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**HM Courts and Tribunals Service  
Leasehold Valuation Tribunal**

**Sections 19, 27A & 20C Landlord & Tenant Act 1985 (as amended) ("the Act")**

<b>Case Number:</b>	<b>CHI/21UD/LSC/2011/0155</b>
<b>Property:</b>	<b>12 Hastings Wall Hastings East Sussex TN34 3AP</b>
<b>Applicants:</b>	<b>Mr &amp; Mrs. W Bond</b>
<b>Respondent:</b>	<b>Amicus Horizon Housing Association</b>
<b>Appearances for the Applicant:</b>	<b>Applicants in person</b>
<b>Appearances for the Respondent:</b>	<b>Mr R Brown of Counsel Michelle Emery from the Housing Association</b>
<b>Date of Hearing:</b>	<b>17<sup>th</sup> February 2012</b>
<b>Tribunal:</b>	<b>Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>28<sup>th</sup> February 2012</b>

## **The Applications**

1. This was an application made by the leaseholders of the property under S.27A (and 19) of the Act for a determination of their liability to pay elements of the service charge for their property spanning the period from 2004 to 2011.
2. The Tribunal also had before it an application under S.20C of the Act that the Respondent's costs for these proceedings should not be included in costs recoverable through future service charges.

## **Summary of Decision.**

3. The Applicants are liable to pay all of the contested charges forthwith save for the following:
  - a) 22<sup>nd</sup> November 2007: £52.17 for Insurance –conceded by the Respondent.
  - b) 2<sup>nd</sup> June 2009: £403.70 - outside the jurisdiction of the Tribunal.
  - c) 2011: £9.39 - Billed in error.
  - d) 2010: internal plastering - Applicants to be given a credit of £5.
4. No order is made under S. 20C of the Act.

## **Background & Preliminary matters.**

5. Mr & Mrs Bonds' application was made on 5<sup>th</sup> November 2011. Directions were given by the Tribunal on the 9th November 2011, following which statements of case, with supporting documentation, were filed by the Applicants and then by the Respondent.
6. Immediately prior to the hearing the Tribunal attended the property and inspected the exterior. Hastings Wall is a three storey purpose built building originally constructed for the local authority and arranged as 18 self-contained maisonettes and flats. The main walls are of cavity brickwork incorporating a damp proof course. The main roof is pitched and covered with interlocking tiles. The Applicants pointed out various matters during the inspection but none were relevant to the Tribunal's determination.
7. At the hearing the parties were able to narrow and refine the issues for determination; firstly by the housing association conceding the costs of insurance and the costs of the door entry system and secondly by the Tribunal declining jurisdiction in respect of the alleged failure by the Respondent to abide by an alleged agreement previously made by the parties and covering service charges.
8. Accordingly there remained just four contested items for determination each of which is addressed below.

## **The Lease**

9. The Tribunal was provided with a copy of the Lease for the property which is dated 5th December 1988. The Lease is for a term of 125 years at a yearly rent of £10.
10. So far as material to the issues in this case the relevant provisions in the Lease may be summarised as follows:
  - (a) The Applicants are liable to pay the Respondent a service charge covering a reasonable proportionate part of the costs incurred by the Respondent in maintaining the building as set out in the Sixth Schedule.
  - (b) The Respondent is to prepare and serve on the Applicants an end of year service charge final account (distinguishing between actual expenditure and any reserve for future expenditure) accompanied by an accountants certificate.
  - (c) Within 7 days of this being done either the Applicants are to pay any balance due or the Respondent is to credit the Applicants for any excess paid on account.

## **The Relevant Law**

11. The Tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application made by made in respect of a matter which has been admitted or agreed by a tenant.
12. By S.19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
13. Under S.20C of the Act a tenant may apply for an order that all or any of the costs incurred in connection with proceedings before a leasehold valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
14. S.21B of the Act requires demands for service charges to be accompanied by a summary of rights and obligations of tenants in relation to service charges.

## **The Applicant's case**

Auditors charge approximately £50

15. In their application Mr and Mrs Bond asserted that there was no provision in the lease for auditor's charges to form part of the service charge. After it was pointed out to them there was provision in the lease for charges to be made, they then asserted that there were inaccuracies in the accounting and therefore they should not have to pay.

