

LON/00AQ/LSC/2005/0258

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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATION UNDER SECTIONS 27A OF THE  
LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

Applicants: Nearart Homes Investments limited

Represented by: Mr K O'Connor ACIOB

Respondent: Mr B Martin FRICS IRRV

Re: Orchard Court, Stonegrove, Edgware,, HA8 7SX

Application received: 14 September 2005

Hearing dates: 30 & 31 May 2006

Appearances: Mr K O'Connor ACIOB (for Applicant)

Mr G Fear, of Graham Fear  
& Co Solicitors (for Respondent)  
Mr B Martin FRICS IRRV of Martin  
Russell Jones Chartered Surveyors  
Mr G Swindles, FRICS of Gordon Swindles  
& Associates Limited

Members of the Leasehold Valuation Tribunal:

Mrs F Burton LLB LLM MA  
Mr F Coffey FRICS  
Mr R Eschle JP MA BEd

**ORCHARD COURT, STONEGROVE, EDGWARE, MIDDLESEX**

**BACKGROUND**

1. This was an application dated 12 September 2005 for the determination of the reasonableness and payability of service charges for the service charge years 2000 to 2005 inclusive, pursuant to s 27A of the Landlord and Tenant Act 1985 (“the Act”) together with an application for limitation of service charge costs pursuant to s 20C. An application has also been made for costs pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002.
  
2. On 2 February 2006 the Leasehold Valuation Tribunal issued Directions following a Pre Trial Review attended by Mr K O’Connor ACIOB on behalf of the Applicant company, Nearart Homes Investments Limited, and Mr B Martin of Russell Jones, Chartered Surveyors (formerly the LVT appointed Manager up to 3 August 2005 and subsequently the Manager appointed by the Administrator of the freeholder) and Mr G Fear, of Graham Fear, Solicitors, for Mr Martin. It was established at the PTR that Mr O’Connor was not a Director of the Applicant company (the Directors of which were his wife and daughter) but was a major shareholder and a Director of the freeholder, St Anthony’s Homes, in Administration, and was representing the Applicant company on behalf of his wife and daughter, the tenants of Flats 18B and 37 .
  
3. The Directions required the usual exchanges of information and relevant copy documents, to be followed by consideration of whether the issues could be settled by negotiation or mediation, failing which the case was set down for hearing on 30 May 2006 and statements of case were to be prepared and served by each party within the LVT’s standard timescales in such Directions. Prior to this date an application was received from Mr Martin to postpone the hearing in view of the Administration of the freeholder company, which had required him to hand over all his books, on the basis that the Administration had proceeded to Liquidation and he considered that the Liquidator should complete his inquiries before the present application was

determined by the LVT. This application which was opposed by the Applicant, was refused, and the hearing proceeded on 30 and 31 May 2006.

### **THE HEARING**

4. At the hearing, the same parties attended together with Mr G Swindells of Gordon Swindells, Surveyors . It was established that the subject property was of a three block configuration containing 47 flats around a central square, together with car parking spaces and further grounds. Additional flats had been built on the top of the three blocks by the freeholder, St Anthony's Homes, and Block C been extended during the course of the latter's management of the property. Later there had been a decision of the Central London County Court (in a case transferred from the Bow County Court) in respect of defective works in the course of these extensions which had appeared to leave a legacy of problems in the management of the building.

However on the present application the LVT was much hampered in its consideration of the service charge issues before the Tribunal owing to the poor preparation of the case by the parties who had presented the (incomplete) documentation in great disorder. While this may have been caused to some extent by the liquidation of the freeholder company, which had resulted in Mr Martin's books being demanded and still retained by the Liquidator, the Tribunal does not understand why a comprehensive set of copies of essential documents have not been kept by both parties, Mr O'Connor for the freeholder and also for the Applicant company and Mr Martin in respect of the management since 2000, so that a proper hearing bundle could be prepared. Late submission of a further apparently random selection of invoices by Mr Martin did not provide anything approaching a complete record of expenditure in the service charge years under consideration.

### **THE APPLICANT'S CASE**

5. For the Applicant Mr O'Connor said that the Directions had not been complied with, and that persistent attempts to obtain sight of the books and records had been frustrated by their non-production despite the LVT's Directions. In response Mr Martin said that while all his books had been handed over to the solicitors for the Liquidator but that he and his staff had attempted to collate those

documents of which they had copies. It was for this reason that he had applied to the LVT for an adjournment pending the completion of the Liquidator's work. He had nevertheless served a response to the Applicant's Statement of Case, and the Applicant's reply to this document was also before the Tribunal.

