



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

Property : Garages 1,2 & 3 Tarrant Wharf, Arundel, West Sussex
BN18 9NY

Case Reference : CHI/45UC/LSC/2016/0077

Lead Applicant : Mrs Gilly Titchmarsh

Representative : None

Respondent : Covent Garden Ltd

Representative : Mr Shamash

Type of Application : Payability of service charges under s.27A
Landlord and Tenant Act 1985 and limitation of
service charges under s.20C

Tribunal Members : Judge A Johns QC (Chairman)
Judge D Agnew
Roger Wilkey FRICS (Surveyor Member)

**Date and venue
of hearing** : 23 November 2017
Havant Justice Centre, Elmleigh Road, Havant PO9 2AL

Date of Decision : 6 December 2017

DECISION

Introduction

1. This case concerns the payability of service charges for works to remedy problems of water ingress to garages forming part of the Tarrant Wharf development. As the case developed, the issue became the amount which could properly be demanded by Covent Garden Ltd (“the Landlord”), as landlord under the applicants’ flat leases, on account of such works.

Factual and procedural background

2. Tarrant Wharf in Arundel is a development built in the 1980s. One row of garages, which includes garages 1-3, is constructed under the rear gardens of houses fronting Tarrant Street.
3. Problems of water ingress into these garages arose soon after the development. Works to remedy the problem were carried out to garages 4 and 5, as well as in part to garage 3. But no works were carried out to the remainder of garage 3 and garages 1 & 2, all of which lie under the rear garden of 81 Tarrant Street.
4. Lessees of flats in Tarrant Wharf are liable under their leases to contribute by way of service charge to a property maintenance fund to be applied by the landlord in, amongst other things, keeping in good and substantial repair and condition the structure of the garages in Tarrant Wharf.
5. Chamonix Estates, as managing agents for the Landlord, consulted the lessees of flats in the development about remedial works to garages 1-3 in 2013. Estimates were provided in the sums (exclusive of VAT) of £12,498 and £9110. But no works were then done.
6. A further consultation began in 2015 but was not at that time pursued and no works were done.
7. On 18 July 2016 Chamonix Estates sent out a new statement of estimates. The estimated costs were very much higher than in 2013. The total sums, including VAT, were £46,176.60 and £56,299.50.
8. That prompted this application, made on 12 August 2016, to determine the payability of service charges for such works.
9. At a hearing on 13 September 2016, Judge Agnew determined that the Tribunal had jurisdiction and gave directions permitting the joinder of other lessees, with Mrs Titchmarsh of Flat 2 being the lead applicant.

10. All flat lessees were then joined at their request, being the lessees of flats 4 – 22.
11. The application came on for hearing on 23 February 2017. That hearing followed an inspection where the Tribunal noted that the walls of the garages are of brick/block construction. Each garage has an “up and over” door and a concrete floor. There are clear signs of ongoing water penetration. The ceiling is formed with concrete blocks. Polystyrene patches have been taped to various sections in an attempt to prevent water penetration. At the front of garage 1 is a plastic hopper and downpipe with severe water stains to surfaces around. Garage 2 has water staining at the north junction with the wall and ceiling. The rear garden area above the garages is paved and an outlet at the edge connects to the hopper already mentioned.
12. Both sides attended the first hearing. That served to narrow the issues. After some deliberation, the lessees made clear they did not wish to contend that the works fell outside the scope of the service charge provisions. It became common ground that the Landlord was responsible under the leases for carrying out the necessary remedial works to the garages and that, subject to a demand, the lessees would be liable to contribute to the cost of such works by way of service charge.
13. But the lessees continued to argue that the estimated costs were too high as a result of the level of specification for the works being too high.
14. The Landlord also thought the figures too high and did not seek to defend them. But there was insufficient material from which a reasonable sum could be determined.
15. An adjournment was therefore granted in order for the Landlord to come forward with a lower figure which, it was hoped, might be agreed.
16. In the event, the lessees procured their own estimate. It is from M Harding Roofing Services Ltd and is in the sum of £19,900 plus VAT. The intended works are detailed in the estimate dated 16 November 2017 and include:
“Fully bond two layers of Icopal TechnaTorch Torch-on felt – apply one vapour dispersion sheet and one TechnaTorch SBS mineral cap sheet to all areas including drips and upstands. Remove steps and fully encase wall in Icopal system.”

Cut a new chase into the abutment walls and dress new code 4 lead flashing into the chase, pointed to a neat finish with lead sealant”.

