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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION S27A OF THE  
LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00BG/LSC/2012/0132

**Premises:** 49, JAMAICA STREET, EXMOUTH ESTATE,  
LONDON, E1 0PD

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**Applicant:** MR SAMUEL SOFAER

**Respondent:** SWAN HOUSING ASSOCIATION

**Appearance for Applicant:** THE APPLICANT IN PERSON  
MR ESHREF TRUSHIN

**Appearance for Respondent:** MR. NATHAN D'ALLESANDRI

**Date of Application** 20 FEBRUARY 2012

**Date of Directions:** 27 MARCH 2012

**Date of Hearing:** 15 JUNE 2012

**Date of Decision** 28 AUGUST 2012

**Leasehold Valuation Tribunal:** Mr S Shaw LLB (Hons) MCI Arb  
Mr P. Roberts DipArch RIBA  
Mr C. Piarrouz JP CQSW

## DECISION

### Introduction

1. This is an application brought by Mr Samuel Sofaer ("the Applicant") in respect of a property of which he is the leasehold owner at 49, Jamaica Street, Exmouth Estate, London E1 0PD ("the Property"). The property is one of a number of flats on the estate, and the property, together with the estate generally, is owned by Swan Housing Association ("the Respondent"). The application is brought pursuant to the provisions of section 27A of the Landlord & Tenant Act 1985 ("the Act") and the Applicant seeks a determination from the Tribunal in respect of his liability to pay service charges for the service charge years 2006/7, 2007/8, 2008/9, 2009/10, 2010/11 and the estimated charges for 2011/12 and 2012/13. Moreover, the Applicant has significant challenges to major works which were carried out within the service charge year 2011/12 (one of the two years for which presently the service charges are estimated only) for which major works he has so far received an invoice requiring payment in the sum of £6028.78, dated 3 May 2011 (page 64 of bundle).
2. A hearing of the application took place on 15 June 2012 which was attended by the Applicant in person, who represented himself (together with a witness, called to give evidence on behalf of the Applicant, namely Mr Eshref Truschin), and the Respondent was represented by Mr Nathan D'Allesandri who is a Leasehold Services Manager employed by the Respondent.

3. The hearing proceeded on the basis of the Applicant presenting his objections to the major works bill first of all, and thereafter the Tribunal heard his challenges to the service charges levied in respect of the years referred to above, most of which had now been finalised but the final 2 years of which remained in estimated form. It is proposed to summarise the evidence given on both sides in relation to these challenged matters, and in respect of each of the matters, in turn, to give the Tribunal's findings. It should be said that the Applicant has carried out a great deal of work in respect of this application. His overall position is that he has owned and been in occupation of this flat for many years, but that the character of the estate has changed during the time of his occupation, and particularly by reference to the time from which the Respondent became the owner and began managing the estate. His case in general terms (in fact he has gone into a great deal of detail) is that the management of the estate and the general quality of the fabric of the buildings has deteriorated since the Respondent took over management and ownership.

#### **Major works invoiced on 3 May 2011**

4. The Applicant has prepared a detailed Statement of Case starting at page 45 and finishing at page 52 of the bundle prepared by him. At page 50 he sets out the particular items of charge in respect of the major works which he challenges. The Respondent has put before the Tribunal a large multi-coloured spreadsheet detailing the costs in a very specific way, also for the assistance of the Tribunal.

5. The first charge under this heading challenged by the Applicant, was that for scaffolding at a figure of £13,455 for the whole project. That figure, as understood by the Tribunal, can be found in the Respondent's spreadsheet under the column headed "Jamaica Street" and in respect of the items numbered 1-71. Two figures are mentioned there for scaffolding allocation in the sum of £10,955.26 and £2,500 respectively. The addition of these two figures produces the £13,455 mentioned by the Applicant, a percentage of which he has to pay in his service charge liability.
6. The Applicant's complaint in respect of the scaffolding was that the cost is a high one, and his conclusion was that the costs had been increased by virtue of the fact that the scaffolding was, unnecessarily on his case, erected for a period of about 8 months, although he only saw people working on the scaffolding for a few days (his estimate was as little as 8 days). He told the Tribunal that he himself was involved in shift work which requires him to be away from the property for periods during the day and at night, but that, so far as he could see, the scaffolding was used for a very significantly shorter period of time than that for which it had been erected. During the whole of this period of about 8 months he told the Tribunal that he had to keep his windows closed during the summer period because otherwise he felt the flat was exposed from a security point of view. Moreover, there were many young people from either within the estate or outside, who would habitually climb the scaffolding, interfering with his privacy and in addition, his light was obstructed throughout this period, unnecessarily.