## 2000

6. Mr O'Connor said that there were apparently no papers for the year 2000, and that no accounts had been produced for that year since neither Mr Martin nor the previous manager (St Anthony's Homes, the freeholder, of which Mr O'Connor had been a Director) had prepared any, there having been some confusion as to whether St Anthony's Homes would prepare them, or whether Mr Martin would do so on the basis of the documentation provided by St Anthony's Homes. Mr O'Connor claimed that the documentation had been sent but Mr Martin countered that it had never been received. However, when asked to comment by the Tribunal, Mr Martin claimed he had in fact managed the property in that year for the six months between April and October 2000, during which he had dealt with all the usual property management problems, including building works, and conducted meetings with residents who had wished to substitute himself for the management by St Anthony's Homes, and this had been formally effected by order of the LVT (Chairman: Lady Wilson) in January 2001. That order had set a management fee of £100 per flat. Mr Martin said that he could not remember in detail what he had done in the 6 months to October 2000, or what emergencies there had been, or if there had been insurance claims, but he had certainly done much of the preparatory work which is inevitable when taking over a property to be managed, such as dealing with insurance, making visits to inspect defects, etc. Mr O'Connor, on the other hand, claimed that Mr Martin had "done nothing" for the money charged which was shown to be £2,761 for the 6 months of the 2000 service charge year. However, nothing else was challenged for the year 2000, save for the management fees claimed which, Mr Martin said, all other Lessees save the Applicant had paid.

## 2001.

7. Mr O'Connor said that in 2001 the service charges were glaringly higher than

NKDR note:

Evidently, Martin Russell Jones also suffers from appalling postal services in the case of other blocks it 'manages' (This is it's 'favourite' excuse)

NKDR note:

Was this because they were sent threatening letters from a solicitor - as Martin Russell Jones did in my case and that of other leaseholders at Jefferson House - through Cawdery Kaye Fireman & Taylor (CKFT) - when we objected to paying unsupported service charge demands ? (See point 12 later on in this report which supports my assumption)

when he managed the building. Building maintenance, gardening, cleaning and professional and management fees were all disputed, and there were a number of discrepancies, e.g the leases required that lessees paid for glazing (paragraph 1 of the Second Schedule) yet charges for this appeared in the accounts. To this complaint, Mr Martin said that there must have been a reason, such as that glass had been broken by a workman, although he could not recall the circumstances. With regard to the complaint about cleaning costs, he said there were the internal common parts of 3 blocks together with their balconies to clean, he had obtained 6 estimates from local firms and sent them to the residents; all of these estimates had been more expensive than the cleaners used, there were generally 2 or 3 cleaners on the job, and extra cleaners were sent when necessary. There was a cleaning specification, and another for gardening. The central square of the property had extensive planting and grass to maintain, and weeding needed to be done. With regard to professional fees, there were two invoices for reports on leaks. There were no invoices for the building maintenance.

## **2002.**

8. With regard to this year, Mr O'Connor said that there were no invoices, only accounts. The cleaning costs had doubled, gardening was more than double and professional fees were charged at £6,149, for which there were four invoices, not entirely totalling to the sum charged. Mr Martin's response to this was that extra cleaning costs had been incurred because of the building works, there had been no provision for the contractor to do its own cleaning except in the immediate area of the work, and in the gardens there had been additional work to hedges and trees, including the employment of a tree surgeon. He had used two people known to him for this work, and based on his long experience they were capable and reliable. Invoices for work in this year were available in the bundle. Professional fees included those of Jennifer Israel & Co, Solicitors, who had advised generally on management issues including, Mr Martin thought, on the renewal of the management appointment order. While Mr O'Connor disputed that these fees were necessary, Mr Martin said that he thought this work had been in connection with Directions to the Manager (i.e. himself).

2003.

