



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

Case Reference : **LON/00BH/LSC/2014/0192**

Property : **607-627 Station Parade, High Road,
Leyton, London E10 6RF**

Applicant : **Mr Mohammad Sadiq**

Representative : **Miss Monika Derveni (Solicitor)**

Respondent : **The leaseholders of the 22 Flats at
the Property**

Representative : **Mr G Kadri (Flat 607A) in person
No appearance for the other
Respondents**

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 Michael Mathews FRICS –
Professional Member
Ms Susan Wilby – Lay Member**

**Date and venue of
Hearing** : **22 September 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **12 October 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £15,921.41 per flat is payable by the Respondents in respect of interim (advance) service charges for planned major works (“the Works”) at 607-627 Station Parade, High Road, Leyton, London E10 6RF (“the Building”) for the year ending 30 March 2015.
- (2) The sum of £15,921.41 per flat will become due upon the Applicant serving revised service charge demands on the Respondents in accordance with paragraph 31 of this decision.
- (3) This decision applies to all flats at the Building apart from Flat 607A, which is dealt with separately in a consent order dated 22 September 2014. The tribunal makes no decision in relation to the potential counterclaim advanced by the lessee of Flat 607A, Mr Kadri.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondents in respect of the service charge year ending on 30 March 2015. The application relates solely to advance contributions to the Works. Applications for payment were issued to the Respondents by the Applicant’s managing agents, Hexagon Property Co Ltd (“Hexagon”) on 10 December 2013.
2. The application was dated 19 March 2014 and directions were issued following a case management conference on 20 May 2014, which was attended by Mr Kadri who is the leaseholder of Flat 607A. None of the other Respondents attended the case management conference or contested the application.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The application was listed for a full hearing on 22 and 23 September 2014. Miss Derveni appeared at the hearing on behalf of the Applicant. Mr Kadri appeared in person.
5. The tribunal heard evidence from Mr Safraz Ali and Miss Zainab Altaf of Hexagon, on behalf of the Applicant, and from Mr Kadri. During the course of the evidence it emerged that Mr Kadri did not dispute the section 20 consultation procedure or the scope of the Works. To the

contrary Mr Kadri is eager for the Works to proceed but contends that the Applicant has breached his lease by neglecting the Building, which gives rise to a potential counterclaim.

6. The tribunal informed Mr Kadri that it could only deal with a counterclaim by way of a set off against the Applicant's service charge claim and that the maximum sum it could award would be capped to the interim service charges demanded for his flat (£15,921.41). In the light of this information Mr Kadri stated that he did not want the tribunal to determine the counterclaim. Rather he may wish to pursue this in the County Court.
7. Having heard the evidence and clarified the issues, the tribunal invited those present to try and agree settlement terms. The Applicant and Mr Kadri agreed terms during the afternoon of 22 September, which were then embodied in a consent order that was approved by the tribunal. The consent order relates solely to the interim service charges for Flat 607A and does not cover the Mr Kadri's counterclaim. The consent order only applies to Mr Kadri and it is therefore necessary for the tribunal to determine the application insofar as it relates to the other Respondents.
8. Given that the Applicant and Mr Kadri agreed settlement terms there is no need to recite his evidence or the grounds for disputing the interim service charge for his flat.

The background

9. The Building is a mixed use property with commercial units on the ground floor and 22 residential flats over the first and second floors. The Applicant is the freeholder of the Building and the Respondents are the leaseholders of the 22 flats. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues to be determined.
10. The Respondents each hold a long lease of their respective flats. This requires the Applicant to provide services and the Respondents 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.

The issues

11. The sole issue to be determined is whether the Respondents are liable to pay the advance contributions for the Works, as interim service charges.

12. The Applicant produced a hearing bundle in accordance with the directions that included copies of the application, directions, a sample lease, witness statements, a condition report, a specification of works, consultation notices, other relevant correspondence and documents and the interim service charge demands.

The lease

13. The hearing bundle contained a copy of the lease for Flat 607A, which was made between DWG Estates Limited ("the Lessors") Station Parade Management Company Limited ("the Company") and Julian Philip Bazley ("the Lessee") on 23 May 1986. The lease is for a term of 99 years from 25 December 1985.

