



LRX/110/2005

LANDS TRIBUNAL ACT 1949

SERVICE CHARGES – Landlord and Tenant Act 1985 Section 27A – jurisdiction of Leasehold Valuation Tribunal – LVT determines amount payable by way of service charge by various lessees – whether LVT has a discretion under Section 27A(d) and (e) (or otherwise) to order payment on such terms as appear to the LVT to be reasonable (being terms giving time for payment and being terms which depart from the terms as to payment in the relevant leases).

**IN THE MATTER OF AN APPEAL FROM A DECISION OF THE
EASTERN LEASEHOLD VALUATION TRIBUNAL**

BETWEEN SOUTHEND-ON-SEA BOROUGH COUNCIL Appellant

and

**(1) MR EDWARD SKIGGS
and
MRS SHIRLEY SKIGGS
(2) MRS BETTY FOGGO Respondents
(3) MRS MARGARET HEYBURN
(4) MRS JENNIFER OTHEN**

**Re: 473, 483b, 479 and 485a
Sutton Road
Southend-on-Sea
Essex SS2 5PL**

Before: His Honour Judge Huskinson

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
On 2 March 2006**

The case referred to in this decision:
Wandsworth LBC v Manuel [2002] 2 EGLR 128

Mr Bates instructed by Mr P Tremayne (solicitor for the Appellant)
The Respondents did not appear and were not represented.

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DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal, with permission to appeal granted by the Eastern Leasehold Valuation Tribunal (“ELVT”), against a decision by the ELVT which is undated but which was sent to the parties on 28 July 2005.

2. The Respondents were served with notice of this appeal and of this hearing but none of them have served any notice of intention to respond nor have any of the Respondents appeared either in person or through any representative at the hearing before the Tribunal.

3. The point before the Tribunal concerns whether the ELVT, having made a ruling under Section 27A of the Landlord and Tenant Act 1985 as amended as to the amounts payable by way of service charge by the various Respondents to the Appellant, enjoyed jurisdiction to exercise a discretion to lay down a timetable for payment of the amounts found to be due to the Appellant, being a timetable otherwise than as provided in the Respondents’ leases. In effect the ELVT has formed its own conclusion as to a reasonable period which could properly be allowed to the Respondents to pay the sums found to be payable by them and has sought to impose this upon the Appellant by incorporating such a provision in its decision, see paragraph 8D of the decision which is in the following terms:

“The Tribunal decides that payment should be made by the Applicants to the Respondents three months from the date hereof without any interest being charged during that period. The Tribunal hope that during this period the Applicants and the Respondents can achieve a satisfactory manner in which the payment is to be made. If this cannot be achieved the parties have permission to apply to the Tribunal for a further hearing to determine this issue of the manner in which the payment is to be made.”

4. The foregoing question of the jurisdiction of the ELVT is the only point raised in the present appeal. In these circumstances the facts can be briefly stated.

Summary of facts

5. The Respondents are lessees of their respective premises in Sutton Road, Southend-on-Sea, holding their premises on a long lease at a low rent from the Appellant. I was told that each of the Respondents had acquired their respective premises through exercise of the right to buy.

6. There is before me a specimen lease being the lease of 473 Sutton Road dated 13 March 1989 between the Appellant and a Mr and Mrs Anderson. This lease includes in Clause 3 a covenant by the lessee to pay to the lessor such annual sum as may be notified to the lessee by the lessor from time to time as representing the due proportion of the reasonably estimated

amount required to cover the costs and expenses incurred or to be incurred by the lessor in relation to certain stated matters. This sum is made payable annually in advance on the days for payment of rent (namely the 1 April in each year). There is then a further provision that the lessee will pay to the lessor on demand the amount by which the estimated sum is less than the due proportion of the total monies properly and reasonably expended or retained by the lessor, and there is a provision that if the sum paid on account is more than the due proportion properly attributable to the relevant lessee, then the excess is to be carried forward by the lessor to be credited to the lessee's account.

