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

Case Reference : **Lon/00AZ/LSC/2013/0447**

Property : **Flats 27A & 27C Bromley Road,
London SE6 2TS**

Applicant : **Mrs Arlette Atandjo Matumona
(formerly Otshudi – tenant)**

Representative : **In person**

Respondent : **(1)Mr Charles Gordon
(2)Ambassador Homes - landlord**

Representative : **(2)Mr Frimpong, counsel
instructed by Blue Trinity Legal**

Type of Application : **Liability to pay service charges**

Tribunal Members : **Judge Tagliavini
Mr K M Cartwright, JP FRICS
Mrs L L Hart**

**Date and venue of
Hearing** : **19 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **22 January 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of **nil** is payable by the Applicant in respect of the service charges for the years 2012/2013 as these sums have not been found to be reasonable or payable. The tribunal finds **no** service charges in respect of 2013/2014 have yet been demanded and are therefore not payable by the applicant until such time as proper and reasonable demands are sent.
- (2) The tribunal makes an order under section 20C, of the Landlord and Tenant Act 1985, if necessary, so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of the service charge years 2012/2013 and 2013/2014. There is a tribunal determination dated 9 May 2012 for the service charge years 2005 – 2011 (inclusive) finding that there are no sums payable by the applicant for this period.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and the second Respondent was represented by Mr Frimpong of counsel. The first respondent, Mr Charles Gordon took no part in this application as the tribunal accepted that he had disposed of his interest in the subject properties in 2011 to Ambassador Homes.

The background

4. The property which, is the subject of this application, is a house converted into five flats. Flat 27A is a three-bedroom two-bath property and Flat 27C is a one bedroom property.
5. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of each of the subject flats, which requires the landlord to provide services and the tenant to contribute

towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2012/2013 and 2013/14;
 - (ii) Whether the works carried out are within the landlord's obligations under the lease and whether the cost of those works are payable by the tenant under the terms of the lease;
 - (iii) Whether the costs are payable by reason of sections 20B and 21B of the 1985 Act;
 - (iv) Whether the costs of any works are reasonable, particularly in relation to the nature of the works, the contract price and the supervision and management fee.
8. Having heard evidence and submissions from the parties, including oral evidence from Ms Lindsey Quirke, property manager for Ambassador Homes (previously having worked for Mr Gordon in 2004) and now for Ambassador Homes from 2011. The tribunal also considered all of the documents provided, including the witness statement dated 4 September 2013, of John Kind, property manager of Refined UK who stated that "Refined UK was instructed to manage the subject property in 2005 by First Property Services the freeholder" the tribunal has made determinations on the various issues as follows.
9. The tribunal does not accept the accuracy of the purported actual costs as set out in the Service Charge Certificate for the period 6th April 2012-5th April 2013. The tribunal does not understand and has not been shown invoices that establish that any of the actual costs claimed have been properly or reasonably incurred for the reasons expanded upon below.

£820 for Flats 27A & 27C for the service charge year 2012/13

Reasons for the tribunal's decision

9. The tribunal is unclear how this sum has been calculated and was not assisted in reaching its determination by the respondent's evidence.

The tribunal finds that the service charges have, in any event not been properly demanded no section 47/48 notices pursuant to the Landlord and Tenant Act have been served and that any sums up to 31 March 2011 have already been subject to a determination by the First-tier tribunal (Leasehold Valuation Tribunal as previously known) who determined no sums were due from the applicant in respect of those years. Consequently, the tribunal is unable to determine how arrears of service charge in the sums claimed have accrued. On balance the tribunal finds that no sums are due under this head in the absence of any coherent explanation as to how they have been incurred.

Service charges in the sum of £350 for flats 27A & 27C for the service charge year 2012/13.

Reasons for the tribunal's decision

9. The tribunal determines that the applicant is entitled to a breakdown of how this sum is made up and that it is demanded in accordance with both the terms of the lease and statutory requirements. The tribunal determines until there has been compliance with these requirements and subject to the application of section 20B and 21B of the 1985 Act these sums are not payable by the applicant.

Building Insurance – 2012/13 for flats 27A & 27C

Reasons for the tribunal's decision

10. The tribunal finds that the applicant has on the face of it overcharged for this item. The respondent is required to furnish the applicant with a Schedule of Insurance in respect of the correct address (not No 37 Bromley Road as previously shown) and calculate her contributions in accordance with the terms of the lease. Once such steps are taken and a correct demand made the applicant is required to pay the reasonable sums due. Subject to the provisions of section 20B and 21B of the 1985 Act.

