

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2011] UKUT 330 (LC)
Case Number: LRX/102/2010

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT- services charges – proceedings transferred to LVT from county court by an order stating the specific question which was being transferred namely “determination of the reasonableness of sum charged for insurance” – whether LVT had jurisdiction in absence of any separate application to it by the parties to decide wider issues – Commonhold and Leasehold Reform act 2002 schedule 12 paragraph 3.

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

BETWEEN

JOHN LENNON

Appellant

and

GROUND RENTS (REGISPORT) LIMITED

Respondent

Re: First Floor Flat,
40 Bavent Road,
London, SE5 9RY

Before: His Honour Judge Nicholas Huskinson

Sitting at: 43-35 Bedford Square, London, WC1B 3AS
on 15 July 2011

Dr John Lennon appeared in person
Stephen Murch of counsel for the Respondent

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The following case is referred to in this decision:
Staunton v Taylor [2010] UKUT 270 (LC)

DECISION

Introduction

1. This appeal concerns the extent of the jurisdiction of the leasehold valuation tribunal (“LVT”) where a court makes an order under paragraph 3 of schedule 12 of the Commonhold and Leasehold Reform Act 2002 transferring to the LVT a question for the determination of the LVT.

2. The Appellant is the tenant of the first floor flat at 40 Bavent Road. He holds the flat on a long lease from the Respondent. A dispute arose between the Appellant and the Respondent as to the amount payable by the Appellant by way of service charge and administration charge. The principal point in dispute was the reasonableness of the amount charged in respect of insurance premium. The parties being unable to resolve their dispute, the Respondent issued proceedings in the Lambeth County Court seeking to recover £624.42 plus interest of £36.62 and a court fee of £65. It appears no document which was formally headed “Defence” was served by the Appellant, but the Appellant served a witness statement dated 1 October 2009 which I was told was treated as the Defence. In this document the Appellant disputed the amount of the sums claimed for insurance premiums, contended that he had already paid a sum of £264.88 for which he should be given credit, and also disputed his liability to pay certain further sums which he described as a “management charge”, but which appear to have constituted sums properly to be described as administration charges within section 158 and schedule 11 of the 2002 Act.

3. On 5 January 2010 District Judge Wakem at the Lambeth County Court heard representations from a legal representative for the Respondent and from the Appellant in person and the learned District Judge made the following order, the wording of which is of central importance to this appeal:

“IT IS ORDERED THAT

Transfer to the Leasehold Valuation Tribunal, 10 Alfred Place, London WC1E 7LR, for determination of the reasonableness of sum charged for insurance.”

4. Accordingly the matter came before the LVT for a hearing on 24 May 2010. In its decision dated 28 May 2010 the LVT considered and ruled upon the reasonableness of the sum charged for insurance. The LVT concluded that the insurance premium for the service charge year 2008/2009 of £443.26 was not reasonably incurred and that, using a broad brush approach, the sum of £350 was relevant and was reasonably incurred and properly chargeable to the service charge account.

5. However, despite the wording of the County Court Order transferring the matter to the LVT for determination of the reasonableness of the sum charged for insurance, the LVT went on to decide certain further points. In particular the LVT rejected the Appellant’s contention

that he had already paid £264.88 off the insurance for the service charge year 2008/2009. The LVT also considered the administration charges (referred to as administration fees) in paragraphs 42-45 of its decision. It decided that the total sum of £133.25 was relevant and reasonably incurred and properly chargeable to the service charge account.

6. It is notable that at the commencement of its decision the LVT states in paragraph 1

“(1) The Tribunal was dealing with the following applications:-

- (a) An application under S.27A of the Landlord and Tenant Act 1985 as amended (“the Act”) for a determination whether a service charge is payable and, if it is, as to ...
- (b) An application for limitation of landlord’s costs of proceedings before the Tribunal under S.20C of the Act was added at the Pre-Trial Review on 17 March 2010.
- (c) An application in respect of an administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002.”

