

12056



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

Case Reference : **LON/00AU/LSC/2016/0229**

Property : **Apartment 7, The Arc, 130 Balls
Pond Road, Islington, London, N1**

Applicant : **Ellen Anne Marshall**

Representative : **William Marshall**

Respondent : **Heather Scanlon**

Representative : **Johnny Christofi, Goodsir
Commercial Limited**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge Owusu Abebrese,
Judge Andrew Dutton,
Mr Hugh Geddes JP RIBA MRTPI**

**Date and venue of
Hearing** : **12th October 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **6 December 2016**

DECISION

Decisions of the tribunal

- 1) The tribunal makes the determinations as set out under the various headings in this Decision
- 2) The tribunal requires the respondent to within 28 days from the date of the decision to prepare certified and audited accounts to be served on the applicant for the years in dispute.
- 3) Claims in respect of exterior rendering, common parts decoration and letterbox, are not recoverable as they fail to comply with s20B of the Landlord and Tenant Act 1985
- 4) Insurance premiums claimed by the Respondent for the periods in dispute are allowed
- 5) The Tribunal finds that the management agreement with Goodsir Commercial is a Qualifying Long Term Agreement for which dispensation has not been sought. In the circumstances the amount payable by the Applicant is limited to £100 for each year during the period in dispute

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2013 - 2014 through to 2015 - 2016. In each year the Applicant seeks to challenge the totality of the service charges and specifically the water rates and insurance premiums. In addition challenges are made to costs associated with rendering, decorating communal areas, letter box installation and renovation of the Balls Pond Road facade.
2. In a document headed summary of criticisms appended to the application further details are provided
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Christofi of Goodsir Commercial Ltd at the hearing and the Respondent was represented by her father.

The background

5. The Arc consist of 11 flats with commercial premises on the ground and the basement floors in a purpose built block. The Applicant is the tenant of Apartment 7 which is a two bedroom flat, which she has owned since July 2010. The Applicant contends that the landlord has failed to operate the service charge account in accordance with the terms of the lease. The managing agents charged a fee of £7,500 for the block in 2013, which included, an element from the previous year of £1,500, £6,000 in 2014 and 2015,
6. 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.
7. The Applicant holds 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.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2013 (£2,821.65), 2014 (£2,209.22), 2015 (£3,038.60) management of account/fees, insurance, painting, work on the exterior of property and letterbox. Initially the claim also included a challenge to the water rates but this was discontinued
 - (ii) Whether the landlord operated the service charge account in accordance with the terms of the lease. The Applicant complains that the landlord has failed to provide a certified statement of expenditure as required under Clause 7 (6), or to ensure that there is no undue fluctuation in expenditure from year to year in accordance with Clause 7 (4) (b) of the lease
 - (iii) Whether the landlord has complied with the consultation requirement under Section 20 the Landlord and Tenant Act

1985 , and in particular whether the management agreement and / or insurance are qualifying long term agreements

- (iv) Whether the demands for service charges have been accompanied by the requisite summary and obligations wording, and if not, the consequences of a subsequent demand. This is linked with separate issue as to whether the cost are payable by reason of Section 20B of the 1985 Act. It is common ground between the parties that the landlord initially failed to serve demands with the requisite statement of rights and obligations, but that lawful demands have been made since February 2016
- Whether the cost of the works are reasonable
 - Whether the management fee is reasonable
 - Whether the sums demanded in respect of insurance are reasonable
 - Whether the Respondent has complied with the provisions regarding consultation requirements under Section 20 with regard to the management agreement
 - Service charges to be re-worked and for the excessive elements to be taken out and for respondent to provide a proper and full account.
9. 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.

Demands and reasonableness of the service charges

10. The Applicant claims that the service charges are not only excessive but that the demands do not comply with statutory requirements and that they are deficient and not valid. It was also argued that the demands are stale and furthermore, they are being demanded outside of the 18 month period in accordance with Section 20B of the Landlord and Tenant Act 1985. The Applicant further maintains that there are further defects with the demands in that they do not comply with sections Section 47 and 48 of the Landlord and Tenant 1987. The Applicant has referred the tribunal to a variety of cases which have been considered by the tribunal in our conclusions. The parties were informed that the tribunal has no jurisdiction in respect of the claim in respect of ground **rent** and this has been excluded from our decision and reasons.

