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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/21UC/LSC/2014/0053**

Property : **Anguilla Close, Eastbourne,
East Sussex, BN23 5TS**

Applicant : **Mr A Levy (and others)**

Representative : **Mr A Levy**

Respondent : **Frays Property
Management (No5) Limited**

Representative : **Mr Crown (Allsquare Solicitors)**

Type of Application : **s27A 1985 Act**

Tribunal Members : **Judge D Dovar
Mr N I Robinson FRICS
Mr T W Sennett MA MCIEH**

**Date and venue of
Hearing** : **14th November 2014, Eastbourne**

Date of Decision : **15th December 2014**

DECISION

Introduction

1. This is an application for the determination of service charges payable in respect of the cost of the painting the steel railings and balcony balustrades of the flats at Anguilla Close ('the Works').
2. Substantive directions were given by the Tribunal on 2nd July 2014, for the provision of joinder of parties, statements of case, disclosure, witness statements, expert evidence and the preparation of bundles. Those have been complied with.
3. Mr Levy, the owner of flat 7, made this application and subsequently the following have been joined as applicants: Mr Cole (No10), Dr Dabash (No18), Mr and Mrs Darkins (No20), Mr and Mrs Lalani (No17), Mr and Mrs Douds (No22) and Mr Scott (No6).

Site View

4. The Tribunal inspected Anguilla Close in the presence of the parties and their representatives. It was clear that despite having relatively recently been painted, both the railings and balustrades were suffering from corrosion. Other, neighbouring properties, on Dominica Court, did not appear to have the same level of corrosion as those at Anguilla Close. The Tribunal also noted that the support steels that had also been the subject of work at the same time as the painting, did not have any evidence of corrosion.

Legislation

5. Section 18 of the Landlord and Tenant Act 1985 defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.

6. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard. Under section 19 (2) where sums are due before the costs are incurred, 'no greater amount than is reasonable is so payable'.
7. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount which is payable and the date at or by which it is payable. The determination can be made whether or not any payment has been made and also in respect of anticipated expenditure.

Background

8. Anguilla Close comprises 25 residential units (17 flats and 8 houses) and is part of the Columbus Point Estate ('the Estate') which itself comprises 236 residential properties and is part of the Sovereign Harbour Development in Eastbourne.
9. The estate consists of a mixture of houses and flats which were built around 2004. Anguilla Court is situated at the southern extreme of the development and is particularly exposed to the sea.
10. In about 2009 issues with corroding steel both on railings, balconies and structural parts of Anguilla Close caused a claim to be made against NHBC. Whilst NHBC accepted the claim in respect of the structural parts of the Close that had corroded, they declined to remedy the non-structural parts; which included the railings and balconies.
11. Hazelvine therefore arranged for their own surveyor, Mr Bullock, to draw up specifications to address the corrosion to those parts not covered by NHBC. An outline was produced in February 2012 which mirrored to some extent the process that NHBC were to carry out to the steel structures. This included blast cleaning and the application of a plastic coating. This was on the basis that Hazelvine would be able to achieve economies of scale by co-ordinating the Works with the NHBC

works. this included the removal of steel for blast cleaning. However, NHBC then decided to blast the steel structures in situ within protective layers. This meant that the Respondent was not able to achieve any economies from the NHBC works. It therefore reconsidered the extent of the works it was going to carry out.

12. On the ground of costs and on advice from International Paint Limited, the specification changed in April 2012 so that any corroded areas were dealt with a wire brush and a coat of rust inhibitor, all on site, with two coats of paint applied thereafter. The Respondents relied on the advice of the paint manufacturer, International Paint Limited and in particular Mr Fenny and Mr Klein as to the appropriateness of their painting specification. The Tribunal was shown email correspondence in which Mr Fenny suggested the approach to take, which was in line with the April specification. The Applicants raised concerns over this change in specification; principally on the basis that they considered that it would not last.
13. The Works started in 2013. By mid-2013, issues began to appear in relation to the works done to Anguilla Close. At that point, the Works were halted and tests were carried out. In July 2013, Mr Klein stated that the railings and balconies should have been blast cleaned because of its condition. He does also say that in reference to the April specification, 'in good faith a maintenance system was proposed.'
14. The Works have been successful on the vast majority of the Estate. It is only in respect of Anguilla Close, that corrosion has started again shortly after the works were carried out. Remedial works were unsuccessfully carried out to Anguilla Close. Further tests are being carried out and further works are proposed.
15. The anticipated final account for the Works is £155,820.64; this includes variations and additional costs due to the rust issues. So far around £90,000 has been expended under the original specification. The Works have not yet been signed off and no final account provided.

The Issue

16. Whilst a number of issues had been raised at the case management hearing, the central issue was whether the Respondent is able to recover the costs of the Works by way of service charge, or whether they are not entitled to because:
- a.) the Applicants objected to the Works on the basis that they would not last and/or that the Respondent should have known that they would not last and
 - b.) they failed so rapidly after being carried out means that they are not recoverable.
17. The Applicants did not pursue any issue relating to either historic neglect or lack of consultation. Further, it was agreed between the parties that the Respondent had the obligation under the lease to carry out the Works (see clause 4 and sixth schedule of the lease).