7. On behalf of the Respondent, Mr D'Allesandri said that he accepted that either the contract manager or the contractors could have required the scaffolding to be taken down sooner but he was unaware of whether it suited the contractors' particular scheme of works for some reason for the scaffolding to be up for this period of time. He accepted that from a management point of view, this may have caused the Applicant some difficulties. He had made enquiries with the contract manager of the works but as yet, at the date of the hearing, he had had no reply. He did refer to an investigation made by the Housing Ombudsman (to whom the matter was referred by the Applicant) which appears at pages 64 and 65 of the second bundle (with red folder) put before the Tribunal and pointed out that the Ombudsman had concluded that there was no mal-administration by the Respondent in respect of security arrangements at the block.
  
8. In addition, as is not unusual in cases of this kind, the Respondent told the Tribunal that when tendering for the job, the Respondent is given an overall figure for the work, and generally elects to go with the contractors who have been able to produce the lowest tender. The sums charged in respect of the scaffolding were a fixed price of the overall tender, and were the figures which ultimately bound the contractors. In other words, the Applicant has not been charged any more or less for the scaffolding by reference to the period of time that it remained in situ. This is consistent with the Tribunal's experience and the sums involved for a major project of this kind do not surprise the Tribunal. For this reason, the Tribunal does not consider that the Applicant has been overcharged for the scaffolding. It makes no adjustment of the charge in this regard, but it takes on board that it is possible that arrangements could have

been made to minimise the disruption to leaseholders by better management. It is possible this may go to some deduction for the management charge but not for the substantive costs in relation to the scaffolding which, as indicated, the Tribunal makes no adjustment for.

9. The Applicant also challenged the cost of glazing in the major works. He told the Tribunal that the need to re-glaze as part of the major works was caused by the Respondent itself, by having made poor security arrangements at the estate and which had led to excessive vandalism. He relied on a letter at page 98 of his bundle from the Senior Project Manager of the Respondent to the effect that it was accepted by the Respondent that the front door had been defective for some significant period of time. However, as the Tribunal reads that letter, that was in the context of an explanation as to why fresh security arrangements were being made rather than an admission of fault on the part of the Respondent. The Respondent, through Mr D'Allesandri again relied on the investigation of the Housing Ombudsman which had concluded that there was no mal-administration in respect of the security arrangements.
  
10. The fact that there was no mal-administration does not, of itself, mean that the charges are reasonable for the purposes of the Act. However, the total cost for the block was £1,033 and so the Applicant's contribution to this cost would be very small. There is no clear evidence which the Applicant put before the Tribunal of smashing of windows brought about by vandalism referable to fault on the part of the Respondent in the form of any independent evidence outside

his own. The Tribunal is not satisfied that this complaint is made out and the charge remains unchanged.

11. A major item of expenditure in the major works was the cost of electrical rewiring in the sum of £37,663. The Applicant's case was that again, the cost of rewiring was boosted by the theft of cables which had been left by the workmen sometimes unsecured for significant periods of time. He complained that this cabling (of which there was photographic evidence) had been unsafe for residents, but more especially, had been vandalised or stolen by people from within or without the estate and which again he surmised had boosted unnecessarily the costs for residents.
12. Once again, so far as the Tribunal is concerned, the cost itself is not unreasonable for a project of this kind. The Respondent assured the Tribunal, which would be the Tribunal's expectation, that again the price charged was consistent with the original tender given by the contractors and the cost has not been inflated by reason of theft of cabling brought about by vandalism or any other cause. If there had been theft, the cost would have been borne by the contractors without any uplift passed onto the leaseholders. This, as indicated, would be the Tribunal's expectation and no deduction is made in this regard.
13. A further head of complaint by the Applicant was that the costs incurred in refurbishing the lift were unreasonable in the sum of £17,668. He put no alternative evidence to the Tribunal in respect of this costing, but essentially his complaint was on the basis that this refurbishment was either caused or

aggravated by two matters. Firstly, he said that there had been a reconfiguring of the access to the lift in the estate with the result that people who had previously used other lifts more appropriate for their particular flats, were now required to use the lifts at or servicing his flat. The result of this was that the lift was receiving much greater usage and thus breaking down or being poorly looked after, thereby increasing costs of repair and refurbishment. In addition, he said that there had been a cost of £186,000 for all five lifts (in fact the spreadsheet referred to seems to indicate nine lifts) and again this involved excessive charging. The Respondent's position was that if there was a strong view expressed by others (about which he had as yet heard nothing), the Respondent would give new attention to whether some different arrangement could be arrived at which would involve people not within the vicinity of the Applicant's flat using this particular lift or lifts, but being directed to lifts closer to and more appropriate for their own flats.