11. Section 20B states that: 'if any of the relevant cost 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 cost so incurred'.
12. The tribunal find that the demands in respect of the **exterior rendering, painting of the common parts** and the **letter box** were served outside of the 18 month rule, if at all.
13. In respect of the **exterior rendering** the Respondent was not able at the hearing to provide the tribunal with an original copy of the demand sent to the applicant, and he referred us to a demand on page 240 of the hearing bundle dated 15 February 2016 sent to the applicant's fathers address. Mr Christofi informed the tribunal that he drafted the demand for the purposes of the hearing as the original could not be found. We concluded on the evidence that the claim for the exterior works dated 3 June 2013 were not recoverable because they fell outside of the provisions of Section 20B. The claimed amount is **£90.50**.
14. The Respondent is claiming £244.36 for painting of the common parts and £224 for the installation of the letter box. We noted that the Respondent in the Scott schedule states a different amount of £268.86 which they claim is the combined total cost of the works. However, we preferred the evidence of the Applicant and concluded that in both instances the demands had been issued outside of the 18 month period required under Section 20B. We therefore, conclude that the sums of **£224** for the painting of the common parts and **£268.86** were not recoverable by the Respondent.
15. The Tribunal found on the evidence that the payments that had been made had been done so on an interim basis/on account. We referred ourselves to case of **Gilje v Charlesgrove Securities Ltd 2003 EWHC 1284**, where it was held that the norm is that service charges are paid in advance and that they normally relate to costs which have been incurred rather than costs which will be incurred. The tribunal makes a finding that on the facts and the evidence the payments that have been made thus far by the Applicant have been on a interim basis and if these payments are sufficient and no further balancing payments required then Section 20B will not apply. There is no evidence before the tribunal to suggest that the demands will exceed the actual expenditure. Therefore, if the on account demands exceed the actual expenditure then Section 20B does not apply.
16. It should also be noted that the Applicant during the course of the proceedings informed the tribunal that the claims in respect of **the water charges** were not being pursued as they accepted the invoice/demand even though the invoice for 2014 could not be found.

17. The tribunal also makes the following additional findings. Clause 7 of the lease deals with the accounting provisions of the lease and the tribunal considered these provisions in determining the validity of the service charges. Service charges are defined under Section 18 of the Landlord and Tenant 1985 as amount : ‘an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly, or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s cost of management and the whole or part of which varies or may vary according to the relevant cost’. We find that the claimed amounts in this application satisfy this provision.
18. The tribunal at the hearing also heard evidence and submissions from both representatives on a reserve fund. The applicant was unable to assist the tribunal with regards to the operation of a reserve fund. Under Clause 7(4)(b) there is a requirement that an appropriate amount of money is set aside in reserve towards future expenditure as part of service provision. The Respondent going forward needs to ensure that this provision is complied with expressly as required by the terms of the lease.
19. The tribunal has no jurisdiction to amend and or rework the provisions of any part of the lease as requested by the applicants.
20. We also find that the claimed amounts, except for where we have expressed otherwise, are payable in accordance with the terms of clause 7 of the lease and that the obligation to pay does arise from the lease. Furthermore, that the cost has been reasonably incurred by the respondent.

Management Fees

21. The case of the Applicants is that the landlord, under Section 20 of the Landlord and Tenant Act 1985 in respect of Qualifying Long Term Agreements,(QLTA) has a duty to consult before entering into an agreement. The landlord, they argue on the facts, has signed an open ended management agreement with Goodsir Commercial which costs each of the lessees considerably more than the £100 per year, without consulting lessees, and is in contravention of the Act. The Applicant relies on the case of **Poynders Ltd v GLS Property Management Ltd LRX/121/2011** where it was held that under Section 20 of the Act the amount of service charges which a leaseholder is obliged to charge is capped at £250 for qualifying works or £100 per year for costs under a QLTA unless the landlord meets the consultation requirements or a court or tribunal makes an order dispensing with the consultation requirements. The Applicants also provided the tribunal with evidence of quotes from three management companies to show that the property could, in their opinion, be managed at a much lower management fee; we considered all of the three quotes. The Respondent could not provide us with any proof of compliance with the statutory

requirements. We were referred to the management terms and conditions specified at page 201 of the hearing bundle.

We found after careful consideration of all the evidence and the statutory requirements that the agreement entered into by the Respondent is a QLTA and one for which the consultation requirements do apply to. The Respondent has failed to act in accordance with the statutory requirements under section 20. The Respondent representative was provided during the hearing with the opportunity to consider whether he would make an application for dispensation but he did not provide the tribunal with a positive response as to whether he would make an application. Mr Marshall indicated that if dispensation were granted the quotes he had obtained for management fees of around £3,000 would be reasonable. In the alternative the Respondent may wish to consider applying for dispensation and rework the accounts to remove some charges made, for example supervision fees (£843.46 in 2013) and similar charges for the following years, which would appear to be included in the management fee. It is hoped that the parties can agree this course of action to save further applications to this Tribunal and further costs being incurred.