Mr Roger Frank Childs.  
At 24 April 2005, he was listed on the Financial Services Authority Register (entry # 309320) as a director of Martin Russell Jones (with Mr Barrie Robert Martin and Ms Joan Doreen Hathaway)

9. In this service charge year, Mr O'Connor disputed the building maintenance invoices, including that for £847 for pest control, which he said should have been undertaken by a professional pest control operative and not by the operative engaged by Mr Martin (a Mr Childs). Mr Martin however contended that there was a significant problem with rats and the operative had the appropriate equipment. The management fee was also disputed. Mr Martin's response to this was that the Chairman of the Residents' Association, a Mr Bhwaney, had offered a small increase in management fees due to extra work. The total for the year had been £5854. There had been an insurance claim that year though Mr Martin could not recall the details of it. Numerous invoices from Mr Childs were also disputed, as Mr O'Connor considered that appropriate professionals should have been used, as he had himself preferred when he was managing the block for St Anthony's Homes. Some of Mr Childs' invoices were, however, not in respect of rats, but for clearing rubbish (some of which had been left by the freeholder following works in 1996), dealing with boundary hedges, repairing boundary walls, and various minor items in connection with building maintenance. Professional fees were those of Mr Swindells in connection with building works. Mr O'Connor accepted some management invoices for this year.

2004.

10. Issue was similarly taken with costs for building maintenance, gardening and management fees in respect of this service charge year. Mr Childs on this occasion had invoiced for addressing damp, which Mr Martin contended was a normal management function, and also for work on the carpets and staircases in the common parts. However, Mr O'Connor considered that this work should have been done by the contractors as part of reinstatement following the building works, when a defects schedule should have been prepared as was the case when St Anthony's Homes had been involved. He also queried the pest control charges, to which Mr Martin responded that he used different firms for different purposes: Mr Childs normally dealt with rats, a firm called Blue Line was used for wasps and another for pigeons, as experience had shown that each function was best carried out by that

NKDR note:  
What kind?

specialist. Mr O'Connor also queried a payment of £250 to Flat 22 for water damage, and further bills from Mr Swindells who had spent 7 hours on an inspection and in taking photographs, and had also billed *inter alia* in connection with an escape of water in Flat 1, which had occasioned damp and mould growth, a leak in Flat 22 which had occasioned inspecting Flat 24, in connection with rodents in Flats 16A and 18A, replacement of the suite in Flat 22, and noise in the cavity walls. Mr Martin's explanation for these charges was that a balcony had apparently been constructed at too low a level to comply with Building Regulations, as a result of which a lessee (of Flat 4) had fallen over it and died. There had also been some leaking on the balconies which had penetrated into the Block C stairwell and that the other items were all normal management which was not covered by the management charge.

**2005.**

11. Mr O'Connor similarly disputed cleaning, gardening, legal fees, management and general repairs for this service charge year. Mr Martin was asked when he had prepared the budgets for this year. He said that this had been done in October 2004 and these had been sent out to all lessees, including to the Applicant at the usual correspondence address, although Mr O'Connor claimed that they had not been received. He said cleaning was up again by 50%, although gardening charges were at the same level as the previous year. He said he was not disputing the clearance of rubbish (abandoned goods) nor payments into the sinking fund although he did not know what this was for. However Mr Martin said this was for decorations and refurbishment and that these funds were held in a separate account as required. His explanation for the increase in cleaning costs was because he had not been satisfied with the previous level of cleaning and had provided for more. He had again obtained other quotations and had found them all more expensive than the existing cleaners, and had instead of employing alternative cleaners adopted a rigorous inspection policy and held back money until the cleaning was done to his satisfaction, which had involved the cleaners in sending more manpower at their own expense. He had expected to change cleaners and had considered it appropriate to over provide in his estimate and then to keep the cheaper cleaners. He added that Mr Childs cleared the vegetation from the roof but that he had extended the gardening specification. Mr O'Connor's contention on the basis of these explanations was

nevertheless that both the gardening and the cleaning should be at the previous year's level of charge, which with 5% for inflation was all that was reasonable.

12. With regard to legal fees, Mr O'Connor contended that these were not necessary, as the solicitors were only writing letters in respect of arrears, of which there were few instances, so that this was an overprovision. Mr Martin in response disagreed, and said that he expected to spend the money. Paragraph 2.6 of the Lease provided for this charge. Mr O'Connor nevertheless insisted that the amounts allowed were an overprovision and that £2,000 would be ample.

