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

Case Reference: LON/00AW/LSC/2014/0148

Property: Flats 2 and 4, 22 Pembroke Road, London W8
6NT

Applicants: James Buxton and Gity Buxton

Representative: In person

Respondent: 22 Pembroke Road Residents Association
Limited

Representative: Richard Power, barrister (direct
access)

Type of application: Liability to pay service charges

Date of hearing: 28 July 2014

Appearances: The applicants in person
Richard Power for the respondent

Tribunal members: Margaret Wilson
Susan Coughlin MCIEH

Date of decision: 14 August 2014

DECISION

Introduction and background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the applicant leaseholders to pay service charges to the respondent freeholder ("the landlord").
2. 22 Pembroke Road is a Victorian house converted into four flats to which a small modern town house, 22A Pembroke Road, is annexed. The lease of Flat 1 in the basement of 22 is held by Lela Pais, that of Flat 2 on the ground floor is held by the applicants, that of Flat 3 on the first floor is held by Marjory Agha, and that of Flat 4 on the second floor is also held by the applicants. James Buxton, one of the applicants, is the son of Gity Buxton, the other applicant. Mr Buxton, Mrs Buxton, Mrs Pais and Mrs Agha each own one share in the landlord, and Mrs Pais and Mrs Agha are its directors.
3. By their application, which was received by the Tribunal on 17 March 2014, the applicants challenged their liability to pay some of the service charges in each of the years 2007/2008, 2008/2009, 2009/2010, 2010/2011, 2011/2012 and 2012/2013, and the estimated charges for the year 2013/2014. However their liability to pay service charges for the years 2007/2008 to 2010/2011 inclusive were either determined by a judgment of His Honour Judge Gerald given on 7 July 2011 or were the subject of an agreement between the parties to the present application dated 17 January 2012 and, as the parties accepted, those charges could not, by virtue of section 24(4)(a) and (c) of the Act, be reconsidered by the Tribunal.
4. The present determination is therefore concerned only with the applicants' liability to pay service charges for the years 2011/2012 and 2012/2013 and the estimated charges for the year 2013/2014, and only with the few costs in those years which the applicants challenged in their application.
5. The hearing occupied one full day. The applicants gave evidence and made submissions and the landlord was represented by Richard Power, counsel, who called Mrs Pais, Mrs Agha and Matthew Mackintosh, a property manager employed by A M Surveying Property Services Limited, the landlord's managing agent, to give evidence. The landlord also relied on witness statements, which the applicants elected not to challenge, from Christopher Fair who is the leaseholder of 22A Pembroke Road [126], Fabio Ingegneri who cleans the common parts of the property [122], and Allen Spooner of Kensington and Chelsea Property Maintenance [124] and Mohamad Kadhim of Smart Building Solutions Limited who have carried out repairs to the property. Mr Kadhim's statement was provided at the hearing.

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6. In addition to the issues which they raised in their application, the applicants sought before us to raise matters relating to the affairs of the landlord company, alleged harassment by Mrs Agha and her son, the choice of managing agent, and the landlord's alleged failure to perform its covenant to repair, in respect of none of which the Tribunal has jurisdiction. The respondent, too, in its written evidence raised matters of that kind. There has in the past been a great deal of acrimony between the applicants and Mrs Pais and Mrs Agha, and many of the disputes between them were aired before and considered by HHJ Gerald. While we have read his judgment as were invited to do, we have not allowed the conclusions he reached as to the character and behaviour of those involved to influence our decision, which is based on the evidence given to us and is confined to the issues within our jurisdiction.

7. In March 2014 Mr Buxton took the unwise and inflammatory step of purporting to register himself as sole director of the landlord and purporting to appoint himself as managing agent, neither of which was calculated to improve relations between the people concerned. But despite that setback we were encouraged by the evidence of Matthew Mackintosh, the person employed by the relatively new managing agent who is mainly responsible for the management of the property. He appeared to us to be constructive and sensible and he agreed to do his best to work with the applicants, Mrs Pais and Mrs Agha to try to resolve some of the problems which have beset them in the past. Since he was not concerned with the events which led to the judgment of HHJ Gerald, which appears considerably to have inflamed the situation between the people concerned, we are reasonably optimistic that, with a measure of common sense and good will, events will proceed more smoothly from now on. It is quite obviously in the interests of all four people concerned that they should do so. We hope particularly that Mr Mackintosh will be able to help Mr and Mrs Buxton and Mrs Pais and Mrs Agha to resolve the issues which they have in respect of the governance of the landlord company.

8. Before the hearing the applicants paid all the disputed service charges in full but without prejudice to their contention that the costs were not reasonably incurred.

The statutory framework

9. By section 27A of the Act an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) of the Act as *an amount payable by the 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*. Relevant costs are defined by section 18(2) and (3). By 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard, and the amount payable shall be limited accordingly*. By section 19(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 of subsequent charges or otherwise.

The issues

10. In respect of all the costs which the applicants challenged, they said in the application only that they wished to see the receipts, invoices and other relevant documents. Those documents were disclosed to them in these proceedings and they were then in a position to make more detailed submissions. Page references in this decision to documents in the hearing bundle are given in square brackets.