7. A disagreement arose between the Appellant and the Respondents regarding the service charges payable for the years 2004 and 2005. The matter was referred to the ELVT.

8. The ELVT considered arguments regarding the substance of the dispute as to how much was properly payable by way of service charges, including questions regarding whether the charges incurred by the Appellant were reasonably incurred and as to whether the works undertaken by the Appellant were carried out to a reasonable standard. In substance the ELVT upheld the arguments of the Appellant and made a determination in paragraph 8A of the decision determining that the respective Respondents were liable to pay to the Appellant the various sums there stated, which were sums which were little different from the sums which the Appellant had sought.

9. No challenge has been made by any of the Respondents to the ELVT's decision as to how much is payable by each of them nor has the Appellant sought to raise any such challenge regarding the quantum recoverable from each Respondent.

10. However a point was raised at the hearing by the Chairman of the ELVT which in due course led to the inclusion in the decision of paragraph 8D which set out above. The ELVT dealt with this point in paragraph 4B under the heading "Points of Law" in the following terms:

"Under Section 27(A) the Chairman raised a preliminary issue that if a service charge is payable in this case there would need to be discussion of the date at or by which it is payable and the manner in which it is payable. The jurisdiction of the Tribunal under Section 27(A) 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. He suggested that it might be reasonable for, say, a three month period to be allowed so that the Respondent could discuss with the Applicants a scheme for payments by instalments if appropriate. Mr Bates submitted that this was not the intention of the legislation and the date for payment and manner of payment must be construed in accordance with the terms of the Leases. If his submission is accepted the Respondent undertakes not to enforce payment for a three month period. The Tribunal decided that there are no words in the appropriate Sections (d) and (e) of Section 27 (A)(1) which suggest by explicit or by inference that they do not have the discretion as to the date and manner of the service charge being payable. The submission of Mr Bates is rejected."

11. The Appellant challenges the conclusions reached by the ELVT in paragraph 4B and the Order made in paragraph 8D of its decision. The Appellant's grounds for doing so are helpfully and fully set out in its grounds of appeal and in the skeleton argument provided by Mr Bates.

Decision

12. In my judgment the ELVT erred in law in concluding that it had a discretion under Section 27A to set down some timetable for payment of the outstanding service charges which it found to be reasonable. My reasons for so concluding are substantially those advanced by Mr Bates and are as follows.

13. Sections 18 to 30 of the Landlord and Tenant Act 1985 as amended make provisions in relation to service charges. One of the principal provisions is contained in Section 19 which limits the recovery of service charges by reference to a test of reasonableness. The section provides that relevant costs are to 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 are of a reasonable standard. The amount payable is limited accordingly. There are also limitations on service charges by reference to consultation requirements (Section 20 and 20ZA), and by reference to grant-aided works (Section 20A). Section 20B provides a time limit for making demands. Section 20C enables a tenant to make an application for an order that all or any of the costs incurred or to be incurred by a landlord in connection with proceedings (whether before a court a leasehold valuation tribunal or the Lands Tribunal or in arbitration proceedings) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable. Section 20C(3) provides:

“(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances”

Sections 21 to 27 make further provisions in relation to service charges to which it is not presently necessary to refer.

14. Section 27A, which is the section central to the present case, is in the following terms:

“(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) Subjection (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.”

15. The first and fundamental reason for my decision that the ELVT does not enjoy the discretion which it concluded it did enjoy is based upon the wording of Section 27A itself. I do not consider that this section can be construed as conferring any such discretion on the ELVT. Section 27A(1) permits an application to be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to certain other matters. This section confers a jurisdiction on the leasehold valuation tribunal (as indeed the heading to the section indicates) namely a jurisdiction to make “a determination” as to certain matters. The expression “a determination” as to whether a service charge “is” payable and, if it is, as to certain other matters concerning the service charge which “is” payable, is appropriate language to confer a jurisdiction on the leasehold valuation tribunal to reach a decision as to what liabilities actually exist between the parties. It is not appropriate language to confer a jurisdiction for the leasehold valuation tribunal to decide what liabilities it concludes in its discretion, should exist between the parties.