17. By the time of the adjourned hearing on 23 November 2017, the parties were agreed that such estimate, being £23,880 when VAT is added, should form the basis of the Tribunal’s assessment of what sum would be payable by way of service charge in respect of the necessary works.
18. Further, there was no issue as to the addition of fees for Mr Tupper, the intended project manager, of £240 plus 10 percent of the contract sum, totalling £2628. Or of a contingency sum, being £3000.
19. There was, however, disagreement as to the fees of Chamonix Estates. The Landlord sought to add £2400 to the cost of works in respect of the fees of its managing agents. The lessees’ position was that £800 was the reasonable figure; such having been Chamonix Estates’ own proposal in 2013.

The adjourned hearing

20. The adjourned hearing was attended by Mrs Titchmarsh as lead applicant, accompanied by Mr Franklin (owner of one of the freehold houses on the development and chair of the residents association) and Mr Goodhew of Flat 6.
21. No one attended for the Landlord. Chamonix Estates had sent a letter to the Tribunal with an explanation for its fees of £2400 and suggesting dispensation with any further consultation requirements.
22. That letter had not been received by the applicants. On seeing it, those present continued to object to fees at the level of £2400 but indicated their own preference for the suggested dispensation in order that these long overdue works could be carried out in the coming Spring.

Discussion

23. This case comes prior to the works being carried out. What is contemplated is a demand for advance service charge based on the agreed estimate.
24. S.19(2) of the Landlord and Tenant Act 1985 provides that “*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.*”

25. The disputed question is whether it would be reasonable to demand by way of service charge the sum of £2400 in respect of managing agent fees as part of the cost of the intended works.
26. We have reached the clear conclusion that that would not be reasonable.
27. It is apparent from the Landlord's explanation of the figure of £2400 that it includes costs referable to the earlier consultations in 2013 and 2015 and to conducting these proceedings. None of those are reasonable costs of getting these works done. The reality is that Chamonix has had three attempts at consulting on these works rather than one and, even on the third attempt, put forward figures it could not then defend and which sparked these proceedings. We consider the costs of these proceedings again later on the lessees' s.20C application.
28. Some managing agents' fees in relation to the project are to be expected and the Tribunal agrees that £800 is the reasonable figure for such fees.
29. Once that figure of £800 is added to the estimate from M Harding Roofing Services Ltd (£23,880), the fees of Mr Tupper (£2628), and the contingency sum (£3000), the reasonable total sum to be demanded by way of service charge is £30,308.
30. **The Tribunal therefore determines that, subject to a valid demand being made in respect of costs to be incurred by the Landlord in carrying out the remedial works to garages 1-3, there will be payable by each of the applicants the proportion specified in their flat leases of the sum of £30,308.**
31. Those proportions were said by the Landlord and those present at the adjourned hearing to be (a) 1/12 for Flats 2, 4 and 6, and (b) 5/72 for the other flats.

s.20C

32. The lessees ask for an order under s.20C of the 1985 Act which provides that the Tribunal may order that any costs incurred in proceedings are not to be taken into account in determining service charge payable by the tenants.
33. The lessees have been successful in these proceedings. It was the level of the sums to be sought by way of service charge that led to the application. Those were as high as over £56,000. It became apparent that the Landlord itself

thought them too high and the proceedings have resulted in a very much reduced figure of £30,000 odd.

34. In those circumstances, it is just and equitable that an order should be made as asked.

Further steps

35. The expectation now is that the Landlord will collect the funds for the works, enter into the necessary contract with M Harding Roofing Services Ltd, and have these works carried out in the coming Spring.
36. In order to prevent any delay to the carrying out of the works, in circumstances where the contractor and estimate to be proceeded with are those put forward by the lessees, and it being the wish of both the Landlord and those who attended the hearing that any further consultation is dispensed with, the Tribunal is minded to dispense under s.20ZA of the 1985 Act with any further consultation requirements in relation to the works without the need for a formal application.
37. Given, however, that the suggestion of dispensation was not received by lessees before the hearing and it being thought (according to Mr Franklin) that there had been a sale of Flat 10, an opportunity should be given to lessees to object to a dispensation.
38. The Tribunal will therefore proceed as follows. Copies of this decision will be sent out to each of the applicants and to "the owners of Flat 10". **If no objection is received by the Tribunal within 28 days of this decision being sent out then a further determination will be made dispensing with any further consultation requirements in relation to the remedial works.**

Summary

39. From the above:
- 39.1 The Tribunal determines that subject to a valid demand being made in respect of costs to be incurred by the Landlord in carrying out the remedial works to garages 1-3, there will be payable by each of the applicants the proportion specified in their flat leases of the sum of £30,308.
- 39.2 The Tribunal orders that any costs incurred by Covent Garden Ltd in these proceedings are not to be taken into account in determining service charge payable by the lessees of the flats.

- 39.3 If no objection is received by the Tribunal within 28 days of this decision being sent out, a further determination will be made dispensing with any further consultation requirements in relation to the remedial works.

Judge A Johns QC
Dated 6 December 2017

Appeal

- (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.