NKDR note:  
Based on my first hand experience at Jefferson House: an item that features high on the list of priorities - including filing and pursuing false claims in court - against anybody who 'dares' to challenge a service charge demand from Martin Russell Jones

13. With regard to general repairs, Mr O'Connor referred to the trunking on the front of the building of which photographs had been provided, where time savers were supposed to have been installed (8 in all) and contended that this had not in fact been properly or fully done. Similarly he disputed the invoice for brick repairs on both ends of the balconies on blocks A and B and contended that Mr Martin had not inspected and checked this work although Mr Martin insisted that he had and that 14 bricks had been taken off and re-bedded, to make the wall stronger and (according to Mr Swindells) to fill the gap between the top of the wall and the handrail. Mr O'Connor also contended that the electrical work billed for should have been done by the building contractors as it was repair to external lighting damaged by their workmen.

14. Mr Swindells was later called to confirm these items and gave evidence that the building works had started in October 2003 and were meant to be finished in January 2004 but this completion had in fact been in March 2004. The cost had been £150,000, had involved Blocks A and B only and had addressed the leaks and water penetration, and asphaltting to the balconies, all of which had required scaffolding. This had followed a case brought in the Bow County Court by the lessee of Flat 24, when the court had ruled that the asphalt had to be replaced. The mansard parapet and gutter built by the freeholder had been replaced with an overarching gutter. Mr O'Connor thought this unreasonable and that it had not been required. Mr Swindells however pointed out that the Court had said that work badly done needed to be replaced. He said that the quality of the work had not been good, and indeed the contractor had gone into liquidation after practical completion. The brickwork repairs

had been the subject of a £1500 retention from the final account which had now been paid. Mr O'Connor nevertheless contended that the tendering process had been unsatisfactory as no comparable tenders had been invited.

NKDR note:  
A repeat of Jefferson House: see its damning report at  
At <http://www.lease-advice.org/decisions/other/table2.html>

Under entry #992 -  
Case # LVT/SC/007/120/02

### **THE RESPONDENT'S CASE**

15. Mr Martin contended that all his charges were validly incurred and reasonable, and had little to add to his previous responses to Mr O'Connor's contentions, save that he had relied on Mr Swindells' reports in ordering work. He accepted that a s20 Notice should have been served in 2004 although he had served a Notice of Intention in connection with Mr Swindells' work in 2005. He said the works carried out to Block C had been those specified by Mr Swindells.

NKDR note:  
Repeat of Jefferson House as (1) the 'so called' 15 July 2002 S 20 "notice" had been invalidated (2) a S.20 notice was not issued preceding the appointment of Mansell in August 2004  
Hence: this amounts to a breach of leaseholders' statutory rights

### **COSTS UNDER S 20C**

16. Mr O'Connor requested that a s 20C order be made, and that there should be a further order for costs pursuant to the LVT's power under the Commonhold and Leasehold Reform Act 2002, of £500 to recompense him for the difficulty in collating the papers. In this connection Mr Fear apologised for not preparing the Respondent's papers adequately, but requested that any such order made against the Respondent's be made against him personally since he did not wish the residents to bear any costs for his defaults. Mr Martin added that their inability to prepare the case properly was not either his or Mr Fear's fault since all the files were still with the solicitors to the Liquidator. He further added that he had tried to deliver the papers to the Applicant's office by courier, post and fax and had not been successful, despite the courier (who had charged extra for the service) having telephoned the Applicant's office number, and tried for a quarter of an hour to deliver the package. The Applicant's fax had also not been working, and a message had been left by telephone without result.

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### **INSPECTION**

17. The Tribunal inspected the property on the morning prior to the second day of the hearing. They found it to be close to the A5 major road, and to be as

described at the hearing and shown in the plan in their bundle, a complex of three three-storey 1930s blocks linked by archways and paved walks and set around a grassed central square with further grassed and landscaped grounds adjacent. There was ample parking at the main vehicular entrance adjacent to the road. They noted that an upper mansard floor had been added with a mansard walkway and that Block C had been extended enlarging it towards the rear of the site. Externally, the central square gardens appeared well cared for except that the central stone pond needed draining and replanting (perhaps not as a pond) as it had currently been left to be taken over by weeds and had in effect become a wild uncultivated bog garden) and the flower beds needed ground cover to obviate constant weeding costs. However the shrubs appeared well managed and there was clearly significant winter work to be done when the grass no longer required regular mowing. On the boundaries, the outer grassed areas were less well maintained and there was still rubbish lying about in places, including a new sandbag behind one block and one part destroyed sack on the land at the rear of another. There were also defective bricks edging the flowerbeds at the side of the building. Internally the common parts were of a variable standard and needed attention. There were signs of damp on one staircase, with mould and rot on the skirting, and some poor post construction reinstatement work e.g. to a newel post the subject of one of Mr Childs' invoices. That staircase carpet also needed replacing. Generally the appearance of the property was of work in progress rather than the finished article. Removal of the trunking covers to the front of Block A enabled the Tribunal to see the location of the time savers for which invoices appeared in the Applicant's hearing bundle.