22. The tribunal's decision

The tribunal finds that the management agreement is a QLTA for which there was no consultation. It will be for the Respondent to consider making an application dispensation to the tribunal. In the absence of such an application being made and being successful the costs recoverable in respect of the management fees are limited to £100 for each year.,

Insurance premium £4,268.47

23. The Applicants contend that the current insurance premium for the block is excessive and that they are able to provide a cheaper quotation from NFU which would provide all lessees considerable savings in the future. The Respondent argues that the amount being claimed is reasonable and that they have tested the market which is what they are required to do in this instance. The Applicant in fact sought to challenge all three years at the hearing. However, the only comparable produced by the Applicant was for 2016. We note also the insurance charge does not seem to appear in the accounts and has been dealt with separately

The tribunal's decision

24. The tribunal **determines that the amount payable** in respect of the insurance premium of £4,268.47, which is the current amount being paid by the block, is reasonable; there is no evidence before us to show

that the previous years' charges were unreasonable and we therefore allow them

Reasons for the tribunal's decision

25. The Applicant's case is that the present amount being charged does not offer value for money and that the NFU have provide them with a quote of £3,181.29, which they argued was reasonable. Furthermore, the Respondent was in this instance relying on a single broker and that they had not really tested the market. The quote which they had provided was like for like, using the same information. The Respondent referred the tribunal to a letter from St Giles Insurance and Finance Services Ltd, which explains the process in obtaining a quote. The letter states that every year prior to the renewal of the policies they send the property details out onto the market requesting the most competitive premiums. Once all the quotes are received back they would then advise the existing insurers of any cheaper quotations and then give them the option to match the premium in order to retain the business. St Giles claim that this ensures that the most competitive premium is provided at the renewal stage. The tribunal took into account the submissions and evidence provided by the Applicant to show that the NFU had indeed provided a reasonable quotation, but concluded that in law the brokers were not obliged to accept the NFU quote and that the Respondent was in law under an obligation to show that they had tested the market, and in this instance we were satisfied that they had taken the appropriate steps to show that they had done so.

Accounts

26. The Applicant's case is that the Respondent has managed the accounts improperly because the accounts are undated, unsigned and not certified. In addition they do not confirm that the funds owed to the lessees have been retained in a separate bank account. Further, the accounts do not set out the basis upon which they have been prepared and they do not show year to year budgeted figures to enable comparison. The accounts also as indicated already do not show that there is a reserve fund in accordance with Clause 7(4). Mention was also made of the failure by the Respondent to prevent fluctuations in the accounts as provided for under clause 7(4)(b) of the lease. However, this relates to the collection of reserve monies, not the general annual service charge payments
27. The Applicant's at page 83 of the hearing bundle state that they require certified accounts, budgeted sums and an explanation of the variances between the budgeted and actual expenditure. The information provided showed that there is a substantial sum showing the funds described as net assets. However, there is no explanation what the assets represents.

28. The Respondent, in response to the claim state that the end of year accounts are prepared by Goodsir Commercial for a fee of £225 inclusive of VAT. Business Orchard LLP receive a fee of £275 to audit the end of year accounts. The Respondent contends the fact that the accounts are prepared internally makes the overall accounting process less costly. The respondent provided the tribunal with end of year accounts for 2013, 2014, and 2015 and they disagree with the Applicant's claim of lack of certification or auditing.

The tribunals decision

29. There is no argument that the figures shown on the accounts are incorrect and a good deal of information in the form of spread sheets is supplied. To comply with the lease they must be certified and to comply with the provisions of s21(6) of the 1985 Act they should be audited. It does not seem to us that it would be difficult for the Respondent to provide such certified and audited accounts for the periods in dispute and going forward. Accordingly we consider that the Respondent should provide audited and certified accounts, for the years in dispute, to the Applicant within 28 days of the decision

Reasons for the decision

- 31 The tribunal found during the course the hearing that there were anomalies in the accounting records retained by the Respondent over the years. Mr Christofi at times was not able to assist the tribunal in respect of gaps in the accounts that had been provided especially with regards to the position after 2010. He was also lacking in information as regards the existence of a reserve fund. There were instances where he was not able to provide us with originals of demands which he claimed had been sent out. The Respondent claims that the other lessees had no problems with the accounts.
- 32 Mr Marshall at the hearing informed the tribunal that the accounts and the property had not been properly managed throughout the period of his daughter's occupation. The Applicant had always paid service charge monies and thought that there was only a gap for the period 2013-2014.,However, she realised that there was a problem when she continued to receive demands so she took proactive steps to obtain further information and to resolve the issues in summer 2015 and not in 2016 as indicated by the Respondent.
- 33 The tribunal did not find that the Respondent had been incorrectly recording information from a book keeping point of view. The tribunal

formed the view that in order to ensure that in the future information reaches the Applicant, correspondence should be posted to the applicant's father's address. The Applicant presently resides in Australia.

Name:
Judge
Owusu
Abebrese

Date:
7
December
2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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.

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) the appropriate 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.