10956

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2018/0185**
Property	:	**43 Cordelia Street, London, E14 6ED**
Applicant	:	**Poplar HARCA ("the landlord")**
Representative	:	**Capsticks Solicitors LLP**
Respondents	:	**(1) Mr Anamul Hoque** **(2) Ms Imrana Begum** **("the tenants")**
Representative	:	**In Person**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**(1) Judge Amran Vance** **(2) Mr P Casey, MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13 September 2018**

DECISION

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Decisions of the tribunal

1. The tribunal determines that the sum of **£8,819.24** is payable by the respondents towards the final costs of major works demanded in the 2010/11 service charge year. This sum is additional to the sum of **£5,830** previously admitted by the respondents, for which judgment was given in the County Court on 9 April 2018. It is also additional to the sum of **£1,645.11** in respect of regular recurring service charge costs for the 2012/2013, 2013/2014, 2015/2016, 2016/2017 and 2017/18 (estimated) service charge years, the payability of which was admitted by Mr Hoque, on behalf of both respondents at a Case Management Hearing at this tribunal on 7 June 2018. As these sums were admitted by the respondents prior to this determination we have no jurisdiction to determine them.

Background

2. The applicant seeks, and following a transfer from the County Court the tribunal is required to make, a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable

3. References in square brackets and in bold below refer to pages in the hearing bundle prepared by the applicant's solicitors.

4. The respondents hold a long lease of 43 Cordelia Street, London, E14 6ED ("the Flat") which is located in a block of flats ("the Block") on an estate known as the Lansbury Estate. Their lease is dated 27 March 1989 **[12]** and was entered into between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets and (2) Ivy May Toulson and Diane Toulson ("the Lease"). The respondents were registered as proprietors of the leasehold interest in the Flat on 9 April 2010 following an assignment of the Lease dated 26 February 2010.

5. The freehold interest in the building in which the Flat is located was subsequently transferred to the applicant. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The mechanics for the calculation and payment of the service charge are set out in the Eight Schedule to the Lease.

6. Proceedings were originally issued in the County Court under claim no. D26YY384 and were transferred to the tribunal by District Judge Rand by order dated 9 April 2018. In that order, the District Judge also gave judgment to the applicant in the sum of £5,830 following a part admission by the respondents in that sum. The District Judge

...ce of the claim to this tribunal. The County Court ... allocated to track.

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7. Th... claimed in the County Court particulars of claim for ...g service charges was £16,294.35. This breaks down as ...

(a) £ 14,649.24 in respect of the final costs of major works demanded in the 2010/11 service charge year ("the Major Works"); and

(b) £1,645.11 in respect of regular recurring service charge costs for the 2012/2013, 2013/2014, 2015/2016, 2016/2017 and 2017/18 (estimated) service charge years.

The Major Works were to be carried out under a Qualifying Long Term Agreement within the meaning of s.20 of the 1985 Act.

8. In their defence in the County Court, prepared by their former conveyancing solicitors, the respondents assert that the applicant is prohibited from seeking more than £5,830 towards the cost of the Major Works because of the contents of a letter dated 25 January 2010 which, it is said, give rise to an estoppel. The letter in question **[193]** was sent by Ms Sarah-Jane Butler, a Home Ownership Officer employed by the applicant, to WJ Meade Conveyancing, the solicitors for the person from whom the respondents purchased the Flat, Ms Diane Toulson. Numbered paragraph 5 of that letter states as follows:

*"I would also like to point out that there are **Cyclical External Repairs and Decorations and or lift refurbishment works proposed at (delete whichever doesn't apply)** this block; this information is listed in Poplar Harca's Capital programme. Poplar Harca are due to carry out these works within the next five years. The costs of the works for the block are **approximately** for the sum of £482,626.00; the contribution from the leaseholder will be approximately £5,830.00. There are no additional works planned to this block. I would point out however, that works of an emergency nature may arise, which the leaseholder would have to contribute towards."*

9. It is the respondents case that because they considered the sum of £5,830 to be affordable they proceeded with their purchase of the Flat. As matters turned out, however, the sum demanded subsequently from them on 23 July 2014 **[204]** was much higher, namely £18,588.21 (based on a Block cost of £486,056.48). Following completion of the Major Works, that sum was revised downwards in a replacement demand dated 18 September 2014 **[209]** because certain items of work had been deemed non-chargeable to the lessees. The revised sum demanded was £14,649.24 (based on a Block cost of £383,057). The respondents say that if they had been notified that the actual costs

would be in this amount, they would not have proceeded to purchase the Flat.

10. An oral case management hearing took place, before me, on 7 June 2018. Mr Fieldsend, counsel for the applicant, was present as was Mr Hoque. At that hearing Mr Hoque accepted liability for the sum of £1,645.11, relating to the regular recurring service charge costs, but disputed liability for the costs of the Major Works. I recommended that he and his wife seek legal advice due to the technical nature of their defence. They did so and their advisors have assisted them in drafting the statement of case included in the bundle before us **[217]**.

