution on the Twenty-ninth day of September and the Twenty-fifth day of March in each year the first of such payments to be made on the signing hereof and to consist of a proportionate part of such payment of EIGHTY SEVEN POUNDS FIFTY PENCE (£87.50) calculated from the date of these presents to the next due date....

12. The "Managers" referred to in this clause is the Respondent company who also own the freehold and in which each flat owns a share.
13. The Applicants accept that in the past there has only been informal compliance with statute and the terms of the lease and that they accepted this arrangement. However in recent years they have highlighted to the Respondent that they expect strict compliance with the lease terms and statute. They have raised these points in correspondence and at Company Meetings at which they have attended. The Applicants contend that there has been a lack of transparency in respect of service charges and that the funds collected in advance referred to as the "roof fund" have not been properly accounted for.

14. The Applicants accept that the percentages sought in respect of the overall service charge accounts are correct and for Flat 4 this is 8% of the total costs incurred.
15. In respect of proposed roof works a Special Resolution had been passed on the 18th July 2011 providing for payments under a formula proposing unequal payments. This document was exhibited at page 41 of the Applicants bundle of documents attached to their statement of case. The Applicants objected to these payments.
16. The applicants contended that the methodology applied was unreasonable.
17. They contended that no justification had been given as to why the cheapest quotation (or the second lowest whom the Applicants believed was the preferred contractor) rather than the highest quote had been adopted for determining the levy determined under the special resolution. They also submitted that the specification of works (a copy of which was available to the Tribunal) provided already for a contingency figure of £10,000 to be included in the quotes. The specification of works included chimney works and it was unclear what the additional amounts claimed related to. As a result the sums sought were unreasonable.
18. The Applicants also drew the Tribunals attention to the existence of what is known as the "roof fund". The Applicants contended this was a reserve fund built up with the express purpose of repairing the roof. The Applicants took issue as to whether the Respondent was properly holding such monies and whether they had improperly used the same to fund other matters but did contend that credit should be given for the balance (whatever that may be) against any special levy sort under a special resolution. The monies collected and referred to as the "roof fund" were expressly collected for the repair and replacement of the roof and should be used for this purpose alone and the Applicants had never authorised its use for other purposes.
19. As a result the Applicants contended that the monies which the Respondent was seeking in advance to pay for the roof works were unreasonably high.
20. The Applicants pointed to the fact that whilst a first stage statutory consultation notice had been served dated 7th February 2012 no further notices had been served. The Applicants contended this was defective in that the proposed inspection facilities at the managing agents' offices in Alton, Hampshire were too far away from the property being about 20 miles distant. Further the Applicants submitted no second stage notice or further action has been undertaken.
21. As to "payability" the Applicants contend that the terms of the lease provide for equal payments to be demanded under clause 2(20)(a) not unequal amounts as per the current demand. The Applicants relied upon an earlier decision of a differently constituted Tribunal under case number CHI/43UD/LSC/2011/0052 and its reasoning. The Applicants rely on the wording of the lease which refers to "sum" and not "sums" and that therefore as is the position with the ground rent the service charge amounts should be of equal amount.
22. The Applicants also looked to challenge certain professional fees and managing agent's fees.
23. Various solicitors' costs incurred by the Respondent with Charles Russell solicitors were challenged. There was reference to a sum of £617 in the accounts for 2011 which the company was looking to recover. Also to a sum of £11,958 paid to Charles Russell as well.
24. The Applicants contended that all such sums were not recoverable. Firstly they contended that the lease did not allow recoverability of such costs. Even if it did the Appplicant contended that all this work was in respect of company matters or in dealing with the previous Tribunal proceedings. Charles Russell, on behalf of the Respondents, had prior to

that hearing written to the Tribunal confirming that the respondent would not look to recover the costs of those proceedings as part of the service charge. The Applicants contended that the Respondent was bound by this concession and could not now look to recover these costs as a service charge item.

