

12305



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

**Case reference** : LON/00BE/LSC/2017/0186

**Property** : 47 St Saviour's Wharf Mill Street  
London SE1 2BE

**Applicant** : Giancarlo Iovino

**Representative** : -

**Respondent** : St Saviour's Wharf Company  
Limited

**Representative** : -

**Type of application** : For the determination of the  
liability to pay a service charge

**Tribunal members** : Professor Robert M. Abbey  
(Solicitor)  
Luis Jarero B.Sc FRICS (Surveyor)

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 10 July 2017

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the cost of repair renewal replacement and maintenance of the glass roof at the property is a service charge item within the terms of the lease of the property payable as a service charge by the lessees in the building and not just the lessee of the property.
- (2) The tribunal makes the determination as set out under the various headings in this Decision

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the liability for the payment of service charges in respect of the glass roof within the property.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The written decision**

3. The parties were content for the tribunal to decide this matter on paper without the cost of an oral hearing having supplied to the tribunal legal submissions from both parties along with supporting copy deeds documents and very helpful photographs of the glass roof.

### **The background**

4. The property which is the subject of this application is a flat within the Wharf building. There are 58 leases of which 50 are residential and 8 are commercial in nature. The property comprising number 47 is a residential property.
5. Photographs of the building were provided in the hearing bundle. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property 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. There was no dispute between the parties regarding the cost and necessity of the works to the glass roof and so the tribunal did not consider these aspects of the application.

## **The issues**

7. The parties identified the relevant issue for determination as follows:
  - (i) The payability of service charges for the repair renewal replacement and maintenance of the glass roof in the property.
8. Having read evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issue as follows.

## **Service charge item claimed and the decision**

9. The tribunal determines that the repair renewal replacement and maintenance of the glass roof in the property is a service charge item within the terms of the lease of the property (and all other leases in the building) payable as a service charge by the lessees in the building and not just the lessee of the property.

## **Reasons for the tribunal's decision**

10. In the lease of the property the building is defined as St Saviour's Wharf and the lease contains several other definitions including the common parts but there is no exact definition of the property in clause 1 with the other definitions. (In the prescribed clauses at the front of the lease the property is described as "Flat 47 on the sixth and seventh floors of the building known as St Saviours Wharf..."). Clause 2 of the lease contains a demise element that more closely sets out the extent of the property. The lease demise states that the property is:-

ALL THAT self contained apartment the position of which is shown edged red on the Plan annexed and more particularly specified in LR4 ("the premises"). The glass roof is over a conservatory area well within the red edging mentioned above.

Then clause 2.01 further defines the extent of the property by stating that this is "including... (b) the ceilings of the premises below the level of the bottom of the beams or joists immediately above,

(c) the floors above the level of the tops of the beams or joists immediately below,

(d) the interior faces including the plaster covering of all exterior walls of the Building enclosing the Premises and the glass and windows therein....

(g) any balcony outside of and forming part of the premises for its sole and exclusive use (but expressly excepting and excluding the main walls and structure of the building and the balcony (if any)).

11. The demise and definition is such that there is doubt as to the repairing liability for the glass roof. If it is a roof then under the lease terms it is repairable by the lessor as a service charge element. If it is a window it is the responsibility of the lessee of the property. The tribunal considered what might constitute "a window". The Cambridge Dictionary defines a window as "A space usually filled with glass in the wall of a building or in a vehicle, to allow light and air in and to allow people inside the building to see out." The Oxford Dictionary defines a window as "An opening in the wall or roof of a building or vehicle, fitted with glass in a frame to admit light or air and allow people to see out". The key element for this definition is the reference to an opening or space. On looking at the photographs it is clear that the structure in question is an expanse over a staircase and room rather than an opening in a wall or roof. It plainly has the appearance of a roofing structure and not a window. A reasonable interpretation of the photographs leads the tribunal to form the view that the structure is a roof and not a window. Indeed the glass roof abuts a non-glass flat roof and as such forms part of the total roofing structure at this point in the property.
12. On the assumption that the structure does form a glass roof, the lease provisions clearly make the maintenance etc of the structure the responsibility of the lessor who can then reclaim the cost as a service charge from all the lessees. Lease clause 6.01 is the landlords repairing covenant. The lessor is specifically required to repair and maintain the main structure of the building and this includes the roof thereof. There is a proviso that this liability excludes roofs included in the demise of the property. However, the tribunal is satisfied that the glass roof is specifically excluded from the demise as more particularly set out above in this decision. Furthermore the tribunal also considered the repairing covenant for the lessee, see 3.03 and 3.09. This does not make express reference to the conservatory roof. While there is an obligation to "paint and paper varnish colour grain and whitewash all the inside parts of the premises" there is no reference to external repair works that you would expect to see where the lease demised external structures such as the glass roof over the conservatory.
13. The respondent in its statement in response to the Applicant's case asked the tribunal to consider other issues arising out of the lease terms and skylights and patios. It is not possible for the tribunal to consider these issues as the remit of the tribunal is in regard to the matters directly raised with the application made by the lessee. Similarly it is not possible to consider the S.20 process raised by the respondent as this would have to be the subject of an applicator to the tribunal in that

regard while the application presently before the tribunal is in regard to s.27.

**Name:** Professor Robert M  
Abbey

**Date:** 10 July 2017

### Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### 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 the appropriate 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 the appropriate 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) the appropriate 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.

## **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 the appropriate 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 the appropriate 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).