9676

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOCG/LSC/2013/0082**
Property	:	**Apartments 8 & 18 Greenmoor Heights, 12 Edward Street, Stocksbridge, Sheffield S36 1BJ**
Applicant	:	**Mr G. Campbell**
Representative	:	**In person**
Respondent	:	**Sinclair Gardens Investments**
Representative	:	**Mr Wijey Aratne (Counsel)** **Mr Mark Kelly of Hurst Managements Ltd**
Type of Application	:	**Sections 27A (and 19) Landlord and Tenant Act 1985 – Service charges**
Tribunal Members	:	**Mrs J. E. Oliver** **Mr M. Bennett** **Mrs M. Oates**
Date of Determination	:	**8th November 2013 & 10th February 2014**
Date of Decision	:	**10th February 2014**

DECISION

Decision

1. The charges made for the repairs to the roof at the Properties are reasonable.

2. The management charges relating to the scheme of work in the sum of £6360 plus VAT are unreasonable and are reduced to £3160 plus VAT.

3. No order is made pursuant to section 20C of the Act.

Reasons

Introduction

4. This is an application by Gary Campbell (the Applicant) for a determination of his liability to pay and the reasonableness of service charges relating to Apartments 8 & 18 Greenmoor Heights 12 Edward Street, Stocksbridge` Sheffield (the Properties) pursuant to Section 27A and Section 19 of the Landlord and Tenant Act 1895 (the Act).

5. The Respondent to the application is Sinclair Gardens Investments who are represented by Hurst Managements, the company appointed to manage the development at 12 Edward Street that comprises of 25 apartments.

6. The items in dispute are the charge for major building works for the year ending 13th February 2103, together with the management charges for the same item of work. The major work was repairs to the roof at the development.

7. On 19th June 2013 directions were issued providing for the filing of statements and bundles and a hearing was subsequently fixed for 8th November 2013.

8. At the hearing directions were given for the filing of further evidence and a determination was made thereafter on 10th February 2014.

Inspection

9. The Tribunal undertook an external inspection of the roof at the development in the presence of both the parties. The Tribunal was able to look at the roof both from ground level and also, by walking up a nearby lane, from an elevated position.

10. The Tribunal noted that despite the repairs undertaken to the roof some of the tiles had slipped.

The Lease

11. The Leases relating to the Properties are dated 28th March 2008 and 23rd June 2008 respectively. The Lease for Apartment 8 is made between Campbell Homes Limited (1) the Applicant and Sylvia Campbell (2) and the Lease relating to Apartment 18 is made between Campbell Homes Limited (1) and the Applicant (2). The terms of the Leases are identical.

12. Campbell Homes Limited subsequently sold the freehold reversion of the development to the Respondent, Sinclair Garden Investments in August 2010.

13. The Leases provide that for each of the Properties the Lessee is liable to pay 4% of the Service Cost which is defined as:

> "Service Cost means the amount the Landlord spends in carrying out all the obligations imposed by this lease (other than the covenant for quiet enjoyment) and not reimbursed in any other way including the cost of borrowing money for that purpose"

14. The Lease provides for the Lessee to pay the Service Charge in accordance with the provisions of the Third Schedule. Thereafter the Landlord is obliged to provide the services contained within the Fifth Schedule which includes:

> "1. Repairing the roof outside main structures and foundations of the Building"

The Law

17.

(1) Section 27A(1) of the 1985 Act provides:

> *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.*

18. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

19. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

20. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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 provision 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.

21. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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*

The Issues

22. The application is to determine the following issues:

(1) Whether the charges made for the repairs to the roof at the development are reasonable;

(2) Whether the management charges relating to the scheme of work are reasonable;

(3) Whether an order pursuant to section 20C of the Act should be made.

The Hearing

23. At the hearing the Applicant was accompanied by Russell Taylor and Sandra Richards. Mr Wijey Avante (Counsel) and Mark Kelly of Hurst Managements represented the Respondent.

