

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/29UD/LIS/2009/0072

Property: 59 Sandpiper Close
Waterstone Park
Greenhithe
Kent
DA9 9RX

Applicant: Covent Garden Freeholds Ltd.

Respondent: Mr. D.J. Wheeler

Dates of Hearing: 30th November 2009
22nd April 2010
23rd April 2010

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Ms L. Farrier

Date Decision Issued:

**RE: 59 SANDPIPER CLOSE, WATERSTONE PARK, GREENHITHE, KENT
DA9 9RX**

Decision

1. Mr. D.J. Wheeler ("the Respondent") is liable to pay the following service charges in respect of each of the following years:

Year	£
2003/2004	272.75
2004/2005	292.22
2005/2006	291.30
2006/2007	261.54
2007/2008	<u>312.35</u>
Total	1,430.16

2. Credit must be given for any sums received by Covent Garden Freeholds Ltd. ("the Applicant") from the Respondent or from his mortgage provider in respect of service charges for those years.

3. An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Applicant in

connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

4. No order as to costs is made in favour of either party.

5. Interest on unpaid balances. This is a matter for determination by the County Court but the Tribunal makes the observation that on the evidence produced to the Tribunal it was not possible to say from what date any interest should be calculated.

Reasons for decision

6. The Applicant is the freeholder of the estate which includes 59 Sandpiper Close, Waterstone Park, Greenhithe, Kent, DA9 9RX (“the subject property”) and the Respondent is the lessee of the subject property.

7. The Applicant issued proceedings in the County Court seeking a declaration from the Court pursuant to the provisions of Section 81 of the Housing Act 1996 that the service charge claimed from the Respondent as detailed in the Particulars of Claim is payable in full by him together with Judgment for the sum due and costs. The Court ordered that the claim be stayed and be transferred to the Leasehold Valuation Tribunal.

8. At the time proceedings were commenced the managing agents were Countrywide Managing Agents and it was their Solicitors Dickinson Dees who were dealing with this case on behalf of the Applicant.

9. The Respondent is working outside the United Kingdom and has authorized Mr. S. Cornwall to represent him.

10. An inspection followed by a hearing was scheduled for 30th November 2009. Present at both were Mr. P. Sissons of Counsel instructed by Dickinson Dees representing the Applicant, Ms Barden of Countrywide Managing Agents and Mr. S. Cornwall. Part way through the inspection we were joined by Mr. A. Cornwall.

11. At the inspection we saw a large residential estate. We were told that it was Phase 1 and that the adjoining Phase 2 was under construction. We could see vehicles used in connection with that construction work were gaining access to it using some of the roads in Phase 1. We were shown some communal entrances, stairs and door entry systems and where a repair had been made to plaster and where hinges had been moved on bin doors. A charge is being made for water but nobody present could show us a tap in the communal parts of the estate. Pit 10, the public open land, was pointed out and we were told that the Council had adopted it in January 2006. Mr. Cornwall pointed out windows in the stairs of Nos. 32-39 and entrances which he said had not been cleaned and the entrance to Nos. 24-31 which was dirty and, above which, lead was missing. We were also shown a lamp base, bollards, some broken guttering, coping stones at the side of steps and nosing on steps which needed repair. There was a light in one of the entrances which we were told was not working and it had some paint on it. Greenery had been allowed to cover some of the gas meter

boxes. Mr. Cornwall told us that there had been no replanting for two years. There were areas of garden but Ms Barden could not tell us exactly which areas of garden were maintainable by the Applicant. It was Mr. Cornwall's opinion that there should be lightning conductors on the higher buildings, that speed humps which had been installed were too high and that although some repairs had been carried out to a retaining wall there were cracks in it and it would need repair.

12. At the hearing Mr. Sissons produced a skeleton argument with copies for the Tribunal and Mr. Cornwall.

13. The Tribunal had considered the documents produced on behalf of the parties and in an effort to clarify the matters in issue Mr. Athow had produced a spreadsheet setting out the budgeted and actual service charges for each item in each year for which accounts had been produced. Copies were provided to all those present.

14. It soon became clear that the hearing would not be completed on 30th November 2009 and that a further day would have to be scheduled. Arrangements were made for the hearing to continue on 2nd December 2009 but Mr. Sissons explained that Countrywide Managing Agents would no longer be the managing agents after 30th November 2009 and as he was instructed by the Solicitors of Countrywide Managing Agents he did not know whether he would still be instructed after that date or whether Ms Barden would be allowed by her employers to attend. Mr. Sissons tried by telephone to obtain instructions on the situation but was unable to do so.

15. It is unfortunate that the Tribunal had not been informed of the imminent change of managing agents but in the circumstances there was no alternative but to adjourn the hearing and to issue further directions.

