**UPPER TRIBUNAL (LANDS CHAMBER)**


**UT Neutral citation number: [2009] UKUT 119 (LC)**
**LT Case Number: LRX/67/2008**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – Administration Charges – charge made by landlord for entering into a deed varying the lease so as to remove perceived defects therein – whether such charge an Administration Charge – Commonhold and Leasehold Reform Act 2002 Schedule 11.***

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

**BETWEEN** **MEHSON PROPERTY CO LIMITED** **Appellant**

**and**

**MRS K PELLEGRINO** **Respondent**

**Re: 18 St Clairs Road,**
**Croydon,**
**Surrey**
**CRO 5NE**

**Before: His Honour Judge Huskinson**

**Sitting at 43-45 Bedford Square, London WC1B 3AS**
**0n 18 June 2009**

*Matthew Laing* of Horsey Lightly Fynn on behalf of the Appellant.
The Respondent did not appear and was not represented.

## DECISION

1. The Appellant appeals to the Tribunal from the decision of the leasehold valuation tribunal for the London Rent Assessment Panel ("the LVT") dated 17 March 2008 whereby the LVT ruled that three charges which had been made by the Appellant to the Respondent in relation to the lease mentioned below constituted administration charges within the Commonhold and Leasehold Reform Act 2002 Schedule 11 and whereby the LVT reduced the amount of such charges.

2. The LVT granted to the Appellant permission to appeal against its decision in relation to the charge of £500 plus £350 legal costs (plus VAT thereon), being a total of £911.25, which the Appellant had charged the Respondent for entering into a deed of variation as described below. The LVT's decision refers to entry into two deeds of variation, but this is an error. There was one deed of variation which dealt with two separate points. The LVT decided that a reasonable cost would be no more than £350 plus £61.25 VAT and therefore ordered that there should be a refund of £500 to the Respondent (who was the applicant before the LVT). The LVT refused permission to the Appellant to challenge its ruling in relation to two other charges. The Appellant sought permission from the Lands Tribunal to challenge the LVT's ruling in relation to these two charges but such permission was refused. This Tribunal is therefore only concerned with the appeal in relation to the charge for the deed of variation.

3. The Appellant in 2006 purchased the freehold reversion of the St Clairs Estate in Croydon, which extends to numerous properties off Addiscombe Road, some of which are in the form of houses and some of which are flats or maisonettes. The property with which this case is concerned, namely 18 St Clairs, is a house.

4. By a surrender and lease dated 12 June 1984 made between the Appellant's predecessors in title and St Clairs (Management) Limited ("the Company") and the Respondent's predecessors in title 18 St Clairs (hereafter "the Property") was demised for 999 years from 25 December 1977 at a rent of £1.05 and on the terms and conditions of an earlier lease dated 12 July 1972. The structure of the lease involved the covenants for repair in clause 4 being given by the Company, which itself did not have a headlease of the property. The lessor under the lease did not itself give any covenants to repair, maintain, insure etc the Property or the Estate. Nor did the lessor or the Company give any covenant to the lessee that it would enforce against other lessees the various covenants in the schedule to their respective leases.

5. In 2007 the Respondent was minded to sell the Property. In due course, after certain correspondence between the Appellant (or the Appellant's managing agents Salmore Property Limited) and the Respondent or her solicitors, the Respondent's solicitors became concerned regarding the terms of the lease and as to the possibility of there being defects therein. The concerns centred upon two points:

(1) Concerns as to whether Clause 4(1) of the lease was sufficiently wide to cover repair of the foundations and (separately from that point) concern that the lease

(2) Concerns as to the fact that it appeared the lessee under the lease enjoyed no right to require the lessor (or the Company) to enforce the various lessee's covenants against other lessees of the estate.

6. As regards concern (1) I was asked to note that the Respondent's lease was of a house rather than a flat, and that accordingly there was no ability in the Respondent to seek to cure any perceived defect by applying to the LVT for a variation of the lease under the Landlord and Tenant Act 1987 section 35. As regards concern (2) above I note that recital C of the lease of 12 July 1972 provides:

> "It is intended that the performance and observance of the regulations specified in the Schedule hereto shall be enforceable by other lessees of the dwellings."

However I am not concerned in the present case to decide whether or not some letting scheme has arisen or whether this provision in recital (C) should have been sufficient comfort for any prospective purchaser who was concerned about the ability to enforce restrictions against other lessees.