## **DECISION**

18. In attempting to collate the documentation in order to determine the appropriate amounts payable during the service charge years which were the subject of the application the Tribunal was severely hampered by lack of supporting vouchers and in the year 2000 by the lack of accounts. The Tribunal does not however accept that the lack of accounts for the year 2000 is the fault of Mr Martin, since a letter was produced at the hearing dated 2 November 2000 from Mr Martin to Mr O'Connor stating as follows:

records of payment of the professional fees in the disputed total of £1069.25, and reports available for which the charges were made. With regard to accountancy fees, there is no invoice, but the sum charged (£450) is entirely reasonable for the work done. The Tribunal notes that this fee remains the same in each service charge year until 2004. Cleaning was charged at £1,939, or £41.25 per flat, and there was no real argument about the quality of the cleaning. Similarly gardening at £3,307 is not an unreasonable sum for the work. All these sums are therefore reasonably charged and duly payable, as is the management fee. With regard to building maintenance of £9,016, however, there are no vouchers at all, and unless Mr Martin can produce evidence, in proper order, of the expenditure of, or towards, this figure by obtaining copies of the relevant invoices by 1 September 2006, this item is disallowed in total.

**2002.**

21. Of the items disputed in this year, the cleaning and gardening need to be capped at a figure which the Tribunal considers reasonable. £3,376 is claimed for cleaning, on the basis that there was extra work to do following the building works as it is said that the contractors were not obliged to clean except in the areas where they were working. This is nonsense: either the contractors created extra work and should have cleared up after themselves pursuant to their contractual obligations (or the contract was defective in not providing for this) or this is not the correct explanation for the increase in cleaning costs. Unless accurate invoices can be produced explaining this matter further, £2,000 is therefore allowed for cleaning in this year. Gardening is similarly overcharged at £7,313. It is said that extra work was required, and while the Tribunal noted that the potential for significant gardening work was extensive, especially if the gardens had previously been neglected which may have been the case, this is a figure double the previous year's, and the explanation provided in the absence of detailed invoices is insufficient to justify such a sum. Unless further copy invoices emerge, gardening will be capped at £4,800. Building maintenance has been charged at £8,262 and, although this figure is lower than in the previous year, invoices produced for only £1,153. Unless further copy invoices are produced this is the sum that will be allowed under this head for this year. With regard to professional fees of £6,149, these appear to be allowed by the lease (paragraph 2.6 of the Seventh Schedule and clause 11.2 of the lease) but invoices have been produced for £2,510.25

“...obviously we have paid very little out as I understand that you have been paying the majority of the invoices. However I have asked the Accounts Department to provide the information in order that you can prepare the accounts for the year ending 31 October 2000.”

This appears to be inconsistent with Mr O'Connor's statement in evidence that he had sent all the necessary papers to Mr Martin who had failed to provide accounts. While the events in question are now getting on for 6 years ago and memories may understandably be failing in respect of detail, the Tribunal notes that the trial judge in his decision in the matter before the Central London County Court found Mr O'Connor an unreliable witness, finding his behaviour “discreditable” in relation to his evidence on the payment of service charges. Moreover, the Tribunal does not understand why the Liquidator of St Anthony's Homes could not previously and cannot now be asked to provide copies of those of Mr Martin's documents in his possession which are required to establish essential matters before the Tribunal, especially as any sums which the Tribunal is able to determine to be due and payable in respect of service charges owed by the Applicant company or their Directors as tenants at the property would only increase the sums at the Liquidator's disposal for payment to the creditors and towards the costs of the liquidation. The Tribunal considers that this should now be done wherever gaps remain in the detailed evidence which the Tribunal should have. However it has been possible to piece together sufficient evidence to determine on the basis of information presently available a minimum amount which should be paid in each year. The Tribunal therefore determines that the amounts found duly documented and payable in respect of each service charge year should be paid forthwith, and if further copy vouchers from the Liquidator can be obtained and submitted to the Tribunal by 1 September 2006 the Tribunal will issue a supplementary determination in respect of any such additional sums duly payable. If no further vouchers are available by that date then the sums hereby determined for each service charge year shall be the final amounts payable for each of those years.

