



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

Case Reference : LON/00AX/LSC/2014/0169

Property : Flat B, 43 St James Road, Surbiton,
Surrey, KT6 4QN

Applicant : Ian Humberstone Limited

Respondent : Philip Mark Bazin and Georgia
Bazin

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

Tribunal Members : Judge Daley
Mr P Tobin FRICS

**Date and venue of
Paper determination** : *21 May 2014 at 10 Alfred Place,
London WC1E 7LR*

Date of Decision : 21.05.2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determination under paragraphs 20-30 of as set out under the various headings in this Decision
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 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.27 (3)A of the Landlord and Tenant Act 1985 ("the 1985 Act"). In respect of the proposed major works for periodic external repair and redecoration of the exterior of 43 St James Road.
2. Directions were given by the Tribunal 31 March 2014 where the following issues were identified from the Application to be determined:
:

The Application form states that the Applicant landlord proposes to carry out major works and to have consulted lessees as required by section 20 of the Act.. The Applicant seeks a determination that some components of the project are sums which, if incurred, would be reasonable in amount and a determination that if the works are carried out the contribution of the Respondent will be payable, the Applicant having complied with section 20 of the Act.

2. Subsequent to the Directions the Respondent stated his grounds of objection to the scheme of work at point 5 He concedes issues on section 20 stating "*The works are needing to be done & nothing will be gained in respect of analysing this aspect any further...*" At point 6 of his letter to the Tribunal stated that-: "*The only issue of relevance is that relating to the appointment of a surveyor to supervise the works and the proposed surveyors management fees ...given that-: (a) I do not recall being approached regarding any selection or nomination of surveyor, contrary to the comments made by the Landlord via their agent...*" The Tribunal consider that point 6 of the Respondent's letter raises issues as to whether the Applicant consulted in respect of the appointment of the surveyor to supervise the works and the proposed surveyors fees of 13.5% + VAT of the total cost

3. The relevant legal provisions are set out in the Appendix to this decision.

The background

8. The property which is the subject of this application is described as -: *“a large Edwardian style semi detached house arranged over 4 floors and divided into 5 flats sold on long leases...”*
9. The Respondent holds a long lease of the property pursuant to a lease dated 17 January 1985, which was subsequently assigned to the Respondent. The lease 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 will be referred to below, where appropriate.
10. On 23.3.2013 the Applicant sent to the leaseholders a letter dated 23.3.13 which set out that they were in a position to progress the consultation on the exterior repair and decoration of the building, and that they had appointed Shaw & Company to draw up a specification for external works. The letter stated that formal notification was being provided of the major works, and that the leaseholders could comment both on the scope of the work and nominate a contractor. This letter made arrangements for a copy of the specification to be inspected.
11. On 12 May 2013 a further letter was sent to the leaseholders in which Mr Humberstone of Ian Humberstone Limited set out the details of four contractors, and inviting the leaseholders to nominate a contractor. This was followed by a letter on 25.5.2013 setting out the contractors' estimates for the proposed major work. At point 6 of their letter they noted that *“...We did not receive within the consultation period any written observations... I did however respond to emails from two leaseholders and clarified the scope of the works, and accepted their recommendations on some points which I summarized below...iii. I had comments on the low standard of service previously provided by Shaw & Co. Although this falls outside the consultation on this contract I shall be making sure they perform to their contract with me...”*
12. On 30 June 2013 the Applicant wrote to the Leaseholders informing them that due to admin errors (made by Shaw and company) he would have to re-start the consultation
13. On 5.08.2013 the Applicant indicated that five quotations had been received ranging in price from Bagnalls at £39141.27 plus VAT and SR Building at £23400 (who from the information before this tribunal did

not appear to be VAT Registered). Mr Ian Humberstone proposed to accept the lowest tender.

14. On 14 September 2013 Mr Humberstone indicated his intention to proceed with the quote from SR Building.
15. On 6 February 2014 Mr Bazin wrote indicating that he had not received a service charge demand and setting out that he had some objections to the cost of the work, including the surveyors fees, stating that from the outset he had always challenged the surveyors fees, and indicating that the Applicant had failed to obtain any quotes. The Applicant provided three letters sent to various surveyors on 11.11 12 asking them to tender for the work, and in his reply to the Respondent dated 7 February 2014 he stated that one company quoted the same percentage and another suggested that the figure of 13% would only apply to schemes of work over £100,000.
16. In his statement of reply Mr Bazin conceded that the consultation for the award of the major works contract was section 20 compliant however he did not concede this in respect of the surveyor's fees. Stating that he did not recall being approached regarding any selection or nomination of the surveyor.
17. On 12 April 2013 Mr Bazin obtained a quote from a local firm Wallakers surveyors indicating that they were prepared to supervise the contract for major works for a fee of 10% plus VAT on the net contract sum.
18. The Applicant did not include this firm of surveyors in the further consultation carried out as a result of the error that had occurred and had resulted in further consultation after 30 June 2013.

The Decision of the Tribunal

20. The Tribunal noted that this was an application under section 27 (3) concerning the proposed external redecoration work yet to be carried out at the premises, and that it was a "protective" application in that the Landlord wished for a determination prior to the cost being incurred.
22. Mr Bazin on the Respondent's behalf had conceded that the work needed to be carried out, and that the only issue was the reasonableness of the proposed fee to be charged by Shaw and Company. The Tribunal

noted that although the Respondent's conceded section 20, this concession did not go to the cost of supervision of the work which was due to be carried out by the surveyor on the major works contract. There was therefore an issue as to whether the Applicant had properly consulted on this aspect of the work the cost of which was within the consultation threshold.

23. The Tribunal had seen no evidence of any consultation on the cost of supervision. The Tribunal noted that the Applicant had tried to obtain three estimates there is no evidence that he subsequently consulted on the use of Shaw and Co. The Tribunal also noted that by the time the letter dated 30 June 2013, was sent out to the leaseholders indicating that the consultation process was being restarted, the Applicant was in possession of the email correspondence setting out a proposed nominated contractor. This was however not considered as part of the re-opened consultation. The Tribunal consider that as the proposed alternative firm Wallakers (Surveyors) had put in a lower price, and there was evidence from the correspondence that there may have been issues with work previously undertaken by Shaw & Company, that the Applicant ought to have consulted on the use of an alternative surveyor.
25. As the Applicant failed to consult on this issue, the Tribunal cannot conclude that the cost of the work for supervising the major works contract would be reasonably incurred in the circumstances set out in the Applicant's application.

Application under s.20C and refund of fees

31. The Tribunal made an order, under the provisions of Section 20C of the Landlord and Tenant Act 1985. On the grounds that this matter has been determined in the Respondent's favour. The Tribunal therefore makes an order under Section 20 C as this is considered just and reasonable in all the circumstances.
- 34.

Judge Daley (Chair) 21.05.2014

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 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).