14. By clause 3(d) of the lease the Lessee covenanted:

To pay to the Company from time to time on demand as a contribution towards the costs charge expenses and management fees from time to time incurred by the Company in carrying out its obligations under the Fifth Schedule hereto (hereinafter called "the Maintenance Charges") the part of the Maintenance Charges apportioned in respect of the flat (being the percentage thereof specified in Part 5 of the First Schedule hereto) and FURTHER on the thirty first of March of every year to pay in advance on account of the Company's liabilities under this clause the sum of Seventy Five Pounds (£75) (hereinafter called "the Interim Maintenance Charge") the first payment to be made on the execution hereof the said Maintenance Charges for each year shall be estimated by the Company or its Managing Agents (whose decision shall be final) as soon as practicable after the beginning of each Maintenance year which Maintenance Year shall commence on the third first of March of every year (or such other date as the Company may from time to time in its discretion decide) and as soon as the actual amount of the Maintenance Charges is known the Lessees shall pay the balance due to the Company or be credited to the Company's books with any amount overpaid

15. The percentage specified in part 5 of the first schedule to the lease is 4.545%, which equates to 1/22nd.
16. The tribunal queried if the effect of clause 3(d) of the lease was to fix the interim service charge at £75 per annum. Ms Derveni contends that the use of the words "*..the said Maintenance Charges for each year shall be estimated by the Company or its Managing Agents (whose decision shall be final) as soon as practicable after the beginning of each Maintenance Year..*" demonstrates that the interim charge is variable. She also referred the tribunal to the Company's maintenance and repair obligations at paragraph 1 of the fifth schedule to the lease, which are said to be conditional upon "*..the due performance by the Lessee of his obligations to contribute to the maintenance charges as*

herein provided..”. Ms Derveni also pointed out that the Applicant would be unable to comply with its various obligations under the lease if the interim charges were fixed at only £75 per annum.

17. Clause 6(b) of the lease provides:

If during the term hereby granted the Company shall go into liquidation or fail to observe and perform its obligations hereunder the Lessors shall be entitled upon giving notice to the Lessee to undertake the obligations hereby undertaken by the Company and if the Lessors elect so to do the Lessors shall be entitled to the benefit of all provisions herein contained concerning the Company and to recover from the Lessee all monies hereby agreed to be paid by the Lessee to the Company

18. The tribunal also queried why the service charges had been demanded by the Applicant rather than the Company. After taking instructions, Ms Derveni advised the tribunal that the Company no longer existed and that the Applicant had demanded service charges throughout the period that it had owned the freehold of the Building. The Applicant’s understanding is that notice had been given to the Lessees in accordance with clause 6(b) of the lease, prior to its acquisition of the freehold.
19. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

Interim service charges for the year ending 30 March 2015

20. The advance contributions demanded for the Works amount to £15,921.41 per flat. The contributions were demanded in the applications for payment issued by Hexagon on 10 December 2013. The applications incorrectly state that the contributions relate to the period 31 March 2013 to 30 March 2014 and that payment fell due on 14 January 2014. Ms Derveni advised the tribunal that the contributions actually relate to the period 31 March 2014 to 30 March 2015 and that payment fell due on 31 March 2014.
21. The hearing bundle contained witness statements from Mr Ali and Miss Altaf, commenting on the management problems at the Building and the Works. They both spoke to their statements when giving oral evidence and answered questions from Mr Kadri and the tribunal regarding the Works.

22. The tribunal does not intend to recite the contents of the statements, which are there for the parties to read. In brief Hexagon obtained a condition report from David Cunningham Associates, Chartered Building Surveyors, in September 2012. This identified the need for the Works. Hexagon subsequently instructed SM Surveyors to prepare a specification before serving Notices of Intention on the Respondents on 21 March 2013. There were no responses to the Notices and Hexagon then obtained tenders for the Works, before instructing SM Surveyors to produce a tender report. Statements of Estimates were sent to the Respondents on 06 November 2013. Again there were no responses. The lowest tender was from S&A Builders in the sum of £252,225.40, excluding VAT, who were selected to undertake the Works. Hexagon then sent Notice of Reasons for Awarding a Contract to the Respondents on 10 December 2013. The applications for payment accompanied the Notice. The sum demanded for each flat was £15,921.42, which is broken down as follows:

