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

**Case Reference** : CHI/29UL/LSC/2017/0015

**Property:** 5 Priory Gardens, Folkestone, CT20 1SW

**Applicants** : David Richardson (flat 1)  
Joan Hargreaves (flat 2)  
Chantal Brace (flat 3)  
Greg Algar (flat 6)

**Representative** : David Richardson

**Respondents** : Paul Ollerenshaw and Barry Bushell

**Representative** : Fell Reynolds

**Type of Application** : Determination of liability to pay and  
reasonableness of service charges under section  
27A of the Landlord and Tenant Act 1985

**Date of Application:** 16<sup>th</sup> January 2016

**Tribunal Members** : Judge S. Lal LLM

**Date of Consideration:** 10<sup>th</sup> July 2017

**Date of Decision** : Monday 17<sup>th</sup> July 2017

APPLICATION DETERMINED ON WRITTEN SUBMISSIONS

RULE 31 OF THE TRIBUNAL PROCEDURE (FIRST-TIER)  
TRIBUNAL)(PROPERTY CHAMBER) RULES 2013

**The application**

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (the 'Act') as to whether service charges are payable by the Applicants for charges demanded by the Respondent in 2015. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.

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2. The Tribunal made directions on 17<sup>th</sup> March 2017 indicating that the application would benefit from a telephone case management hearing. This took place on 27<sup>th</sup> April 2017. At this hearing, Mr Richardson confirmed that the dispute related to the construction of clauses 3 and 6 of the leases and the calculation of the service charges and whether the section 20 consultations had been properly carried out in respect of payments to the Cyril Orchard Group.

3. The parties have agreed that the application is now to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. The Tribunal has considered the bundle of documents provided by the parties in accordance with the Tribunal directions of 27<sup>th</sup> April 2017. The Tribunal will not repeat at length the detailed submissions therein but will summarise the respective arguments below.

### **The Applicants' case**

4. The Applicants are the tenants under long leases of the Property (the "Leases") and the Respondents are the landlords under such Leases.

5. The Applicants claim that it is unreasonable for the Respondents to require the Applicants to pay for the contract administrator services covered by invoice 3198/2 of 10/11/2014 from Cyril Orchard Group for a total sum excluding VAT of £4365 as part of the service charges for the year ending 24/03/2015.

6. The Applicants claim that the Respondents have incurred the above expenditure contrary to Clause 6 of the Lease and in breach of the consultation requirements under section 20 of the Landlord and Tenant Act 1985. The Applicants assert that under the provisions of Clause 6 of the Leases and section 20 of the Landlord and Tenant Act 1985, they should have been consulted prior to the engagement of the Cyril Orchard Group and given an opportunity to object to the expenditure.

7. The Applicants also note that the accounts produced in arrears of the year which the expenditure was incurred, show a global amount under each expenditure heading with no further detail given.

8. The Applicants further contend that the Cyril Orchard Group fees represent services that form an integral part of the qualifying works to the Property. They argue that these services serve no purpose on their own and involve the overseeing of the work which is to be carried out. The Applicants also note that the managing agents have charged the Cyril Orchard Group fees to the service fund under the heading "Repairs" which supports their argument that such fees are a part of maintenance and come within the provisions of clause 6 of the Leases.

## **The Respondents' Case**

9. The Respondents contend that it is reasonable for the sum of £4365 (excluding VAT) attributable to the contract administrator services of Cyril Orchard Group to be included in the service charge for the year ending 24/03/2015 and to be payable by the Applicants.

10. The Respondents submit that the professional fees of Cyril Orchard Group do not fall within Clause 6 of the Leases as they are not "maintenance" and, in any event, these amounts have not been disputed in writing by the Applicants as envisaged by that clause.

11. The Respondents further contend that section 20 of the Landlord and Tenant Act 1985 is not relevant as the professional fees of Cyril Orchard Group do not constitute "Qualifying Works" as defined in section 20ZA of the Act as they are not "works on a building or any other premises".

## **Decision**

12. This is a complicated case in which the parties do not appear to agree on anything. The Tribunal notes that the Property appears to be in some need of repair but the lack of agreement on which quote to go forward with, means they are at deadlock. This Decision, however, does not relate to the ongoing issues between the parties but only the matters that the Tribunal has jurisdiction to consider by virtue of the application.

13. This Decision relates purely to the question of whether it is reasonable under section 27A of the Landlord and Tenant Act 1985 for the Respondents to include the professional fees of Cyril Orchard Group in the service charge demand for the year ending 24/03/15 or whether it is unreasonable because the Respondents have not complied with clause 6 of the Leases and/or section 20 of the Landlord and Tenant Act 1985.

14. The Tribunal has considered the bundle of documents and the submissions of both parties in coming to its Decision. The Tribunal has also considered the terms of the Leases and section 20 of the Landlord and Tenant Act 1985.

15. The Tribunal has considered the terms of the Leases and in particular, clauses 3 and 6 and the second schedule. Clause 3 defines "maintenance" as ("being the estimated annual cost of doing the things (hereinafter comprehensively referred to as "maintenance") specified in the second schedule hereto. Examples in the Second Schedule would include employing caretakers, maintaining the property in good and substantial repair and keeping any common ground tidy and in good order.

16. Significantly the second schedule does not refer to the appointment of any consultant as being within the "maintenance" definition. The Tribunal therefore finds that the provisions of clause 6 will not apply in this case.

17. However the matter does not end there because the Tribunal noted that the law is not certain on the point and the prudent approach is to ensure that consultation is carried out for both professional fees as well as contractor's costs. This is derived from the case of **Marionette Ltd v Visible Information Packaged Systems Ltd [2002] ALL ER 377**. The Tribunal therefore imports a general duty to consult the Applicants rather than in any artificial distinction between what may constitute maintenance under the terms of the lease. This would be consistent with the statutory purpose for consultation to take place. The Tribunal notes that the Applicants have not provided any evidence to demonstrate that the professional services of Cyril Orchard Group are unreasonable other than disputing their liability to pay them.

17. The Tribunal therefore finds that the Respondents did have any obligation to consult with the Applicants under section 20 of the Landlord and Tenant Act 1985 as the professional fees of Cyril Orchard Group comes within the definition of "qualifying works" under section 20ZA of the Landlord and Tenant Act 1985. The Tribunal accepts the Applicants' argument on this point

18. It is for the above reasons that the Tribunal determines that the inclusion of the Cyril Orchard Group fees in the service charge demand for the year ending 24/03/2015 is limited to £250 per leaseholder.

19. Having regard to the guidance given by the Land Tribunal in the Tenants of **Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in their central argument that professional services come within the definition of matters that fall for inclusion in the consultation process.

20. 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. 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.

21. 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.

22. 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.

Judge S.Lal.....