2011/2012

Repairs: £833.75

11. The landlord listed the four items of repair which formed the subject of this charge [82]. Their total cost was £996 and the applicants challenged the first three items (invoices at [167], [168] and [169]) but not the fourth [170]. They maintained that the three items of repair which they challenged were all carried out for Mrs Pais and that problems of disrepair which affected the applicants were ignored. They also suggested that the cost of the works should have been the subject of insurance claims. Mrs Pais gave evidence that the works were all carried out to the common parts of the property or to remedy the consequences of a leak from the exterior of the property into a bedroom of her flat and all of them had been organised by the then managing agent, James Price, who has since died. Mrs Agha gave evidence that it had been necessary to fit a latch to an outside gate [169] because people had been leaving rubbish in the garden of the property. Mr Mackintosh said that the excess under the insurance policy was £250, but that in his opinion it would have been unwise to make small claims such as for the works in question because to have done so would have affected the premium in subsequent years.

12. We accept that these works were necessary, that all of them were carried out to the common parts and were properly the subject of a service charge and that the costs were reasonably incurred. If items of work which would have more directly benefited the applicants were not carried out (which we are not satisfied was the case), that is not a matter over which we have jurisdiction. We accept Mr Mackintosh's evidence that it would not have been prudent to make insurance claims in respect of any of the works, which in any event might well not have been covered by insurance.

Legal costs: £1335

13. These costs were included in the service charge accounts by the previous managing agent, David Price of James E Fisher & Son, who has since died, and Mr Power was unable to explain them. However he conceded that they had either been included in the sum ordered to be paid by HHJ Gerald or in the sum agreed under the agreement of January 2012 and that accordingly no determination in respect of them was required from us.

Cleaning: £260

14. The landlord employs Fabio Ingegneri, trading as Fabulous Cleaners, to clean the common parts of the property once a month at a cost of £45 for two hours. It appears that the cost of £260 represents the part of Mr Ingegneri's fees which were not included in the sums paid under the judgment or agreement. Mr Ingegneri provided a witness statement in which he said that he did "the cleaning in the common parts, including cleaning windows, hoovering, dusting, mopping and checking the rubbish bins". The applicants elected not to cross-examine him and they withdrew a suggestion they had made in a notice they had given under section 22 of the Landlord and Tenant Act 1987 [319] that "the service charges included fees for non-existent ... cleaning". Indeed, in the course of the hearing Mr Buxton said that he believed that Mr Ingegneri did not clean the common parts, a suggestion which appeared to be based only on the fact that he had never seen him do so and which he later withdrew. The applicants continued to suggest, however, that the cleaner was "massively overpaid" and that the cleaning was not done well and Mr Buxton said that he would prefer to clean the common parts himself, which he would do without charge. Mrs Pais and Mrs Agha gave evidence that the cleaning was done to a reasonable standard.

15. We are satisfied that the cost of cleaning was reasonably incurred. The cost was reasonable in amount and we accept the evidence of Mrs Pais and Mrs Agha that the standard of the cleaning was satisfactory. It is hardly surprising that the common parts did not always look immaculate given the infrequency of their cleaning, and it is also not surprising that the cleaning was not carried out more frequently given the past reluctance of the applicants to pay service charges promptly. We do not regard Mr Buxton's suggestion that he should do the cleaning as practical in view of the history.

2012/2013

Repairs: £963.60

16. In its statement of case [85] the landlord listed two repairs carried out in the year: £250 for works to rainwater goods [181] and £780 for works to a balcony carried out in February 2013 [182], a total cost of £1030. In the absence of Mr Price Mr Power

could not explain the difference between the total cost of the two items and the sum in the service charge accounts.

17. The applicants accepted the charge of £250 but disputed the charge of £780. That was in respect of work carried out by Smart Building Solutions Limited and was described in the invoice as "remove existing concrete slabs on the balcony; supply and install new concrete to stop the water to the other side of the balcony to stop water dripping on the wall of the neighbour flat below which caused big damage on the window seal and wall, even for the ground floor flat". A witness statement from Mohamad Kadhim of Smart Building Solutions Limited was produced at the hearing and the applicants agreed to its admission. In his witness statement Mr Kadhim said that concrete slabs on the balcony of Flat 4 had been incorrectly installed without a slope and that in consequence all the water from the main roof went directly to the kitchen window of Flat 3 and the patio door of 22A.

18. Mrs Agha gave evidence about this item of repair. She said that she had previously tried to rectify the leak into her flat but without success and that she had asked Mr Kadhim, who was working for Mr Fair at the time, to come and have a look. She said that she had then spoken to the sub-tenant of Flat 4 who said that he would telephone the applicants, who were at the time abroad for a month. Mrs Agha said that on the following day she had spoken on the telephone to the sub-tenant who said that he had spoken to Mr Buxton who had said "that's fine" or words to that effect, and that Mr Kadhim had then carried out the necessary work on the instructions of Mr Price and by arrangement with the sub-tenant, and that the work had taken part of each of three consecutive days. She said that the work was urgently required because rainwater was pouring down the outside of the property and was likely to damage it.