S&A Builders	£252,225.40
VAT	£50,445.08
Subtotal	£302,670.48
15% Project Management Fee	£45,400.57
Section 20 Consultation Fee	£2,200.00
Total	£350,271.05
Sum demanded (1/22nd of Total)	£15,921.41

23. Mr Ali explained that a project management fee of 15% of the contract price had been agreed with SM Surveyors. This only becomes payable upon completion of the Works, with no advance payments to the surveyors. Mr Ali argued that the fee is reasonable, given the complex nature of the Works and the favourable payment terms agreed..
24. Mr Ali also stated that the Works are due to be undertaken by 30 March 2015, being the end of the current financial year. He explained that there were service charge arrears for a number of Flats at the Building, which were slowly being reduced.

The tribunal's decision

25. The tribunal allows the contributions to the Works in full upon the basis that the interim service charges became due on 31 March 2014,

rather than the date stated in the applications for payment (14 January 2014)

Reasons for the tribunal's decision

26. With the exception of Mr Kadri, none of the Respondents has contested the application or challenged their liability to contribute to the Works.
27. Having regard to the condition report from David Cunningham Associates, the tribunal is satisfied that all of the Works are reasonable and fall within the maintenance and repairing obligations in the lease. The Works are needed to put the Building back into repair and will benefit all of the Respondents.
28. None of the Respondents has responded to the section 20 consultation notices and there has been no challenge to the consultation procedure or the scope of the Works. The tenders have been analysed by independent surveyors and the lowest tender has been selected. The tribunal is satisfied that the anticipated cost of the Works is reasonable, upon the basis that the Works are completed in full and to a reasonable standard.
29. The project manager's fees are at the top end of the normal range of 10-15% of the contract price but are reasonable given the nature of the Works and the payment terms agreed by the surveyors.
30. The tribunal carefully considered the wording of clause 3(d) of the lease, which is far from clear. On the one hand it refers to a fixed sum of £75 being payable in advance on 31 March in each year yet it also refers to the Company, or the managing agents, estimating the charge at the start of each service charge year. There appears to have been an error in the drafting of clause 3(d) and the parties may wish to consider an application to vary the service charge provisions in leases under sections 35 or 37 of the Landlord and Tenant Act 1987.
31. When construing clause 3(d) the tribunal bore in mind that none of the Respondents have argued that the interim service charges are fixed at £75 per annum. Further a fixed charge of this sum is unworkably low. The tribunal concluded that it cannot have been the intention of the parties that the interim charge would be fixed at £75 per annum for the entire duration of the leases. Rather the intention must have been that the Lessees would pay £75 or such increased sum as may be estimated by the Company or the managing agents. In this case the increased sum estimated by Hexagon was £15,921.41 per flat and the tribunal is satisfied that this sum is reasonable.
32. The tribunal accepts that notice must have been given to the Lessees in accordance with clause 6(b) of the lease, prior to the Applicant's

acquisition of the freehold. It follows that the Applicant is entitled to demand and collect the service charges for the various flats at the Building.

33. The applications for payment issued by Hexagon on 10 December 2013 incorrectly state that the service charge period is 31 March 2013 to 30 March 2014 and the due date is 14 January 2014. The Applicant should serve revised demands on Respondent showing the service charge period to be 31 March 2014 to 30 March 2015 and the due date as 31 March 2014. Upon service of the revised demands, the Respondents will each become liable to pay their advance contributions to the Works.
34. This decision relates solely to the advance contributions to the Works for the year ending 30 March 2015. It does not prevent any of the Respondents (including Mr Kadri) from seeking a determination of the actual cost of the Works, once completed, should they wish to do so.

Section 20C

35. At the end of the hearing, Ms Derveni explained that the Applicant would be seeking to recover its costs of these proceedings, including fees paid to the tribunal, from the service charge account for the Building.
36. At the case management conference Mr Kadri made an application for an order under section 20C of the 1985 Act, which (if granted) would prevent the Applicant from passing any of its costs through the service charge. That application was withdrawn as part of the consent order. None of the other Respondents applied for a section 20C order. Accordingly there was no application for such an order before the tribunal, by the time it made its decision.

Name: Jeremy Donegan

Date: 12 October 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.

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 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.