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**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL**

**S.19 & 27A of the Landlord and Tenant Act 1985 (as amended)  
("The 1985 Act")**

<b>Case Number:</b>	<b>CHI/21UD/LSC/2012/0173</b>
<b>Property:</b>	<b>Second Floor Flat 4, Quarry Terrace, Hastings East Sussex TN34 3SA</b>
<b>Applicant:</b>	<b>Braear Developments Limited</b>
<b>Respondent:</b>	<b>Ms Melissa Powell</b>
<b>Appearance for Applicant:</b>	<b>Mr D J Earwaker</b>
<b>Appearance for Respondent:</b>	<b>Mr S Powell</b>
<b>Date of Hearing:</b>	<b>22nd March 2013</b>
<b>Tribunal:</b>	<b>Mr R. Wilson LLB (Lawyer Chair) Mr R. Wilkey FRICS (Surveyor Member) Mrs J. Morris (Lay member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>5th April 2013</b>

## The Applications

1. The Tribunal had before it an application transferred from the Central London County Court which involved a determination under S.27A (and 19) of the Act of the Respondent tenant's liability to pay a final balancing service charge amount for the year ended 24<sup>th</sup> June 2011 and on account service charges for 2012 & 2013.
2. The Tribunal may also consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003, whether the Respondent should be required to reimburse the Tribunal fees incurred by the Applicant in these proceedings.

## Summary of Decision

3. The service charges recoverable by the Applicant are as follows:

Year	£
Service charge balance For year end 24 <sup>th</sup> June 2011	1,125
On account service charge for year end 24 <sup>th</sup> June 2012	2,744
On account service charge for year end 24 <sup>th</sup> June 2013	750
Administration costs	84

## The Lease

4. The lease for the Respondent's flat is dated 7<sup>th</sup> July 1997 and is for a term of 99 years from 24<sup>th</sup> June 1970 at an annual rent of £10. The relevant provisions in the lease may be summarised as follows:
  - (a) By clause 4(1) the tenant covenants with the landlord to pay and contribute one third part of the costs and expenses and outgoings and matters mentioned in the fourth schedule (broadly comprising the landlord's expenditure in maintaining and managing the building and in performing and carrying out the landlords obligations set out in clause 5).
  - (b) Clause 5 sets out the landlord's covenants with the tenant, which includes various maintenance and repairing and decorating obligations and insurance of the Property.
  - (c) Surprisingly there is no obligation on the landlord to prepare and serve on the tenant annual service charge accounts.

## **The Inspection**

5. The Tribunal inspected the subject property on the morning of the 22<sup>nd</sup> March 2013 immediately before the hearing in the presence of the Applicant's representative. The property is a substantial mid-terrace building constructed in the Victorian era. The property is currently arranged as three self-contained flats over three floors. The building is constructed of brick and has part rendered and part tile hung elevations. The front external elevation looked to have been recently redecorated and appeared to be in good decorative order.
6. The Tribunal members made a brief inspection of the internal common ways and inspected the third floor flat which was occupied by a tenant. The members of the Tribunal were directed to an area in the living room, which had previously been affected by damp. The area concerned appeared to have been made good and there were no current signs of damp ingress.

## **The Law and Jurisdiction**

7. The Tribunal has power under S. 27A of the 1985 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.
8. By S. 19 of the 1985 Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
9. By S. 20 and regulations made thereunder, where there are qualifying works or the landlord enters into a qualifying long term agreement, there are limits on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal.
10. The Tribunal may consider, pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, whether one party should be required to reimburse the Tribunal fees incurred by another party in the proceedings.

