



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

Case Reference : **LON/00BD/LSC/2018/0452**

Property : **Flat 8 Dunraven House, 230 Kew Road,
Richmond, Surrey TW9 3LG**

Applicants : **Mrs S Pourjam and Mr B Soleimani**

Representative : **Mrs Pourjam in person**

Respondent : **Dunraven House Management
Company Limited**

Representatives : **Mr M Adams and Mr C Pugh, directors
of the Respondent company**

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

**Tribunal
Members** : **Judge P Korn
Mrs H Bowers MRICS
Mr O Miller**

**Date and venue
of Hearing** : **25th April 2019 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **13th May 2019**

DECISION

Decisions of the Tribunal

- (1) Our factual finding in relation to the legal fees which have been challenged by the Applicants is that they have not been added to the service charge by the Respondent and nor have they been paid using a reserve fund. Consequently, there is no determination to be made as to the payability of these legal fees pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”).
- (2) The Applicants’ share of the charge for decorating the balconies in 2014/15 is reduced to £182.00 (this being 9.1% of £2,000.00).
- (3) The sinking fund contribution of £250.00 levied in 2016 is not payable.
- (4) The plumbing charges challenged by the Applicants are payable in full.
- (5) The Management Agreement with HML PM Limited (“**HML**”) is not a qualifying long-term agreement and therefore the Respondent had no statutory obligation to consult with leaseholders before entering into that Management Agreement. The failure to consult, in the absence of a legal obligation to do so, is therefore not a legal basis for reducing the managing agents’ fees.
- (6) The Tribunal makes no cost order under paragraph 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (7) The Tribunal makes an order under section 20C of the 1985 Act that none of the costs incurred by the Respondent in connection with these proceedings may be recovered through the service charge. The Tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants’ liability to pay any of the costs incurred by the Respondent in connection with these proceedings.

Introduction

1. The Applicants are the leasehold owners of the Property and they seek a determination pursuant to section 27A of the 1985 Act as to the reasonableness and payability of certain charges.
2. The Property is part of a purpose-built block of 11 flats (“**the Building**”). The Respondent company is the freehold owner of the Building and the company is jointly owned by the leaseholders.
3. The disputed charges, as per the application (as later amended to include the Management Agreement with HML), are as follows:-
 - Various charges for plumbing between 2014 and 2016.

- Charges for redecorating the balconies in 2014/15.
 - A demand for payment of £250 towards a sinking fund in 2016.
 - Charges for solicitors' fees in 2018.
 - The managing agents' charges in the current service charge year, based on whether the Management Agreement with HML is a qualifying long term agreement.
 - Potential future charges for solicitors' fees, potential future contributions towards sinking funds and potential future charges for repair to pipes within individual flats.
4. The relevant statutory provisions are set out in the Appendix. The Applicants' lease ("**the Lease**") is dated 1st April 1968 and was originally made between the Respondent (1) and Jean Maud Chaston (2).

Preliminary point

5. At the start of the hearing Mrs Pourjam objected to the admissibility in evidence of the Respondent's further statements of case sent on 21st February 2019, 12th March 2019 and 12th April 2019, essentially on the basis that they were not served within the time limits specified in directions. Mr Adams countered that the Respondent had had no option but to serve these documents late as the information on which they were based was itself received late from the Applicants.
6. The case management issues associated with this case are a matter of record, and there have been multiple failings by both parties. As stated at the hearing, the Tribunal's decision is not to declare the abovementioned further statements of case to be inadmissible. Despite their being served late the Applicants still had plenty of time to consider them and the further statements did rely on information which the Applicants themselves supplied late, albeit that this was information that should have been in the Respondent's possession.

Legal fees

7. At the hearing, and following on from her written submissions, Mrs Pourjam made some points regarding an invoice from the law firm Russell-Cooke. However, these points were superseded by oral submissions which were then made by Mr Adams. He said that all of the legal fees to which the Applicants were objecting had in fact been paid by him personally and that they were neither charged to leaseholders through the service charge nor paid by using a reserve fund. These submissions from Mr Adams reflected points previously made in paragraph 40 of the Respondent's first statement of case and in paragraph 11 of Mr Adams' witness statement.
8. Mrs Pourjam seemed to accept Mr Adams' assurances at the hearing that these sums had neither been added to the service charge nor paid using a reserve fund. In any event, on the basis of the information before the Tribunal

and in the absence of any evidence to the contrary, the position in our view is that there is no service charge dispute in relation to the legal fees queried by the Applicants in their application as these items have not been charged to leaseholders as service charges or at all. Consequently (a) there is no need for a determination by the Tribunal on this issue and (b) the Tribunal has no jurisdiction under Section 27A of the 1985 Act to make a determination. It is worth adding that this lack of jurisdiction on the part of the Tribunal has only become apparent now that the factual position itself has been clarified and that it was not clear from the application itself.