24. The history of the events, giving rise to the application, was broadly agreed by the parties. The development was built by the Applicant's company Campbell Homes Ltd. The Applicant had purchased and retained the Properties. Once completed, the development did not have an NHBC agreement but an insurance policy had been taken out with Premier Guarantee. This guarantee covered the development, insofar as the roof was concerned, for a period of ten years.

25. Whilst still in the ownership of Campbell Homes Ltd and prior to the Respondent acquiring the freehold reversion repairs had been undertaken to the roof by an independent contractor. It was stated that the development is such that it is likely to suffer damage due to high winds.

26. In 2010, after their acquisition of the freehold, the Respondent was advised that further damage had occurred to the roof including slipped and broken slates. The Respondent wrote to Campbell Homes Ltd asking them to undertake the necessary repairs given the development was, then, only three years old. There was a lengthy period of further correspondence but no agreement was reached for any remedial work to be done by Campbell Homes Ltd.

27. The Respondent then contacted the company that had previously undertaken remedial work, Cortac Limited, seeking a quote for any necessary work. Cortac Ltd issued a quote for remedial work in May 2011, in the sum of £16080 but further stated that this would only provide a short term remedy stating further:

"However, upon inspection we feel that it is important to inform you that the completion of remedial works on this property can only be a short term measure as the seriously poor workmanship that we have observed will result in further repairs being required at a later date, possibly on a number of occasions. The roof slates are unsafe because they have been secured with the wrong size nails, the mortar is disintegrating due to the wrong mix being used and the gutter clips are snapping, therefore making the gutter unstable.

We have had to make numerous repairs to this property for Campbell Homes due to these issues and consequently we cannot guarantee the remedial works that we complete. In our professional opinion, the roof needs to be stripped and re-slated in order to rectify these problems"

28. After further delays and correspondence the Respondent made a claim against the insurance policy held with Premier Guarantee who commissioned an engineer's report. This confirmed the need for the roof on the development to be stripped and re-covered. Premier Guarantee's insurance company, MD Insurance, notified the Respondent that they would pay for the cost of the necessary work subject to each Lessee paying an excess of £1000, in the total sum of £25000.

29. The Respondent commenced the consultation process pursuant to section 20 of the Act and obtained four quotes for the remedial work.

30. It was acknowledged by the Applicant that he had not responded to the correspondence sent in relation to the section 20 and thus had not formally objected to the quotes provided.

31. MD Insurance accepted the quote given by KR Roofing. This was in two parts:

"Quote A

Strip out existing slate, store any reusable slate for salvage (not sure if these can be resold)

Strip existing felt, baton lower to ground and remove from site

Supply and fix breathable membrane throughout roof areas secured with 25x38 treated timber baton set out to accept 600x300 artificial slate

Supply and fix 600x300 black cement fibre artificial slate fixed with two copper nails and secured at base with one copper rivet

All verges to have cement fibre undercloak and mortar verge finish

Supply and fix angle ridge to match slate

To the sum of £53280.00 (excl of VAT)

Quote B

Strip existing slate and store ready for re-use estimate to loose possible 45%

Supply and fix 250x500 Imported natural slate to match as near as possible

Clear ex batons of all nails and fix slate to existing baton, repairing and damaged membrane as work progresses

Re-use existing ridge replacing any damaged or missing to match existing

To the sum of £50850.00 (excl of VAT)"

32. MB Insurance agreed Quote A and this was confirmed to KR Roofing by the Respondent on 9th May 2012.

33. The Respondent, within their bundle, included a copy memo regarding the replacement of the slates with eternit slates, this being considered a preferable replacement to those already in situ. This would have been in accordance with Quote A that provided for the use of eternit slate, The local authority would not agree because the original planning permission was for the use of natural slate. The Respondent therefore instructed KR Roofing to proceed using natural slate. This was the material referred to in Quote B. The change in specification was not notified to the leaseholders.

34. In May 2012 the Respondent claimed a payment on account in the sum of £19468 that was paid and, upon completion of the work, requested a final payment of £19468. The work was, however, subject to a surveyor's report. This stated the work had been done to Quote B rather than Quote A and consequently the final payment was reduced to £16552.