Sums charged or intended to be charged

18. The parties were unable to give the Tribunal a clear answer as to what charges were in dispute, how they had been arrived at or how they had been demanded. The Applicants maintained that the cost was £800 per flat of which around half had been drawn from the reserve account and the balance had been demanded by way of an ad hoc demand.
19. The Respondent maintained that the total contract sum had not been settled yet as there were still works to be carried out. There have been variations to the work from the original specification, not least in order to deal with the rust issues. The sum was likely to be around £150,000 across the Estate.

The Applicants' case

20. The Applicants stated that they had been charged a sum of money for a job they didn't want and in respect of which they had specified why it was wrong. The Respondent had ignored them, carried out the work

and within a fortnight rust started and has continued ever since. They raised concerns that the April 2012 specification, was not going to last for 7 years, and they would have to continue to contribute to frequent works to address the problem.

21. They asserted that for an extra £250 each, they could have had a paint specification which the supplier would have offered a 15-20 year guarantee. That would have been a huge saving over time by avoiding the additional expenses that would be incurred when it became necessary to redo the works.
22. Further, the Applicants considered that the Respondent had previous experience of this issue with another development in Sovereign Harbour.
23. The Applicants provided a quote for work they considered was correct, which included removal of the metal work in order to have it grit blasted off site before painting. They considered that as NHBC were covering the cost of structural works at the time, it was possible to have these items removed and blasted and a proper painting specification followed. Their quote was for £22,680 (for all 17 flats in Anguilla Close) and was obtained in June 2014.

The Respondent's case

24. The Respondent accepted that they would not have gone ahead with the works if they knew then, what they know now. The Respondent justified their position on the grounds of the advice they had received and the cost savings. They stated that they could not have married their works with the NHBC works as those works had been sealed off. Therefore additional costs would have been incurred by removing the railings and balconies to have them blasted and in applying the plastic coating. Most importantly, they took expert advice from International Paints Limited, who at the time, stated that they did not need to go to those lengths. Therefore although they took on board what the

Applicants were saying, this was outweighed by the expert advice they received.

25. The Respondent also pointed out that the Applicants' original objections were not that the Works would instantly fail in respect of Anguilla Close, but that they would not last more than 5-10 years and that the February specification would ensure that the works would not have to be carried out again for a much longer time.
26. The Respondent also stated that they didn't use the more extensive specification, as the structural integrity of the railings and balconies was not considered to be as at risk as the main structure of the building which NHBC were dealing with. Shot blasting was not considered necessary for what was considered to be a more superficial corrosion issue on the rails and balconies; this could just be brushed off with wire and then the application of the paint as recommended by International Paints Limited.
27. The Respondent had looked into taking the railings and balconies down and arrived at a prohibitive figure of around £450,000 almost three times the amount of money to do the April specification.
28. There are 15 blocks left to have the works carried out; 90% have been carried out, all successful, apart from Anguilla Close. The work was stopped because of concern with rust, and a decision was made not to spend more money until the fault was discovered. So far, the reports show that the issue is not applicable to the other blocks. Four test panels have been mocked up and monitored. Once those test have been finished it seems likely that the Works will continue to the remaining blocks.
29. The Respondent now considers that it is likely that the galvanising failed for some reason on the railings and balconies for Anguilla Court.

Decision

30. This challenge is under section 19 of the 1985. The Tribunal has to consider whether the sums claimed were reasonably incurred and whether the work was to a reasonable standard.
31. Although the works now have failed, the consideration should be whether at the time the sums were incurred, it was reasonable to incur them. The Tribunal is conscious that the Applicants had pre-warned of issues that would arise if the Respondent commenced the Works in the manner proposed. However, the Respondent took professional advice from specialist paint manufacturers as well as from their surveyor. There is no doubt that they relied on that advice when carrying out the Work. It is difficult to see how they can be criticised for relying on that advice.
32. Although the Applicants' predications have materialised, that does not necessarily mean that the costs were not reasonably incurred. Firstly, the rust issues are not common to the whole development, it appears that the majority of the Works have been successful. Secondly, the Works have not yet completed and further works will be undertaken to address the issues at Anguilla Close. Thirdly, the Tribunal notes that the Applicants' original objection was based on durability in terms of years; there is a more drastic issue which has caused the rust to appear in a matter of weeks rather than years. This appears to be an underlying issue which neither party was aware of.
33. On this last point, the Applicants sought a higher specification so works would not have to be carried out so frequently. They therefore argued that the higher specification should have been adhered to all along. The Tribunal considers that it was reasonable for the Respondent to consider the lower specification. There is a certain latitude given to the Respondent in terms of the precise works that are carried out and its decision at the time was a reasonable one. The fact that there were underlying defects does not impact on the decision at this time.
34. In terms of the standard of work, the Tribunal's view is that the standard was reasonable. It was not the work of removing rust and

painting that gave rise to the problem, it was the underlying defects in the steelwork at Anguilla Close.

35. For those reasons, the Tribunal does not consider that the challenge succeeds.

Section 20C / Reimbursement

36. In light of the above conclusion, the Tribunal does not consider that an order under section 20C should be made or an order for reimbursement.

Conclusion

37. This is an odd case in that despite the Applicants raising issues which ostensibly and unfortunately turned out to be correct in relation to the Works, the Tribunal does not consider that their challenge succeeds.

A handwritten signature in black ink, appearing to read 'D. Dovar', with a long, sweeping flourish extending to the right.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.