HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL Of THE NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985

Section 27A and Section 20(C)

Properties:	**7 & 8 Mayfield Close, Penwortham, Preston PR1 9YG**
Applicants:	**Robert Graham Felton & Heather Dawn Taylor-Fenton (7) and Peter Robert Woodburn & Dorothy Jean Woodburn (8)**
Respondent:	**Chelford Properties Limited**
Tribunal:	**L J Bennett (Chairman) W Tudor M Roberts, FRICS**
Date of Hearing:	**7 February 2012**
Date of Determination:	**23 April 2012**

Application:

1. The Applicants apply under Section 27A of Landlord and Tenant Act 1985 (the Act) for a determination relating to service charges requested for their respective Properties.

2. The Applicants apply under Section 20C of the Act for an order that the cost incurred or to be incurred by the Landlord in connection with the application is not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them.

3. The Properties are individual dwelling houses constructed by the Respondent in a development known as St James' Gardens, Strickland Lane, Penwortham, Preston.

4. The Respondents are the registered Freeholders of the Properties.

Background preliminary to the determination:

5. Following a pre-trial review an inspection and hearing was arranged, this took place on 7 February 2012. The Applicants attended. Mr Robin Davies and Mr David Green of Albany Property Services Limited represented the Respondent. They stated that they had recently been appointed as Managing Agents in place of Messrs Solitaire, the previous Landlord appointed Agents. The parties made submissions and the hearing adjourned. Directions were made for the

determination of the application. The Tribunal's directions of 7 February 2012 and background are appended to this decision.

6. Neither party requested a continuation hearing. Each party made written submissions. The Applicants also applied for an order for repayment of costs in respect of their disbursements including application and hearing fees, travel and copy costs amounting to £505.95.

The Law:

7. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable.

8. Section 19 of the Landlord and Tenant Act 1985 states:-

(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.

The Lease:

9. The Leases of the Properties are in common form. It is assumed that other leases within the development except those premises which consist of flats and will likely have additional service charge obligations are also in common form.

10. Mr and Mrs Felton's lease is dated 6 December 2005; Mr and Mrs Woodburn's, 27 July 2007.

11. Paragraph 6.1 of the Lease(s) states: "The Lessor undertakes with the Lessee immediately following the grant by the Lessor of a lease of the last of the properties comprised in the Estate to complete the transfer of the Lessors freehold reversion in the Estate to the Management Company."

12. Paragraph 6.4 of the Lease(s) states: "If the Management Company ceases to exist prior to the grant of a Lease of the last of the properties comprised in the Estate then the freehold reversion subject to the leases of the properties comprised in the Estate shall be transferred to a new management company having a similar constitution to the Management Company subject to the Lessee and other lessees applying to be members of such new management company bearing the expenses of the transfer."

13. Paragraph 1 of The Fourth Schedule to the Lease(s) contains definitions:
    - "Service charge" shall be a twentieth share attributable to the Property of the annual expenditure incurred by the Management Company during each financial year in providing all or any of the services hereinafter mentioned
    - "The Management Company" means St James (Penwortham) Management Company Limited the ownership of whose shares is limited to the owners of the Properties comprised in the Estate and (pending completion of the sale of the last such Property) the Lessee of each such Property shall carry equal voting rights in the Management Company

14. Paragraph 2 of The Fourth Schedule to the Lease(s) states:

    "Subject to the Lessee paying the service charge and complying with the covenants and other terms of this Lease:
    2.1 the Lessor shall maintain and keep in good order:-
        a. the open space/garden areas forming part of the Common Areas:
        b. the ditch along the northerly boundary of the Estate: and
        c. the retaining wall situate on the westerly side of Stricklands Lane

    and shall insure the Common Areas against all third party and public liability of the Landlord in relation thereto"

15. Paragraph 2.2 specifies arrangements for accounting and payment of the final service charge.

Evidence and submissions:

16. It is common ground that the service charge is requested by the Respondent and has not been raised by the Management Company defined in the Lease. It is also common ground that the Management Company has not operated and may not have existed at the time of the service charges demand made by the Respondent's appointed Managing Agents Messrs Solitaire Management. Although all the Properties have now been sold the Freehold has not been transferred in accordance with the Lessor's obligation in paragraph 6.1 of the Lease.

17. The Respondent's submissions include "It is clear that the drafting of the Lease does not properly and correctly represent the initial intentions and requirements of the Respondent for the future provision of services and the management of the development which were ....." and that "The Respondent submits that the legal effect intended by the above if the Lease had not contained the drafting errors referred to would pass the responsibility for the provision of Services and the obligations to prepare and recover Service Charges after completion of the development to the Management Company controlled by all Lessees through allotted shareholding."