## **Representation, Evidence, and Procedure at the Hearing**

11. Mr Earwaker managing director of the Applicant Company represented the Applicant and called Mr Atkinson a chartered surveyor to give evidence. In accordance with directions given by the Tribunal, the Applicant had filed a detailed statement of case together with a comprehensive hearing bundle of documents.
12. The Respondent's brother Mr S Powell attended the hearing and represented his sister. The Respondent's case was confined to a brief letter dated the 8<sup>th</sup> January 2013 addressed to the Tribunal in which the Respondent raised three issues, excessive management fees, excessive surveyors fees and a claim that neglect by the Applicant in complying with its repairing obligations had brought about an increase in the level of service charges. The Respondent filed no other documents or evidence in support of her case.
13. The County Court referral required the Tribunal to determine the balancing service charge payment for 2011 and the on account service charge payments for 2012 & 2013. By the hearing date the Applicant had produced an account of actual expenditure for 2012, and invited the Tribunal to deal with this year on the basis of actual rather than budgeted expenditure. However, it was clear that the Respondent was not happy

with the standard of some of the services provided by the Applicant, for example the cleaning of the common ways, and therefore the Tribunal elected to restrict its scope of enquiry of the years 2012 and 2013 to budgeted expenditure thus preserving the Respondent's right to challenge actual expenditure in these years at a later date by way of a separate application to the Tribunal under S.27 of the Act.

14. At the hearing Mr Powell advised the Tribunal that his sister did not intend to pursue her claim for historic neglect and had in fact paid her proportion of the expenditure on the roof some two weeks earlier. Accordingly this admission left just two contested items for the Tribunal to determine, the managing agents fees and the surveyor's fees.
15. The Tribunal first heard the Respondent's objections and challenges and then heard the Applicant's case in response. At the conclusion of the evidence, both sides were invited to make final submissions and then to address the Tribunal on the issue of the Tribunal fees.

### **Management and surveyors fees**

16. The Respondent's case was simply put. She agreed that the basic management charge of £150 per flat, the amount charged by the Applicant in 2008-2010, was reasonable but she considered that the additional management fees of 10% of the cost of major works charged by the Applicant in 2011 and 2012 to be excessive and not justified. The Property was a very simply conversion and an annual fee of £450 should cover both routine management and the overseeing of the roof repairs and the external painting. The statutory consultation, which was necessary, was a completely straightforward job and simply required the filling in of a few fields in a standard template computer desktop document. Mr Powell contended that it was neither necessary nor reasonable for an extra management charge to be made for such a simple building.
17. Mr Powell further contended on behalf of the Respondent, that where a building was being professionally managed, as it was in this case, then it should not have been necessary for the Applicant to employ a third party surveyor to be involved in the straight forward roof repairs or the external decoration. When one added the costs of management, the additional 10% major work management fee and the third party surveyor fee, then these costs accounted for almost 75% of total annual expenditure in 2011. Mr Powell contended that taken in the round the combined costs of management and the surveyor in 2011 and 2012 were disproportionate and he invited the Tribunal to reduce the amounts recoverable as service charge.
18. For the Applicant, Mr Earwaker largely repeated the written submissions contained in the Applicant's statement of case. The Fourth schedule of the lease provided for the lessee to contribute towards the cost of management of the property. Relying upon this clause the Applicant had entered into a rolling management contract with the managing agents, a copy of which was contained in the hearing bundle. The amount charged by the agents currently stood at £150 per flat plus VAT. This fee covered all routine management work carried out in a year excluding management in connection with major works which were carried out in cycles of five years. This structure was agreed to keep the annual charge low in most years but there was an extra management charge of 10% on the costs of major works when carried out to cover the extra administration. From 2008 to 2010 the charges were kept to the basic £450. In 2011 the management fees increased to £834 to take into account the roof repairs carried out in that year. In 2012 the managing agents fees increased again to approximately £1,300 to reflect the external decoration. The average management fee over the five-year cycle amounted to a little over £230 per flat which he contended was reasonable. In this respect he referred to the decisions of other Tribunal cases in Worthing where the Tribunal had determined annual management fees of £218 per flat and £250 per flat to be reasonable.

19. Mr Earwaker told the Tribunal that when major works were necessary then it was the Applicant's usual practice to instruct a third-party surveyor, as the Applicant did not possess the necessary expertise to be able to draw up the necessary specifications and oversee the works. Mr Earwaker contended that the Fourth schedule to the lease enabled the Applicant to recover the reasonable costs of a third-party surveyor incurred in relation to roof repair work and the external decorations.
20. Mr Earwaker referred the Tribunal to the Applicant's hearing bundle, which contained copies of every invoice submitted by Mr Atkinson the surveyor. In 2011 Mr Atkinson had been appointed in relation to the roof repairs and he had charged his minimum fee of £750. Mr Atkinson gave evidence that he had been engaged in taking instructions, making arrangements for access, carrying out an inspection of property, preparing a specification for the roof repair works, submitting specifications to tender, analysing tenders and reporting to the freeholder, inspecting building works in progress and agreeing the final account and certifying practical completion. A similar service had been provided in respect of the external redecoration carried out in 2012. His charges had been approximately £1,300 calculated at 15% of the final cost of the redecoration. Mr Earwaker considered that these fees were competitive and reasonable in amount.