**2000.**

19. In respect of this service charge year, the Tribunal considers that Mr

O'Connor has not established that "nothing" had been done by Mr Martin in respect of management of the property. Although the LVT's management order was not made until January 2001, it is clear that Mr Martin was carrying out some preparatory work between April and October 2000. In the absence of convincing evidence from Mr O'Connor that he was not doing so, the Tribunal accepts Mr Martin's evidence. With regard to Mr O'Connor's contention that accounts were not prepared by him as he understood that Mr Martin would prepare them, and that he had therefore sent all the necessary documents to Mr Martin, the Tribunal has not seen any evidence that Mr O'Connor did in fact do this. The Tribunal notes that in her order of January 2001 Lady Wilson required production of documents to Mr Martin but there is no evidence that this was ever done pursuant to this order either. Lady Wilson also set a reasonable management fee of £100 per flat plus VAT, which would equate to £5523 p.a. and exactly half of this (£2,761) has been charged in this year, which appears to the Tribunal to be an entirely reasonable charge and duly payable (and the figure of £5523 is similarly acceptable for a full year). The Tribunal also notes that Mr O'Connor criticises Mr Martin's lack of compliance with the Directions in the present case before the Tribunal, but (as an experienced freeholder, developer and property manager himself) apparently keeps no copies of vital documents himself, and is therefore unable to provide any proof of his assertions in respect of the lack of accounts for the service charge year ending 31 October 2000. On the other hand, Mr Martin at least advances a reason for his non-compliance in that all his files were taken by the Liquidator of the freeholder company – a company connected with Mr O'Connor – even though the Tribunal considers that the Liquidator should have been approached for copies and should have had no reason to comply with such a request. Moreover, every other lessee appears to have paid the service charge for the service charge year 2000 long ago, and there is evidence in the decision of a second Tribunal which considered the affairs of the property in the year 2001 that there was a budget before them for that year although they do not record its detailed content in that Tribunal's decision. The Applicant company should therefore pay in full the unpaid service charge for the service charge year 2000.

**2001.**

20. Of the items disputed by Mr O'Connor in this year, there appear to be

only. Unless further copy invoices are available this is therefore the sum allowed under this head for this year.

#### 2003.

22. In this year cleaning has risen to £5,072 without invoices to support such a figure. The Tribunal is prepared to allow £3,000 unless copy invoices can be produced to justify a higher figure. Gardening went down to £2,850 which is allowed in full. Building maintenance is charged at £12,018 in respect of which the Tribunal is prepared to allow up to £4,000 on the basis of invoices seen, unless further copy invoices are produced. For professional fees (£517) an invoice was produced and this is allowed in full. Pest control, charged at £1,033, is unsupported by sufficient invoices, since only £186.43 was justified in this way. This is the sum that will be allowed therefore, unless further copy invoices can be provided. The slight increase in management fees (to £5,854) over the previous rate as set by the LVT in 2001 also appears reasonable, Mr Martin having given evidence that this was incurred due to extra work in the service charge year and was acceptable to the Residents Association, and the Tribunal determines that this sum is duly payable.

#### 2004.

23. With regard to this service charge year, the Tribunal has seen invoices to support the charge for pest control (£1,570) and professional fees (£3,582) and in fact more invoices have been produced for this latter item than have been charged to the service charge. Accountancy fees rose to £500 and the Tribunal accepts that this modest increase after several years at the same figure is reasonable. However there are no invoices for cleaning or gardening and the Tribunal therefore allows £3,000 for each of these items, unless further copy invoices can be provided. With regard to building maintenance, the invoices produced amount to only £726.26 as against a figure in the service charge accounts of £13,863, so that in that case also unless further copy invoices can be provided, the charge for this item is capped at the lesser figure. Moreover management fees rose to £10,106 for which there appears to be no justification, (although curiously Mr O'Connor claims that they were only £6,756)

and unless this sum can be supported by further copy documentation the Tribunal determines that this item shall be capped at the former rate of £5523.