16. The directions which the Tribunal proposed to issue were outlined to those present who agreed that the written directions should be issued to Dickenson Dees on behalf of the Applicant and to Mr. Cornwall on behalf of the Respondent.

17. In the documents produced on behalf of the Respondent and from what Mr. Cornwall pointed out during the inspection and stated at the hearing, the Tribunal could see that there were a number of issues raised on behalf of the Respondent which were outside the jurisdiction of the Tribunal in relation to these proceedings. They are:

(a) Any possible claims against the developer.

(b) Any possible claim in respect of the Respondent's right to first refusal on a proposed sale of the freehold.

(c) Any failure by the freeholder to carry out repairs for which the Respondent has not been charged (except in so far as such failure may justify a reduction in the fees charged for management).

18. In complying with the directions which were made the Respondent was asked to bear in mind those matters and that the Tribunal would be concerned with the

charges which had been made. Evidence which would be of assistance to the Tribunal in reaching a determination was evidence of any work charged for which had not been carried out or which has not been carried out to a reasonable standard or was unnecessary or where the sum charged for the work was unreasonably high. We suggested that the parties might find it helpful to deal with each of the sums set out in the spreadsheet provided at the hearing.

19. The Tribunal was aware that on changing managing agents the new managing agents would require some time to become familiar with the estate and with that in mind more time had been allowed for compliance with the directions.

20. Directions were made which included that by 25th January 2010 the Respondent (bearing in mind what the Tribunal had said about relevant matters and the suggestion of addressing the sums set out in the spreadsheet) should send to the Applicant and to the Tribunal a statement setting out in detail exactly which items of service charge he agrees with and which he does not agree with. He should exhibit to that written statement copies of all items of correspondence, documents, witness statements and other documents which he wished the Tribunal to see. By 19th March 2010 the Applicant should send to the Respondent and to the Tribunal a written statement in reply to the points raised by the Respondent. Such written statement should be accompanied by copies of all items of correspondence, documents, witness statements and other documents which the Applicant wished the Tribunal to see. The originals of those documents must be brought to the hearing. The Applicant should include in the bundle in respect of each year in question all insurance receipts showing on a year by year basis that they tie in with the certified accounts.

21. Further bundles of documents were received from those representing the parties.

22. It was clear from those bundles, the bundles provided in advance of the hearing on 30th November 2009 and the inspection and hearing on that day that it was going to be necessary for the Applicant to provide evidence in support of the sums claimed. The Applicant's bundles contained a total of over 2000 pages consisting mainly of invoices but with little or no indication of which invoices were relied upon to support the particular sums claimed. In some lever arch files the page numbers were repeated which made verifying the invoices very difficult.

The Hearing on 22nd and 23rd April 2010

23. At the hearing the Applicant was represented by Mr. Sissons of Counsel Instructed by Miss Roberts from Dickinson Dees Solicitors. Also present was Mr. Hulse from Broadlands Estate Management, the new managing agents from 1st December 2009. The Respondent was represented by Mr. Cornwall.

24. Between the end of the hearing on 22nd April and the beginning of the hearing on 23rd April and during the hearing on 23rd April Mr. Sissons, his instructing Solicitor and Mr. Hulse made substantial efforts to find the documents which supported the Applicant's claim. Some they were able to locate and present in evidence and some they could not. In respect of some of the sums claimed calculations were required to come to the figure which could be claimed and the

correct percentage the Respondent was liable to pay.

25. Clearly, the work involved in producing the necessary evidence had not been anticipated by the Applicant and had not been done in advance of the 22nd April 2010 and although much work was done in preparing the evidence between the end of the hearing on 22nd April and the beginning of the hearing on 23rd April it could not be completed. Mr. Sissons presented the Tribunal and Mr. Cornwall with as much information about the sums claimed as it had been possible to trace.

26. The result was that some of the sums claimed were pursued by the Applicant and disputed by the Respondent, other sums were conceded by the Applicant and were no longer claimed and a number of sums were agreed by those representing the parties. In many instances this was after the sum claimed by the Applicant had been reduced by the Applicant's representatives.

27. At the end of the hearing on 23rd April 2010 it was agreed by the representatives that in respect of the sums which still remained to be dealt with and the application for an order under Section 20C of the Act, the parties would provide written evidence and submissions and that the Tribunal would deal with those matters on the basis of such written evidence and submissions and without an oral hearing. A timetable was agreed.

28. Evidence and submissions were received from those representing the parties and were considered by the Tribunal.

29. There were a very small number of instances where the recollection of the representatives as to sums which had been agreed or conceded at the hearing differed from the notes made by the Tribunal. In such cases we relied on our notes. In respect of some sums which had been agreed at the hearing Mr. Cornwall sought to present further argument but we came to the conclusion that where sums had been agreed at the hearing we were not prepared to consider further evidence or submissions in respect of them.