14. Again it seems to the Tribunal that this is more in the nature of a management issue than the actual need for and cost of the lift refurbishment. There was no compelling evidence outside that of the Applicant that the lifts were not now working in a reasonably satisfactory fashion. Mr Truschin was fairly muted in his criticism of the lift system, and although he said that there were periods of a few days when the lifts were not working because of repair work, this would not in the scheme of things, be unsurprising. However, if it is indeed the case that the lift or lifts servicing the Applicant's flat are receiving excessive wear because of the new arrangement in relation to access, then it does seem to the Tribunal that this should be reviewed as it could, for the future, produce an excessive



charge which would be unreasonable under the Act for the Applicant to pay. Mr D'Allesandri assured the Tribunal that he would look at this, and the Tribunal is concerned that it should receive some attention. Upon this basis, the Tribunal makes no adjustment in respect of this cost.

15. The Applicant complained further of a sum of £6,460 in respect of cost of removal of asbestos in the major works. His complaint was that this cost had in fact been incurred because it was connected with the cabling issue mentioned above. He took the view that cabling had either been vandalised or unnecessarily removed which in turn had generated the need to deal with the asbestos. The asbestos itself, whilst in situ and if not disturbed, would not have been required to be removed.
16. The Respondent's evidence was that this asbestos had first been installed in the early 1960s and there had been no electrical replacement of the system up until the time of this major project. The system was 45-50 years and required refurbishment or replacement, during the course of which it was inevitable that the asbestos would have to be removed too in order to comply with current regulations.
17. This is in the nature of a specialised area of work. The cost concerned is not in the scheme of things, outside the range to be expected by the Tribunal and there was no compelling independent expert or any other form of evidence to support the Applicant's speculation. No change is made in respect of this charge.

18. The second highest cost in these major works is that of the cost of roof covering, in the sum of £37,021. The Applicant had a major complaint in this regard which was that he wished the Tribunal to take into account that the roof of his block was already under warranty until 2017 by virtue of roof works carried out at an earlier date and in respect of which his block and the residents therein were charged substantial sums. His contention was that if large costs were now necessary in respect of this roof, the Respondent should have reverted to the original contractors or the provider of the warranty in order to cover these costs. In fact he had been able to obtain a copy of the original guarantee which appears at page 103 in the blue bundle and which indeed confirms that the main roof area was covered by weather proof asphalt in or around 1997 and was guaranteed against product failure due to faulty manufacturer and failure due to faulty workmanship for a period of 20 years from that date. Indeed it was the Applicant's case that the provider of the guarantee was still in business and the warranty was perfectly capable of having been relied upon. The Respondent, through Mr D'Allesandri, very candidly said that he is willing, as he put it, "*to hold up my hands upon that point.*" He told the Tribunal that the decision to go ahead with this comprehensive covering was taken, but that he was not himself satisfied that he could justify it as the right decision, but it was the decision with which "*I now need to work*". He pointed out that the guarantee had been given not to the Respondent, but to its predecessors in title, the London Borough of Tower Hamlets. Nonetheless, he very candidly conceded that he should have been in a position to show what steps were taken to obtain cover for these costs under

the guarantee and he was not in a position to do so. He conceded that his inability in this regard could well lead to a 100% of the Applicant's contribution to this cost being credited back to him.

19. In the light of Mr D'Allesandri's very reasonable stance on this matter, the Tribunal does find for the Applicant on the basis that it is unreasonable, under the terms of the Act, to expect a leaseholder to pay again for work of this kind which could quite possibly have been recoverable in its entirety under an extant and enforceable guarantee. Accordingly the Applicant's contribution to this part of the works referable to the roof covering should be credited back to him.
  