9. As noted by the Tribunal at the hearing, if the Respondent were to change its mind in the future and were to seek to charge these legal fees to the leaseholders through the service charge then it would be open to the Applicants and/or to other leaseholders to challenge the liability to pay and reasonableness of the charges at that point.
10. Therefore, in conclusion, the Tribunal makes no determination on this issue.

Specific sinking fund contribution

11. The application includes a challenge to one specific sinking fund contribution, namely the amount of £250.00 demanded as a sinking fund contribution in 2016. It is common ground between the parties that this contribution was demanded, although in its statement of case the Respondent categorises the fund as a reserve fund rather than a sinking fund.
12. Mr Adams for the Respondent argued at the hearing that the Building was showing signs of wear and tear and that a sinking fund would be helpful. However, the Respondent has been unable to point to any provision within the Lease entitling the landlord expressly or impliedly to demand contributions from the tenant towards either a sinking fund or a reserve fund. In the absence of any such provisions this sum is not payable.
13. Therefore, in conclusion, the £250.00 contribution demanded in 2016 towards a sinking or reserve fund is not payable.

Plumbing charges

14. Mrs Pourjam's submissions on this issue are extensive and at times difficult to follow, and we do not consider it practical or necessary to summarise them in detail. What follows is therefore a brief summary.
15. In Mrs Pourjam's view, certain invoices relate solely to plumbing problems within individual flats and the cost should therefore not have been included in the service charge. For example, in relation to the invoice for £1,074.00 her view was that the problem had been caused by the occupier of Flat 7 blocking the sink. She noted that it had been suggested by the Respondent that the issue had been a communal stack-pipe issue, but Mrs Pourjam had spoken to

other occupiers and none of them had experienced similar problems. Therefore, it could not have been a communal stack-pipe issue.

16. As regards the invoice from Transgas, Mrs Pourjam said that this related to a leak within Flat 9 and therefore again should not have formed part of the service charge.
17. As a general point in relation to Flat 7, Flat 9 and Flat 10, in her view the kitchen pipes generally got blocked due to the occupiers carelessly pouring grease or other food material into the sink. Mrs Pourjam also made the point that for a long time she was the only leaseholder who actually lived in the Building.
18. In her written witness statement Mrs Josephine Adams, joint leaseholder of Flat 7, states that in relation to the plumbing invoices from 2014 for Flat 7 her tenant reported a problem with the drain in the kitchen and a plumber was called. Her understanding was that, after investigating, the plumber realised that the problem was not within the flat and so the managing agents arranged for their own plumber to inspect. That second plumber agreed that the problem was not within the flat and said that it was instead within the shared stack area.
19. In her own written witness statement Mrs Sarah Hall, leaseholder of Flat 11, summarises her experience of plumbing issues within the Building. She states that where a flat owner discovered a problem in their flat they would pay the costs of the work of the plumber or other tradesperson unless the problem was caused by faulty plumbing in another flat (in which case that other flat owner would pay) or the problem could be demonstrated to be covered under the relevant lease as forming part of the freeholder's responsibilities.
20. In his own written witness statement Mr David Colvill, leaseholder of Flat 3, states that the problem with plumbing in Flat 7 (and also affecting Flat 4) was exactly the same problem as the one which occurred 6 months later with the second soil pipe on the other side of the Building.
21. At the hearing, Mr Adams for the Respondent said that the relevant invoices stated that they related to the stack-pipes and that it was reasonable and appropriate for the Respondent to take the contractor's and managing agents' advice at face value. Regarding the Transgas invoice, Mr Pugh, leaseholder of Flat 9, confirmed that this invoice related to his flat. He had investigated the problem and then had passed it over to the managing agents who found that there was a leak at the joint with the soil stack and therefore concluded that it was appropriate for the cost to form part of the service charge.
22. The Tribunal has considered the written and oral submissions made by both parties. As a Tribunal our role is to make an objective assessment based on the evidence before us. On this issue the Respondent has offered credible evidence as to the process gone through and as to the reliance placed on the

expertise of the managing agents and of more than one plumber in concluding that the relevant plumbing issues were not ones which were confined to individual flats but instead revealed problems which related to the common parts of the Building. There are also invoices in the hearing bundle in support of the Respondent's position.

23. The Applicants disagree with the Respondent's assessment but they have not provided any evidence in support of their position. They have offered no expert evidence, they do not have any relevant expertise themselves, and they have not offered anything beyond mere assertions to counter the Respondent's evidence.
24. Therefore, in conclusion, the plumbing charges are all payable in full.