11. In addition to a claim for unpaid service charges, the applicant also seeks to recover costs incurred up to the issue of the County Court claim and an award of contractual costs under the lease as well as interest under s.69 County Courts Act 1984. At the case management hearing I indicated that I would determine the question of costs and interest as a judge of the County Court under the flexible deployment of judges' pilot scheme.

The hearing

12. The applicant was once again represented by Mr Fieldsend. Also present was Mr Mathew Mitchell, a leasehold advisor with the applicant who had provided a witness statement dated 1 August 2018 **[119]**. Mr Hoque was present and represented both himself and his wife.

13. At 9.36 on the morning of the hearing the tribunal received an email from the applicant's solicitors enclosing a Statement of Costs for Summary Assessment in Form N260. The email also contained an interest calculation. The sum of £6,101 is sought in respect of costs and £5,052.63 in respect of interest.

14. At the start of the hearing Mr Fieldsend provided the tribunal with copies of the decision in *Cain v London Borough of Islington* [2015] UKUT 117 (LC) and extracts from Snell's Equity 33rd edition relating to the law on estoppel.

15. During the course of the hearing, Mr Hoque handed up a copy of a page from a statutory consultation notice sent by the applicant under s.20 Landlord and Tenant Act 1985 dated 20 October 2009. He said that he had obtained this from his neighbour but that he expected a similar notice had been sent at the same time to Ms Toulson, the previous lessee of the Flat. The notice states that total expenditure in the sum of £488,758 was likely to be incurred by the applicant in connection with proposed Major Works to the Block and surrounding area. Of that sum, £209,848 would not be charged to lessees, leaving estimated chargeable block costs in the sum of £278,910. Those costs were

apportioned on a floor area basis resulting in an estimated cost to the lessee of £10,388.69. The floor area used in this calculation was 74 square metres and is identical to the floor area of the respondents' flat.

The Respondents' Case

16. In their statement of case the respondents made two submissions. The first was that the applicant was estopped from demanding more than £5,830 for the costs of the major works. The second was framed in the alternative and was that the costs of the Major Works had been apportioned incorrectly. However, their statement of case provided no explanation as to how it was said that the costs had been apportioned incorrectly. Before us, Mr Hoque stated that he was not arguing that his contribution towards these costs had been incorrectly calculated when compared to the contributions payable by other leaseholders. He said that his concern was that the costs were far in excess of the sum he had been told the works were likely to cost when he purchased the flat.

17. As to estoppel, the respondents argued that the statement made in paragraph 5 of the letter of 25 January 2010 gave rise to:

    (a) an estoppel by representation; and/or;

    (b) an estoppel by way of promissory estoppel

18. They contend that the statement was a clear and unequivocal promise or assurance concerning the costs of the Major Works, and the respondent's share of those costs, which was made in the knowledge that the respondents were contemplating purchasing the leasehold interest in the Flat and which was therefore intended to affect the legal relationship between both parties. They contend that the respondents took the applicant at its word and acted upon that promise or assurance by purchasing the Flat.

19. Before us, Mr Hoque asserted that his solicitors were not informed about the contents of the letter sent by the applicant on 20 October 2009, that the figures stated in the 25 January 2010 letter were clearly wrong and that the applicant should have realised when writing to the respondents' vendor's solicitors that the information was provided for the benefit of him and his wife.

The applicant's case

20. Mr Fieldsend contended that: (a) the apportionment argument was inadequately particularised and was, in any event, outside the tribunal's jurisdiction, which was limited to those issues raised in the County Court and transferred to the tribunal; and (b) the estoppel argument was misconceived.

21. He accepted, after seeking instructions from Mr Mitchell, that the sum of £5,830 stated in the letter of 25 January 2010 was clearly an error made by the author of that letter given that the Block cost specified by her was £482,626.00, which is close to the Block cost figure of £486,056.48 stated in the 24 July 2014 notice, in which the respondents' contribution was calculated at £18,588.21. He said, however, that as Ms Butler was no longer employed by the applicant it was not known how she arrived at that figure.

The tribunal's decision and reasons

22. We agree with Mr Fieldsend's submissions on both the apportionment and estoppel issues. This application is a transfer from the County Court. Our jurisdiction derives from the terms of that transfer and is confined to the question or questions transferred and any subsidiary issues encompassed within such questions.

23. In this application, the District Judge gave judgment for the admitted sum of £5,830 and transferred "the balance of the claim" to this tribunal. In *Cain,* the Upper Tribunal considered the terms of a County Court transfer where the issue transferred was "the reasonableness of the service charge demanded". It held that the question of apportionment (in other words, how much Mr Cain was obliged to pay under the terms of his lease) was a subsidiary question to the question of the reasonableness of the service charges demanded. Until that sum was quantified it would not be possible to determine whether the sum demanded was reasonable. As such, the question of apportionment was within the tribunal's jurisdiction.

24. However, in this application, the only question raised by the respondents in the County Court was that of estoppel. The question of the respondents' apportioned contribution towards the costs of the Major Works cannot be construed as a subsidiary question to that of estoppel and we agree with Mr Fieldsend that the apportionment argument is outside our jurisdiction. Even if we are wrong and the question is within our jurisdiction, Mr Fieldsend is correct that the apportionment issue has not been particularised in any detail whatsoever and must be rejected for that reason. Indeed, Mr Hoque's verbal response to my question indicated that there was no real challenge to the question of apportionment in any event.

