



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

Case reference : **CHI/OOHP/LSC/2014/0029**

Property : **Santoy, 57 Banks Road, Sandbanks,
Poole, Dorset BH13 7PP**

Applicant : **Mr & Mrs R M Leader Cramer (Flat
1)**

Representatives : **Foxes Property Management Ltd,
Managing Agents
Mrs Harley & The Stanley Martin
Trust (Flat 2)
Mrs Bunyard (Flat 3)
Mrs Kaye (Flat 4)
Mr & Mrs Ivie (Flat 5)
Mr Howarth (Flat 6)
Executors of D Webb (Flat 7)
Mrs Allen (Flat 8)
Mr Meyrick (Flat 9)
Mr Hickman (Flat 10)**

Respondents: :

Type of application : **Liability to pay service charges**

Tribunal Judge : **Angus Andrew
Luis Jarero BSc, FRICS**

**Date and venue of
hearing** : **13 November 2014
The Law Courts, Civic Centre, Park
Road, Poole, Dorset BH15 2NS**

Date of decision : **26 November 2014**

DECISION

Decision

1. £410,510.87 exclusive of VAT is a reasonable estimate of the cost of the proposed major works to Santoy.
2. All the proposed major works are repairs.
3. Each respondent is liable to pay 10% of the estimated cost as a service charge.

The application, inspection and hearing

4. By an application received on 25 March 2014 the landlords sought a determination pursuant to section 27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act") of the tenants' liability to pay a service charge in respect of the estimated cost of a proposed major works project. Directions were issued on 15 May 2014.
5. We inspected Santoy on the morning of 13 November 2014. At the hearing the landlords were represented by Mr Karl Lyons of Foxes Property Management Limited. Mr Damon Green BSc, MRICS, FBBng MIAS gave evidence on the landlords' behalf. Mrs Webb who is one of the executors of the estate of Mr D Webb (flat 7) attended the hearing. However Mrs Webb apart none of the other respondents either attended the hearing or were represented.
6. Mr Lyons is a member of the Southern Panel of this Tribunal. Consequently the case was heard by ourselves as members of the London Panel to avoid any perceived conflict of interest.

Background

7. Santoy is a block of 10 flats built in the 1950s. It is situated on a narrow low-lying strip of land that separates Poole Harbour from the sea. The southern elevation faces the sea. The northern elevation faces Banks Road that fronts Poole harbour. Consequently on both sides Santoy is open to the elements and in particular the prevailing onshore salt water winds. It is a four storey building constructed of rendered brickwork with concrete floors and roof slabs and cantilevered concrete balconies to the main northern and southern elevations. The flank walls are of brick construction and are not rendered.
8. As well as owning the freehold reversion to Santoy the landlords also hold a lease of flat 1. Included in the hearing bundle was a copy of the lease of flat 3 and we were told that all 10 leases are in similar form. The lease was granted in 1964 and is of its time. The landlords' obligations are contained

in clause 3. It is unnecessary to recite them in full. The essential point is that the landlords are obliged only to "*maintain in good repair and condition*" the exterior, main structures and common parts of Santoy.

9. The service charge provisions are unusual in that the service charges are calculated on the basis of rolling estimates. The service charge year runs from 25 June. At the beginning of each year the landlords' surveyor is required to prepare an estimate of the costs to be incurred by the landlords in fulfilling their obligations during that and future years having regard to any shortfall or surplus accruing from previous years. Each lessee is required to pay 10% of the estimate by two equal instalments on 24 June and 25 December in each year. Thus although not specifically stated the landlords can build up a reserve fund to cover the cost of future anticipated expenditure.
10. As a result of its exposed position Santoy has been subject to extreme weathering. The detail to the balconies to both the north and south elevations has allowed water to penetrate the render and asphalt and saturate the concrete structure of the balconies causing damage to the decoration, the render and the structure itself. The detail to the penthouse balconies has been similarly affected and has also allowed water to enter into the flats below. Previous attempts to patch repair Santoy were unsuccessful. The last attempt was in 2011/2012 and resulted in an application to the tribunal. Mr Lyons informed us that even before the redecoration was completed it was damaged as a result of water transmission from the saturated structure.
11. Accordingly a scheme was devised by Bennington Green Ltd to remedy the disrepair that was the root cause of the problem and a specification was prepared. Put simply the balcony parapet walls will be removed. A lead "tray" damp proof course and new balcony surfaces will then be installed. The parapet walls will then be replaced. The gulley round the penthouse balconies will be similarly treated and a new covering will be installed over the existing asphalt balconies that serve as a roof to the flats below. The render will be removed, replaced and suitably decorated. Further additional repairs to Santoy will also be completed including the repointing of large sections of the flank walls that have been weathered.
12. Mr Green said that the alterations to the appearance of both facades will require planning consent. Furthermore if the local authority considers that the new roof covering amounts to replacement they will insist on the provision of insulation. In granting planning and building control consent the local authority will require the work to be completed to current standards rather than those prevailing at the time of Santoy's construction in the 1950s. For example the balcony parapet walls do not comply with current Health and Safety standards because they are too low. On replacement either the height of the walls will have to be increased or a safety rail added. In answer to our questions Mr Green confirmed that if

the local authority's requirements were less onerous than he anticipated only the minimum work required would be completed.