Decoration of balconies

25. At the hearing, and in summary of her written submissions, Mrs Pourjam said that the Applicants' share of the cost of decorating the balconies was about £275.00. This was above the threshold for statutory consultation but there had been no consultation. In addition, she considered the work to have been sub-standard. Furthermore, she did not understand why the actual cost was so much higher than the estimated cost.
26. In written submissions the Respondent states that the actual cost was higher than the estimated cost because according to the managing agents "the contractor charged extra for some unforeseen issues with getting the white railings on and off and something else".
27. At the hearing Mr Adams accepted that the Respondent had not gone through the section 20 consultation process despite having a statutory obligation to do so, but he explained that it had not been felt worth doing so as the charge per unit was so close to the consultation threshold. As regards the standard of work, Mr Pugh said that it was not accepted that the quality of the painting itself had been poor, but he did concede that the painting had stopped at the top of the vertical and that this had allowed water to penetrate.
28. When asked by the Tribunal what she thought would be a fair charge Mrs Pourjam said that the total charge should be reduced to £2,000.00 and that her share should therefore be 9.1% of £2,000.00, namely £182.00.
29. The Tribunal has considered the parties' respective submissions, and it seems clear to us that the Respondent was obliged to go through the section 20 consultation process in relation to these works as the charge was over the statutory threshold of £250.00 per flat. Whilst Mr Adams has provided an explanation of the Respondent's tactical decision not to consult, the Respondent was nevertheless legally obliged to consult. We have not received an application from the Respondent to dispense with the requirement to

consult, although in any event we consider that the chances of such an application being successful would be slim.

30. As to whether the Applicants suffered prejudice as a result of the failure to consult, the Respondent has not sought to argue that there was no prejudice. In addition, the actual cost was much higher than the estimate and the justification offered for the increase is vague and not wholly convincing. Furthermore, if the Respondent had consulted with leaseholders it is quite possible that the representations received from leaseholders as part of that consultation would have resulted in the Respondent arranging for the work to be carried out by another contractor in a more competent and/or more cost-effective manner. Therefore, the maximum amount that can be charged to the Applicants is £250.00, subject to the observations that follow below.
31. In relation to the standard of work, whilst there is some disagreement as to the precise problem, Mr Pugh for the Respondent has conceded that elements of the work were sub-standard. Mrs Pourjam has proposed a reduction in her contribution from £276.00 to £182.00. In the light of the failure to consult, the poorly explained large increase from the estimated cost to the actual cost and the agreement between the parties that the work was sub-standard we consider that Mrs Pourjam's assessment is fair and reasonable.
32. Therefore, in conclusion, the Applicants' contribution towards the cost of decoration of the balconies is reduced to £182.00.

HML Agreement

33. In their application, the Applicants' objection to the current Management Agreement with HML is that it was a qualifying long-term agreement and that the Respondent failed to consult with leaseholders in respect of that agreement.
34. A copy of the Management Agreement was contained in the hearing bundle and its wording was considered at the hearing. It is expressed to be for a term from 25th March 2019 to 23rd March 2020. At the hearing Mrs Pourjam conceded, or at least appeared to concede, that the Management Agreement was for a term of less than a year but she maintained that the Respondent should nevertheless have consulted with leaseholders.
35. Section 20 of the 1985 Act imposes limits on service charge contributions towards the cost of services provided pursuant to a qualifying long-term agreement where the landlord has failed to comply with (or to obtain dispensation from) the relevant consultation requirements. The phrase "qualifying long-term agreement" is defined in section 20ZA of the 1985 Act as "... an agreement entered into, by or on behalf of the landlord ..., for a term of more than 12 months". This Management Agreement is for a term of less than 12 months and so the statutory consultation requirements do not apply to it.

36. Therefore, in conclusion, the Management Agreement is not a qualifying long-term agreement, the Respondent had no statutory obligation to consult with leaseholders before entering into it and the lack of consultation (in the absence of any legal obligation to consult) is not a legal basis for reducing the managing agents' fees.