25. The Applicants accept that works are required and asserted they will pay what is properly due but currently do not accept that a reasonable amount has been demanded and that the demands are not in accordance with statute or the terms of the lease.
26. The Applicants accepted that they had been served with a summary of rights with the demands and this was not challenged.
27. Counsel for the Respondents also conceded that matters had in the past been dealt with informally. The Respondent was a company run by the residents and the Directors had always acted in good faith and tried to do what was right and proper in their eyes.
28. With regards to the special levy the company does not have cash reserves. It is not a commercial freeholder but a residents owned management company and has to be cautious in its dealings to ensure that all monies are available for any contracts which it enters into.
29. Counsel for the Respondent submitted that given the Applicants accept the works are required it is bizarre for the Applicant to object. If the monies are not spent they will be returned.
30. Counsel submitted that the lease is not clear. At no point does it specifically state that the payments must be by equal amounts. Whilst he accepted that the earlier Tribunal had commented upon these points counsel reminded the Tribunal that they are not bound by such decisions and asked the Tribunal to take account of the fact that the Respondent was not represented nor did they appear at that hearing. The Respondent believed they had made concessions on the relevant points prior to the hearing. Counsel submitted that practically two equal payments would not always be sensible (as here) and referred to paragraphs 21-24 of the Respondents statement of case.
31. At this point counsel for the Respondent made an application to dispense with the consultation requirements under section 20 of the Landlord and Tenant Act 1985. Counsel contended that Ms Game stated that in her view the works were urgent and the Tribunal had heard that everyone agrees that the works need to be undertaken. He suggested that various defective section 20 processes had been undertaken and everyone was clear as to what was required. Counsel referred to the case of Daejan Investments limited v. Benson and others [2011] EWCA Civ 38 which is currently subject to an appeal to the Supreme Court. Counsel referred the tribunal to paragraphs 61 and 67 of LJ Gross judgement in particular. In paragraph 67 LJ Gross indicated that he could see occasions where in relation to an owner managed block a less rigorous approach to the consultation requirements may be adopted particularly where there had been informal consultation. Counsel contended that no prejudice would be suffered by any leaseholder.
32. Counsel accepted there was no evidence before this Tribunal as to why it was so urgent that the works should be undertaken that consultation should be dispensed with. The Respondents had not continued because of these applications and no one previously had suggested they could and should make such an application.
33. The Tribunal did indicate to the Applicants that if they wished time to consider the application the Tribunal would afford them this and delay hearing any submissions they

wished to make on this point until the following morning however they were content to proceed and made submissions immediately after counsel for the Respondent.

34. The Applicants said they were surprised that the Respondents had not made such an application earlier. The issue here was that they did not believe that there had been a genuine consultation. They submitted that in Daejan it was suggested that with an owner managed block there would be more consultation although some of this may be of an informal nature. The position here was that the Applicants (including Ms Game) felt side-lined and that information is not passed on to them. There has to be genuine consultation and that has not taken place in there submission.
35. The Tribunal did indicate to the parties that it was not sure that it could hear and determine such an application as part of these current applications and indicated that at the start of the following day they would hear any additional submissions on this point.
36. The Respondent continued with their reply. It was submitted that the respondent acted upon the advice of the Chartered Building Surveyors CMI Associates who prepared the Specification and were overseeing the tender process in determining the formula to be adopted. It was submitted that a Freeholder in these circumstances does not have to go with the lowest quotation obtained. The Respondents relied upon the professional advice they had taken and their desire to adopt a cautious approach.
37. In respect of the chimney works the additional works related to the lining of the chimney to flat 5 which the Tribunal was told was required to stop smoke seeping into other flats (particularly flat 4). The sum proposed of £5000 was as a result of a conversation only which it is understood that CMI may have had with a contractor. There was no specification or evidence as to how this sum was quantified or what was included within this.
38. It was accepted that the formula adopted, including the roof levy monies, amounted to about £65,000 being about 50% of the contract sum. The respondent contended this was reasonable to ensure that the company had funds to meet all of its obligations.
39. It was said on behalf of the Respondent that if the Tribunal upholds the challenge as to the reasonableness of the amount claimed under the special levy then the Respondent will have to begin the whole process, including passing a special resolution again. The Respondent is concerned about such delay and wishes to move forward with doing the works.
40. In respect of the professional sums claimed it was submitted that these have not been demanded as yet and as such there is no jurisdiction upon this Tribunal to deal with the same.
41. In respect of the claim for £617 paid to Charles Russell this was in respect of advice as to earlier section 20 consultations. The invoice was not immediately present but was produced on the second day and confirmed that it was for such advice.
42. With regards to the further Charles Russell costs the Respondent contended that not all of these costs related to the previous Tribunal application. In so far as the Respondent had conceded that the costs of that application would not be recovered counsel accepted the Respondent was bound by this. He had no specific breakdown as to how much of the invoice related to that application however it was submitted that a large part must have related to other matters most particularly in respect of the General Meeting and the special resolution. It was reasonable to instruct solicitors to advise and such costs would be recoverable under clause 4 (j) of the lease.