13. Bennington Green Ltd estimated the cost of the works at between £550,000 and £650,000 plus vat and professional fees. Consultation notices were issued on that basis under section 20 of the 1985 Act and it was on the basis of that estimate that the landlords made their application to the tribunal.
14. The consultation notices produced a number of responses. Although there was general acceptance that the work was necessary some of the respondents objected to specific items principally on the grounds that they included an element of betterment.
15. The specification was eventually put out to tender. Nine contractors were invited to tender including one nominated by the respondents. However, only three tenders were received and these were considered in a tender report prepared by Mr Green and dated 15 June 2014. For reasons that do not appear to be disputed he recommended that the contract for the work be let to Spetisbury Construction Ltd in the sum £410,753.37 exclusive of VAT and professional fees.
16. Four of the respondents instructed John Holt, a surveyor, who inspected Santoy and produced a report. His conclusions are summarised in the following passage: *"The work schedule is extensive, which in turn requires a significant financial outlay. That said, on the whole the works are reasonable, although many items of work is consequential, to aide repairs elsewhere"*. He drew attention to seven items in the lengthy specification that he considered might be a *"questionable"*.
17. The respondents as a whole wrote to the landlords on 21 August 2014 citing Mr Holt's report. Although they generally accepted that the work was necessary they also questioned a number of specific items.
18. The respondents concerns were largely dealt with in a letter from Mr Green to Mr Lyons on 15 September 2014. In that letter some concessions were made.
19. The original consultation prompted negotiations between the parties with a view to the demolition and redevelopment of Santoy. The proposal would obviously require the cooperation of all the respondents and negotiations are ongoing. The proposal is however outwith our jurisdiction.
20. At the hearing Mr Lyons produced an agreement signed by eight of the nine respondents. In the agreement those respondents acknowledged both that the scope of the proposed works is necessary and reasonable and in accordance with the landlords' repairing covenant contained in clause 3 of the leases. They also acknowledged that they should pay the proposed cost

of £410,753.37 exclusive of VAT in accordance with the terms of their leases.

21. Mr Hickman (flat 10) was the only respondent who did not sign the agreement. Mr Lyons told us that he had not signed only because he was "unwell". The directions issued on 15 May 2014 record that "*Mr & Mrs Ivie of flat 5 and Mr Hickman of flat 10 indicated to the Applicant that they agree with the application*".
22. Mrs Webb who attended the hearing and who had signed the agreement sought clarification to two issues. Firstly she said that the respondents had signed the agreement on the express understanding that the work would not start until May 2015 to give the parties further time to explore the possibility of a whole site development. With the landlords express consent Mr Lyons accepted that the agreement had been signed on that basis.
23. Secondly and in answer to our question Mrs Webb said that the agreement had been signed on the basis that the concessions made by Mr Green and recorded in his letter to Mr Lyons of 15 September 2014 would be implemented. Mr Lyons acknowledged that understanding. Having checked the specifications Mr Green's evidence was that the concessions would amount to a reduction in the agreed price of £242.50 exclusive of VAT (in addition to any further reduction if the local authority's requirements were less onerous than Mr Green envisaged).

Issues in dispute

24. Eight of the nine respondents having expressly agreed to contribute towards the estimated cost and the ninth (Mr Hickman) having indicated at the pre-trial review that he had agreed with the application it could be said that there nothing for us to decide. Nevertheless Mrs Webb at the hearing asked for reassurance that the respondents were not being asked to pay for any unnecessary work and the landlords not having withdrawn their application we must determine it.
25. As it has been pointed out in a recent Upper Tribunal decision applications relating to the estimated cost of proposed works are to an extent "*sterile*". Nevertheless this application raises the following issues:
 - a. Are the proposed works "repairs" within the meaning of the landlords repairing covenants?
 - b. Is there an element of betterment in the proposed works that should be discounted?
 - c. Is the estimated cost reasonable?

Reasons for our decision

26. In essence the first two issues are the opposite side of the same coin. Essentially the proposed works are required to put the property into a state of repair and to make good the disrepair that has accumulated over a period of some 60 years as a result of Santoy's exposure to the elements. There is a small element of betterment in the proposed works of which the proposed increase in the height of the parapet walls is the most obvious. Nevertheless any betterment results from the application of modern building practice and also the legitimate requirements of the local authority when granting permission for the proposed works. Although no authorities were cited it is well established that in undertaking repairs to a property a landlord may properly have regard to modern building standards, advances in technology and the requirements of modern building regulations and planning requirements. We are satisfied that the items originally questioned by the respondents (other than those that were conceded) fall within those categories. Consequently the proposed works as a whole fall within the landlords repairing obligations and they are entitled to recover the reasonable estimated cost of the works through the service charge.
27. Turning to the third issue the reasonableness of the estimated costs had effectively been conceded by all the respondents. A detailed specification had been put out to tender and the returns had been subject to a rigorous analysis. We have no hesitation in concluding the estimated cost is reasonable and that a service charge is payable in respect of it.
28. We emphasise that this decision relates only to the estimated cost of the work and not the actual cost. The respondents will still be entitled to challenge the actual cost when the work has been completed if for example they are dissatisfied with the quality of the work.

Name: Angus Andrew

Date: 26 November 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.