At the hearing I inquired as to whether there were in fact any such applications before the LVT. It was expressly agreed by both the Appellant and the Respondent that neither party had made any application under section 27A of the 1985 Act and that neither party had made any application in respect of an administration charge under schedule 11 to the 2002 Act. In short, leaving aside the point regarding costs under section 20C, neither party had made any application of any kind to the LVT and the only way in which the LVT was seized of the matter was by virtue of the County Court Order.

7. In paragraph 4 of its decision the LVT referred to the County Court Order of 5 January 2010 and stated:

“It is noted that the Order states that the transfer was “*for determination of the reasonableness of sum charged for insurance*” but the Tribunal has jurisdiction in respect of the service charge issues and has therefore included all such matters within the claim, namely insurance and administration charges.”

In paragraph 5 of its decision the LVT stated:

“It should be noted that the Tribunal’s jurisdiction flows from the County Court and such jurisdiction is limited to the amount claimed in respect of the service charge dispute only. Other issues, such as interest and County Court costs remain within the jurisdiction of the County Court.”

8. The Appellant was disappointed with the LVT’s decision and sought permission to appeal to the Upper Tribunal. The Appellant did not raise any question of jurisdiction in his application for permission to appeal, but advanced certain points whereby he sought to challenge the decision on the facts. The President concluded that permission to appeal for the purpose of challenging the findings of fact must be refused, but the President was concerned

as to whether the LVT had exceeded its jurisdiction by deciding points which went beyond the question transferred by the County Court Order. Accordingly on 18 October 2010 the President issued a document in the following terms:

“Permission to appeal is REFUSED for the following reasons, but subject to what is said in paragraphs 2 to 4 below:-

- (1) The question transferred to the LVT by the County Court was the reasonableness of the sum charged for insurance (see paragraph 4 of its decision). It determined that question at paragraph 40: the sum of £350 was reasonably incurred for insurance. There is nothing in the contentions advanced in the present application to suggest that there would be a realistic prospect of success in showing that the LVT ought to have concluded that only a sum less than this was reasonably incurred. No alternative amount is put forward by the Applicant. It is not sufficient to contend that there were procedural irregularities and that there were inaccuracies in the decision. Permission to appeal on this ground is refused.
- (2) The rest of the Applicant’s complaint is directed towards the LVT’s conclusions on administration costs and his outstanding liability in the light of the payment of £264.88. Neither the reasonableness of the administration costs nor the question of liability were questions that were transferred to the LVT by the County Court. The LVT said at paragraph 4 that, although the question transferred from the County Court was that of the reasonableness of the sum charged for insurance, it had jurisdiction in respect of all service charge issues in the County Court claim, but that is incorrect in my judgment. Its jurisdiction is confined to the question transferred (and all issues that are comprehended in that question): see *Staunton v Taylor* LRX/87/2009 (9 August 2010).
- (3) The jurisdiction of the LVT is not a matter raised by the Applicant in his grounds of appeal. The matters that he wishes to raise, however, are matters that he would be entitled to raise when the case is remitted to the County Court. A possible course would be for the Upper Tribunal to leave the LVT decision as it is and leave it to the Applicant to advance his contentions to the County Court. But I think it would be unsatisfactory to allow the LVT decision to stand if, as appears to me to be the case, it is, in respect of the range of matters it purports to determine, unlawful
- (4) I am therefore **minded to grant permission** limited to the ground that the LVT’s decision was unlawful to the extent that it purported to determine matters that were outside the scope of the question transferred to it by the County Court. Before I do so, however, the landlord ought to have the opportunity of making representations on this proposed course of action. Any representations must be received within 14 days of the date of this decision.”

9. In response to this the Respondent wrote on 26 October 2010 stating that it agreed with the President’s comments regarding the case of *Staunton v Taylor*, but pointing out that the LVT had made a decision in respect of the insurance element and that therefore the

Respondent would consider that this part of the decision was both lawful and valid. The letter respected the President's reasoning and the decision to consider granting permission to appeal but suggested that any appeal would not be time or cost effective and that the LVT's decision was sensible and logical and correct.

