9397

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LIS/2012/0007**
Property	:	**Flat 3, Stanley Mansions, Marius Road, London SW17 7QS**
Applicant	:	**Zerlan Estates Limited**
Representative	:	**Conways Solicitors** **Mr Sissons of Counsel**
Respondents	:	**(1)Property Investment Partnership Ltd** **(2)Mr Martin Howard Bandel** **(3)Mrs Amanda Bandel**
Representative	:	**Mr Bandel in person** **Mr Webb of Counsel for the Respondents**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge O'Sullivan** **Mr Mathews FRICS** **Mrs Turner JP**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21 October 2013**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Edmonton County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 1999 to 2012.

2. Proceedings were originally issued in the Edmonton County Court under claim no. 2ED00084. The claim was transferred to this tribunal, by order of District Judge Silverman on 11 September 2012.

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

The hearing

4. Directions were first made in this matter on 16 October 2012 which provided for a hearing to take place on 18 and 19 March 2012. At that hearing the Applicant was represented by Mr Sissons of Counsel and Mr Bandel appeared in person for the Respondents. It became clear that the Applicant had not complied with directions and permission was sought to rely on a statement of response and witness statements which had been served only shortly before the hearing in relation to the issue of the major works. Permission was granted but an adjournment of the hearing was also granted and further directions made to enable the Respondents to consider that evidence and file any expert evidence they wished to rely upon. However at the hearing on 18 March 2013 the tribunal did hear the parties' submissions on various legal arguments. The adjourned hearing took place on 9 and 10 September 2013, the delay being due to issues of availability.

The background

5. The subject property is 3 Stanley Mansions, Marius Road, London SW17 7Qs (the "Property"). Stanley Mansions is a block of 6 flats. The Applicant is the freeholder. Three of the flats within the block are let on long leases with the remaining three remaining within the control of the freeholder.

6. There is a long history of dispute between the parties. The Applicant's claim relates to service charges from 2000.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Respondents hold a long lease of the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

9. On 3 April 2009 the leasehold interest in the Property was registered in the joint names of the Second and Third Respondents. The Applicant says that it has not been given notice of that assignment and has continued to serve demands on the First Respondent.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether part of the claim is statute barred

    (ii) Whether the service charges are payable (including compliance with section 47 and the issue of certification)

    (iii) Whether the cost of the major works was reasonable

    (iv) Whether there was valid consultation

    (v) Application for dispensation

    (vi) A counterclaim in relation to an insurance claim

    (vii) The payability of administration charges

    (viii) The reasonableness of management fees

(ix) The reasonableness of accountancy fees

(x) A determination as to an alleged breach of covenant

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Limitation

12. The Applicant's claim was issued in the County Court on 26 January 2012. The Respondents say that the Applicant is statute barred from recovering service charges in respect of the service charge years ending December 1999, 2000, 2001, 2002, 2003 and 2004.

13. The Applicant agrees. However Counsel invited the tribunal to make a determination in respect of those years as he submitted that the Applicant may recover those sums on a potential application for relief from forfeiture, such an application not being statute barred.

14. The tribunal makes no decision as to whether arrears which are statute barred may be recoverable on a potential application for relief from forfeiture. However as the evidence was before the tribunal, it considered it may be helpful o the parties if it does set out its decision in relation to the period 1999 to 2004.

Did the demands comply with section 47?

15. The Respondents say that the Applicant failed to serve demands which complied with section 47 of the Landlord and Tenant Act 1987. The first time the Respondents say that a compliant demand was served was 25 May 2012. It is accepted that the operation of section 47 is suspensory and can be rectified by the service of a compliant demand. However the Respondents say that this issue does impact on the issue of interest on the alleged arrears.

16. The Respondents criticise the demands on the basis that the demands prior to June 2010 did not contain the address of the landlord. The address given was *"c/o 17 Rostrevor Avenue London N5 6LA"* which was the address of the managing agents, Avon Estates (London) Ltd.

17. The tribunal heard evidence from Mr Moskovitz in this regard. His evidence was that that 17 Rostrevor Road was the address of both the landlord and managing agent. He informed the tribunal that Mr Gross (deceased) a director of the company had worked from that address and more recently Mr Moore, had also had a desk at the managing agent's offices. Mr Moskovitz at first gave evidence that Mr Moore was a

director of the landlord but later said that he had held a position in the company but was unsure what the position had been. The tribunal was further informed that all of the landlord's post was sent to that address although he had no evidence of this and the Applicant did not produce any letterheads to show it had been operating from that address. He confirmed that the registered address of the landlord was not 17 Rostrevor Road.