20. There is a very small sum also challenged by the Applicant in respect of the asphalt covering of his own private balcony. His case is that no such work was carried out on his balcony, which is tiled rather than covered by asphalt. Moreover he said that this balcony is within his own demise and no part of the common parts or the area on the estate which would be covered by the major works. The Respondent, as understood by the Tribunal, did not have a very substantive reply to this allegation and upon perusing the lease, it does indeed appear that the balcony is within the Applicant's demise. Accordingly, whatever sum is referable to this work (it would appear to be the £352 mentioned by the Applicant) should be deducted or credited back to his account.
  
21. The Applicant made some further challenges in respect of "*additional works*" as part of the major works project. These additional works were not well documented in the evidence but, as understood by the Tribunal, they were

matters which were covered by "snagging" following the end of the contract period at the end of last year. They are being dealt with by the Respondent and on this basis no particular deduction is made in this regard.

22. As mentioned above, in addition to the challenges in relation to the major works, now dealt with above, the Applicant had challenges in respect of the other service charges referred to, which will now be dealt with.

### **2006/7**

23. In this year the Applicant challenged the cost for cleaning of which his contribution amounted to £282.12. His evidence and witness statement were to the effect that firstly, since the charge exceeded £100, he should have been given the benefit of a statutory consultation when these works were tendered for. Secondly, he argued that he has never seen any invoices in relation to the work and that it was generally of poor quality. He described the common parts as +6 and felt that he should pay nothing for it. The Respondent told the Tribunal that this was not a charge in respect of which consultation was required because the work was carried out by internal staff of the housing association and not put out to tender. The Respondent argued that it was possible to do the works more economically "in-house" and there was in fact no qualifying long term agreement for the purposes of the Act. The Tribunal accepted this, but the Tribunal was impressed by the detailed evidence given by the Applicant about the poor quality of the work. The Respondent was unable to give the Tribunal any detail about the frequency or duration of the cleaning works carried out. It produced no work schedules or no job description

indicating how the work was done and how it was monitored. Doing the best it can on the evidence and on the basis that at least some work was done, the Tribunal takes the view that the Applicant has made out his case to some degree and that these costs should be reduced by 50%.

24. The Applicant challenged the sum of £6.69 referable to door entry maintenance and said that the maintenance poor, for the detailed reasons given in his statement. The Respondent again candidly, through Mr D'Allesandri, said that it could not defend this challenge because it could not locate any of the documentation referable to it. The challenge was effectively conceded and this sum must be removed from the service charge levied.
  
25. The Applicant challenged the sum raised in respect of buildings insurance, not on the basis that the sum itself was unreasonable, but that as understood by the Tribunal, the cost may have been inflated by the increased security risk caused by the scaffolding and the other matters which he had raised in relation to security. Further and primarily, he argued that there was leaking pipe work within the block which had been the cause of a lack of pressure in the water supply and increased pipe work repair costs. He felt that this should be covered under insurance. It seemed to the Tribunal that these arguments were misconceived. The Respondent is obliged to keep the property properly insured and whether or not these further works (about which there was no clear evidence from the Applicant) could or should have been covered under some kind of insurance policy, was an entirely separate matter. No adjustment is made for this charge.

**2007/8**

26. For this year the same challenge was made in respect of the communal cleaning and the evidence was effectively identical to the preceding year. The Tribunal makes the same finding, that it is to say that there should be a reduction in the cleaning cost levied to the extent of 50%. Further, the Applicant challenged the sum referable to door entry lift and maintenance amounting to £11.23. He argued that the charge did not "make sense" because the lifts were not operating during this period and moreover, the invoice details provided did not correspond to the charge made. The Respondent conceded that the sum to be charged should be £7.19 only and accordingly if any sum beyond this has been charged, credit should be given. It seems to the Tribunal that the charge is indeed £7.19 as appearing at page 58 in the bundle from the service charge expenditure and this meets the point taken by the Applicant and therefore no change is required in this regard. There was a general point made by the Applicant concerning the management charge made for this year and for subsequent years. In fact the fee of £72.87 is, in the scheme of things, well within the range that one might expect for a property of this kind. However, the Applicant has identified significant management failings for this year and the subsequent years which in some respects, though not all, were accepted on behalf of the Respondent. Doing the best it can, the Tribunal finds that some of the objections which the Applicant raised in respect of the major works and other matters which were not substantively disputed, do sound in poor management and a deduction of 25% of the management cost should be allowed to him and the account credited accordingly.

**2008/9**

27. Again, similar challenges were made, and similar findings (for similar reasons) are made for this year. The communal cleaning charge is reduced by 50% from £313.93 to £156.96. The management fee is reduced by 25% from £77.70 to £58.27.