10. In the result the President on 28 October 2010, having considered this reply, stated that he was satisfied that permission to appeal should be granted and therefore granted permission -

“Limited to the ground that the LVT's decision was unlawful to the extent that it purported to determine matters that were outside the scope of the question transferred to it by the County Court. The appeal will be by way of review.”

11. Although in their letter of 26 October 2010 the Respondent apparently agreed with the point of jurisdiction raised by the President, the Respondent has served a statement of case dated 1 February 2011 stating that it considers the LVT nonetheless to have made a correct and reasonable determination based on the fact as presented before them. At the hearing the Respondent has argued, through Mr Murch, that the LVT did have jurisdiction to decide the wider matters and that therefore the appeal should be dismissed.

Statutory provisions

12. Section 27A of the Landlord and Tenant Act 1985 as amended provides in subsection (1):

- “(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.”

13. The provisions relating to the transfer of proceedings from a County Court to an LVT are contained in paragraph 3 of Schedule 12 to the 2002 Act. This provides:

“Transfers

- (1) Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court –
- (a) may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question, and

- (b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any remaining proceedings pending the determination of that question by the leasehold valuation tribunal, as it thinks fit.
- (2) When the leasehold valuation tribunal has determined the question, the court may give effect to the determination in an order of the court.
- (3) Rules of court may prescribe the procedure to be followed in a court in connection with or in consequence of a transfer under this paragraph.
- (4) Procedure regulations may prescribe the procedure to be followed in a leasehold valuation tribunal consequent on a transfer under this paragraph.”

It does not appear that any procedure has been prescribed under sub-paragraph (4).

Appellant’s submissions

14. The Appellant relied upon but did not seek to develop the jurisdictional point raised for consideration by the President in the grant of permission to appeal.

15. The Appellant contended that the LVT was wrong as a matter of fact in paragraph 38 when it decided he was not entitled to credit for the sum of £264.88. The Appellant also contended that the Respondent had failed to prove that any demand for the payment of the administration charges had complied with the provisions of schedule 11 of the 2002 Act. This was a point which he had raised before the LVT (see paragraph 11 of his Reply before the LVT at pages 88-90 of the bundle which was before the LVT). Schedule 11 provides that a demand for the payment of administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. The Appellant contended that this did not occur in the present case and he complained that the LVT had not considered this point in its decision.

Respondent’s submissions

16. Mr Murch provided a helpful skeleton argument which he developed further in oral submissions.

17. As regards the case of *Staunton v Taylor* [2010] UKUT 270 (LC) he submitted that what this case showed was that the LVT could not, on the determination of a question transferred from the County Court, decide points which had not been raised on the pleadings in the County Court proceedings, because the LVT has no power to permit the County Court pleadings to be amended and thereby to widen the scope of the questions to be determined. However provided a point is raised in the County Court proceedings, there is nothing in the decision of *Staunton v Taylor* to prevent the LVT deciding that point.

18. Mr Murch submitted that the LVT appears to have taken a pragmatic view that there were certain points regarding service charge and administration charge which were in issue between the parties, that all relevant parties were present before the LVT, and that it was sensible to address the wider aspects of the dispute. He submitted the LVT was entitled to do this provided the LVT did not purport to decide issues that had not been raised in the County Court pleadings.

19. As regards the point raised by the Appellant that no demand for administration charge had been served which contained the relevant information required by schedule 11 of the 2002 Act, Mr Murch pointed out that this was not a point raised by the Appellant in the County Court pleadings. Accordingly he argued that any complaint now made by the Appellant that the LVT did not decide this point must fail because:

- (1) The LVT would not be entitled to decide this point as it went beyond the matters raised in the pleadings and therefore the LVT would have contravened the principle in *Staunton v Taylor* if it had purported to decide this question under schedule 11 as to whether proper demands had been served;
- (2) In any event the permission to appeal to the Upper Tribunal to challenge the LVT's decision did not grant permission to appeal on the ground that the LVT had failed to consider this point under schedule 11 – the grant of permission to appeal was limited to the question of the LVT's jurisdiction.