35. The Applicant stated that he would have accepted the work had it been done in accordance with Quote A. However he did not accept the work done complied with Quote B. The work was defective and the maximum cost of it should be no more than £16000. The Applicant did not accept that new slates had been used to the amount claimed by the Respondent. The Applicant stated the Respondent claimed 65% of the slates had been replaced whilst the Applicant estimated that no more than 10% had been replaced. Further no new felt or battens had been used as quoted.

36. Mr Marshall, on behalf of the Applicant, confirmed that he had been on site whilst the work was undertaken. He had taken photographs showing the workmen only having baseball caps, no high visibility vests and the fact that there were no skips on site. There were no designated loading bays which would have been necessary to deal with the amount of slates which should have been removed. This was evidence that slates had not been removed as stated.

37. The Applicant further submitted that "extras" charged for by KR Roofing would not have been needed had they done the work in accordance with Quote A.

38. As a result of the Applicant's concerns regarding the work undertaken, the Respondent made further enquiries with KR Roofing to establish the full extent of the work. In their reply KR Roofing wrote that all the roof had been removed and re-slated, 15-20% of the batons had been replaced, of 13500 tiles removed

all 6000 which had been delivered to the site had been replaced, and the slates and materials had been hoisted to the roof via a bumpa hoist. It was further stated the work the insurance company had inspected the work upon completion.

39. The Applicant stated that when he challenged the work he asked the Respondent to provide the delivery tickets for the slates. Whilst he had had sight of the invoices this was insufficient. The Applicant also requested sight of the waste transfer tickets, when the redundant slates had been removed from the site, stating that they would be clear evidence of the amount of slates that had been replaced. The waste transfer tickets had not been produced.

40. Once the work on the development had been concluded the insurance company requested a report from the Gelder Group. This was produced to the Tribunal at the hearing. It was not clear why this report had been commissioned, given the insurance company had paid the Respondent for the work done. It is assumed it was as a result of concerns expressed to the insurance company by the Applicant. The report is dated 17th September 2013. It states " We believe that the original slates were re-used in the re-roofing". It concludes that there is no evidence of water ingress. Whilst "the roofs have a fairly untidy appearance" it is unlikely to cause a problem with regard to water ingress. It recommends that the top slates are not covered by the ridge tiles and this should be addressed as " a minimum requirement".

41. The Applicant also referred to the expert report upon which the Respondent had relied, namely one prepared by Taylor Tuxford Associates that had been commissioned by Facility Management Solutions Ltd. The Applicant advised that Facility Management Solutions Ltd was a company owned by Mark Ramsden who is the owner of one of the flats within the complex and who therefore had a conflict of interest.

42. The Applicant referred to the management fees charged by the Respondent for their work in dealing with the roof repairs, amounting to £6360. He claimed those were excessive.

43. The Respondent submitted that the Applicant's motivation in pursuing the application before the Tribunal was to mitigate any losses that might be incurred by Campbell Homes Ltd should there be any further claims by other leaseholders within the development for the cost to them for repairing the roof.

44. The Respondent further submitted that the requirements of section 20 had been complied with; the Applicant had not objected at any time during the process, the only objections being received from one leaseholder.

45. The Respondent accepted that there had been confusion over whether KR Roofing was to do work in accordance with Quote A or B. The Respondent accepted that the Applicant and other leaseholders were not advised that the work was to be done in accordance with Quote B despite having originally told them it would be done in accordance with Quote A. This was because the section 20 correspondence covered both eventualities. The Respondent would maintain

that there was not a significant difference in the work between the two quotes given the relatively small difference in the amounts.

46. The Respondent conceded that they had made a claim for the wrong amount when claiming the second payment from the insurance company and this should have been in the lower sum of £16522. The claim for the higher payment had been an oversight and nothing further should be read into this; there was no evidence of any intention by the Respondent to defraud the insurance company.