18. The tribunal had in its original directions ordered that copies of the service charge demands be produced. However it became clear that what the landlord in fact produced were reconstituted demands rather than copies of the originals. When asked about this Mr Moskovitz said that the computer programme had automatically updated the demands in that form to include the landlord's registered address. The tribunal heard that no hard copies were kept of the invoices.

Section 47 - the tribunal's decision

19. The tribunal found that the demands for the period 1999 to 25 May 2012 did not comply with section 47 of the Landlord and Tenant Act 1987.

Reasons for the tribunal's decision

20. Section 47 of the Landlord and Tenant Act 1987 provides that:

"(1) Where any written demand is given to a tenant of premises to which this part applies, the demand must contain the following information, namely:

(a) The name and address of the landlord..."

21. The demands gave the landlord's address as *"c/o 17 Rostrevor Avenue London N5 6LA"*. This was agreed to be the address of the managing agents. The tribunal was not persuaded by the evidence of Mr Moskovitz that the landlord had operated its business from the address of the managing agents. In particular it had no direct evidence from any member of the landlord company to confirm they had worked at that address, it was unclear what position Mr Moore had held in the landlord company and there was no documentary evidence to suggest that the landlord had operated from there, such as a letterhead.

22. Accordingly the tribunal concluded on the evidence before it that demands for the period from 1999 to 5 May 2012 did not comply with section 47.

Certification of accounts

23. The Respondents say that for the years 2000-2005 no interim charges were demanded. The Applicant's practice during that period was not to issue interim demands but rather to demand the Respondents' share of the actual total expenditure following the end of the service charge year.

24. It is the Respondents' case that the liability to pay the service charge is subject to a condition precedent of the following matters:

    a) A certificate must be prepared and signed by auditors

    b) The certificate must be prepared by reference to a service charge period of 1 January to 31 December in any year

    c) The Certificate must contain:

        i. The amount of the total expenditure for that year

        ii. The amount of the interim charge paid by the tenant for that year (in this case the amount would be £0 in most cases) and

        iii. The amount of the service charge in respect of that year for the particular tenant and the amount of any excess or deficiency of the service charge over the interim charge

25. The Respondents say that the landlord has failed to comply with the requirement for the years to 2002 as they have never produced accounts to the correct period.

26. Counsel for the Applicant agreed that the certificate must contain the three requirements referred to above. Counsel submitted they the Applicant had complied with the requirement by serving audited service charge accounts signed by accountants acting as auditors.

27. However in the alternative the Applicant relies on *Warrior Quay Management Co Ltd v Joachim [2008] EW Lands LRX/42/2006* where the tribunal's decision that, in the absence of proper certification no sum was payable, was overturned. In particular reliance was placed on the following paragraph:

    "It is clearly unsatisfactory that [the landlord] has failed to comply with its obligations under the Seventh Schedule..However I am unable to read this as meaning that if [the landlord] has failed to comply with this provision then this automatically thereby proclaims that in respect of the service charge year to which the failure relates [the

landlord] has lost the right to be paid any service charge whatsoever....I agree with [counsel for the landlord] that for this dramatic result to ensue from a failure to comply in proper time with the obligation under the Seventh Schedule Part III paragraph 2 would require clear words".

28. Counsel for the Applicant submitted that there is no wording in the lease (which he says is materially identical to the provisions in issue in Warrior Quay) which would justify a finding that failure properly to certify the sums due leads to the conclusion that the Respondents are relieved of the obligation to pay anything at all.

Certification of accounts- the tribunal's decision

29. The tribunal agreed that the Applicant had failed to certify the service charge by reference to the correct period. However it agreed with Counsel for the Applicant that reliance should be placed on the decision in Warrior Quay. Having regard to the decision and reasoning of HHJ Huskinson the tribunal did not consider that the reference to the incorrect accounting period was fatal to the ability to recover the service charges.