16. It may also be noted that when Parliament wishes to make clear that the leasehold valuation tribunal enjoys some discretion to decide what is just and equitable in the circumstances, then it uses expresses language to do so, see Section 20C(3) set out above.

Similarly when Parliament intends to impose some limit on the amount of a service charge by reference to reasonableness then once again this is done so expressly, see Section 19. In my judgment the wording of Section 27A, especially subsection (1) which is the subsection relied on by the ELVT, is incapable of being read as conferring a discretion on the ELVT to give such time to lessees as it thinks reasonable to make payments for service charges. It only has jurisdiction to determine the rights existing under the terms of the lease, but of course such rights must be determined having regard to the limitation on service charges as contained within the statute (e.g. in section 19).

17. I am fortified in my foregoing conclusion by the legislative purpose of Section 27A, which was introduced by the Commonhold and Leasehold Reform Act 2002 Section 155. The position prior to this amendment had been considered in various cases including *Wandsworth LBC v Manuel* [2002] 2 EGLR 128 where Tomlinson J decided that a leasehold valuation tribunal was not given jurisdiction by Section 19 of the Act to determine matters that are matters of interpretation or construction of the lease, nor did it have jurisdiction to reach some overall conclusion as to the reasonableness of a service charge – instead it had jurisdiction to determine whether costs incurred for services etc were reasonably incurred and the question of whether the services or works were carried out to a reasonable standard. The difficulty which therefore arose from the statute was that, while certain matters could properly be determined by a leasehold valuation tribunal, the entirety of the dispute between a lessor and a lessee as to what was properly payable by way of service charge might well require the matter also to be taken to the county court so that that court decide matters (such as the construction of a lease) jurisdiction upon which had not been given to the leasehold valuation tribunal.

18. That being the position prior to the 2002 Act, the purpose of the 2002 Act, so far as concerns Section 27A, is in my judgment clearly demonstrated by paragraph 35 of the Explanatory Note to the 2002 Act, to which Mr Bates referred me, which states:

“This Chapter extends the jurisdiction of LVTs so that they can determine whether or not leaseholders are liable to pay service charges as well as the reasonableness of such charges.”

I consider this to be confirmation that Section 27A was introduced to confer jurisdiction on leasehold valuation tribunals to decide the legal rights of parties on points which previously could only have been dealt with by the county court. This is quite different from conferring a discretion on the leasehold valuation tribunal to adjust these legal rights in such manner as the leasehold valuation tribunal may think just and equitable.

19. Mr Bates accepts that a leasehold valuation tribunal has jurisdiction under Section 35 and following of the Landlord and Tenant Act 1987 to order, in certain circumstances, variation of certain leases. However in the present case no application for any such variation was ever made by any party to the present proceedings and the ELVT did not purport to exercise any such jurisdiction in reaching its conclusion in paragraph 4B and 8D of its decision. I consider it therefore clear that paragraph 8D of the ELVT’s decision cannot be justified on the basis that it should in some way be treated as an exercise of this jurisdiction to vary leases.

20. The ELVT did not seek to rely on any statutory provision apart from section 27A as giving it the discretion it purported to exercise. I am not aware of any other provision which could give it any such discretion.

21. In the result therefore the Appellant's appeal is allowed to the extent that the decision of the ELVT is varied by the deletion of paragraph 8D. I determine that as regards the various sums referred to in paragraph 8A(i) to (iv) of the ELVT's decision, each such sum is payable to the Appellant by the person who is there specified as being liable for such sum and that such sum is payable at the date and in the manner provided for in the lease under which the respective Respondent holds his/her premises.

22. Very properly the Appellant made no application for any order for costs before this Tribunal. I also record that Mr Bates accepted that there was no provision in the terms of the Respondents' leases enabling the Appellant to seek to include the costs of the present proceedings as part of the service charges, such that it is not necessary to consider whether any order should be made under Section 20C of the Act.

Dated 9 March 2006

His Honour Judge Huskinson