



LRX/67/2006

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – service charges – procedure – applicant’s failure to comply with LVT’s directions – power to dismiss under Regulation 11 of Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 – failure by LVT properly to consider the matter under Regulation 11.

**IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

BETWEEN **MARILENA VOLOSINOVICI** **Appellant**

and

CORVAN (PROPERTIES) LIMITED **Respondent**

**Re: Flat 726,
Clive Court,
Maida Vale,
London W9 1SG**

Before: His Honour Judge Huskinson

**Supplemental decision upon costs: section 20C of the Landlord and Tenant Act 1985
as amended**

1. This decision is supplemental to the principal decision in this matter dated 16 July 2007. In paragraph 36 of that decision I gave directions to be followed if the Appellant wished to make an application under section 20C of the Landlord and Tenant Act 1985 as amended. The Appellant has made such an application.

2. I should record that that the Appellant has reserved her position upon the question of whether, having regard to the terms of the relevant lease, the costs of these proceedings before the Lands Tribunal are costs which can properly be taken into account when determining the amount of service charge payable by the Appellant. Helpfully it has been agreed between Mr Buckpitt and Mr Bates that I should consider this section 20C application on the assumption that legal costs are recoverable under the terms of the lease through the service charge machinery, but that I should do on the basis that this is entirely without prejudice to both parties' rights to argue in the future the issue of whether such costs are indeed recoverable under the terms of the lease.

3. I am only concerned with the costs of the proceedings before the Lands Tribunal.

4. The Appellant was successful on her appeal to the Lands Tribunal. However the need for this appeal did not arise from any unreasonable conduct on the part of the Respondent. Instead the need for the appeal arose because of the unfortunate course taken by the LVT of striking out certain parts of the Appellant's application for "failing to comply substantively" with certain directions which the LVT had previously given, without giving proper consideration to the matter under Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 and without giving clear and sufficient reasons for its conclusions.

5. Section 20C provides so far as presently relevant:

"Limitation of service charges: costs of proceedings

(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, [residential property tribunal] or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made –

...

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(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."

6. I also have regard to the decision of the Court of Appeal in *Iperion Investments v Broadwalk House Residents Limited* (1995) 27 HLR 196 and to the Lands Tribunal decision of His Honour Judge Rich QC in *Langford Court Tenants v Doren Limited* (LRX/37/2000). It is clear from the wording of section 20C and from these decisions that the power of the Lands Tribunal in making an order under Section 20C can be effective in relation to

“... the amount of any service charge payable by the tenant or any other person or persons specified in the application.”

Accordingly an order under section 20C that certain costs are not to be regarded as relevant costs can properly be an order made in favour of a particular tenant, such that the landlord is disabled from including certain costs within the relevant costs when calculating that particular tenant's service charge but is not so disabled as regards other tenants in the relevant building(s), see in particular the judgment of Staughton LJ in the *Iperion* case and paragraph 11 of Judge Rich's decision.

7. I do not read the Appellant's application under section 20C as an application on behalf of any person other than herself. There are no other “person or persons specified in the application” within the words of section 20C(1). Even if this is not the correct reading of the Appellant's application I conclude that in any event on the particular facts of this case it is just and equitable for the order which I propose to make to be only an order in relation to the Appellant's position.

8. I consider that it is just and equitable that the Appellant, who was successful in the Lands Tribunal, should not have to pay through her service charge any part of the Respondent's costs of the proceedings before the Lands Tribunal. It is just and equitable for her to pay her own costs such as they may have been of the proceedings before the Lands Tribunal (although it is noted that her costs will be substantially less than they would otherwise have been bearing in mind that Mr Bates was good enough to act on a pro-bono basis for her) and for the Respondent to be prevented as against the Appellant from recovering through the service charge any part of the Respondent's costs of the proceedings before the Lands Tribunal. This will mean that the Respondent will have to bear itself what would otherwise have been the Appellant's share of these costs (I gather that this share is 0.55%).

9. However, while I consider it just and equitable that the Respondent should not recover from the Appellant through the service charge any part of the costs of the proceedings before the Lands Tribunal, I do not consider it would be just and equitable for the Respondent to have to bear itself any greater amount of those costs than the share which would otherwise been borne by the Appellant. Thus the order I make below is framed so as not to affect the Respondent's ability to include the costs of the Lands Tribunal proceedings as part of the relevant costs to be taken into consideration in determining the amount of any service charge payable by any tenants in the relevant building(s) other than the Appellant.

10. I therefore order under section 20C that the costs of these proceedings in the Lands 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 Marilena Volosinovici.

Dated 25 October 2007

His Honour Judge Huskinson