Management fee – 2012/13 – Flats 27A & 27C

Reasons for the tribunal's decision

11. The applicant accepts that the leases make provision for the collection of service charges and that the sum of £120 per flat is reasonable. However, the tribunal finds that any demands for payment have not met the statutory requirements and the respondent has not provided the applicant with audited and certified service charge accounts.

Further, the tribunal is not satisfied that any reasonable management of this property has been carried out in the subject service charge year. Therefore, the tribunal finds the sums claimed under this heading are not payable.

Accountant's fee – 2012/13 – flats 27A & 27C

Reasons for the tribunal's decision

11. In principle the applicant accepts that this fee is reasonable. However, the tribunal finds that this sum relates simply to a certification provided by the in house finance manager. The tribunal notes that the actual costs are not supported by any documentation or receipts and the tribunal doubts that the sums claimed could be in actual costs the round figures specified e.g. repairs £2,500 for 2012/13. Therefore, the tribunal finds these costs are unreasonable and are not payable by the applicant.

Internal redecoration – 2012/2013 – flats 27A & 27C

Reasons for the tribunal's decision

12. The respondent accepts that no section 20 consultation was carried out before the commencement of this works. The tribunal finds that these costs are therefore limited to £250 per flat. The tribunal further finds that the standard of the works as depicted in the photographs has been minimal and poor and therefore determines that no sums are payable in respect of this item.

Cost of reminder letters (£125) & solicitor's costs – 2012/13 – flats 27A & 27C

Reasons for the tribunal's decision

13. The tribunal finds that there is no provision in the lease for the recovery of legal costs and rejects the respondent's submission on this point that paragraph 18 of Schedule 5 provides for such recovery. Further the tribunal finds, that the respondent has insisted on sending correspondence to the subject property despite knowing the applicant's alternative correspondence address and as a consequence has incurred unnecessary and unreasonable costs.

Gardening and ground maintenance £600 – 2012/2013 – flats 27A & 27C

Reasons for the tribunal's decision

14. The tribunal does not accept the respondent's explanation as to how these costs have been incurred. The respondent was unable to produce any written contract in respect of these works and noted that gardening costs were billed annually. The tribunal also notes that the gardener purports to visit only once a month regardless of the season and there is no explanation given of the work carried out. The tribunal accepts the applicant's assertions that little work has been done by any gardeners and determines that the sums claimed are unreasonable and are not payable by the applicant.

Cleaning £1,200 – 2012/13 – flats 27A & 27C

Reasons for the tribunal's decision

15. The tribunal finds that the sum has not been satisfactorily explained by the respondent and is therefore considered not reasonable and is not due from the applicant. Again these fees appear to be claimed annually, there is no written contract and no explanation given of what cleaning is carried out or when. Although, the respondent has asserted that a new carpet has been installed in the communal parts of the premises, the tribunal is not satisfied that these costs have been reasonably incurred or for what service charge year.

Communal electricity – 2012/13 – flats 27A & 27C

Reasons for the tribunal's decision

16. The tribunal finds that the respondent has failed to demonstrate how this cost has been incurred in view of the very limited communal parts. Therefore in the absence on any communal electricity bills the tribunal finds no sums are due or payable by the applicant.

Roof works – October 2013 – flats 27A & 27C

17. The tribunal finds that although an initial notice was sent the section 20 consultation provisions have not been complied with. Further, the tribunal was not provided with evidence of the nature and extent of the works carried out or their satisfactory completion. Consequently, the

tribunal finds that the sums due are limited to £250 and in the absence of an explanation of these works that no sums are reasonably due from the applicant.

Service charges – 2013/14 – flats 27A & 27C

17. No sums for this service charge are payable until demands satisfy the statutory criteria and the lease terms. The respondent has conceded that no demands for this service charge year have been sent to the applicant.

17. In reaching its determinations the tribunal has preferred the evidence of the applicant to that of the respondent particularly as no clear explanation has been provided as to why the respondent has repeatedly refused to accept letters sent by certified post by the applicant, which query certain charges or purport to make ground rent payments. Further, the respondent's insistence on sending letters to the subject properties although it has been known to them that the applicant does not reside there and an alternative address has been provided, is not understood by the tribunal and serves only to provide a means to the respondent to claim increased costs.

Application under s.20C

9. In the application form the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that in all the circumstances, and even if the lease allows for the recovery of legal costs, it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Tagliavini

Date: 28 January 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.