30. Included in the evidence and submissions provided after the hearing were further concessions made by the Applicant in respect of certain sums; presumably because evidence to support the claim could not be found.

31. Mr. Cornwall drew attention to some items where the same invoice had been included twice or where two invoices for the same work had been used in calculating the sum claimed. He also drew attention to many items where the evidence produced did not indicate the property concerned, with the result that the Tribunal was left in considerable doubt that the Respondent was liable to contribute to the cost incurred.

32. It is noteworthy that in issuing proceedings in the County Court the Applicant claimed that the service charge of £5,563.16 was payable in full by the Respondent but that as a result of sums reduced or conceded in full by the Applicant the sum claimed was reduced to £2,349.65.

33. In considering the evidence the Tribunal also found that the sum charged for gardening under Public Open Land was excessive, that a sum claimed for repairs

should have been the subject of an insurance claim, that window cleaning had been charged for in both the Group 1 and Group 2 Services, and that some charges were excessive and not reasonably incurred.

34. For these reasons we came to the conclusion that management had been carried out to a poor standard and accordingly reduced the charges made for management.

35. Annexed to this decision is a schedule setting out the category of service charge, the total charged, the Applicant's revised claim: indicating the page number in the documents supplied and the amount, the Respondent's claim, the Tribunal's comments, by: being the number of units shown on the invoice, due from the Respondent, the LVT decision indicating decided sums for each item and decided totals for each category.

36. The Tribunal's comments column of the schedule is in the main self explanatory. However, for the avoidance of doubt:

'evidence of A accepted': The Tribunal accepted the evidence produced by the Applicant and came to the conclusion that the sum claimed was payable by the Respondent.

'part only chargeable to R': The Tribunal found that only part of the sum included in the invoice was chargeable to the Respondent and calculated the proportion chargeable based on the number of units shown as being within each invoice.

'duplicate of...': The invoice upon which the Applicant relies is a duplicate of an invoice relied upon.

'quotation': The document relied upon by the Applicant was a quotation not an invoice.

'agreed at hearing': Agreed by the representatives of the parties at the hearing.

'conceded': Conceded either at the hearing or in evidence supplied later and no longer claimed by the Applicant.

In Group 1 Services - 'poor management - £100 per unit + VAT allowed': A sum allowed for management taking into account the poor standard of management which the Tribunal found as a fact to be the case.

In Group 3 Services - 'poor management - £232.06 per month allowed': A sum allowed for management taking into account the poor standard of management which the Tribunal found as a fact to be the case. We were not convinced that over £4,000 worth of management had been undertaken and therefore decided that the lowest figure claimed was reasonable.

In Public Open Land Gardening 'figure calculated@ 0.62%': The lease provided for a maximum of £123.69 to be charged to the Respondent but the Tribunal was not satisfied that there was proper provision for the calculation of the sum for which the

Respondent was liable. In the absence of such provision the Tribunal came to the conclusion that a reasonable proportion of the cost would be 0.62%, the same as for the Group 3 Services.

'6.10.04 estate', 'Dec 04 estate' '28.6.05 estate', '1.3.05 estate' and '31.1.05 estate January': From the evidence produced the Tribunal was not satisfied that these sums related to the block.

'transferred to group 3 by applicant': At the hearing the Applicant's representative decided that this sum should be claimed under Group 3 Services.

'wrong block...': The invoice produced did not refer to the Respondent's block.

'page 548 included twice': The same invoice had been used twice in the calculation of the sum claimed.

'poor identity flat 39 Waterstone Park': The Tribunal was not satisfied that this invoice referred to the Respondent's block.

'no identity': The Tribunal was not satisfied that this invoice referred to the Respondent's block.

'not invoiced': No page number was provided in order to trace an invoice for this sum.

'part block of flats/part outside light – no identity': It was not clear how much of this sum was chargeable to the Respondent.

'no identity, why renew so soon': In addition to the lack of identity the Tribunal questioned the need for renewal having to be carried out so soon.

'not accepted – insurance claim': The Tribunal found as a fact that this repair should have been the subject of an insurance claim.

'3 elements to bill, only £124.58 relates': The Tribunal accepted the evidence of only part of the repair as being chargeable to the Respondent.

'disallowed, being claimed in group 2 cleaning': The Tribunal found as a fact that window cleaning had been charge for under Group 2 Services – Cleaning and therefore could not be charged also under Group 1 Services – Window Cleaning. In the Sixth Schedule to the lease, window cleaning along with cleaning of common parts appears in Part 2.

'part applies but minimal time-no cost allocated': The Tribunal found as a fact that the Respondent was liable for part of the work covered by this invoice but that the time involved in dealing with that part of the work was minimal and no cost should be allocated to it.

'excessive cost – reasonable cost £58.75': The Tribunal found as a fact that the cost of this work was excessive and that a reasonable charge for the work was £58.75.