47. The Respondent confirmed that they had not supervised the work. It had sought confirmation from the insurance company whether it required the Respondent to oversee the work and, further, whether their charges for dealing with the administration of the contract would be met by the insurance company. The insurers advised that it did not consider a project manager to be necessary.

48. The Respondent stated that because it was not fully managing the project it had not carried out an inspection at the conclusion of the work. Paul Hickey, an employee of the Respondent, visited the development and, viewing it from ground level, was able to confirm the work had been completed.

49. The Respondent submitted that the work had been done to a satisfactory level in accordance with Quote B. While it did not believe the insurance company had supervised the work, nevertheless it was satisfied with the work. Had it not been, it would not have paid for the work. The Gelder report indicated the necessary work had been completed. The insurance company have not said they would revisit the claim and there have been no repercussions from that report.

50. The Respondent referred to the invoices produced, both for the cost of the slates used on site and also the cost for felt and batons. The invoices for the slates were for 5831 slates, representing 43% of the total roof tiles. There were several invoices showing felt, batons and other materials. All the materials charged for had been used.

51. In respect of the management charges relating to the scheme of work the Respondent submitted that it was entitled to make such charges pursuant to clause 5.5(1) of the Lease.

52. In the alternative the charges were for the administration of the insurance claim. The Respondent had approached the insurance company to pursue a claim and their work was to administer this claim. This had been lengthy, complicated by the fact the Respondent did not hold the certificate of insurance and which was held by the individual leaseholders. Consequently the Respondent had had to write to each of the leaseholders to obtain their consent to the Respondent dealing with the matter. The insurance company accepted the quotes, not the Respondent. Consequently the costs in dispute are not relevant costs pursuant to section 18 of the Act but are costs associated with the insurance claim.

53. It was further submitted on behalf of the Respondent that if the Tribunal did not accept this argument then the Respondent is protected by section 19 given it had fully complied with the consultation process required by section 20 of the Act.

54. It was said that the charges had been charged at 10%-12.5% of the final account of which 50% was pre-contract work and 50% post contract. The RCIS recommended Scale of Charges states " For taking particulars on site, writing specifications, obtaining estimates and administering the contract there is a time charge for works costing less that £23000 and a fee of 10% for the works in excess of £25000 with a minimum fee of £3125.00"

55. When considering the application for an order pursuant to section 20C of the Act Mr Aratne argued that the Respondent was entitled to recover costs under section 4.31 of the Lease that provides:

"To pay all expenses (including legal and surveyors fees) which the Landlord incurs in preparing and serving:

(a) a notice under section 146 of the Law of Apartment (Sic Property) Act 1925 even of forfeiture is avoided without a court order
(b) A Schedule of dilapidation's recording failure to give up possession of the Apartment in the appropriate state of repair when this lease ends"

56. The Tribunal was referred to **Freeholders of 60 Marian, St Leonards-On-Sea v Oram [2011] EWCA Civ 1258** which held that the costs incurred by a landlord in bringing proceedings before a tribunal and county court for the determination of and non-payment of service charges were payable by the tenant under the relevant terms of the lease. In that case the relevant term of the lease was that relating to proceedings under section 146 LPA 1925.

57. The Respondent submitted that the Tribunal would have to determine whether it was equitable for such an order to be made. The Applicant would have to secure a decision that reduced the charges made for the scheme of work by a sum greater than £25000 for there to be any effect upon the leaseholders, including the Applicant. This was the extent of their liability in terms of the excess payable by them. Therefore, when considering the application for an order pursuant to section 20C of the Act, this should only be made if the Applicant succeeded in an amount over this sum. Otherwise there would be no difference to the Applicant and the Respondent was entitled to defend the application.

58. Having considered the evidence the Tribunal determined that further information should be provided by the Respondent and gave directions for the filing of the delivery notes and waste transfer tickets relating to the scheme of work.

Further Evidence

59. The Respondent supplied the delivery notes but advised that no waste tickets were required for the removal of general waste because it did not contain any hazardous materials.

