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**HM COURTS AND TRIBUNALS SERVICE**  
**MIDLAND LEASEHOLD VALUATION TRIBUNAL**

BIR/00FY/LVA/2012/0002

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER  
PARAGRAPH 5 OF SCHEDULE 11  
TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002  
AND  
SECTION 20C OF THE LANDLORD AND TENANT ACT 1985*

Applicant: Mr R Benns (leaseholder)

Respondent: Rowan Consultancy Limited (freeholder)

Subject property: 52 Jensen Way  
Nottingham  
NG5 1QP

Date of application to LVT: 1 October 2012

Members of the Tribunal: Professor N P Gravells MA  
Mr J E Ravenhill FRICS

Date of determination: 7 December 2012

## Introduction

- 1 This is a decision on an application made to the Leasehold Valuation Tribunal under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') for the determination of the liability to pay an administration charge.
- 2 The Applicant is the leaseholder of the flat at 52 Jensen Way, Nottingham NG5 1QP ('the subject property'). He holds the subject property under a lease dated 24 March 2005 for a term of 125 years from 1 January 2002.
- 3 The Respondent is Rowan Consultancy Limited, the freeholder of the subject property.
- 4 By an application dated 27 September 2012 and received by the Tribunal on 1 October 2012 the Applicant seeks a determination as to the payability and reasonableness of a charge (currently £99.75) demanded by the Respondent in connection with the registration of each underletting of the subject property.
- 5 The relevant provision in the lease is paragraph 17.4 of the Fourth Schedule, by which the Applicant covenants  
'To give to the Landlord and the Management Company notice of every dealing with or underletting or transmission of the legal estate in the Property including all mortgages or legal charges of the Property within twenty one days after the same shall occur and pay to each of the Landlord and the Management Company such reasonable registration fees (including Value Added Tax) as the Landlord and the Management Company respectively shall from time to time determine.'
- 6 For reasons that will become clear, it is important to note that the lease does not require the Applicant to obtain the consent of the Respondent landlord to any underletting of the subject property.
- 7 Directions were issued by the Tribunal on 24 October 2012. In accordance with the previous agreement of the parties, the Directions indicated that the application would be determined without an oral hearing on the basis of written representations.

## Representations of the parties

- 8 So far as relevant to the determination of the Tribunal, the representations of the parties are referred to below.

## Determination of the Tribunal

- 9 In determining the issues in dispute between the parties the Tribunal took account of all relevant evidence and submissions presented by the parties.

## Jurisdiction to determine the payability/reasonableness of the registration fee

- 10 The Respondent raised a preliminary issue as to whether the Tribunal has jurisdiction to make the determination sought by the Applicant. The Tribunal considered that preliminary issue first since a determination in favour of the Respondent would mean that it would be unnecessary to consider the substantive issues as to the payability and reasonableness of the registration fee demanded by the Respondent.

- 11 Paragraph 5 of Schedule 11 to the 2002 Act confers jurisdiction on the Tribunal to determine the payability and reasonableness of administration charges. Paragraph 1 of Schedule 11 defines an administration charge as
- ‘... an amount payable by a tenant of a dwelling, as part of or in addition to the rent which is payable, directly or indirectly –
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is a party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.’
- 12 The Respondent submits that the registration fee payable by the Applicant in accordance with paragraph 17.4 of the Fourth Schedule to the lease is not an administration charge within any of the subparagraphs of paragraph 1 of Schedule 11 to the 2002 Act and therefore falls outside the jurisdiction of the Tribunal.
- 13 In support of that submission the Respondent refers to three Leasehold Valuation Tribunal decisions: *Macey and MacLeod v Proxima GR Properties Limited* (CHI/24UL/LAC/2011/ 0009); *Mills v Proxima GR Properties Limited* (BIR/00FY/LAC/2011/0013); *Stanbra v Estates & Management Ltd* (MAN/00CG/LAC/ 2012/ 0013).
- 14 The Applicant submits that the registration fee is an administration charge within paragraph 1(b) of Schedule 11; and that the Tribunal therefore has jurisdiction to determine its payability and reasonableness under paragraph 5 of Schedule 11. He argues that a covenant to give notice (such as paragraph 17.4 of the Fourth Schedule to the lease) ‘usually imposes’ on the landlord ‘an express or implied duty to acknowledge receipt by countersigning/returning a copy of a notice served in duplicate’; and that the return of the copy constitutes ‘the provision of a document by or on behalf of the landlord’ within the meaning of paragraph 1(b) of Schedule 11. The Applicant’s representations are not unambiguous since he seems to compromise his argument that the landlord may have an *implied* duty to countersign and return a copy of the tenant’s notice by asserting that the alleged duty exists ‘*if the lease so stipulates*’.
- 15 The Applicant cites no authority in support of his submission that the landlord has a duty (whether express or implied) to countersign and return a copy of the tenant’s notice and that the return of the copy constitutes ‘the provision of a document by or on behalf of the landlord’ within the meaning of paragraph 1(b) of Schedule 11. He does refer to a number of decisions of the Leasehold Valuation Tribunal and the Upper Tribunal (Lands Chamber), although not apparently in connection with the preliminary issue of jurisdiction: *Smith v Simarc Property Management Limited* (CAM/42UD/LAC/ 2008/0001); *Knight v Simarc Property Management Limited* (CAM/00MC/LAC/2008/ 0003); *Burden v Gradeband Limited* (MAN/30UH/LAC/2011/0020); *Hughes v Proxima GR Properties Limited* (CHI/24UF/LAC/2012/0005); *Holding and Management (Solitaire) Limited v Norton* [2012] UKUT 1 (LC).