Summary of tenant's rights and obligations

30. The Respondents submit that the first occasion upon which a summary of tenant's rights and obligations pursuant to section 21B of the 1985 Act was served was by letter dated 29 October 2009. This again goes to the issue of interest and administration charges only as this provision entitles the tenant to withhold payment until such time as a summary is served.

31. The Applicant was unable to provide the tribunal with any evidence that the demands prior to 29 October 2009 had been accompanied by a summary pursuant to section 21B.

Summary of tenant's rights – the tribunal's decision

32. On the evidence before it the tribunal found that the demands issued prior to 29 October 2009 were not accompanied by a summary of tenant's rights and obligations.

The major works

33. There were 4 separate major works projects before the tribunal, June 2000, July 2000, January 2002 and July 2007. The tribunal deals with each separately below.

June 2000 – exterior decorations

34. In relation to compliance with section 20 of the Act the Respondents say no estimates were provided with the Stage 2 notice. It is acknowledged however that the estimates had been provided subsequently and that the tenants had responded to those estimates giving views. Thus although the Respondents say there has been a technical breach of section 20 it is acknowledged that it would be difficult to oppose an application for dispensation under section 20ZA.

35. The Applicants say that the Stage 2 notice was accompanied by the estimates. Mr Moskovitz' evidence was that the estimates would have been included. Reliance was placed on the covering letter which referred to the estimates as being enclosed. It became clear during the hearing when Mr Lewin produced his file that he had received at least one of the estimates. In any event the Applicant relied on the application for dispensation.

36. In relation to the 2000 works however the level of fees is opposed. The charges include a management fee of 15% together with a surveyor's fee of 10%. In relation to the management fees the Respondents say there are no invoices and no evidence of payment. The management agreement has not been disclosed as it is said to be confidential. Counsel also drew attention to the connection between the landlord and managing agent, it is accepted that the landlord has an interest in Y & Y management. It was questioned whether there was a contractual liability to pay those costs and whether they were in fact paid. The level of the management fee at 15% was also criticised as excessive.

37. The criticism in relation to the surveyor's fee was that the 10% charged had been charged not only on the cost of works but also on the management fee.

38. The Respondents in their statement of case had also raised criticism of the quality of the works. They asked for a general reduction to be made to reflect poor workmanship. Counsel also submitted that a deduction of approximately £2,000 should be made to reflect works which Mr Lewin said had been duplicated in 1996. It was acknowledged by Counsel that the Respondents were in a difficult position, the works having taken place in 2000. They had not been able to obtain an expert's report. They did however rely on the letter of Mr Howes dated 20 June 2001 and submitted that it was clear that a number of items had not been completed satisfactorily. It was questioned whether the works had deteriorated or whether they simply had not been carried out properly. Mr Raye for the Applicant had accepted that he could not categorically say that this was due to deterioration.

39. As far as the management fees were concerned Counsel for the Applicant submitted that it was not unreasonable to charge additional

fees in respect of non-routine works which did not form part of general day to day management. The tribunal was urged to consider the level of correspondence which had been generated by the major works and the amount of additional time which could have been spent.

40. In relation to the surveyor's fees Counsel for the Applicant submitted that the tribunal should look at the sum paid and decide whether that was a reasonable amount. He relied on Mr Raye's evidence who submitted that the industry standard was 12.5-15%.

41. As far as the quality of the works was concerned the Applicants relied on the evidence of Mr Raye who appeared and gave evidence. Mr Raye had also made a witness statement. He was heard to be a building surveyor who had been retained as surveyor to prepare the specification and oversee the major works contract. His instructions had been to prepare the schedule of works to address the matters raised in the notice served by the Local Authority. His evidence was that the works had been carried out to a proper standard and that he had made routine inspections. He was able to provide the tribunal with the dates of his inspections to the site both during and after the works had been completed and during the defects liability period. Mr Raye was referred to the letter dated 20 June 2001 from Mr Howe of James Ross & Co, the tribunal was referred to his response in the form of a report prepared after a visit to the premises on 6 February 2002. He pointed out that this report was prepared after the expiry of the defects liability period. As far as deterioration was concerned his evidence was that any deterioration did not suggest the works had been poorly done but could be down to the weather and level of exposure. The tribunal heard that the standard of the works could only properly be judged at the end of the defects liability period. The tribunal was also referred to the final account which showed the omissions, in particular the tribunal heard that a large part of the specified pointing had not taken place as additional works had been found to be necessary, a costs exercise had taken place and the pointing had been omitted.