60. The Applicant challenged the information provided stating that waste transfer tickets should have been available given the requirements of the Environment Agency and that one delivery note was missing.

61. The Respondent then filed two waste transfer tickets showing two skips containing mixed construction waste was removed from the site. The Respondent estimated that each skip held 3000 tiles together with mixed construction waste. It was further said that due to the underpass at the development skips could not be delivered to the rear of the site and the remainder of construction waste material was removed by KR Roofing's own vans. In addition one man with a van had removed one load of mixed construction waste.

62. The Applicant replied to this by stating:

> "this as supposed to be a £70000 job not a man with a van & 20000 tiles should have been removed from the site not 6000 showing only part job not full replacement roof as agreed"

Determination

63. The Tribunal considered the charges made for the repairs to the roof and determined them to be reasonable.

64. The Tribunal noted the concerns expressed by the Applicant regarding the repairs undertaken to the roof and, in particular, that the work had not been done in accordance with Quote A as specified by KR Roofing and as advised in the s20 consultation. The fact the work had not been done per Quote A appears to have been as a direct consequence of the local authority's decision not to allow the use of eternit slate, the material specified in Quote A.

65. The roof has been repaired and this is confirmed by the Gelder report, commissioned by MB Insurance.

66. The Tribunal considered the claim by the Applicant that KR Roofing had not replaced the number of tiles mentioned in Quote B. The Applicant relied upon his experience in building the Property to state that the waste transfer tickets, showing two skips had been used, were evidence that 6000 slates had not been removed from the site.

67. The Tribunal had sight of the delivery notes and invoices for the materials used in the scheme of work that included 5751 slates. There were delivery notes for all of these invoices except one, which was for 75 slates. The Tribunal determined that this was evidence that the slates mentioned in Quote B had been delivered to the site. There was no reason to assume that they had not been used on the repair of the roof. There was no evidence to support the Applicant's assertion that only 10% of the slates were used to repair the roof.

68. The Tribunal further noted that the invoices referred to batons and other materials required in the repair of the roof. This again was evidence that work had been done in accordance with Quote B.

69. The Tribunal considered the Applicant's assertion that two skips were inadequate to clear the slates from the site. The Tribunal determined that this claim could not be substantiated given the production of the waste transfer tickets. The description of "mixed construction waste" allowed for slates and a significant amount could be carried in those skips given the density of the materials.

70. The Tribunal considered whether the Respondent had failed to carry out the necessary consultation work pursuant to s20, given the fact the work had not been undertaken as originally advised. The Tribunal determined that the Respondent had complied with the requirements of s20 and it had not been necessary to repeat the process when it became aware the work could not be done per Quote A. When writing to the leaseholders of the development they had advised the work to be done was

    "Erect scaffolding as necessary, remove existing slates keeping undamaged slates for reuse, replace damaged under felt, refit slates or as an alternative supply and fit new eternity slates, leave site clean and tidy"

71. The Respondent then sent details of the quotes received and advised the cost for KR Roofing was £53280. This was the higher figure for Quote A. Upon the basis the cost to each leaseholder was the same, whether the work was done in accordance with Quote A or B, it was not unreasonable for the Respondent not to undertake a further consultation.

72. The Tribunal considered the charges made for the management of the scheme of work in the sum of £6360 plus VAT. It determined those charges to be unreasonable.

73. The Tribunal noted the RICS recommendations as referred to by the Respondent but considered that would include a charge for fully managing a scheme of work. The Respondent admitted that they had not overseen the work and, instead, had followed the insurance company's instruction that their supervision was not necessary. Consequently their role had been administrative and the charges made excessive. Whilst there had been work to co-ordinate the insurance claim the hourly rate charged by Mr Kelly (£158 per hour) suggested time in excess of 40 hours. The Tribunal considered that a more reasonable charge for the work done would be 20 hours, in the sum of £3160 plus VAT.

74. The Tribunal thereafter considered the application by the Applicant for an order pursuant to section 20C. The Tribunal did not consider such an order should be made given the Applicant had not succeeded on the substantive part of his claim.