- 16 As noted above, the Applicant cites no authority for his submission (and the underlying arguments) that the registration fee demanded by the Respondent is 'a payment for or in connection with the provision of information or documents by or on behalf of the landlord'. The lease contains no express requirement for the Respondent to countersign and return a copy of the Applicant's notice of underletting or to provide any form of receipt, acknowledgement or record of the payment of the registration fee. If the Applicant is arguing that such a requirement is to be implied in to the lease, in the absence of any authority the Tribunal finds that argument unpersuasive. The provisional view of the Tribunal is therefore that it does not accept the submissions and underlying arguments of the Applicant.
- 17 That provisional view is supported by a number of decisions, which, although not binding on the Tribunal, evidence a consistent view from which the Tribunal would be reluctant to depart in the absence of any compelling contrary argument.
- 18 The three decisions cited by the Respondent determined that a registration fee is not an administration charge with the meaning of paragraph 1 of Schedule 11 to the 2002 Act. *Macey and MacLeod v Proxima GR Properties Limited* and *Stanbra v Estates & Management Ltd* clearly distinguish between (i) a charge for giving consent to an underletting, which falls within paragraph 1(a) and which is therefore subject to the Tribunal's jurisdiction under paragraph 5, and (ii) a fee for the registration of an underletting, which does not fall within any of the subparagraphs of paragraph 1 and which is therefore outside the Tribunal's jurisdiction. The facts in *Mills v Proxima GR Properties Limited* were very similar to those in the present application. There was no requirement in the lease for the leaseholder to obtain the consent of the landlord to underletting; and the Leasehold Valuation Tribunal determined that the mere registration fee did not fall within any of the subparagraphs of paragraph 1 and was therefore outside its jurisdiction.
- 19 Moreover, with one arguable exception, the decisions cited by the Applicant also support (or at least are consistent with) the determination of the Tribunal on the jurisdiction issue. In *Smith v Simarc Property Management Limited* the Leasehold Valuation Tribunal determined the (un)reasonableness of an underletting registration fee; but the issue of the Tribunal's jurisdiction appears not to have been raised and the Tribunal did not identify the relevant subparagraph of Schedule 11 to the 2002 Act. In *Knight v Simarc Property Management Limited* and in *Burden v Gradeband Limited* the jurisdiction issue was raised and the Leasehold Valuation Tribunal determined that an underletting registration fee was not an administration charge within the meaning of Schedule 11 (although the Tribunal in *Knight* expressed a view as to the reasonableness of the fee charged in that case). In *Hughes v Proxima GR Properties Limited* the Leasehold Valuation Tribunal determined the (non)payability of an underletting registration fee but it assumed jurisdiction on the basis that the fee fell within paragraph 1(a) of Schedule 11: on the facts the registration was an integral part of the consent application process contained in the lease and the fee was therefore payable 'directly or indirectly ... for or in connection with the grant of approvals under [the] lease, or applications for such approvals' (original emphasis). In *Holding and Management (Solitaire) Limited v Norton* the Upper Tribunal heard appeals against four Leasehold Valuation Tribunal decisions. The appeals were concerned only with charges for giving consent to underletting. Although the Leasehold Valuation Tribunal in each of the four appealed decisions had assumed jurisdiction to determine the payability and/or reasonableness of underletting registration fees, and that assumption of jurisdiction was not challenged in the Upper Tribunal, the Leasehold Valuation Tribunal had determined that the registration fee fell within paragraph 1(a) (or 1(d)) of Schedule 11.

- 20 In summary, therefore, with the exception of *Smith v Simarc Property Management Limited*, where the jurisdiction issue appears not to have been raised, there is no support in the decisions of the Leasehold Valuation Tribunal or the Upper Tribunal for the argument that, in the context of a lease that imposes no requirement to obtain consent to underletting, a mere registration fee for underletting is an administration charge within the meaning of Schedule 11 to the 2002 Act.
- 21 The Tribunal therefore determines that it does not have jurisdiction to determine either the payability or reasonableness of the registration fee demanded by the Respondent (or registration fees that may be demanded in the future) in connection with the underletting of the subject property.

#### Application under section 20C of the 1985 Act

- 22 The Applicant also made an application under section 20C of the 1985 Act, which provides (so far as material):
- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court ... or leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- ...
- (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.
- 23 The Applicant argues that the Tribunal should make an order precluding the Respondent from recovering its legal costs on ground that the Respondent has sought to impose unreasonably high administration charges. The Respondent makes no representations on the section 20C issue.
- 24 Although the Tribunal has no jurisdiction formally to determine whether the registration fee is reasonable, where other Leasehold Valuation Tribunals have expressed a view on the level of such fees, they have clearly indicated that a fee of the level charged by the Respondent would be unreasonable. This Tribunal would endorse that view.
- 25 In the circumstances, the Tribunal determines that it is just and equitable that the Applicant should not be liable to pay the costs incurred by the Respondent in connection with the present proceedings before the Tribunal; but that the parties should pay their own costs, which in any event are unlikely to be significant. The Tribunal therefore orders that any costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

#### **Summary**

- 26 The Tribunal determines that it does not have jurisdiction to determine either the payability or reasonableness of the registration fee demanded by the Respondent (or registration fees that may be demanded in the future) in connection with the underletting of the subject property.
- 27 The Tribunal orders that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Signed .....  
(Professor Nigel P Gravells (Chairman))

Dated 7 December 2012