43. At the end of the first day counsel referred the Tribunal to two authorities which he said may assist the Tribunal in determining the point with regards to dispensation. The first being Warrior Quay v. Joaquim [2008] and the second being Westbourne v. Spink [2008].
44. At the start of the second day with regards to dispensation, counsel for the Respondent stated that the second notice had not been sent due to these proceedings. The Respondents sought a finding that the proposed place of inspection being the manager's address in Alton was reasonable. He submitted that under the Warrior Quays case it was right and proper for a Tribunal to consider such an application for dispensation.
45. In response the Applicants contended that the test in Daejan was whether the failure was sufficiently trivial. By reference to Ms Game's submission the Respondents had not been transparent and accountable. Still no idea actually when it was proposed the work would be done or who actually would be appointed. Certain of the proposed works were not even set out in the specification. They submitted that the breaches were not minor or trivial.
46. Counsel for the Respondent did then clarify the legal costs. With regards to the additional management charge this was anticipated but had not been invoiced or charged yet. The Respondent produced a contract and covering letter which they said allowed extra charges. The managing agent, Mrs Wilding, said large amounts of extra work had been undertaken dealing with the Tribunal cases and the special resolution which went beyond normal management work. With regards to the large Charles Russell fee an email was produced form the partner with conduct setting out the work undertaken but including no time breakdown or calculation. This indicated that whilst work had been undertaken on the previous Tribunal proceedings a lot of work was undertaken advising the company in particular with regards to the special resolution. Counsel suggested that whilst this was advice to the company it clearly related to the lease and should be recoverable since it was right and proper for the company to take advice with regards to the meeting and the special resolution.
47. The Applicants stated that they could not see how £12,000 of work was undertaken and felt this was completely disproportionate.
48. There was discussion over the second part of the special levy which supposedly was calculated having regard to the charge kin previous years with a 10% uplift.

APPOINTMENT OF A MANAGER

49. The Applicants formally asked the Tribunal to adopt as appropriate the submissions made in respect of their application in respect of the payability and reasonableness of the service charges in so far as these applied to the appointment of a manager.
50. The Applicants relied upon the preliminary notice served dated 16th April 2012 to which they had not received a response. This relied on various issues.
51. The first was in relation to water penetration. The property has been subject to roof leaks and problems with the guttering which have not been remedied.
52. Next the Applicants contended that the service charges demanded were not in accordance with the lease terms and were unreasonable. Also works done in the past such as previous re-pointing of the chimney had been poorly undertaken causing the leaseholders greater expense. The Applicants contended that the Respondents and their managing agents Castlekeys had failed to adhere to the RICS code of conduct in respect of service charges.