Internal plastering £98

16. The Applicants' case simply put is that the leases of the building place the obligation of internal plastering on the individual lessees and not the freeholder and therefore these charges should not form part of their service charge.

Putting faulty work right £82

17. In their application Mr & Mrs. Bond assert that they have been wrongly charged for putting faulty work right. They mention being invoiced for three attempts to put the same work right and they make reference to three different job numbers. They say that they were not charged for the original work because it was badly carried out but subsequently were then charged to repair this work, which in their words is shoddy work.

2004: £1,644 late invoice caught by the 18-month rule

18. In their application, the Applicants state that the 2004 accounts were not audited as a result of which it was not noticed that the Sandells invoice, which was dated the 24<sup>th</sup> June 2002, was first demanded in June 2004 (i.e. more than 18 months thereafter) and therefore would make it irrecoverable by virtue of S.20B of the Act.
19. The Applicants' statement expresses uncertainty whether this issue can be dealt with because of the time limit and in effect leaves it to the discretion of the Tribunal to consider if this claim is time barred.

Section 20C application.

20. The Applicants argue that a S.20C order is appropriate because the Respondent's accounting procedures have been at fault and the Respondent has failed to enter into a constructive dialogue with them failing to take reasonable steps to mediate or find alternative and less expensive ways of settling the dispute.

**The Respondent's case**

Auditor's charges

21. Mr Brown argued that there was contractual provision in the lease for the costs of preparing and certifying the annual accounts to form part of the service charge. The alleged inaccuracies did not relate to the subject property and in any event did not mean that the charges made were unreasonable. He reminded the Tribunal that the Applicants had lead no evidence to suggest that the charges were unreasonable. He asserted that they patently were reasonable and should therefore be upheld by the Tribunal.

Internal plastering

22. Mr Brown's argument advanced at the hearing differed somewhat from that expressed in his skeleton argument, which had been handed up to the Tribunal immediately prior to the hearing. At the hearing he suggested that even though

internal plastering was the leaseholders responsibility under the terms of the lease, if the reason for the need to re-plaster the internal wall was defects to the exterior wall, which was the responsibility of the freeholder, then in this case the internal costs could be recovered as a service charge item.

23. That said Mr Brown suggested a compromise position namely that there should be deducted from the composite invoice (which covered not only the internal plastering but also other work) the cost of plastering the internal wall. He suggested that the appropriate reduction should be £70 of which the Applicants' share would be 1/18<sup>th</sup> thereof.

#### Putting work right

24. The Respondent relied upon the evidence of Ms. Emery to substantiate these charges. The evidence of Ms. Emery was that the charges did not relate to putting defective work right but rather they related to specific work carried out for the first time. She pointed to documents in the hearing bundle which identified the charges as being made up of three invoices: one for inspection totalling £70.50 and then two invoices for lead work to the chimney of £810.68 and £534.63. On this basis she invited the Tribunal to uphold the modest charge of £82 being the Applicants' share of this work.

#### 2004 invoice and the 18-month rule

25. Mr Brown's primary position was that the Applicants had already made an application to the Tribunal to make a determination in relation to a works contract carried out in 2004 which had included this invoice. That decision was then the subject of County Court proceedings, which were ultimately settled on terms by which the Applicants agreed to pay a sum in full and final settlement. Therefore the Applicants had already had two determinations on the same subject matter and it was no longer open to them to raise the matter again. S. 27(4) of the Act prevented the Tribunal from entertaining an application in respect of a matter which has been admitted or agreed by a tenant. This was exactly the case here.
26. Mr Brown further contended that the claim was in any event statute barred because these current proceedings had not been commenced within 6 years of the facts giving rise to the claim e.g. 18 months after the date of the invoice. In these circumstances the Limitation Act 1980 precluded the Applicants from litigating over this issue.
27. Finally Mr Brown relied upon the doctrine of Res Judicata, which he said precluded the Tribunal from hearing a claim, which in effect had already been decided.

#### Application under S.20C

28. Mr Brown argued against a S.20C order, stating that the Respondent had every right to defend the application. He pointed to the fact that the Tribunal had declined jurisdiction on the second largest issue and in his opinion the largest amount contested was also outside of the jurisdiction of the Tribunal. That left only four issues for determination, which if the Respondent was successful in defending meant that it could not be said that the Applicants had by any measure been justified in bringing the application.