18. The Respondent stated that it instructed its Managing Agents (Messrs Solitaire) and was unaware that they had not satisfied the company administration requirements in respect of the Management Company.

19. The Respondent submissions include proposals for reinstatement or formation of a new Management Company and instruction of new Managing Agents. They

request that the Tribunal order that the Applicants should pay service charges to them as they have provided management services.

20. The Applicants comment upon the Respondent's submissions and give reasons why other Leaseholders might have paid service charges requested by the Respondent's Managing Agent. They comment on the Respondent's responsibility to comply with its obligations under the Lease in respect of the Management Company transfer.

Conclusions:

21. We note the application relates to service charges for a period commencing 1 July 2007 to 31 December 2016. By order made 29 October 2010 by Mrs E Thornton Firkin, a Vice President of the Tribunal, the application was limited to service charges for years 2007-2011 inclusive.

22. The Lease(s) are not unusual in form and are similar to many seen by the Tribunal in respect of such developments. There is good reason for the management arrangements specified once the development is completed in effect a Residents Management Company becomes Landlord and takes responsibility for continued maintenance. The developer is free of continuing obligation. Although not relevant to our conclusions the assertion that the Lease(s) are in error and some other intention was in mind is not credible.

23. If the Lease(s) produced for the Respondent and executed by it in respect of each of the properties within the development was contrary to their intention, this was a repeated mistake and it is surprising that nothing has been done to rectify it. We find more likely that the Respondent has overlooked the need to comply with its terms. Its responsibilities are clear as are the consequences of what they have done.

24. The clear application of the Lease provisions leads us to the conclusion that a valid service charge has not been demanded. It is not open to the Freeholder or its Managing Agent to request one. The Lease states a service charge can only be incurred and required by St James (Penwortham) Management Company Limited or a new Management Company with similar constitution.

25. As a service charge has not arisen we find that the Applicants are not liable to pay demands on behalf of the Respondent for service charge periods commencing 1 July 2007 to 31 December 2011.

26. This position is plainly unsatisfactory and it will be in the interests of the Lessor and Lessees to resolve as early as possible. Both parties have an interest in the maintenance and services within the development. There are appropriate applications that could be made by the Lessor or Lessee; no doubt the parties will seek advice. This is not a matter for these proceedings, the Tribunal cannot amend the Lease or appoint a Manager on this application.

Section 20C:

27. We have found that there is no entity capable of demanding a valid service charge under the Lease. It is not therefore necessary for us to consider Section 20C as no

competent party has incurred costs in connection with this application that could be the subject of a service charge.

Costs:

28. The Applicants have made submissions relating to costs and gave details of their disbursements. They state that they have tried to discuss the issues with the Respondent but they did not respond, similarly the Respondent did not attend the pre-trial review in these proceedings.

29. The Respondent's submissions include that the "Tribunal should order responsibility for each party to pay their own costs in connection with the application."

The Law:

30. Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 (the Act) states:

    (1) A leasehold valuation tribunal may determine that a party to Proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2)
    (2)(a) he has made an application to the Leasehold Valuation Tribunal which is dismissed in accordance with Regulations made by virtue of Paragraph 7 or
    (2)(b) he has in the opinion of the leasehold valuation tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings."
    (3) the amount which a party to proceedings may be ordered to pay in the proceedings by a determinations under this paragraph shall not exceed
    (a) £500, ...

31. Paragraph 9 of the Leasehold Valuation Tribunal's (Fees)(England) Regulation 2003 states:

    (1) Subject to Paragraph (2), in relation to any proceedings in which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings
    (2) (not applicable in the circumstances)

32. The Respondent has clearly been in error in demanding a service charge. Submissions made indicate that the Respondent has made concerted attempts to collect it and we accept it reasonable that the Applicants should have made this application to ascertain whether the charges were payable. Had the Respondent considered its Lease obligations it would have been obvious that demands were incorrect.

33. In the circumstances we find it appropriate to order under Regulation 9 that the Respondent shall reimburse to the Applicants the application fee of £150 and hearing fee of £150.

34. Noting the Respondent's have acknowledged the regime set out within the Lease we do not consider they acted or conducted themselves in connection with the proceedings such that this activity would fall within Paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Accordingly the application for costs other than fees cannot succeed.

Order:

35. The amount payable by the Applicants for service charges for the periods 1 July 2007 to 31 December 2011 is zero.

36. Chelford Properties Limited shall pay to Robert Graham Felton & Heather Dawn Taylor-Fenton and Peter Robert Woodburn & Dorothy Jean Woodburn the sum of £300 by way of reimbursement of the application and hearing fees in these proceedings.

L J Bennett
Chairman
23 April 2012