53. It was accepted by the Applicants that since service of the Notice things had improved. Ms Cavendish also accepted that the issues with regards to anti social behaviour and problems with a fellow leaseholder had improved.
54. The Applicants proposed Mr John Mortimer as the Manager. He had produced a short presentation pack and gave evidence.
55. He confirmed that whilst he would be the named Manager he would use the resources of his company John Mortimer Property Management Limited on a day to day basis. The company was based in Bracknell. He confirmed he would charge £140 per annum plus VAT for providing management. For major works, if they managed without an external surveyor, they would charge 5% of the contract sum.
56. He explained his company had been formed in 1990 and had 56 staff of which 43 were involved in block management. For each area there was one manager and one assistant. He has available to him a project and health and safety department. He felt service charges should be a separate set of accounts which would set out the actual expenditure against the budget. He has an out of hours service and he personally has been involved in property management for most of his working life.
57. He confirmed he manages about 30 properties in the area and expanded on some of the details within his submission. He advised that he would hope to get the major works required underway with in about 6 months and completed within two years. On questioning he did advise that he had not seen a copy of the lease. When told the terms of the lease his view was that it was workable if people want it to work but can see a variation may be required. He would be a neutral non aligned person and hopefully people would work with him.
58. Further he confirmed he had not seen the quotes or specification of works. He would need to work with the surveyor but may be possible to proceed with existing. He confirmed he had no affiliations with any contractors.
59. He was asked if he was seeking to be appointed as a Receiver. He was unsure on this point and would be guided by the Tribunal.
60. He confirmed that he has experience of dealing with applications to the Tribunal. He advised that his management would not be direct, but would be conducted on a day to day basis via a local manager which he would appoint. He did concede that if funds are not paid he would not be able to manage. At this point Mr Mortimer was invited to review the case papers including a copy of the lease.
61. Counsel for the Respondent reminded the Tribunal that the test to be adopted was whether it was "just and convenient" for a manager to be appointed. He submitted that this was a remedy of last resort. He looked to rely upon the Respondents statement of case. The issues raised were historic. The point of the initial section 22 Notice was to improve matters and Ms Cavendish had accepted matters seemed to have improved. He also referred to the fact that save for the Applicants all other leaseholders supported the existing management.
62. The Directors had not formally replied to the initial notice as they were concerned about incurring extra costs. The charges proposed by the manager were higher than currently charged by Castekeyes.
63. If the Tribunal was minded to appoint a manager then the Respondents would be happy for such an appointment to be as both a manager and receiver. They would want provisions included that the Manager would hold professional indemnity cover of not less than

£2million pounds, that he would account to the company for ground rents and all reserves would be held in a separate account. Also there should be provision that there would be a complaints procedure such as that suggested by the RICS.

64. Mr Mortimer returned and confirmed having read the documents he was still happy to be appointed if the Tribunal so ordered. He accepted he would have to rely on the shareholders to call meetings but felt he could work with them to achieve this. He was happy that the fees he had proposed were adequate to undertake the task.

SECTION 20C APPLICATION

65. The Applicants relied upon their statement of case to support their application that the costs should not be recoverable as a service charge expense. Whilst they accepted the Respondents had proposed mediation that was only after the application was made and they felt given there was no response to the notice served that this was not a genuine attempt to resolve matters and could not see any real movement. The Applicants felt harassed and have found the whole process very stressful.
66. The Respondents submitted that they had no choice but to defend the case as the roof works had to be undertaken as accepted by everyone. They had acted in good faith and had suggested mediation which the Applicants rejected. The Respondents have tried to act reasonably. The Applicant accept there has been improvement. Therefore it was submitted that no order should be made under section 20C or for the reimbursement of any fees.

DECISION

APPLICATION FOR DISPENSATION

67. The Tribunal considered the cases referred to and in particular Warrior Quays. The Tribunal accepts it is required to draw to a party's attention the possibility of making such an application. Given such had not been made before the hearing and leaseholders who were not a party to the two current applications had not had an opportunity to comment upon the same the Tribunal finds it did not have jurisdiction to entertain an oral application. Only two leaseholders were parties in the current proceedings and no prior notification of such an application was made. The Tribunal believes it was always open to the Respondent to make such an application at any time or to have proceeded with the consultation which it had begun and placed on hold as a result of these two current applications.
68. If the Tribunal is wrong on this point in any event it would have declined to make such an order. No evidence was before it that the works were of such urgency that dispensation was warranted or that the situation would deteriorate or get worse if dispensation was refused. To the contrary this process had been ongoing for some years and it was the level of distrust that had led to the Applicant making the two applications. That being said the Tribunal wished to make clear that if an application was made supported by evidence it would be considered on its own merits and this decision would not preclude the same.
69. The Tribunal does find as a matter of fact that providing inspection at the manager's address in Alton, Hampshire is reasonable. Whilst clearly not in the same town the Tribunal notes

that public transport is available to travel to Alton which only lies approximately 20 miles distant. The Tribunal is satisfied in these circumstances this is reasonable.

