



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

Case Reference : LON/00AN/LSC/2015/0461

Property : Flat 3, 139 Hurlingham Road, SW6 3NH

Applicant : Mr and Mrs Raymond Paul Russell

Representative :

Respondent : Concerto Properties Limited

Representative : Mr P Mizon, Marcus Cooper Group,
Property Manager
HML Hathaways Property Managers

Type of Application : An application for an order as to payability
and reasonableness of service charges,
s27A Landlord and Tenant Act 1985

Tribunal Members : Judge Shaw
Mr M Cairns MCIEH

Date of Hearing : 7th March 2016

Date of Decision : 10th March 2016

Venue of Hearing : 10 Alfred Place, London WC1E 7LR

DECISION

1. This case involves an application made by Mr and Mrs R Russell (“the Applicants”) in respect of Flat 3, 139 Hurlingham Road, London SW6 3NH (“ the property”). The Applicants are the leasehold owners of the property and the application is made against Concerto Properties Limited (“the Respondent”), which is the freehold owner. The Property is one of four converted flats within an original Edwardian house in Putney. The application is made under section 27A of the Landlord and Tenant Act 1985 (“the Act”) for a determination of the payability and reasonableness of certain parts of the service charge for the years 2013-2016.

2. The Application was dated 16th October 2015 and Directions were given by the Tribunal on 24th November 2015. One of the Directions (Direction 6) was the standard direction that the Applicants prepare a schedule identifying the amounts in dispute for the respective years. The Applicants prepared a bundle of documents and a Schedule of Items in Dispute, but no Schedule of the kind directed by the Tribunal. A hearing date was fixed for today in the Directions. The Applicants applied for an adjournment, but that was declined by the Tribunal on an earlier occasion. The matter came before the tribunal for hearing on 7th March 2016. The hearing was attended by Mr P Mizon (who also prepared the Respondent’s written Reply), a property manager with Marcus Cooper Group of Companies (of which the Respondent is a subsidiary) and representatives of HML Hathaways, the Respondent’s managing agents. The Applicants did not attend the hearing.

The Hearing

3. Mr Mizon addressed the Tribunal on the List of Items in Dispute prepared by the Applicants appearing at page 13 of the Bundle. He told the Tribunal that he

had had a meeting with Mr Russell on 1st February 2016, when agreement had been reached in respect of some of the items in the Schedule. It is proposed to deal with the items in the Applicants' list in turn, and to give the Tribunal's decision in respect of each item.

(a) Is there provision in the lease for demanding monies on account, in respect of proposed building works?

4. This item can be dealt with shortly. Mr Mizon said that the Respondent had taken advice on this issue, and he conceded that there was no such provision in the lease. The lease is so drafted that the landlord is required itself to fund "one off" major works, and to recoup the expense as a deficit at the end of the subsequent service charge year. This accords with the Tribunal's construction of the lease (see paragraph 2(a) of the Fifth Schedule to the lease) and the Tribunal so finds.

(b) Variation of the Lease

5. The Applicants have raised the issue that the Respondent proposes "unilaterally" to change the lease. Of course, such unilateral variation is not open to the Respondent. The Respondent confirmed that there is no application before the Tribunal to vary the lease, and there is no need for the Tribunal to make any finding on this issue, which does not arise in the context of this application.

(c) Intercom System

7. The Applicants have objected to the installation of a new intercom system in the context of some future proposed major works. The Applicants contend in their Schedule that the existing system works well and was installed in 2014. At the meeting referred to above on 1st February 2016, Mr Mizon told the Tribunal that in fact the Applicants' handset was not working, and the system is a relatively basic one which would be inconsistent with the quality of the building

after the proposed works are completed. However the Respondent is relaxed about not installing a new system, provided the 3 other leasehold owners agree, and provided that the leaseholders take responsibility if the existing system malfunctions.

8. These works have not yet taken place and the question of whether or not they are reasonable is presently hypothetical. If a finding had to be made, the Tribunal's determination is that the present system is not in fact functioning well, on the evidence before it, and it would be reasonable to replace it with a system of consistent quality with the overall major works. It is entirely open to the leaseholders to agree that this should not take place, and if this is their collective view, the installation will be omitted from the major works.

(d) Porch Light

9. Exactly the same objections are made by these Applicants to the proposed new Porch Light within the Major Works, and the Respondent's position is exactly the same (as is that of the Tribunal) as in respect of the preceding item, to which reference should be made.

(e) Doormat

10. This was also proposed as part of the major Works but in fact one of the leaseholders has carried out work in the common parts rendering the replacement unnecessary, and Mr Mizon confirmed that this item would be removed (together with the consequent cost) from the proposed Major Works. The Tribunal is content to confirm this fact.

(f) Roof Replacement

11. This was initially the most substantial objection raised by the Applicants in this Application. However, in the Applicants' Schedule, it is confirmed that this

objection is withdrawn, provided the replacement comes with a 10 year gurantee. The Respondent at the hearing confirmed that this would be the position, and there is therefore no dispute in respect of which a finding is needed under this head.

(g) **Recovery of Deficit**

12. The final issue raised in the Application is an argument that a charge for a deficit has been included in the accounts for 2014 and 2015 and a further charge is expected for 2016. The Applicants argue that this ought to be taken out of the accounts because it is irrecoverable under the terms of their lease, dated 16th February 1973. They rely on the provisions of paragraph 15 of the Eight Schedule to the lease, appearing at page 58 of the bundle and repeated and set out at paragraph 32 of the Respondent's Reply. That provision provides for a cap of 30% of the costs incurred in the relevant year.

13. The Respondent argues (and the Tribunal agrees) that the provision at paragraph 15 of the Eight Schedule refers in terms to the amount which may be demanded and collected in "***for the purpose of accumulating a Reserve Fund***". It has no bearing on the entitlement of the Respondent to recoup from the leaseholders any excess of expenditure over the estimated expenditure at the end of the accounting year. Such an entitlement (which would be surprising if it were not provided for) is expressly permitted by paragraph 2(a) of the Fifth Schedule to the lease set out in full at paragraph 29 of the Respondent's Reply, and reading:

" (a) immediately upon the Lessors' Managing Agents' or Accountants' certificate being given...there shall be paid by the lessee...any...excess between the amount paid....on account of the Management Charge so certified."

14. The Tribunal's finding is therefore that this deficit charge is indeed recoverable under the terms of the lease, as would be expected, and the

determination under this head is accordingly for the Respondent and against the Applicants.

15. Section 20C Application

This application has been made within the main written application. The Respondent confirmed that it was not proposing to seek to recover any part of the costs of dealing with the application to the Tribunal, and the Tribunal is content to make a section 20C order, and does so make. The costs incurred by the Applicants in respect of the Application Fee and Hearing Fee will be met by the Applicants and no order is made against the Respondent in this respect.

16. Conclusion

The Tribunal's findings on the Disputed Issues are as set out above and a section 20C order is made precluding the addition of any of the costs incurred in defending this application from being added to the service charge account.

Judge Shaw

10th March 2016