25. We also agree with Mr Fieldsend that the estoppel arguments are misconceived. Estoppel by representation arises where a person has by words or conduct made to another a clear and unequivocal representation of an existing fact, either with knowledge of its falsehood or with the intention that it should be acted upon, and the other person has acted upon such representation to his or her prejudice. In such circumstances an estoppel arises against the party

who made the representation, and he or she is not allowed to claim that the fact is otherwise than as previously represented.

26. However, the statement made by Ms Butler in her letter of 25 January 2010 is not a clear and unequivocal representation of an existing fact concerning the costs of the Major Works, or the amount of the respondents' contribution towards those costs. As Mr Fieldsend points out, on the date the letter was written the works had not commenced and, therefore, their cost and the respondents' required contribution to them was unknown. Instead, the statement is an estimate of the approximate costs of the works and the respondents' contribution. Whilst we recognise that the estimate in the sum of £5,830.00 was erroneous, and that the respondents may have relied upon the statement when deciding whether to purchase the Flat, the statement cannot establish a defence based on estoppel by representation as it is not a clear and unequivocal statement of an existing present or past fact.

27. Nor do we consider the respondents have established a defence of promissory estoppel. This arises where one party, by his or her words or conduct, makes to another person a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly. Once the other party has taken the person at his or her word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made, if it would be unconscionable to allow them to do so. Instead, they must act consistently with it.

28. In this case, Ms Butler's statement was not given to the respondents. It was given to a third party, their vendors. There was therefore no existing legal relationship between the applicant and the respondents on the date the statement was made. Nor can it be said that the statement made constituted a clear and unequivocal promise or assurance. The costs referred to are expressed to be approximate figures only.

29. For these reasons, the respondents' estoppel arguments must fail. That is sufficient to dispose of this application but we should record that in his skeleton argument Mr Fieldsend also put the respondents to proof that:

    (a) the alleged representation induced them to purchase the Flat;

    (b) the alleged representation caused them to alter their position;

    (c) the alleged representation has caused them prejudice;

(d) that they relied on the alleged promise when deciding to purchase the Flat;

(e) that they relied on the alleged promise to their detriment; and

(f) that it is inequitable for the applicant to claim a contribution to the costs of the Major Works in the amount claimed.

30. No witness evidence was submitted by the respondents addressing these points and we do not consider it necessary to address them in this decision.

Remaining Issues

31. The following issues remain to be determined by this **tribunal**:

(a) the respondents' application under s.20C Landlord & Tenant Act 1985; and

(b) the respondents' application under Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002

32. The following issues remain to be determined by Judge Vance alone, sitting as a judge of the **County Court**:

(a) costs incurred up to the issue of the County Court claim;

(b) the applicant's claim for contractual costs under the respondents' lease; and

(c) interest under s.69 County Courts Act 1984.

33. As we suggested at the hearing, the applicant should consider the extent to which it seeks to recover costs and interest from the respondents and the extent to which it seeks to resist an order under section 20C. In her letter of 25 January 2010, Ms Butler, an employee of the applicant, specified an incorrect figure of £5,830 when stating the approximate costs that the lessee of Flat would have to contribute to the costs of the Major Works. We accept the respondents' submission and Mr Hoque's oral evidence to us, that he and his wife purchased the leasehold interest in the Flat in the belief that their liability would be in this sum. There is no evidence to counter that assertion and it is clearly credible. They then received a final demand for the costs of these works in the sum of £14,649.24 and, understandably, questioned the very large disparity.

34. Before us, Mr Fieldsend suggested that the respondents were given a strong indication by me at the case management hearing to seek legal advice and that his clients had been compelled to incur the costs of attending a contested hearing. That is correct, but the applicants should also bear in mind that there may have been no need for proceedings to be issued in the County Court against the respondents but for the applicants' own provision of erroneous information.

Directions on the Remaining Issues

1. By **1 October 2018** the **applicant, Poplar Harca**, should send to the tribunal, and to the respondents, its written submissions in respect of the remaining issued identified in paragraphs 31 and 32 above.

2. By **22 October 2018** the respondents**, Mr and Mrs Hoque**, should send to the tribunal their written submissions in response.

3. The tribunal will then determine the remaining issues it must determine and Judge Vance will determine the County Court issues that he alone has to determine. The determinations will be made on consideration of the documents provided and without a hearing. However, either party may request an oral hearing prior to the determinations. Any request for an oral hearing must be made to the tribunal by **8 October 2018** and if a request is made the tribunal will notify the parties of the hearing date. Judgment for the sums of £8,819.24 and £1,645.11 will be entered at the same time that Judge Vance determines the costs sought by the applicant in the County Court claim.

4. Details of the parties' appeal rights in respect of this decision are set out below. However, I extend the time limit for appealing the decision to the Upper Tribunal (Lands Chamber), so that the deadline for doing so is to expire 28-days after the tribunal sends its written reasons in respect of the Remaining Issues to the parties.

Name: Amran Vance **Date: 13 September 2018**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.