

CHI/00LC/LSC/2007/0102

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 27A, AS AMENDED**

Address: Sandringham House & Sarafand House, 84 St.
Margarets Street, Rochester, Kent, ME1 3ER

Applicants: The Lessees

Respondent: Freehold Managers (Nominees) Limited

Application: 5 November 2007

Inspection: 20 February 2008

Hearing: 20 February 2008

Appearances:

Tenants

Mr Allen

Leaseholder

Mr Garrett

Leaseholder

For the Applicant

Landlord

Mr Calloway (Solicitor)

Hatchers, Solicitors

For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)

Mr R Athow FRICS MRIPM

Ms L Farrier

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/00LC/LSC/2007/0102

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

**AND IN THE MATTER OF SANDRINGHAM HOUSE & SARAFAND
HOUSE, 84 ST. MARGARETS STREET, ROCHESTER, KENT, ME1 3ER**

BETWEEN:

THE LESSEES

Applicants

-and-

FREEHOLD MANAGERS (NOMINEES) LIMITED

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is a joint application made by the lessees of the subject property pursuant to 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of service charges totalling £13,211.97. This figure is comprised of £12,500, being the cost of rebuilding a boundary wall and £711.97 for legal fees.
2. The facts that gave rise to this application can be set out shortly. On 24 December 1999, a tree growing in the gardens of Sandringham House was felled by storms that damaged a boundary wall belonging to 82 St. Margaret's Street, the property adjacent to the subject property. Apparently, liability for the damage was disputed by the then management company, Hawksworth

Management Ltd. ("Hawksworth"), and the owner of 82 St. Margaret's Street. It or about September 2002 the owner of 82 St. Margaret's Street issued a claim against the Respondent, which was settled by way of a Consent Order dated 17 March 2003. The said order provided that the Respondent would arrange for the rebuilding of the damaged party wall and to pay the Claimant's costs and damages totalling £3,225. On this basis, the claim was stayed.

3. It appears that it or about June 2003 the rebuilding of the damaged boundary wall commenced. On 1 February 2003 Castle Estates ("Castle") took over the management of the subject property from Hawksworth. On the instructions of the Respondent, Castle demanded and collected a service charge contribution of £521 from each of the lessees in respect of the total sum paid to the owner of 82 St. Margaret's Street to settle the claim.
4. It is a matter of common ground that the boundary wall had been rebuilt to a poor standard by the contractors. The relevant experts instructed to oversee the works concluded that the new boundary wall erected should be demolished and rebuilt again to a proper standard.
5. As at 1 June 2004 the new boundary wall had not been rebuilt. On 2 August 2004, the Respondent entered into correspondence with the contractor who had built the defective boundary wall with a view to having them carry out the necessary remedial work. It seems that on 4 October 2004 the contractor attended the site to carry out the remedial works but was turned away by the owner of 82 St. Margaret's Street.
6. Further correspondence then ensued between the solicitors instructed by the owner of 82 St. Margaret's Street and the Respondent about the rebuilding of the boundary wall. Under the threat of more legal action, the Respondent paid a further sum of £12,500 to the owner of 82 St. Margaret's Street in full and final settlement of all claims against it. This sum included the cost of rebuilding the boundary wall by the owners of 82 St. Margaret's Street.

7. On 21 June 2007, the Respondent issued a service charge demand to each of the Applicants to recover service charge expenditure totalling £13,211.97, being the sum that is the subject matter of this application. This figure is comprised of the sum of £12,500 paid to the owner of 82 St. Margaret's Street and the Respondent's legal costs of £711.97 incurred in dealing with the issues arising from the defective boundary wall and settling the matter. The individual contribution demanded from each of the Applicants was £695.37.
8. The Applicants subsequently contended that they had no liability for the additional costs incurred by the Respondent primarily because of its failure to properly manage the rebuilding of the boundary wall to a reasonable standard and/or the Respondent had failed to serve at the section 20 notices on the leaseholders in respect of either service charge demand issued in respect of the boundary wall. On 5 November 2007, the Applicants issued this application seeking a determination of their liability to pay the service charge contribution demanded on 21 June 2007 and/or the reasonableness of these costs.
9. The Applicants are all lessees of the flats in the subject property. The leases granted to them are in common form and the relevant service charge provisions are identical. For reasons that will become apparent below, it is not necessary to set out those provisions.

Inspection

10. The Tribunal attended the subject property on 20 February 2008 and inspected the relevant boundary wall. However, at the time of inspection the boundary wall had been rebuilt by the owner of 82 St. Margaret's Street. No issue arose as to the standard of the rebuilt wall.

Hearing

11. The hearing in this matter also took place on 20 February 2008. The Applicants were represented by Mr. Allen and Mr. Garrett, who appeared in person. The Respondent was represented by Mr. Calloway, a solicitor from the firm of Hatchers instructed by it.

12. The Tribunal heard submissions from Mr. Allen who set out the factual background that gave rise to this application. He submitted that the Applicants should not be liable at all for the service charge costs in issue.
13. Mr. Calloway, for the Respondent, admitted that the initial boundary wall had not been rebuilt to an acceptable standard and he did not attempt defended this allegation. In so doing, Mr. Calloway also accepted that his client had been in breach of the consent order dated 17 March 2003. Materially, Mr. Calloway conceded that the boundary wall in question did not form part of the curtilage of the subject property. In the circumstances, the Tribunal inquired whether the service charge costs in issue were in fact defined service charge costs recoverable under the Fourth Schedule of the leases. Initially, Mr. Calloway submitted that the service charge costs were recoverable under the Fourth Schedule because they were incurred in relation to damage consequent upon a failure to keep the grounds in good order.
14. Mr. Calloway was then invited by the Tribunal to properly consider the relevant service charge provisions in the leases and granted him a short adjournment in which to do so. At the resumption of the hearing, Mr. Calloway, properly, conceded all of the service charge costs that were the subject matter of this application were not recoverable, as a matter of contract, as being relevant service charge expenditure under the terms of the leases. He also conceded that the Respondent had no contractual entitlement to recover its costs incurred in these proceedings as relevant service charge expenditure.
15. In the light of the admissions made by Mr. Calloway, the Tribunal determined that this application succeeded completely and it disallowed all the costs of £13,211.97 claimed by the Respondent on the basis that they were not relevant service charge expenditure within the meaning of the leases and it, therefore, had no contractual entitlement to recover those costs from the Applicants.

Section 20C & Fees

16. The Applicants also made an application under section 20C of the Act to *disentitle* the Respondent from being able to recover all or part of the costs it

had incurred in these proceedings. Having regard to the concession made by Mr. Calloway that the Respondent had no contractual entitlement to do so, it was not strictly necessary for the Tribunal to consider this application. However, for the avoidance of doubt, the Tribunal orders that the Respondent shall not be able to recover, as relevant service charge expenditure, any of the costs it had incurred in these proceedings against the Applicants. The Tribunal made this order by applying the principle that “costs should follow the event”. For the same reason, the Tribunal orders the Respondent to reimburse the Applicants within 28 days the total fees of £350 paid by them to the Tribunal to issue this application and have it heard. This order is made pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Dated the 7 day of March 2008

CHAIRMAN.....*J. Mohabir*.....
Mr I Mohabir LLB (Hons) 