42. Counsel for the Applicant also pointed out that if the Respondents had had serious concerns in 2000 they surely would have commissioned a full report at that time but failed to do so. A far as any duplication of the 1996 works was concerned Counsel submitted that the tribunal had no real evidence to make any finding. Mr Lewin was of course a layman and the tribunal was urged to take account of Mr Raye's evidence who as a suitably qualified professional assessed the necessary works.

June 2000 works- the tribunal's decision

43. The tribunal made the following findings;

a) It was unclear which documents had been sent with the Stage 2 notice. On the evidence therefore the tribunal found that the

stage 2 notice under section 20 had not been accompanied by the estimates. The Applicant applied for dispensation in this regard (see below).

b) Management fees are disallowed. Although the tribunal considers that management fees are recoverable in principle in some instances it had no evidence that there was a contractual liability for those costs between the landlord and the managing agents nor was there any evidence that the costs had been invoiced or paid.

c) The surveyor's fees should properly be charged only on the cost of the works themselves and not on the management fees and are allowed at a rate of 10% on those works.

d) The tribunal made no reduction in relation to the alleged poor quality of the works. It was impressed with the evidence of Mr Raye who it found to be a reliable witness who had retained his notes from the works. It considered that Mr Raye had dealt satisfactorily with the comments made in the report of Mr Howes and that there was no evidence of poor workmanship. The tribunal also considered that the complaints raised by Mr Howe were relatively minor and one would expect such works to be picked up during a defects liability period.

July 2000 - window works

44. The Respondents likewise challenge the management fees (now 10%) and surveyor's fees on the same basis as above.

45. In relation to the July 2000 window works the Respondents submit that there was not proper consultation under section 20.

46. Evidence on the notices served was given by Mr Moskovitz, property manager, of Y and Y Management Limited. His evidence was that a generic notice was served under section 20 dated 11 July 2000 on all leaseholders and that each letter was placed in an envelope addressed to the specific flat. A copy of the notice was contained in the bundle and addressed to "*The Lessee, Stanley mansions, Marius road, London SW12*".

47. It is said for the Respondents that the notice was not properly addressed to the tenant and did not reach the tenant until after the works had been undertaken. It is submitted that no consultation took place and the costs recoverable are limited to £250. The tribunal heard that if the notice had reached Mr Bandel he would have made representations about those works as he had concerns about why one set of works had been proposed and then substituted.

July 2000 – window works – the tribunal's decision

48. The tribunal disallows the management fees and allows the surveyor's fees at 10% on the cost of works alone on the same basis as above.

49. The tribunal was not persuaded by the evidence of Mr Moskovitz in relation to the service of the notices. The tribunal only had one generic letter before it and was not persuaded that this had been served properly on the leaseholders. It therefore concluded that the landlord had failed to serve valid notice under section 20.

January 2002 major works

50. No issue on compliance with section 20 is raised in relation to these works.

51. In relation to the 2002 works the Respondents only raise a challenge to the management fees (now charged at 10%).

52. The tribunal disallows the management fees on the same basis as above.

July 2007 major works to the chimney

53. No issue on consultation under section 20 is raised in respect of these works.

54. The Respondents likewise challenge the management fees (now 10%) on the same basis as above.

55. The major works in 2007 were in response to a dangerous structure notice served by the Local Authority in relation to a chimney. The Respondents argued that the July 2007 major works should have been undertaken in 2000 as the need for those works should have been obvious at that point. It is said that it is clear from the 2000 specification that the works to the chimney stack were intended to be carried out. Had they been carried out at that time there would not have been duplication in costs. The Respondents argued that the cost of scaffolding in the sum of £998.75 and management and surveyor's costs on that sum should be disallowed.

56. Mr Raye gave evidence in relation to the 2007 works. He was asked on cross examination if these works would have been necessary if the pointing which had originally been part of the major works specification in 2000 (but had been omitted due to budgetary considerations) had been carried out. He told the tribunal that the chimney could have become more dangerous over that period. His

evidence was that it was entirely possible that there had been substantial deterioration from 2000 to 2007 and that the works had not been necessary on inspection in 2000.

