



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

**Case Reference** : LON/00AF/LSC/2014/0066

**Property** : Gilbert House, 207 Anerley Road,  
London SE20 8ER

**Applicant** : Mr P C Benveniste (1)  
Ms H A Brown (2)

**Representative** : Circle Residential Management  
Limited (Managing Agents)  
Mrs E Ahmet (Flat 1)  
Illius Property Limited (Flat 5)

**Respondent** : Mr G Joseph (Flat 7)  
Evolution Trading (UK) Limited  
(Flat 9)

**Representative** : None

**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Mr Jeremy Donegan – Tribunal  
Judge  
Mr Andrew Lewicki FRICS –  
Professional Member  
Ms Jacqueline Hawkins - Lay  
Member

**Date and venue of  
Paper Determination** : 08 May 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 08 May 2014

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**DECISION**

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### **Decisions of the tribunal**

The tribunal determines that if the Applicants undertake the external refurbishment works to the property detailed in the specification for works to be found at pages 65-71 of the hearing bundle (“the Works”):

- (a) The Respondents will each be liable to pay a service charge for the cost of the Works;
- (b) The Respondents will each be liable to contribute to the budgeted cost of the Works, in the total sum of £12,750 (subject to a contingency of £2,500), in the proportions specified in their respective leases; and
- (c) The service charge contributions referred to at paragraph (b) above will be payable to the Applicants.

### **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 amount of service charges payable by each of the Respondents for the Works.
2. The tribunal received the application on 07 February 2014.
3. Directions were issued at an oral case management hearing on 27 February 2014, which was attended by Ms Walpole of the managing agents (“Circle”). There was no appearance by the Respondents.
4. The directions provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties have objected to this or requested an oral hearing. The paper determination took place on 08 May 2014.
5. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

6. The property which is the subject of this application is Gilbert House, 207 Annerley Road, London SE20 8ER, which is a purpose built block of 10 flats. The tribunal did not consider that an inspection of the property was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicants are the joint freeholders of the property. The Respondents are the leaseholders of four of the flats within the

property. The leases require the Applicants to provide services and the Respondents to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

8. The Applicants wish to undertake the Works and seek a prospective determination pursuant to section 27A (3) of the Landlord and Tenant Act 1985. The leaseholders of six of the flats at the property have agreed to the Works and the anticipated cost of the Works. The Respondents have not commented upon the Works, despite being invited to do so by Circle.
9. Paragraph 2 of the directions included provision that if any of the Respondents objected to the application then they should provide full reasons for their objections, with any alternative quotations and other supporting documents, by 28 March 2014. None of the Respondents have objected to the application.

### **The issues**

10. The sole issue to be determined is whether a service charge would be payable by the Respondents for the cost of the Works, if incurred.
11. The Applicants provided the tribunal with a hearing bundle in accordance with the directions. This contained copies of the application and directions, their statement of case, a sample lease, the specification of works and tenders, consultation notices and various additional documents.
12. The tribunal has determined the application based upon the documents contained in the bundle.

### **The lease**

13. The bundle included a copy of the lease for Flat 1 Gilbert House. The tribunal assume that all of the leases are in identical form. The lease was granted by Stonecourt Limited ("the Lessor") to Michael John Perry ("the Lessee") on 24 November 2006 for a term of 125 years from 01 March 2005.
14. The Maintenance Expenses are defined in the sixth schedule to the lease and include:

*6. Redecorating the external parts of the Building including all doors door frames windows and window frames and carrying out remedial work in the structure of the Building so often as in the opinion of the Lessor is reasonably necessary*

15. Clause 7 of the seventh schedule to the lease states:

*The Lessee shall pay to the Lessor the Lessee's Proportion of the Maintenance Expenses in manner following that is to say:*

*7.1 In advance on the 1<sup>st</sup> day of February and 1<sup>st</sup> day of August in every year throughout the Term one half of the Lessee's Proportion of the amount estimated from time to time by the Lessor or its managing agents as the maintenance expenses for the year the first payment to be apportioned (if necessary) from the date hereof*

*7.2 Within twenty one (21) days after service by the Lessor on the Lessee of a certificate in accordance with Paragraph 6 of this Schedule for the period in question the Lessee shall pay to the Lessor the balance by which the Lessee's Proportion received by the Lessor from the Lessee pursuant to sub-paragraph 7.1 of this Schedule falls short of the Lessee's Proportion payable to the Lessor as certified by the said certificate during the said period and any overpayment by the Lessee shall be credited against future payments due from the Lessee to the Lessor*

### **The Applicants' evidence**

16. Mr Martin Paine of Circle produced a helpful statement of case on behalf of the Applicants, which set out the grounds of their application in some detail. They rely on a specification that was prepared by the First Applicant and tenders obtained from Haywood Property Services ("Haywood") and Complete Property Services ("Complete").
17. The tender from Haywood was for £12,750 including VAT and a contingency of £2,500. The tender from Complete was for £19,130.40 including VAT and the £2,500 contingency.
18. Circle served a Notice of Intention to Carry Out Work on the leaseholders on 27 April 2012. They then served a Statement of Statement of Estimates and accompanying Notice on the leaseholders on 13 August 2013.
19. Having considered all of the documents provided, the tribunal has made the determination set out below.

### **The tribunal's decision**

20. The tribunal determines that the scope and budgeted cost of the Works, if undertaken, will be reasonably incurred. It follows that the Respondents will each be liable to contribute to the cost of the Works in the proportions specified in their leases.

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

21. The tribunal has no knowledge of the condition of the property but rely on the specification from the First Applicant, who is a Fellow of the Royal Institution of Chartered Surveyors, as evidence that the Works are necessary and that the scope of the Works is reasonable.
22. Circle has obtained two tenders for the cost of the Works and served consultation notices on the leaseholders. The Applicants wish to proceed with the lowest tender from Haywood and the tribunal is satisfied that the amount of this tender is reasonable.
23. The anticipated cost of the Work is recoverable from the Respondents, as service charges, under the terms of their leases.
24. It may be that the actual cost of the Works will be less than £12,750, if the contingency is not used or is only used in part.
25. Nothing in this decision prevents the leaseholders from seeking a determination of the actual cost of the Works, once completed, if they have any reservations about the quality of the work undertaken, the use of the contingency or any variation to the scope of the Works.

**Name:** Jeremy Donegan

**Date:** 08 May 2014

## **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.