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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2015/0193**
Property	:	**13 Cold Blow Lane, London SE14 5RB**
Applicant	:	**Ms L Machia and Mr M Machia**
Representative	:	**Ms L Machia in person**
Respondent	:	**(1) Freehold Manager (Nominees) Limited** **(2) Blue Property Company Limited**
Representative	:	**Mr A Skelly of counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr H Geddes JP RIBA MRTPI** **Mrs J Dalal**
Date and venue of Hearing	:	**11 December 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11 January 2016**

DECISION

The application

1. The Applicants seek 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 Applicants in respect of the service charge years 2011 to 2015 (the service charge year being the calendar year).

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

The hearing

3. Ms Machia appeared in person, representing herself and her brother. The Respondent was represented by Mr A Skelly of counsel.

4. Ms Machia gave evidence on her own behalf. Evidence was given by two employees of the First Respondent's current managing agents, CP Bigwood. They were Mr R Hollingshead, senior property manager, and Mr M Lewis, regional operations manager. The Second Respondent did not appear. It did, however, provide a short bundle of documents in advance of the hearing.

5. During the course of the morning, Ms Machia sought to introduce new evidence not provided in her bundle. We allowed her to produce the new evidence, having given the Respondent time to consider it during the lunch adjournment (paragraphs 32 below).

The background

6. The property is a two bedroomed flat in a purpose built block. The block is one of three, amounting to 38 flats, in a larger estate, which has 112 flats in all, and 52 houses. The houses are largely held by individual freeholders.

7. The Applicants hold a lease for 125 years from September 2001. The lease is in tripartite form, the parties being the landlord, the tenant and the Cold Blow Lane Management Company (particulars). It was the original intention that the Management Company would be composed of the leaseholders. The tenant covenants to pay a service charge (clause 5.1), which is variable in nature. The Management Company covenants to undertake various obligations, and to insure the building, as set out in the fifth schedule (clause 7). The fifth schedule also makes provision for interim and final service charges payable by the tenant. There is provision for the landlord to step into the position of the Management Company should it cease to exist (clause 6.1.4). The houses are responsible for a contribution to the costs of the wider

estate, and thus the service charge demands are divided into two schedules, one for estate costs (paid by both flats and houses) and one for block costs (flats only).

8. The freehold was acquired by the First Respondent in December 2005. The Applicants acquired the leasehold interest in 2006. Sometime before 2011, the Management Company ceased to function. The landlord has appointed Freehold Managers PLC, a separate company, as their agents. In June 2011, the landlord appointed the Second Respondent ("Blue") as managing agents. CP Bigwood ("CPB") were appointed managing agents in place of Blue in April 2013. CPB has a large number of properties under management in the Midlands and London.

The issues

Preliminary

9. At the start of the hearing, it was agreed that the matters in dispute were fully represented by the entries in the Scott Schedule compiled in accordance with the directions given at a case management conference on 28 May 2015. The Scott Schedule used the figures for the budget provided for 2015, but it was understood that the issues related to the same headings for each of the years under consideration.

10. We should note, however, that the issues that arose before us under the various headings in the Scott Schedule were not necessarily those specified in the Applicants' column in the Scott Schedule, nor their statement of case; and in some cases bore little relationship to the heading itself.

11. It was agreed that there was no dispute in respect of the following items in the Scott Schedule, either in the Schedule itself or at the commencement of the hearing: building insurance, electricity, bank charges and contributions to the reserve fund.

12. As the hearing proceeded, it became clear that the degree to which the Applicants' challenge was particularised was limited. Further, in respect of a number of issues, Ms Machia expressed the challenge, in whole or in part, is terms of questions, such that the evidence and submissions of the First Respondent satisfied the challenge, to varying degrees.

13. The Applicants had at some point in the past paid service charge demands made when the Management Company was in existence, but had not since that time. The property is tenanted.

Accountancy fees

14. Ms Machia's challenge was in generalised form, amounting to an objection to the fact that the fees had increased over time (from a total of £945 in 2011, £1,185 in 2012 to £1,767 for 2013.

15. Mr Skelly took us to the accounts for the relevant years, and the supporting invoices. It appeared from the documents, Mr Skelly argued, that Blue had done a proportion of the work in-house, rather than all through an independent chartered accountant. It was not entirely clear to the Tribunal whether the figure in the accounts for accountancy in 2011 constituted the full cost.