2007 Major works – the tribunal's decision

57. The tribunal disallows the management fees on the same basis as above.

58. The tribunal allowed the cost of the 2007 major works in full. It had no evidence in relation to the condition of the chimney in 2000 and in fact over the entire intervening period until 2007 when the dangerous structure notice was served. It accepted Mr Raye's evidence in relation to the potential deterioration of the chimney over that time.

Application for dispensation

59. The Applicant applied for dispensation under section 20ZA of the 1985 Act in respect of any consultation requirements which the tribunal considers that the Applicant has failed to comply with.

60. In relation to the June 2000 works the Applicant had failed to enclose estimates with the stage 2 notice but they had subsequently been received and the leaseholder had made observations.

61. In relation to the July 2000 works the Respondent had not received the consultation notice until after the works had been carried out. Counsel for the Respondent submitted that Mr Bandel would have responded to the consultation and by not having been served had lost the opportunity to do so. The Applicant submitted that Mr Bandel had failed to show that he had suffered any prejudice.

62. As Mr Sissons for the Applicant pointed out the Supreme Court set out the proper approach to be adopted to applications for dispensation in *Daejan Investements Ltd v Benson [2011] EWCA Civ 38*. The approach for the tribunal is the extent to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirement. Having regard to the *Daejan* case Mr Sissons submitted that the Applicant had substantially complied with the requirements, the complaints made being of a minor and technical nature and the Respondents have in no way been prejudiced by the failings of the Applicant, the onus is on them to explain fully how full compliance would have made a difference to the outcome.

Dispensation – the tribunal's decision

63. In relation to the 2000 works Counsel for the Respondent accepted that it was difficult to argue that the leaseholder had suffered prejudice in this instance and the tribunal agreed. It therefore grants dispensation under section 20Za in respect of the 2000 external decorations.

64. In relation to the July 2000 works for the Respondents Mr Webb emphasised that there had been no compliance at all as it was the Respondents' position that they had not received the notice until after the works had been carried out. The tribunal agreed that there was a total lack of compliance. It was not satisfied however that the Respondents had established what prejudice they had suffered as a result. Accordingly the tribunal granted dispensation under section 20Za in respect of the July 2000 works.

Administration charges

65. The Respondents challenge administration charges in the sum of £440.64 on the basis that there is no provision in the Lease and that they are in any event unreasonable. Counsel for the Respondents say that reliance could not be placed on the costs provision in relation to costs of and incidental to the preparation and service of a notice under section 146 as no notice had been served.

66. For the Applicant Mr Sissons clarified that a section 146 notice had been served in 2001 and the tribunal was referred to a copy in the bundle. He submitted that all of the charges were incidental to the notice and thus recoverable under the Lease.

Administration charges – the tribunal's decision

67. The tribunal allowed the administration charges before it in full, there was clear provision in the Lease for recovery of the costs of and incidental to the service of a section 146 notice and these appeared reasonable in amount.

The Counterclaim

68. The Respondents also made a counterclaim in respect of damages for its alleged breach of covenant in failing to make a claim under an insurance policy. The Respondents say that in 2006 there were a series of water leaks from Mr Bandel's flat into the bathroom and kitchen of Mr Lewin in Flat 1.

69. The tribunal heard evidence from Mr Lewin in relation to the leaks. Mr Lewin told the tribunal that the managing agents failed to make an

insurance claim and as a result Mr Lewin had to undertake the repair works. The tribunal heard that it had been unclear at first where the leak was coming but it was later confirmed to be coming from Mr Bandel's flat. He asked Mr Bandel to reimburse him the cost of the works in the sum of £2,000 as he was the leaseholder of the flat from where the leak emanated. Mr Lewin confirmed that he had forwarded copies of the invoices to the managing agents with a request that they make an insurance claim. He did not however pursue this further with the agents.

70. The Applicant's position in relation to the counterclaim was that it should be left to the County Court. Counsel pointed out that Mr Bandel had agreed to pay the sum of £2,000 voluntarily. He criticised the lack of a survey or proper report and the failure to obtain a full specification. Mr Sissons also pointed out that it was unclear as to whether this was in any event a valid insurance claim as there was no clear evidence as to the root of the problem.