SERVICE CHARGES

70. The Tribunal determines that the proper construction of the lease is that the payments demanded under clause 2(20)(a) should be in equal amounts on 29th September and 25th March. The Tribunal determines that in its judgement the wording of the lease in suggesting that the initial charge would be in equal amounts and the fact that the lease refers to "each or such sum as shall be decided..." and not "each or such SUMS as shall be decided.." (the Tribunals emphasis) clearly implies that two equal amounts will be collected. The Tribunal also adopts and agrees with paragraphs 16 and 17 of the earlier decision between the same parties under matter CHI/43UD/LSC/2011/0052.
71. As a result the Tribunal determines that the amounts demanded following on from the special resolution passed on 18th July 2011 are not payable under the terms of the lease.
72. In any event the Tribunal is not satisfied that the amount claimed following on from the special resolution is reasonable. The Tribunal determines that the formula adopted under the special resolution of 18th July 2011 looked to recover an unreasonable amount.
73. No evidence was put before the Tribunal as to why the second lowest quote from AK Roofing was not adopted as the figure to base the calculation upon given it was indicated that this was the preferred contractor. This of itself included a contingency sum. The Tribunal agrees that the various professional and local authority fees used in the formula are reasonable but does not agree to any additional costs for the chimney works. These were (and as far as we were led to believe remain) unspecified and no quotations or estimate have been received. Further there seemed no reasonable explanation as to why the "roof fund" monies should not be credited. It appeared to the Tribunal that these monies had been collected for this purpose and should be used for this.
74. The Tribunal was invited to rule as to whether the "roof fund" is a reserve fund or company monies. The Tribunal does not believe that it has jurisdiction to do so under this application and does not determine this issue.
75. In respect of the professional costs the Tribunal rules that the sum included in the accounts for £617 in respect of Charles Russell's fees for advising in connection with section 20 compliance is reasonable.
76. The Tribunal finds that none of the later bills from Charles Russell amounting to some £11,958 are a legitimate service charge expense. These costs had been challenged from the outset by the Applicant. The Tribunal was disappointed that it was only on the last day of the hearing that the Respondents attempted to itemize the costs by producing a general outline via an email from the firm Charles Russell. Having considered the email and the previous concession offered on behalf of the Respondents by Charles Russell that they would not look to recover the costs incurred in respect of that application as a service charge item the Tribunal finds that the work either related to company matters not recoverable under the lease or to the previous Tribunal application.
77. In respect of the property manager, Castlekeys, additional fees the Tribunal rules that £300+VAT is recoverable for work above and beyond the usual management in undertaking the section 20 consultation. The Tribunal finds that all other costs are not a service charge expense being costs associated with the affairs of the company.

APPOINTMENT OF A MANAGER

78. The Tribunal declines to appoint a manager.
79. Whilst the Tribunal are satisfied that the proposed manager was a very able and competent manager with considerable resources available to him in the current circumstances the Tribunal do not believe that it is just and convenient to appoint a manager.
80. In making this decision the Tribunal have taken account of the unusual form of the lease and the interaction between that and the Respondent company. The Tribunal have considered the fact that both of the current Directors and all other leaseholders expressed no desire for change. Any manager appointed requires the assistance and co-operation of the company, its directors and shareholders if they are to be able to manage properly. The Applicants accept that there seems to be some improvement. It is clear that this application has served to highlight to the Respondent the need to comply with statute and the terms of the leases.
81. The Tribunal was not convinced that the appointment of a manager would necessarily improve matters for the Leaseholders and could lead to further delays and problems with the management of the building and in particular the roof works.

SECTION 20C AND FEES

82. This is an unfortunate case. The Tribunal accepts that the directors of the Respondents believe that they have acted in good faith and have plainly spent large sums of money on taking advice. However it is equally clear that the Applicants have now for some considerable period of time raised their concerns as to the running of the development and they have been for a large part ignored until such time as these applications were made.
83. The Tribunal accepts that an offer of mediation was made by the Respondents however it notes this was some time after the applications were first made and notes that no reply was sent to the section 22 notice served by the Applicants.
84. It is this Tribunals judgement that an order should be made under section 20c providing that 50% of the costs incurred in these proceedings should not be recovered as a relevant service charge cost. In making this order the Tribunal considers the decisions it has made and the applications as a whole.
85. Further the Tribunal orders that the Respondent should reimburse the Applicant Mr Reid and Ms Cavendish for the fees paid totalling £500. In making this order the Tribunal considers that the making of the applications by the Applicant was necessary due to the failures by the Respondents to actively engage with the Applicants.

David Whitney LLB(Hons)

Lawyer Chair