'not reasonably incurred should be incl in man fee': The Tribunal found as a fact that this sum was not reasonably incurred and should have been included in the management fee.

'wrong group': In the Sixth Schedule to the lease, window cleaning along with cleaning of common parts appears in Part 2.

'wrong supplier': The invoice relied upon by the Applicant does not refer to electricity.

'Park Lane not part of this scheme? 50% allowed': The Tribunal could not be satisfied that the part of this work attributed to Park Lane could be charged to the Respondent and therefore reduced the sum by 50%.

'Insufficient identification': The Tribunal could not be satisfied that the sum claimed related to something for which the Respondent was liable to contribute.

'part only allowed': The Tribunal could not be satisfied that all of the sum claimed related to something for which the Respondent was liable to contribute and therefore reduced the sum accordingly.

37. There is before the Tribunal an application for an order under Section 20C of the Act. In considering whether or not to make such an order the Tribunal considered all the circumstances. In particular, account was taken of the fact that although the Respondent is liable to pay service charges, the sum originally claimed by the Applicant in the County Court in respect of service charges was stated in the Particulars of Claim to be £5,563.16 but during the course of the proceedings the Applicant reduced the sum claimed by more than 50% to £2,349.65. This alone indicates that the Respondent was justified in contesting the proceedings. On the evidence produced by the Applicant the Tribunal was not satisfied that the Respondent was liable to pay even that lesser sum and made further deductions with the result that the Respondent is liable for only £1,430.16.

38. For these reasons the Tribunal finds that it is just and equitable in the circumstances to make an order under Section 20C of the Act.

39. All determinations were made on a balance of probabilities after consideration of all the written and oral evidence provided and the submissions made.



R. Norman
Chairman

Sandpiper Close schedule 2005-6

Category	Total charged	A's revised claim page amount	R's claim	Tribunal's comments	LVT decision	
					Total	R's %age
Group 1 Services	1.06%					
Gardening	£ 4,447.39		£ 44.84	agreed at hearing	£ 44.84	£ 44.84
Insurance	£ 5,698.40		£ 60.40	agreed at hearing	£ 60.40	£ 60.40
Water Rates		1868 1869 1647		wrong block 92 -99 SP wrong block 84 - 91 SP wrong block 85 - 91 SP	£ - £ - £ -	
	£ 193.13		£ -		£ -	£ -
Repairs		1588 £ 176.25 1648 £ 294.93 1649 £ 235.00 1650 £ 253.37 1654 £ 141.00 1659 £ 175.08 1663 £ 129.25 1661 £ 94.00 1664 £ 117.50 1671 £ 232.00	£ - £ - £ - £ - £ - £ - £ - £ - £ - £ -	poor indentity flat 39 Waterstone Park no identity)))) evidence of A accepted)))))	£ - £ - £ 235.00 £ 253.37 £ 141.00 £ 175.08 £ 129.25 £ 94.00 £ 117.50 £ 232.00	
	£ 4,045.96	£ 1,848.38	£ -		£ 1,377.20	£ 14.60
Drainage Repairs	£ 232.00	1671	£ -	duplicate of 1671 included above	£ -	£ -
Satellite TV System	£ 76.37		£ -	conceded	£ -	£ -
Management fees	£ 11,872.26			poor management-£100 per unit + VAT allowed	£ 2,820.00	£ 29.89
Window Cleaning	£ 2,068.00		£ -	not invoiced	£ -	£ -
Auditors fees	£ 1,421.75		£ -	transferred to group 3 by applicant	£ -	£ -
Group 2 Services	1.02%					
Cleaning	£ 22,891.35		£ 43.56	agreed at hearing	£ 43.56	£ 43.56
Repairs	£ 89.30		£ -	conceded	£ -	£ -
Electricity	£ 4,434.73		£ 1.85	agreed at hearing	£ 1.85	£ 1.85
Group 3 Services	0.62%					
Grounds & Gdn Maint	£ 15,862.50		£ 56.09	agreed at hearing	£ 56.09	£ 56.09
Repairs		1875 £ 376.00 1874 £ 170.38 1873 £ 458.25 1872 £ 103.40 1871 £ 387.75 1870 £ 581.63 £2,077.41	£ - £ - £ - £ - £ - £ -	part block of flats/part outside light - no identity no identity no identity	£ 376.00 £ 170.38 £ - £ - £ - £ 581.63	
			£ -		£ 1,128.01	£ 13.99
Management fees	£ 5,705.80		£ 35.38	poor management- £232.06 per month allowed	2784.72	£ 17.27
Car Park Security	£ 70.50			not invoiced	£ -	£ -
Auditors fees	£ 1,421.75		£ 8.81	agreed at hearing	£ 8.81	£ 8.81

£ 291.30