19. Mr Buxton agreed that he and his mother had been away for the whole of February 2013 but he said that he had not given permission to the sub-tenant for workmen to enter the flat. He said that the applicants were not complaining about the fact that the work was done but about the fact that it was carried out without the applicants' permission and that in their opinion the necessary works were not urgent and could have been carried out much more cheaply by installing a pipe to carry the rainwater away at a cost, Mrs Buxton suggested, of about £70. The applicants also said that the new concrete had blocked the existing water outlet from the balcony so that water now pooled on the balcony surface. In support of their contention that the works were not urgent and could have waited until they returned from their visit abroad they relied on an email [342] which the wife of their sub-tenant had sent to Mr Price on 4 October 2012 which suggested that by February 2013 the damp had been present for some months.

20. We are not altogether surprised that the applicants were displeased that the works were carried out in their absence, whether or not they were consulted about it on the telephone. Nevertheless we are satisfied from the evidence we were given that the works were necessary and we do not have the material on which we could conclude that the cost was other than reasonable. We accordingly determine that the cost was reasonably incurred.

Legal costs: £2040

21. The only invoices in the hearing bundle relating to legal costs are at [171 - 173] and are in respect of the fees of Mr Power for appearing at the county court before HHJ Gerald in June and July 2011 for which he was paid on 8 July 2011. The landlord accepts that those fees, or the bulk of them, were paid by the applicants by virtue of HHJ Gerald's order for costs against them. There is then a fee of £800 plus VAT for advising in conference and in writing on 5 October 2011 for which Mr Power was paid £960 including VAT, a fee of £1080 including VAT for "drafting settlement agreement and correspondence ... agreeing terms of settlement agreement and amount of arrears owed" on 15 November 2011, and a fee of £675 including VAT for advising in writing on 21 March 2012. Mr Power said that all legal fees charged up to the end of June 2011 were taken into account in the agreement of January 2012 and were not subject to determination by the tribunal. He said that the sum of £2040 in the service charge accounts all related to work he had carried out since June 2011 in respect of correspondence written by him and advice given by him on matters outlined in his letter to Mr Buxton dated 15 November 2011 [253], the total fees for which amounted to £2715 including VAT. He was unable to explain the difference between that figure and the amount shown in the service charge accounts. He submitted that all the matters set out in the letter fell within the costs set out in paragraph 9 of the fourth schedule to the lease [162] to which the applicants were liable by virtue of clause 2(2)(ii) [146] and 3(11) [155] to contribute by way of a service charge. Paragraph 9 of the fourth schedule provides that the costs a proportion of which is recoverable as a service charge include *the costs which [the landlord] considers may be incurred by [the landlord] in or about the performance of the covenants on the part of the [landlord] contained in this lease.*

22. Mrs Pais and Mrs Agha said that, as directors of the landlord, they considered that they needed legal advice on the matters set out in Mr Power's letter dated 15 November 2011 in view of the facts that Mrs Buxton had been previously advised by her husband, a solicitor, in relation to her disputes with them, that Mrs Buxton had in the proceedings before HHJ Gerald counter-claimed damages of £70,000 which she and Mrs Agha had found intimidating, that for nine years the applicants or one of them had resisted the payment of service charges, and that Mr Price had said to them that he considered that the directors required legal advice which he was unqualified to provide. They said that Mr Power's advice and assistance by direct access had in their opinion been effective and reasonable in price by comparison with other suitable alternatives.

23. The applicants submitted that it had been unnecessary for the landlord to instruct a lawyer and that Mr Price could have dealt with the disputes between the applicants and the landlord, and that the applicants and the landlord "could have come to an agreement" without the intervention of a lawyer. They did not suggest that the fees were excessive in themselves or that they did not fall within the landlord's covenant or were not recoverable as service charges under the lease.

24. We are satisfied that these fees are recoverable as service charges and that they were necessarily and reasonably incurred. We accept that it was reasonable and

proportionate for the landlord to take legal advice in view of the history and that the amount claimed as a service charge was not excessive.

Cleaning: £525

25. We determine this cost to have been reasonably incurred for the reasons we have given in respect of 2011/2012.

2013/2014 (estimated)

Repairs: £2500; gardening: £190; and cleaning: £600

26. No detailed arguments were addressed to us in respect of these estimated charges. All that the landlord is required to do in respect of estimated charges is to make a reasonable estimate, usually based on charges for earlier years with an uplift for inflation or known changes in circumstances. We are satisfied that these charges meet that standard and are payable as a service charge.

Costs

27. Mr Power asked for the opportunity to make submissions on costs in writing and we afford the parties that opportunity. Any submissions on costs from the landlord must be provided to the applicants and three copies provided to the Tribunal within 14 days of the date when this decision is sent to the parties, and the applicants must provide to the landlord, with three copies to the Tribunal, any submissions they wish to make as to costs within 14 days of the date on which they receive the landlord's submissions. Our decision on costs will be made on the basis of the written submissions as soon as practicable after we have received them.

Judge: Margaret Wilson

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