11496

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

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| **Case Reference** | : | **CHI/43UF/LSC/2016/0052** |
| **Property** | : | **19, 19A & 19B Garlands Road, Redhill, Surrey, RH1 6NX** |
| **Applicants** | : | **(1) Max Cooper**<br>**(2) Nicola & Kay Williams**<br>**(3) James & Collyn Slade** |
| **Representative** | : | **Nicola Williams** |
| **Respondent** | : | **RG Securities (No.2) Ltd** |
| **Representative** | : | **Gateway Property Management** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay service charges** |
| **Tribunal Members** | : | **Judge I Mohabir**<br>**Mr R A Wilkey FRICS** |
| **Date and venue of Hearing** | : | **6 September 2016**<br>**Redhill & Reigate Law Courts** |
| **Date of Decision** | : | **8 November 2016** |

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**DECISION**

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***Introduction***

1. This is an application made jointly by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of estimated services charges for the year ending 24 December 2016.

2. The service charges in issue are the contribution of £4,326.33 demanded from each of the Applicants by the Respondent for proposed external redecorations and minor repairs to 19 Garlands Road, Redhill, Surrey, RH1 6NX ("the property").

3. The subject property is a house that has been converted into 3 self-contained flats. The Applicants are the long leaseholders of each flat, which they hold pursuant to leases variously granted. The Respondent is the present freeholder and is represented in these proceedings by its managing agent, Gateway Property Management Ltd ("Gateway").

4. It is common ground that under the terms of their leases the leaseholders have to each contribute one third of the total expenditure incurred by the lessor in carrying out its obligations under clause 5(5) of the leases. This includes the expenditure incurred in repairing, maintaining and redecorating the external and common parts of the property. Paragraph 1(3) of the Fifth Schedule of the leases requires the lessees to pay, if demanded, an interim service charge on account in advance in respect of each service charge year of a sum of not less than £500.

5. The Second Applicants had in fact completed their purchase of Flat 19B, being the First and Second Floor flat, on 27 October 2015. However, it seems that a Notice of Assignment was not served by the Second Applicants' solicitor on Gateway until 5 May 2016.

6. By a letter dated 23 November 2015, Gateway served a Notice of Intention on the lessees to carry out external and internal redecorations

and/or repairs and any roofing works to the property to commence statutory consultation under section 20 of the Act. This notice was served by Gateway on the previous lessee of Flat 19B, Mr Poulter, at the flat address but this was redirected to Mr Poulter's forwarding address. The Second Applicants also make mention of a second Notice of Intention being served on the lessees on 16 December 2015 in relation to the driveway at the property, which they also assert they did not receive.

6. On 14 January 2016 Gateway instructed Mr Conrad Graham Dip BS MRICS of Hann Graham Ltd, Chartered Surveyors, to prepare a specification of works for internal and external redecoration and roofing works at the property. He inspected the property on 11 February 2016 and prepared a specification of works, which was later subject to a tender process. The evidence he gives in his witness statement is that the overall external condition of the decoration of the property was fair save for the front elevation to either side of the steps leading down to the basement flat and recess. He noted that no defects were visible to the front and rear pitched roof or dormer windows.

7. By a letter dated 8 April 2016, Gateway served a Notice of Estimates on the lessees including the Second Applicants. It recommended that the lowest tender submitted by SAG Construction Ltd in the sum of £9,234 plus VAT be accepted. It was at this point in time that the Second Applicants assert that they first became aware of the proposed works.

8. Subsequent correspondence and communication took place between the Second Applicants and Gateway in which the former contended that because they had not been served with the Notice of Intention on 23 November 2015, the process was invalid and should be recommenced by Gateway. They also contended that the scope of the proposed works was excessive.

9. In the absence of agreement, the Applicants made this application to the Tribunal. The issues raised in the application are:

   (a) whether valid section 20 consultation had been carried out in relation to the Second Applicants.

   (b) whether the scope of the proposed works is reasonable.

***Relevant Law***

10. This is set out in the Schedule annexed hereto.

***Decision***

11. The Tribunal's determination took place on 6 September 2016 following an earlier external inspection of the front and rear of the property. Pursuant to the Tribunal's directions there was no oral hearing and the determination was based solely on the statements of case and documentary evidence filed and served by the parties.

***Section 20 Consultation***

12. The Second Applicants contend that they had not been served at all by Gateway with the Notice of Intention dated 23 November 2015 and, therefore, in so far as they are concerned, there has not been valid statutory consultation carried out by the Respondent under section 20 of the Act.