20. Mr Murch pointed out that the County Court pleadings did raise the question of whether the sum of £264.88 was available to the Appellant as a credit and also raised the question of whether additional monies in the nature of administration charges were due. Accordingly the LVT was entitled to decide these points.

21. On the central question of the significance of the limited wording in the County Court order which transferred to the LVT determination of “the reasonableness of sum charged for insurance”, Mr Murch advanced the following argument. He drew attention to the wording of paragraph 3 of schedule 12 to the 2002 Act. He submitted that there were four elements to the paragraph, the first two being (i) that there should be proceedings brought in the County Court; and (ii) that these proceedings raise a question falling within the LVT's jurisdiction. He submitted that both those elements were satisfied in the present case. He then drew attention to the wording of the statute which provides for what the court may do namely the court “may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question.” This is the third element. The fourth element is that the court may dispose of all or any “remaining proceedings” (i.e. proceedings which do not raise such a question) and can either determine them or adjourn them until after the LVT has determined the relevant question.

22. Mr Murch focused his submissions on the third element. He submitted that it must follow that the question which is transferred to the LVT cannot be divided up. In other words the effect of the transfer must be that “so much of the proceedings” as fall within the jurisdiction of the LVT must all be transferred to the LVT. It is open to the court not to

transfer any matters to the LVT. However if the court decided that there falls for determination a question falling within the jurisdiction of the LVT and also decides that there should be a transfer, then the court must transfer all of the question which falls within the jurisdiction of the LVT. Mr Murch therefore submitted that in the present case, where various questions falling within the jurisdiction of the LVT were raised, it was open to the County Court not to transfer any of those questions to the LVT. However if the court decided to transfer a question to the LVT, then there is thereby transferred to the LVT all of the question or questions falling within the jurisdiction of the LVT. As he put it in paragraph 12 of his skeleton:

“It follows that upon the transfer to the LVT, notwithstanding the apparently limited question sent to it, *all* of the question which fell within its jurisdiction was transferred.”

Conclusions

23. This matter could easily have proceeded differently before the LVT. It would have been open to either party, had they chosen to do so, to make a separate application to the LVT under section 27A of the 1985 Act for the LVT to decide certain matters in dispute between the parties regarding service charge or administration charge. Had either party done so then, subject to some possible argument as to the ability thereby to raise points which could have been but were not raised in the pleadings in the County Court, the LVT would have had jurisdiction to decide these additional points of dispute between the parties regarding service charge or administration charge. Similarly it would seem to me, as presently advised, that it would have been open to the parties to have agreed to request the LVT to extend the scope of the hearing in the foregoing manner and to dispense with the formality (which otherwise would be required by the relevant procedural rules) of making a written application to the LVT – in which circumstances the LVT could have decided that it should accede to this request by the parties for an extension. I note paragraphs 17 and 18 of the LVT’s decision. However I do not consider that this can be taken as a considered request by the parties to extend the scope of the hearing and to dispense with the requirements of a written application. The LVT decided in paragraph 4 of its decision that its jurisdiction to decide the wider issues (i.e. beyond the reasonableness of the sum charged for insurance, which was the only question transferred to it by the County Court) arose automatically from the fact that the County Court had transferred a question for determination to the LVT. The LVT appears to have proceeded on the basis that once this transfer, albeit in limited terms had been made by the County Court then this gave the LVT jurisdiction to decide all points which would (supposing a proper application had been made to the LVT) have been within the LVT’s jurisdiction.

24. I have already observed above that the matter could have proceeded differently before the LVT, but it did not do so. Neither party made any application to the LVT under section 27A. The only reason the LVT had any jurisdiction to consider the case between the Appellant and Respondent at all was by reason of the order of the County Court which transferred to the LVT the determination of the reasonableness of the sum charged for insurance. The County Court did not transfer to the LVT any question regarding whether the Appellant was or was not entitled to credit for £264.88 against the insurance premium for

2008/2009 nor did it transfer to the LVT the question of whether any administration charges were properly payable.