7. By a letter dated 19 September 2007 the Respondent's solicitors wrote to the Appellant's solicitors stating that they were acting on behalf of the Respondent and that she had sold the Property subject to contract and asking for a note of the costs involved if they asked for a deed of variation "re the lack of enforceability clause in the Lease". The Appellant's solicitors responded indicating a charge of £350 for a deed of variation to deal with the enforceability clause and a further charge of £350 for a deed of variation to rectify "the defective landlord's repair and maintenance clause" with a further £350 (plus VAT) for legal fees. The letter stated that the Appellant would accept a reduce premium of £500 if a deed of variation in respect of both these factors was entered into. It is clear on the correspondence that the Appellant and the Respondent did agree that there should be paid this sum of £500 plus £350 (plus VAT) for legal fees for the execution of a deed of variation to deal with both of these points. The terms of the deed were prepared in draft and in due course agreed and a deed of variation was executed dated 13 December 2007 between the Appellant and the Respondent. The operative part of the deed was in the following terms:

> "1. The Lessor and the Lessee **HEREBY AGREE** that the Lease shall be varied as follows:
>
> 1.1 There shall be a new clause 5(5) as follows:
>
> "The Lessor will to the extent that it is able to do so if so requested by the Lessee and in default by the Company of compliance with its covenants in clause 4(1) of the Lease comply with the said covenants and for the purposes of this clause but not further or otherwise the word "foundations" shall be deemed to be incorporated after the words "keep the" on line 2 of clause 4(1)(a) provided that the Lessee repays to the Lessor on demand the full amount of all costs and expenses of the Lessor so doing and provides

before any step to comply with those covenants is taken full security of the Lessor's costs and expenses as the Lessor may require

1.2 There shall be a new clause 5 (6) as follows:-

"The Lessor will if so requested by the Lessee enforce the regulations contained in the Schedule on the part of any Lessee of every dwelling on the Estate provided that the Lessee repays to the Lessor on demand the full amount of all costs and expenses of the Lessor so doing and provides before any step to enforce those regulations is taken full security of the Lessor's costs and expenses as the Lessor may require"

8. After the execution of the deed the Respondent made an application to the LVT for an order as to the reasonableness of the charges made by the Appellant in respect of this deed and in respect of two other matters for which the Appellant had charged the Respondent. As already noted above, I am not concerned with these other two matters.

9. The Commonhold and Leasehold Reform Act 2002 section 158 provides that Schedule 11, which makes provision about administration charges payable by tenants of dwellings, has effect. Schedule 11 defines the meaning of "administration charge" in paragraph 1 in the following terms:

> "1–(1) In this Part of this Schedule "administration charge" means 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 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 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."

10. Mr Laing argued that the charge for entry into the deed of variation did not fall in any of subparagraphs (a) to (d). He submitted that it clearly was not a charge for the grant of an approval (within subparagraph (a)) nor could it fall within (c) or (d). As regards (b) he argued that the sum charged for the deed of variation was not an amount payable either directly or indirectly for or in connection with "the provision of ... documents by ... the landlord". He submitted that paragraph (b) related to the provision of copies of existing documents or the provision of new documents which related to the lease in its existing form, but did not extend to documents whereby the lease was varied.

11. Mr Laing also pointed out that, by entering into the deed of variation, the Appellant was assuming a responsibility which could arise in certain circumstances for the repair etc of the Property and the estate (a responsibility the Appellant previously did not have) and that, conversely, the Respondent received an improved lease which she had no entitlement to seek by way of a variation under the Landlord and Tenant Act 1987. As I understood Mr Laing he relied upon these points both to make good his contention that the charge for the deed of variation was not an administration charge at all as contemplated in Schedule 11 paragraph 1, but also for the purpose of arguing that, supposing the charge was an administration charge, the charge was reasonable. On the latter point Mr Laing also drew attention to a deed of 19 May 1986 in relation to another property on the estate when the Appellant's predecessor in title executed a deed of variation to introduce a covenant to enforce relevant provisions against other lessees. Mr Laing pointed out that £575 had been paid back in 1986 for such a variation, which he submitted showed the reasonableness of a charge of £500 (plus legal fees) for a more extensive variation executed in 2007.

12. I accept Mr Laing's argument upon the principal point. In my judgment a charge for entering into a deed of variation does not constitute an administration charge within paragraph 1 of schedule 11 to the 2002 Act. Such a charge self-evidently cannot fall within subparagraphs (a), (c) or (d). As regards subparagraph (b) I do not consider that these words can be read so as to extend to the provision not merely of documents (whether existing or to be created) relating to the lease but also to documents by way of formal deeds which actually amend the parties' responsibilities under the lease. In the case of deed of variation the landlord will be making a charge not merely for the provision of the document but for the substance of the variation, which may involve the landlord being less advantageously placed so far as concerns the terms of the lease as compared with the position before the variation.

13. Accordingly I conclude that the LVT was wrong to find that it had any jurisdiction to treat the £911.25 paid for the deed of variation as an administration charge. It was not an administration charge. The LVT had no power to consider the reasonableness of the charge or to reduce the charge. If I were wrong on the foregoing, I see no justification for the reduction of the charge to £350.

14. The Appellant, very properly, did not press any argument to seek to displace the LVT's ruling on the reimbursement of fees and on the section 20C application. It did not appear to me that in any event the Appellant had permission to raise such matters.

15. In the result therefore the Appellant's appeal is allowed and the LVT's decision reducing the charge of £911.25 for the deed of variation is quashed.

Dated 1 July 2009

His Honour Judge Huskinson