13. On behalf of the Respondent, Gateway contend that the Notice of Intention had been validly served on the previous lessee because a Notice of Assignment was not served by the Second Applicants' solicitors pursuant to clause 3(8) of their lease until 20 May 2016.

14. Paragraph 8(1)(a) of Part 2, Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2013 expressly requires a landlord to 'give' a Notice of Intention to carry out qualifying works to each tenant. It is common ground in this case that the

proposed works are qualifying works within the meaning of Regulation 6 because the Applicants are required to contribute more than £250 each for the works.

15. It is now settled law that the expression to 'give' in paragraph 8(1)(a) above effectively means to serve the correct tenant with the notice. Section 7 of the Interpretation Act 1978 provides that:

> *"Where an Act authorises or requires any document to be served by post...then, unless the contrary intention appears service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document..."*[1]

16. The service of a notice and service of a Deed of Assignment of a lease are often quite separate matters, especially if the lessee does not occupy the property concerned.

17. It is highly material to note that in the sales pack completed and sent to the Second Applicants' solicitors, the Respondent gives its address for service of notices as being *"c/o Pier Management Limited, 16/18 Warrior Square, Southend-on-Sea, Essex, SS1 2WS"*. It goes on to expressly state that Gateway Management Limited act as Managing Agent only in respect of this property. Moreover, in answer to the question in the sales pack *"Who accepts Notices and Charges?"* the reply was *"Pier Management Ltd on behalf of the Landlord. They will then forward a copy to (Gateway) in order for our records to be updated"*.

18. There is clear evidence in an e-mail from the Second Applicant's solicitor dated 25 January 2016 that she did serve Pier Management Ltd with a Notice of Transfer/Charge the day after completion on 28 October 2015, which was later acknowledged on behalf of the Respondent.

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[1] see paragraph 17 and 22 of *Akorita v 36 Genseng Road Ltd* (LRX/16/2008)

19. The Tribunal is, therefore satisfied that the Respondent had been correctly informed that the Second Applicants were the new owners of Flat 19B and the address of the flat was their usual or last known address. For whatever reason, it seems that this information was not passed on to Gateway and, in error, it served the Notice of Intention addressed to the previous lessee. It follows, the Tribunal finds that the Notice of Intention dated 23 November 2015 had not been correctly served in accordance with section 7 of the Interpretation Act 1978 and is, therefore, invalid. It also follows that unless the Respondent recommences that statutory consultation under section 20 of the Act or successfully obtains dispensation from the requirement to do so under section 20ZA, the maximum amount it can recover from the Second Applicants is £250 for the cost of the proposed works. In the light of this, the scope and cost of the proposed works may now be somewhat academic.

20. For the avoidance of doubt, the Tribunal finds that the alleged second Notice of Intention served by Gateway on 16 December 2015 in relation to the driveway is also invalid because this area is demised to the Second Applicants under the First Schedule of their lease and does not fall within the Respondent's repairing obligations. In any event, this point does not appear to be pursued by the Respondent.

***Scope of Works***

21. The Applicants generally challenge the scope of the proposed works. In particular, they challenge the need for and the estimated cost of repainting the front and rear elevations and the internal communal area and a provisional sum for roof repairs. For the avoidance of doubt, the Tribunal is not concerned with the reason why certain items of work are not included in the specification or why any monies in the reserve fund are not being applied to defray the estimated cost of the proposed works.

22. The specification of works prepared by Mr Graham and provided to the Tribunal is no more than generic in nature and does not specifically identify any items of works. Having regard to Mr Graham's evidence in his witness statement and with the benefit of having inspected the property, the Tribunal found it difficult to understand how the scope of works set out in the tender provided by SAG Construction Ltd could have been properly arrived at.

23. The Tribunal, therefore, accepted the submission that the general scope (and cost) of the proposed works was excessive and, therefore unreasonable. In the Tribunal's judgement, it would be unsafe to seek to apportion what items of cost set out in the SAG Construction Ltd tender could properly be said to be reasonable, as the resultant figure would almost inevitably be a matter of some speculation. In the alternative, the Tribunal found that both the scope and cost of the estimate prepared by the Applicants' contractor, James Sexton, dated 17 July 2016 to be reasonable.

***Section 20C & Fees***

24. Given that the Applicants have succeeded entirely in the application, the Tribunal considered that costs should "follow the event" and, therefore, it was just and equitable to make an order under section 20C of the Act that the Respondent is not entitled to recover any of the costs it had incurred in these proceedings through the service charge account.

15. For the same reason, the Tribunal orders the Respondent to reimburse the Second Applicants the issue fee of £125 for the application within 28 days of service of this decision.

Judge I Mohabir
8 November 2016

## 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 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).