**2005.**

24. For the service charge year 2005 there are apparently no accounts available and only a few invoices. This level of documentation does not enable the Tribunal to determine any figures which are reasonable and duly payable. In respect of this year Mr Martin is at liberty to present a proper account, duly supported by copy invoices, by 1 September 2006 as in the case of other missing invoices, whereupon the LVT will determine what it is reasonable for the Applicant company to pay for this year.

**2006.**

25. The present application does not in fact extend to the service charge year ending 31 October 2006 for which a further application may be made in due course if desired.

**COSTS APPLICATIONS PURSUANT TO s20C OF THE LANDLORD AND TENANT ACT 1985 AND SCHEDULE 12 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

26. Mr O'Connor requests a s 20C Order on the basis that the lessees should not be obliged to pay for the costs of the Manager's and his Solicitor's attendance at the LVT and this is clearly warranted since it would obviously be inequitable for any such charges to be applied to the service charge accounts in all the circumstances since all lessees save Mr O'Connor's family have paid their service charges, and should pay nothing further pursuant to the Applicant company's application, and had Mr Martin kept proper copies of the service charge documentation to produce to Mr O'Connor when requested no doubt Mr O'Connor's family, the Directors of the Applicant company, would not have decided to bring the present application, so that it would similarly be inequitable to require them to pay for such costs through their service charge. However in respect of Mr O'Connor's request for costs up to the statutory

maximum to be awarded against Mr Martin and Mr Fear (who stated at the hearing that any such costs would be for him to settle, since he would not wish his clients to be disadvantaged by his inability to prepare the case properly) the Tribunal is not minded to make this order. Mr O'Connor makes much of Mr Martin's inefficiency in keeping copies of the relevant documents under his control or obtaining them from the liquidator of *Mr O'Connor's* freeholder company, but it does not seem to the Tribunal that Mr Martin is more at fault in this matter than in having not insisted that the liquidator produce the documents since they are at present not under his personal control. The Tribunal has given Mr Martin the opportunity of attempting to remedy this default so that all possible sums may be retrieved by the liquidator from the Applicant company, and has set a time deadline of 1 September 2006 for this to be done. However the Tribunal does not find Mr O'Connor entirely blameless in this matter, in that he appears to be likely to be equally at fault for the failure to provide accounts in the service charge year 2000, and his own paperwork was not presented in the properly filed and paginated format which the LVT makes clear in its Directions it expects, but in the random form of one treasury tagged bundle (not arranged in any logical order, nor indexed, nor referred to in his statement of case nor even comprehensive) a variety of correspondence and numerous loose sheets, navigating through which has tried the patience of the Tribunal considerably. Mr O'Connor could not, for example, produce all the service charge accounts for the years under consideration, which one would expect the Applicant company to have retained in a file, since it is held out by its name ("Nearart Homes Investments Limited") to be an investment company. Accordingly the Tribunal makes no order for costs and each side must bear their own.

27. Any further copy invoices produced by Mr Martin from the files of the liquidator must be properly and chronologically organised in a file or files, paginated consecutively and delivered to the Tribunal by close of business on 1 September 2006, with one copy to the Applicant. Should Mr Martin avail himself of this opportunity to provide the missing invoices the Tribunal will issue a supplementary decision detailing any further sums found to be reasonable and duly payable. Any such further determination will be issued by the Tribunal without further representations being required or received from the parties, since should further supporting copy invoices be provided the resulting recalculations comprise purely an

arithmetical exercise. In default of further copy invoices being supplied as set out above, the current maximum figures found by the Tribunal to be reasonable for each year shall stand, and in any event are duly payable by the Applicant company forthwith.

Chairman... *F. R. Smith* .....

Date... *12.8.06.* .....

NKDR note:

Message to leaseholders of Orchard Court:

If you are thinking of complaining against Mr Barrie Martin, FRICS, to his trade association, the Royal Institution of Chartered Surveyors - based on my own experience, anticipate the following reply (which I received following my 2 February 2005 complaint against Mr Barrie Martin and Ms Joan Hathaway):

***"I am of the opinion that there is an insufficient weight of evidence to place this matter before an RICS disciplinary committee currently.***

***Should you be unable to provide corroborative evidence of a breach of the rules, I will have no option other than to close the matter"***

(See my website for detail - section on RICS and on Martin Russell Jones)

On the other hand, maybe my website will help you achieve a better outcome (?) I hope!

Best wishes. You have my sympathy.