The Counterclaim – the tribunal's decision

71. The tribunal had very poor evidence before it in relation to the counterclaim and considered that the County Court was the better venue for this to be heard. It will therefore remit the matter of the counterclaim to the County Court.

Alleged breach of covenant

72. It is agreed that the leasehold interest in the Property was transferred to the Second and Third Respondents on 3 April 2009 and a charge registered against the title. The Applicant says quite simply that in breach of clause 3(8) of the Lease it was never given notice of the assignment. It therefore asks for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act") that a breach of covenant has occurred. It is accepted that this breach has since been remedied.

73. In reply the Respondents say that a notice of the assignment was served by the solicitors acting for the Second and Third Respondents at the time. Mr Bandel says that his solicitor was very pedantic and had informed him that he believed it had been sent. As soon as he became aware of the allegation that no notice had been served in 2009 a notice of assignment was served under cover of a letter dated 19 April 2012. The Respondents did not provide any evidence of the service of the notice of assignment as at the date of the assignment in April 2009 such as a copy letter from the solicitors serving the notice or a witness statement from the solicitor to confirm the service.

Alleged breach of covenant – the tribunal's decision

74. Clause 3(8) of the Lease provides;

> *"Within four weeks next after any assignment subletting (for a period of six months or more) charging or parting with possession (whether mediate or immediate) or devolution of the Demised Premises to give notice in writing of such transfer assignment subletting charging parting with possession or devolution of the name an (sic) address and description of the assignee sublessee charge or person upon whom the relevant terms or any part thereof may have devolved a s the case may be) and to deliver to the Lessors' Solicitors within such time as aforesaid one verified copy of every instrument of transfer assignment subletting charging or devolution and every probate letter of administration order of the Court or other instrument effecting or evidencing the same and to pay to the Lessors or their (sic) a reasonable fee (not less than twenty five pounds) plus Value Added Tax in every case for the registration of each such Notice."*

75. The tribunal had no evidence that a notice of assignment had been served save for the hearsay evidence of Mr Bandel that he had been informed by his solicitor that he would have served such a notice in the ordinary course of events. The tribunal therefore concluded that no notice had been served and found that there was a breach of clause 3(8) of the Lease under section 168(4) of the 2002 Act.

Management Fees

76. The Respondents say that the management fees are excessive. It is submitted that the fees are opaque and it is unclear what services are being provided. It is suggested that a 50% reduction be made for each of the service charge years. Specific criticisms include;

- The reactive nature of the major works in 2000/02 and those in 2007 which were prompted by the service of a Housing Act notice in relation to one of the retained flats
- Limited scope of the major work projects compared to works which were in fact alleged to be necessary
- The failure to respond to requests for information and clarification with specific reference to questions in relation to the reserve fund

77. In response the Applicant says that the Respondents are not criticising the general day to day management but rather specific instances of alleged poor management. Counsel submitted that there was evidence of good responsive management from the level of correspondence

included in the bundles. Property inspection reports had been provided which showed visits were taking place on a roughly quarterly basis.

Management fees- the tribunal's decision

78. The tribunal had seen some evidence of poor management. Demands for service charges were not complaint with section 47, communications with the leaseholders were poor at times. The tribunal had found Mr Moskoitz's evidence highly contradictory and Mr Azoulay displayed a worrying lack of knowledge of good management practice.

79. Management fees are therefore allowed at the following rates;

2001 - £125 plus Vat

2002 - £125 plus Vat

2003 - £125 plus Vat

2004 - £140 plus Vat

2005 - £140 plus Vat

2006 - £165 plus Vat

2007 - £165 plus Vat

2008 - £200 plus Vat

2009 - £200 plus Vat

2010 - £200 plus Vat

2011 - £200 plus Vat

Accountancy Fees

80. The Respondents say that the sums claimed in respect of accountancy fees are excessive. They do not however provide any comparable evidence in support of the contention.

81. The tribunal considered that given the errors it has seen in the accounting process the accountancy fees should be reduced to the following rates;

2008 - £450 plus Vat

2009 - £500 plus Vat

2010 - £500 plus Vat

2011 - £500 plus Vat

Application under s.20C

82. At the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines on balance that no order should be made under section 20C. However the reasonableness of those charges may be subject to a later challenge under section 20C.

The next steps

83. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Edmonton County Court.

Name: Sonya O'Sullivan **Date:** 21 October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.