Potential future charges for (a) solicitors' fees, (b) contributions towards a sinking fund and (c) repair to pipes within individual flats

37. The Applicants have requested a determination as to whether certain charges would be payable in the future if levied.
38. As explained at the hearing, the Tribunal's jurisdiction is limited by statute. It can make a determination as to the payability of actual charges and of estimated charges. There are also circumstances in which a landlord who is contemplating the carrying out of one or more sets of works or services can apply for a determination as to whether the cost would be recoverable if charged to leaseholders as a service charge.
39. However, in our view the Tribunal does not have jurisdiction to make a determination, on an application by a leaseholder, as to whether in principle a certain category of charge would be payable if it were to be levied. In addition, we question how useful an exercise this would be, as a proper legal analysis often relies on the precise details and context of the particular works or services and it is unlikely to be helpful to offer a vague guide in the absence of those details and context. If the Applicants want general legal advice on these issues, they will need to engage a solicitor or other legal professional.
40. Therefore, in conclusion, the Tribunal does not have jurisdiction to make a determination on these issues.

Cost Applications

41. The Applicants have made an application under section 20C of the 1985 Act for an order that the costs incurred by the Respondent in connection with these proceedings should not be charged to leaseholders through the service charge. They have also made an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform act 2002 ("**CLARA**") for an order extinguishing the Applicants' liability to pay any of the costs incurred by the Respondent in connection with these proceedings.
42. The Respondent itself has made a cost application under paragraph 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**") for the reimbursement by the Applicants of the extra costs incurred by the Respondent in having to prepare its own separate hearing bundles.

43. Dealing first with the Applicants' cost applications, the Applicants' have been successful on two significant points, as we have found in their favour in relation to the sinking fund contribution in 2016 and the cost of decoration of the balconies. In relation to the disputed legal fees, our factual finding was that no legal fees have in fact been charged and therefore the Applicants have not lost on this point in the sense that we have not made a determination that these fees are payable. Whilst it is fair to say that the Applicants' submissions were confused in relation to the legal fees issue, in our view much of the blame for their confusion belongs to the Respondent who should have clarified the position sooner and more clearly, particularly in the light of the confusing nature of certain correspondence contained in the hearing bundle. As regards the potential future charges, again we have not made a determination in relation to these and again we have some degree of sympathy with the Applicants' confusion on these issues, particularly in respect of solicitors' fees and sinking fund contributions.
44. In addition, it became clear during the course of the hearing that in making service charge demands the Respondent has in some ways not been complying with the terms of the Lease. Furthermore, when asked at the hearing whether the service charge accounts had been audited Mr Adams said that they had been, but it then emerged that the 'auditing' had been carried out by the directors themselves. Finally, whilst we note that the Respondent made its written submissions in stages because it was awaiting further information from the Applicants, this was information that should have been in its possession.
45. We appreciate that the Respondent is a leaseholder-run company rather than a commercial landlord. However, the lack of information in its possession, the confusing nature of some of its correspondence and invoices, the failure at times to follow the service charge provisions of the Lease and the confusion as to what constitute audited accounts are in aggregate reasons which – coupled with the fact that the Applicants have been successful on certain points – in our view justified the making of the application and would also make it unfair to allow the Respondent to recover its costs incurred in opposing the application. It is fair to add that the way in which the Applicants have pursued their application has been unreasonably aggressive and emotional and that their arguments have been very long-winded and often quite muddled, but the Respondent has also been quite combative in its approach and on balance we consider that it is right to make cost orders under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to CLARA.
46. As regards the Respondent's own cost application, we consider it inappropriate to make a cost order in the Respondent's favour pursuant to paragraph 13(1)(b) of the Tribunal Rules. As explained at the hearing, in order to succeed under paragraph 13(1)(b) of the Tribunal Rules a party essentially has to show that the conduct of the other party was so poor that it does not permit of a reasonable explanation and that the unreasonable conduct caused extra costs to be incurred. Whilst we accept that there is a connection in this case between the Applicants' conduct and the Respondent's incurring of extra costs through having to prepare a separate hearing bundle, we do not accept

that the conduct in question was sufficiently unreasonable to fall within paragraph 13(1)(b) of the Tribunal Rules. There have been case management failings by both parties in this case, and the Tribunal's staff have been forced to get involved in refereeing those failings to an extraordinary extent. However, we do not accept that the circumstances that led to the Respondent having to prepare its own bundle were themselves of an order of unreasonableness that would justify imposing a penalty cost award on the Applicants.

47. Therefore, in conclusion, the Tribunal:-

- makes an order under section 20C of the 1985 Act that none of the costs incurred by the Respondent in connection with these proceedings may be recovered through the service charge;
- makes an order under paragraph 5A of Schedule 11 to CLARA extinguishing the Applicants' liability to pay any of the costs incurred by the Respondent in connection with these proceedings; and
- makes no cost order under paragraph 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge P Korn

Date: 13th May 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... 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.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

- (2) In section 20 and this section –

"qualifying works" means works on a building or any other premises, and "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement – (a) if it is an agreement of a description prescribed by regulations, or (b) in any circumstances so prescribed.

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.