## Conclusions

21. The Tribunal has carefully reviewed the basic management charge, the major work management charge and the third-party surveyors fees and has concluded that in context, they are all recoverable and reasonable in amount.
22. The basic annual fee of £150 per flat is accepted by the Respondent as being recoverable and reasonable in amount. The Tribunal is satisfied that the additional management fee, set at 10% of the cost of major works, is also recoverable and reasonable in amount. Although Mr Earwaker indicated in oral evidence that the managing agents work at the time of major works consisted only in drafting the consultation notices, it is clear from the hearing bundle that increased management activity did take place when the works were carried out. There is evidence in the hearing bundle that the managing agents work involved considerably more than just drafting the S.20 notices. The agents coordinated the consultation procedure and liaised with the Applicant in relation to the observations received. It is also clear from the written evidence that the managing agents were involved in reviewing the tender analysis, instructing the contractors and coordinating the works in consultation with the independent third-party surveyor. The Tribunal therefore rejects the Respondent's argument that the managing agents' role in the 2011 and 2012 amounted to no more than conducting a desktop exercise. The evidence points to significantly increased management activity which justifies the additional 10% major works fees charged in 2011 and 2012. They are therefore upheld.
23. The Tribunal is also satisfied that it was reasonable for the Applicant to retain the services of a third-party independent surveyor for the roof repairs carried out in 2011 and the redecoration of the front elevation carried out in 2012. The property is a substantial three-storey period building and for both projects it would have been necessary to have erected scaffolding and take into account CDM regulations. It was also necessary to draw up specifications for both projects to ensure that the contractors' tenders were on a like for like basis. The review of the tenders received following the consultation procedure required a level of expertise, which goes beyond basic management, which is largely administrative in nature. There is a raft of legislation to be complied with in relation to external repair and decoration work of buildings of this kind and in the judgment of the Tribunal the Applicant should not be faulted for electing to use the services of a third party surveyor in the way that it did.
24. The Tribunal heard evidence from Mr Atkinson the surveyor who provided the services in both years and has no hesitation in upholding his fee of £750 for the roofing project

and approximately £1,300 in respect of the decoration work as being competitive and in line with market rates. The hearing bundle contained a number of further invoices from Mr Atkinson, for example an insurance valuation, and the Respondent offered no evidence to challenge these amounts. In short the Respondent adduced no evidence that challenged the recoverability or the reasonableness of any of the surveyors fees and therefore they are all upheld.

25. In conclusion the Tribunal notes that the second stage of the consultation procedure carried out by the Applicant for the works carried out in 2011 and 2012 rightfully put the Respondent on notice of the proposed 10% additional management charge and also the 15% surveyors charge and invited observations from all lessees including the Respondent. This was the Respondent's opportunity to voice her concerns and she did not do so. On being questioned by the Tribunal Mr Powell confirmed that his sister had not raised any concerns about these charges at that time and he accepted that she should have done so.
26. Accordingly for all of the reasons stated above the Tribunal determines that the service charges payable by the Respondent are as set out in the summary decision contained in paragraph 3 above.

#### **Reimbursement of fees**

27. The Tribunal declines to exercise its discretion to make an order that the Respondent should repay the Tribunal fees incurred by the Applicant in these proceedings. Although the Respondent has not been successful in reducing the service charges claimed by the Applicant, it was not unreasonable for the Respondent to challenge the amounts claimed by the Applicant and the Respondent has not acted, frivolously vexatiously or otherwise unreasonably in relation to the proceedings.

Signed  
Chairman:

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Robert Wilson LLB

Dated: 5<sup>th</sup> April 2013