16. The Tribunal heard evidence of CPB's approach to auditing. They maintained a panel of auditors in each area in which they operated. Those on the panel submitted schedules of costs on an annual basis, ensuring competition, and the membership of the panels changed from time to time. At no time had any of the residents at Cold Blow Lane suggested alternative arrangements.

17. The First Respondent's arrangements for accountancy are reasonable and appropriate. There is no clear basis to Ms Machia's challenge to the charges. She did not provide any alternative accountancy costs to indicate that the fees charged were unreasonable or too high.

18. *Decision*: The expenditure on accountancy was reasonably incurred, and was payable.

Cleaning/window cleaning and ground maintenance

19. Mr Skelly took the Tribunal to the accounts and invoices, and to the relevant contracts. Evidence was given of the general pattern of inspection and management of the contractors, including market testing arrangements.

20. To the extent that there was a particularised challenge from Ms Machia, her main point (although it was put interrogatively) was that it was not necessary to increase the frequency of visits by the cleaner of the common parts from fortnightly to weekly.

21. The evidence from CPB was, first, that the increase in frequency was necessary to ensure a reasonable standard of tidiness, and assisted with reporting of defects; and secondly that the arrangement did not amount to more cleaning being done, but rather what had been done in one fortnightly visit being undertaken in two weekly visits. The fees for 2012 (fortnightly) and 2013 (weekly) were the same, at a total of £14,400.

22. There was in addition an apparent dispute about whether the sheets affixed to a notice board in the block which the cleaner was obliged to sign on each visit also contained a column for comments by residents. We did not consider that it was necessary to determine this dispute.

23. We accept the First Respondent's submissions. Even if Ms Machia was right about the necessity for weekly visits (which we do not accept), it appears to have imposed no additional costs.

24. *Decision*: The expenditure under these heads was reasonable and payable.

The maintenance agreement

25. We have retained this heading, which appears in the Scott Schedule. However, the substance of the challenge related to charges for fire risk and health and safety assessments.

26. It was not contested that periodic assessments of this nature were reasonable. However, in 2013, there had been a leak in the basement of the block, which had resulted in the electricity being turned off for a period while work was undertaken by the network provider. The CPB evidence was that this event would not itself have resulted in extra cost (evidence which Ms Machia did not contest). However, her case was that the fact that the events occurred demonstrated that the fire safety and health and safety assessments which had resulted in costs to the service charge had not, in fact, been undertaken. If they had been, then they would have picked up the fault that led to the leak, and the electricity being cut.

27. The parties gave competing accounts of the leak incident. It appears that, while both parties agree that the water pipe that leaked was under the floor, Ms Machia claimed that the wiring affected had been "loose" (and therefore, we surmise, in a potentially dangerous state). The evidence from CPB was that the wiring was not dangerous per se, and that the leak itself could not have been discovered by an inspection.

28. The Tribunal does not accept that, even if Ms Machia's account of the leak incident was correct, it provides compelling evidence that the relevant assessments were not undertaken. The charge amounts to one of fraud, to the extent of providing false documentation, and the evidence is a very long way from supporting such an allegation.

29. *Decision*: The expenditure on fire risk and health and safety assessments was reasonable and payable.

Management fees

30. The management fee was calculated on the basis of £250 plus VAT per unit. The witnesses from CPB gave evidence of the tasks undertaken in consideration of the management fee. Having heard the evidence, Ms Machia conceded that she had not realised what the management fee encompassed, and agreed that "she could not argue with that".

31. However, it was under this heading that Ms Machia deployed two specific challenges. Those were, first, the charge that invoices had been inflated; and secondly that the communication between CPB (and previously Blue) and the leaseholders had been so poor that the Tribunal should conclude that in part the management fee was unreasonable.

32. To support these challenges, Ms Machia sought to provide the Tribunal with further material. We originally understood this application to apply to a small number of documents comprising quotations relating to the inflation of invoices, and emails and letters relevant to the communications issue. We agreed that we would consider the material on the basis that Ms Machia provided the First Respondent and us with copies of the relevant materials to consider over the lunch-time adjournment. In the event, Ms Machia produced two bundles of documents of 37 pages in total.