## The Tribunal's Determination

### Auditor's charges

29. The Tribunal has no difficulty in upholding this charge as contractually payable and reasonable in amount. The fact that the Respondent may not in the past have made such a charge does not prevent them from changing their policy for the future to take account of legislation passed by parliament and making a charge for preparing the annual accounts. The provision for them to do so is contained in the Sixth Schedule to the lease and the Tribunal considers that the amount charged of under £50 to be reasonable even if it transpires that the accounts do contain what appear to be minor inaccuracies.

### Internal plastering

30. The Tribunal finds that the costs of making good internal plastering should not form part of the service charge even if it is the case that the plastering work has come about because of deterioration to the exterior of the building which is the Respondent's responsibility. At the hearing, Counsel for the Respondent was prepared, for commercial reasons, to concede this issue and suggested that the cost of the internal plastering would have been in the region of £70. He argued that the charges complained of by the Applicants also included work to the exterior, which was undoubtedly the Respondent's responsibility and therefore at the very least these charges were without doubt recoverable through the service charge. The Applicants did not challenge the cost of internal plastering at £70. Accordingly the Tribunal accepts these submissions and determines that the Applicants should receive a credit for the costs of internal plastering, which amounts to £5 based on 1/18<sup>th</sup> of £70 rounded up.

### Putting the work right

31. On this issue the Tribunal prefers the evidence of the Respondent and upholds the charges. The Applicants' case amounts to no more than an unsupported assertion that there has been duplication of work with no evidence to back up their claim. On the other hand the Respondent was able to explain what the work was, why it was carried out and lead the Tribunal to documents in the hearing bundle to support the charges levied. The Tribunal has no reason to doubt the Respondent's evidence on this issue.

### 2004 charges and the 18-month rule

32. The Tribunal is entirely satisfied that it is no longer open to the Applicants to further litigate this issue in either a Tribunal or a Court. The Respondent lead persuasive and unchallenged evidence that the issues relating to the major works carried out in 2002/3, which included the invoice from Sandells for approximately £29,600, were addressed in an earlier Tribunal decision and thereafter fully and finally disposed of in subsequent County Court legal proceedings. The Applicants produced no evidence to the contrary and merely asserted in their application form that the 2004 accounts were not audited with the result that the Sandells invoice, which was dated the 24<sup>th</sup> June 2002, was not demanded until sometime in June 2004. The Respondent denies this version of events.

33. The Tribunal finds that the Sandells invoice was subject to proceedings in the Tribunal and thereafter in the County Court, and ultimately settled by consent between the parties. This being the case the Tribunal finds that it is too late for the Applicants to raise further issues in respect of the work which was completed over 8 years ago. The issue has already been tried and the Tribunal accepts the submissions and conclusions of the Respondent's Counsel as set out in paragraphs 25, 26 and 27 above.

#### **Application under S.20C**

34. In deciding whether to make an order under S.20C of the Act a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Given the outcome of the proceedings the Tribunal is satisfied that it would not be just or equitable for an order to be made. The two highest value issues have either been outside of the jurisdiction of the Tribunal or lost. In all, the reduction achieved by the Applicants is a figure of considerably less than £100, which amounts to less than half the application and hearing fees.
35. At the hearing the Applicants showed a lack of understanding of the provisions contained in their lease and also a lack of understating of the legal issues underpinning their challenge. It is not for the Tribunal to conduct a case on behalf of an unrepresented party and the Tribunal expects parties to have taken appropriate advice before making an application and thereby setting in train all the time and expense that may then be required. The Tribunal is of little doubt that had the Applicants taken appropriate advice then it is unlikely that the application would have been pursued.
36. For these reasons, the Tribunal makes no order under S. 20C of the Act

#### **Concluding observations**

37. There has clearly been a breakdown of communication and cooperation between the parties which must not be permitted to continue. The situation has been exacerbated by the failure of the Applicants to properly understand their lease and statute. In the event of any further difficulty the Tribunal will expect the Applicants to take appropriate advice before any application is filed. The attention of the Applicants is drawn to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which permits the Tribunal to make a costs order against a party who (amongst other things) has acted frivolously, vexatiously, abusively or otherwise unreasonably in connection with the proceedings.

Signed \_\_\_\_\_  
R.T.A.Wilson (Chairman)

Date: 28<sup>th</sup> February 2012