25. Accordingly the County Court order did not give the LVT jurisdiction to decide these wider matters unless Mr Murch's argument is correct to the effect that the County Court is limited either to transferring nothing to the LVT or to transferring everything to the LVT (i.e. everything which could be within the LVT's jurisdiction). Mr Murch submitted that the County Court was so limited and that as the County Court had made an order for transfer it necessarily followed that, despite the wording of the transfer order, the order carried to the LVT jurisdiction to determine all matters in dispute between the parties which were matters which could be within the jurisdiction of the LVT. I am unable to accept this argument. It is perfectly possible (as indeed has arisen in this case) that in proceedings before a County Court there fall for determination several questions each of which separately falls within the jurisdiction of the leasehold valuation tribunal. Paragraph 3 of schedule 12 to the 2002 Act does not require there to be a transfer of such matters to the LVT – the County Court is given a discretion as to whether or not to do so. If in a particular case a single question is raised in County Court proceedings which falls within the jurisdiction of the LVT, then the court will either decide that this question (i.e. the whole of this single question) should be transferred to the LVT for determination or the court will conclude that it should itself decide the question. Where however several questions arise which are potentially within the jurisdiction of the LVT, a court may well conclude for good reason that one or more of the questions should be transferred for decision to the LVT but that one or more of the questions should be retained by the County Court for its own decision. There are various questions which, although theoretically within the jurisdiction of the LVT, are questions which may be thought can be equally or more appropriately decided by the County Court. If the power to transfer a question to the LVT was intended to be circumscribed in the manner contented for by Mr Murch, i.e. that it was an all or nothing transfer, then the statutory provisions would have made this clear. The statutory provisions have not done so.

26. Accordingly I conclude that the LVT did not have jurisdiction to decide any point beyond the reasonableness of the sum charged for insurance. It follows that I quash those parts of the LVT's decision which decided points beyond the reasonableness of the sum charged for insurance.

27. At the conclusion of the hearing a point was raised concerning costs. Before the LVT the Respondent stated that it would not seek to recover the costs of the LVT proceedings through the service charge account. Accordingly the LVT decided that no determination was required from the LVT under section 20C in that respect (see paragraph 12 of the LVT's decision). Before the Upper Tribunal the Respondent stated that it made no concession that it would not seek to recover the costs before the Upper Tribunal from the Appellant. Mr Murch stated that the Respondent may seek to recover these costs not through the service charge provisions but instead through clause 8.13.1 of the lease which includes a covenant to pay to the landlord on an indemnity basis all fees charges and other expenses incurred by the landlord or the superior landlord including for the avoidance of doubt various matters which are then stated which include "the recovery of any sums due from the Tenant." I raised the question of whether a claim for such a sum would be a claim for an administration charge rather than a claim for a

service charge. As I understood it, the Respondent accepted that this would be the case and that the Respondent would not seek to be recovering such sums through the service charge.

28. Section 20C enables a tenant to apply to the Upper Tribunal for an order that all or any of the costs incurred in connection with proceedings before the Upper 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.” Section 20C(3) gives the Upper Tribunal power to make such order on such an application as it considers just and equitable in the circumstances. The Appellant did orally make such an application to me at the hearing. The Respondent has indicated that it will not seek to recover such costs through the service charge, but may seek to do so by way of an administration charge, in relation to which separate statutory provisions apply. For the avoidance of doubt and bearing in mind that the Respondent has said it will not seek to recover the Upper Tribunal costs through the service charge, I conclude that it is just and equitable to order that all of the costs incurred by the Respondent in connection with these proceedings before the Upper 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 Appellant. If the Respondent seeks to recover all or any of these costs by way of an administration charge it will be open to the Appellant to rely upon such rights as he has for the purpose of resisting in whole or in part such a claim for an administration charge.

Dated 18 August 2011

His Honour Judge Nicholas Huskinson