33. The quotations produced by Ms Machia, the product of internet searches, did not support her challenge in relation to the charge that invoices had been inflated. As an example, in respect of an invoice for replacing "9 x 2D 28W emergency [light] fittings in communal areas", she produced figures for the replacement of 28W light bulbs. We accepted the First Respondent's submission that the invoice was to replace the *fittings*, not the bulbs. They were emergency lights, and thus required a separate power supply, in addition to labour costs. Other quotations were not (or not clearly) for similar products or products of similar quality; and the prices that were provided were those available today. We agreed with the First Respondent that we could not assume that prices up to four years ago would have been the same.

34. In respect of the allegation of poor communication (which was levelled more at Blue than CPB), Ms Machia said that, before the Tribunal proceedings were initiated, she had never had a communication providing information she had sought. She accepted that the correspondence she had produced included references to previous correspondence, and included examples of her thanking the managing agent for specific letters (for instance, in her letter of 2 December 2013), but insisted that these did not contain the information she wanted.

35. Mr Skelly submitted that Ms Machia's material showed on-going communication; but that we did not have (given the lateness of the production of the material) the terms of the correspondence from the managing agents. Mr Hollingshead gave evidence that CPB had sought details of the information that Ms Machia sought, but had not received a satisfactory particularisation.

36. The material provided by Ms Machia, standing on its own, does not provide evidence of a sub-standard level of communication by either managing agent. There is ample reference to communication by both in the material, and we are not prepared to conclude that the communications from the managing agents referred to were inadequate on the basis of the material and evidence before us.

37. In coming to this conclusion, we are fortified by our own impression of Ms Machia. Throughout the hearing, and in the documentation preceding it, she had difficulty particularising the points she wished to make. Her points were frequently obscured behind wide ranging, and sometimes difficult-to-understand questions.

38. In relation to the communication issue, there was also a dispute between the parties as to the circumstances surrounding a proposed meeting after the case management conference in these proceedings. The meeting was canvassed as a means of both satisfying Ms Machia's requests for information, and seeking a settlement in the proceedings. We do not find it necessary to come to a view as to which account is accurate in determining the issues before us.

39. *Decision*: The management fees demanded in the service charge demands are reasonable and payable. We find against the Applicant in relation to the allegation that invoices were inflated, and that communication between the managing agents and the leaseholders was inadequate.

Out of hours contract

40. Since CPB took over management, a charge (£9 per flat plus VAT) had been levied in respect of an out-sources out of hours contact contract. It appears that Blue undertook out of hours functions in-house. Once this was explained, it was not apparent what challenge Ms Machia was making.

41. *Decision*: the expenditure on the out of hours contract is reasonable and payable.

Professional fees

42. Ms Machia essentially asked questions under this heading in the Scott Schedule. She did not persist with her challenge after a difference of practice between Blue and CPB was explained in evidence (except to the

extent that it related to the fire risk and health and safety assessments issue considered above).

Repairs and maintenance

43. It became evident that Ms Machia was effectively asking questions, or complaining of a lack of communication, in respect of expenditure under this head. She expressed herself as now "comfortable" with the demands, given the additional information available, and her understanding (gleaned from the hearing) of the process of auditing accounts. She claimed, however, that the information had only been forthcoming since the Applicants' application to the Tribunal

Application under section 20C of the 1985 Act

44. Ms Machia applied for an order under section 20C that the costs of the proceedings should not be charged to the service charge.

45. The landlord has been entirely successful before us. While that is not determinative of an application under section 20C, it is an important matter to take into account. It requires a compelling reason before an order should be made where a tenant has been wholly unsuccessful. There is no such reason in this case.

46. *Decision*: The Tribunal makes no order under section 20C of the 1985 Act.

47. We come to this conclusion without considering the extent to which costs may be recoverable as a matter of law under the lease, whether as part of the service charge on all the tenants or from the Applicants alone as an administration charge.

48. The Applicants remain at liberty to challenge the payability and reasonableness of any service or administration charge relating to the costs of proceedings in an application under section 27A of the 1985 Act.

Name: Tribunal Judge Richard Percival **Date:** 11 January 2016

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).