**2009/10**

28. In this year the same challenge was made in respect of the communal cleaning and the same finding (a deduction of 50%) is made by the Tribunal, for the reasons already indicated above. However, a further challenge was that the global sum of £10,343.32 was a mistake in the accounts and that there had been some double counting, so that the correct figure should be £10,011.36. The Respondent conceded that it could not justify the original figure by reference to the invoices and so this figure of £10,011 is the correct figure upon the basis of which the Applicant's percentage share of 2.77% should be calculated but then divided by two, for the reasons indicated.

29. There was a challenge in respect of the communal door entry maintenance charge for this year amounting to £1.83 which, as understood by the Tribunal, was not seriously challenged by the Respondent and therefore this should be allowed in addition.

**2010/11**

30. For this year the charges have now been finalised, and the Applicant challenges a sum of £165.40 for block electricity charges, which show an uplift by some

770% over the previous service charge year, and for which no invoices have been provided. Mr D'Allesandri concedes that there has been an obvious mistake in the charge levied for this year and that it should be deleted because an external agency (Energy Centric) has produced the estimate in an erroneous way. Unfortunately he was not in a position to give any evidence about the correct figure and concedes that in the circumstances this sum should be deleted in its entirety, which in fact should take place.

31. There were other challenges for this year relating to refuse disposal and TV aerial cost which in fact the Applicant did not pursue at the hearing. A charge of £17.40 has been made in respect of the communal door entry maintenance. The Applicant challenged this on the basis that the previous year this door entry system had been completed and one would not have expected an uplift of 850% for maintenance (the previous year's maintenance was £1.83) – indeed quite the opposite, given that this was the first year after a new system was installed. The Respondent was unable to produce any invoices in this regard and on the evidence before it, the Tribunal accepted the Applicant's challenge and this charge should be deleted in its entirety.
  
32. It is a fair point made by the Applicant that the figures suggested to be actual for the period 2010/11 contain a number of anomalies brought about by apparently incorrect calculation, part of which was accepted on behalf of Mr D'Allesandri on behalf of the Respondent. The adjustments already referred to above should therefore be made for that year and the sums allowed should be recalculated for the remaining charges so as to produce the correct figure. In addition the



communal cleaning figure of £299.31 should be reduced by 50% and the management fee of £83.83 also by 25%.

### **2011/12 and 2012/13**

33. The estimates for these successive years contain within them estimates based on what, for the reasons indicated above, must be miscalculations for the electricity charges in relation to the block and the cleaning charges and management charges, together with the lift maintenance charge. Once the correct figures have been calculated for the period 2010/11, it seems to the Tribunal that the estimates for the two subsequent successive years should be adjusted so as to allow for a 10% uplift respectively on all charges for each of these years, until the actual costs have been calculated. This adjustment should accordingly be made.

34. The Applicant applied for the Tribunal to make a direction to the effect that under section 20 of the 1985 Act his service charge bill should not be increased by any costs incurred by the Respondent in dealing with this application. Since some reasonably significant deductions have in fact been made in favour of the Applicant, it does seem to the Tribunal that it is reasonable to give such a direction and accordingly the Tribunal directs that, pursuant to section 20 of the Act, no part of the costs of these proceedings or this application should form the part of any subsequent service charge levied against the Applicant.

**Legal Chairman: S. Shaw**

**28 August 2012**

year		item	amount claimed	amount allowed	to be			
				as reasonable	adjusted			
			£	£				
<b>2011/12</b>	<b>Major works -</b>							
	<b>block charges</b>							
		scaffold	13,455.00	13,455.00				
		glazing	1,033.00	1,033.00				
		electrical wiring	37,663.00	37,663.00				
		lift refurbishment	17,668.00	17,668.00				
		asbestos removal	6,460.00	6,460.00				
		roof covering	37,021.00	nil	100%			
		balcony asphalt	352.00	nil	100%			
<b>2006/07</b>	service charge	cleaning	282.12	141.06	50%			
		door entry maint	6.69	nil	100%			
		insurance	69.42	69.42				
<b>2007/08</b>	service charge	cleaning	258.53	129.65	50%			
		door entry maint	7.19	7.19				
		management	72.87	54.65	75%			
<b>2008/09</b>	service charge	cleaning	313.93	156.96	50%			
		management	77.70	58.27	75%			
<b>2009/10</b>	service charge	cleaning	286.51	143.25	50%			
		door entry maint	1.83	1.83				





