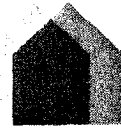




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Residential
Property
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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM
ACT 2002 & SECTION 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AT/LSC/2012/0728

Premises: 40 Flanders Mansions, Flanders Road, W4 1NF

Applicant(s): Alya Randell-Khan & Ella Randell-Khan

Representative: Dr K Khan

Respondent: Flanders Freeholders Limited

Representative: Guillaumes Solicitors

Date of hearing: 13th and 25th February 2013

Appearance for Applicant(s): Dr K Khan
Mr A Walder (Counsel)
Mr G Bland

Appearance for Respondent: Mr A Dymond (Counsel)
Mr A Tigwell (Solicitor)
Mr M Pollitt (Director)
Mr G Hanson (Surveyor)
Mr D Jackson (Managing Agent)

Leasehold Valuation Tribunal: Mr L Rahman (Barrister)
Mr R Potter FRICS
Mr C Piarroux JP CQSW

Date of decision: 22.4.13

Decisions of the Tribunal

- (1) The Tribunal determines the administration charges payable by the Applicant's are £9,323.78.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant's seek a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant's in respect of charges arising from works to alter their flat.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant's did not appear at the hearing. Their father, Dr Khan, appeared but did not give any evidence. They were represented by Mr Walder (Counsel). Mr Bland gave evidence on their behalf. Mr Bland had been a property lawyer for more than 30 years and knew Dr Khan in a professional and business capacity and was also a friend. Mr Bland had also met the Applicant's. Mr Bland helped Dr Khan purchase the long leasehold interest in the flat at auction. Mr Bland inspected the flat, vetted the auction pack, introduced Dr Kahn to his solicitors (Skelly & Corsellis), and introduced Dr Khan to his builders and Paul Webber of Alternative Designs. Mr Bland also dealt with the application for the alterations to the flat.
4. The Respondent was represented by Mr Dymond (Counsel). Mr Pollitt, one of the Respondent's Director's, Mr Hanson, the Respondent's surveyor, and Mr Jackson from the Respondent's managing agents, all appeared and gave evidence.
5. Immediately prior to the hearing on the first day the parties handed in further documents, namely, Skeleton Argument on behalf of the Applicant's and case-law (Mount Eden Land Limited-v-Prudential Assurance Company Limited, Alchemy Estates Ltd-v-Astor and another, and Holding and Management (Solitaire) Ltd-and-Cherry Lilian Norton).
6. Immediately prior to the hearing on the second day the parties handed in further documents, namely, "Costs Submissions" on behalf of the Applicant's

and an "Explanation of Legal Fees Incurred and in Dispute" on behalf of the Respondent.

The background

7. The property which is the subject of this application is a flat in a mansion block. The Applicant's purchased the leasehold interest in the property on 30th June 2009. The Applicant's intended to undertake substantial works to the property. Dr Khan, with the help of Mr Bland, dealt with all the matters concerning the property.
8. By Clause 3(5) of the lease, the Applicant's covenanted "Not at any time during the said term to make any alterations in or additions to the Demised Premises or any part thereof or to cut maim alter or injure any of the walls or timbers thereof or to alter the landlord's fixtures therein without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessors and secondly having received the written consent of the Lessors thereto".
9. An application for consent was made on 30.6.09 (pages 238-244 of the bundle). The application was refused by the Respondent in a letter dated 9.7.09 (page 237) and a further more detailed letter dated 24.7.09 (page 226).
10. The Applicant's submitted a further application on 16.8.09 (pages 196-197). This was accompanied by a full specification of the works and associated drawings prepared by the Applicant's building surveyor (pages 198-212).
11. The Respondent gave its consent by virtue of a licence to alter ("First Licence") executed on 28.10.09 (pages 380- 421) on condition of the payment of various administration charges amounting to £5,613.15.
12. Under the Licence the Applicant's agreed to carry out and complete the works to the reasonable satisfaction of the Landlord's Surveyor and (where applicable) any superior landlord who shall have all necessary facilities for inspecting the progress of the works and the quality of the materials and workmanship used (Clause 4.2.6).
13. The Applicant's further agreed under the Licence not to cause or permit: insofar as would reasonably be expected of a reasonable Landlord or neighbour any damage disturbance annoyance nuisance or inconvenience whether by noise dust vibration the emission of smoke fumes or effluvia or otherwise to the Landlord or to the owners or occupiers of any adjoining or neighbouring premises (Clause 4.3.1 (a)), any damage or disturbance to or weaken or render unsafe the structure of the Premises or any adjoining or neighbouring premises or any plant equipment or machinery at the Premises (Clause 4.3.1(b)).

14. The Applicant's also agreed under the Licence to pay the proper costs charges fees disbursements and expenses of the Landlord and their solicitors surveyors and architects and other professional consultants (including value added tax and any stamp duty payable) in connection with the negotiation preparation and completion of this Licence and the Counterpart and in connection with the carrying out of the works (including without prejudice to the generality of the forgoing all fees incurred in connection with the approval of drawings specifications and with the inspection of the works whether before or after the date of this Licence) (Clause 4.9).
15. A dispute then arose as to whether the works done by the Applicant's were beyond the terms of the First Licence, in particular the addition of an extra bathroom. The Respondent refused to grant a second licence to alter ("Second Licence") unless the Applicant's agreed to pay additional costs that had been incurred by the Respondent, amounting to £4,969.98. At the hearing, Counsel for the Respondent conceded that a letter sent to Mr Bland, dated 8.6.10 (page 76), in effect granted consent.
16. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

17. Both parties agree the charges demanded by the Respondent constitute variable administration charges. Both parties agree as a condition of granting written consent the Respondent has the right to require the payment of a reasonable sum in respect of, among other things, any legal or other expenses properly incurred by the Respondent in connection with the consent (section 19(2) Landlord and Tenant Act 1927).
18. The issue to be determined by the Tribunal is whether the administration charges in relation to both the First Licence and Second Licence are reasonable.
19. Counsel for the Respondent confirmed at the start of the hearing on the first day that given the letter dated 8.6.10 had effectively granted consent with respect to the additional bathroom, the proposed licence to alter fee (£540.00 inclusive of vat) was not payable. The charges concerning the Second Licence were therefore £4,429.38.
20. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

First Licence

21. The following charges were billed; legal fees for Guillaumes (£2,140.15), legal fees for Perry Hay (£1,437.50), surveyors fees (£1,518.00), and licence fees (£517.50), totalling £5,613.15 (inclusive of vat).
22. The Applicant's state it was a relatively straightforward matter. Much of the work was unnecessary, for example, it is unclear why Perry Hay generated a bill for legal fees when Guillaumes appeared to be instructed on the matter. The legal fees suggest the work was undertaken at partner level, which is unreasonable considering the issues. Many of the legal fees relate to threats to forfeit the Lease, which was unnecessary and overly litigious considering the Applicant's had lawyers negotiating on their behalf. It is unclear why a surveyors inspection was paid if the surveyor did not notice the alleged unauthorised third bathroom. The surveyor was not registered by RICS and was thus unregulated and unqualified. There appears to be unnecessary duplication in the work.
23. The Respondent states it was not a relatively straight forward matter. The Applicant's commenced work without consent and then carried out work outside the terms of the First Licence. The works were not properly completed in accordance with the terms of the First Licence. In particular, the Applicant's installed a loud macerator. Dr Khan's behaviour was time-consuming and obstructive. He made allegations of racism against Mr Hanson, requested the Respondent refer its solicitors to the Law Society, and submitted a freedom of information request to the Information Commissioner.

Second Licence

24. The following charges were billed; legal fees for Guillaumes (£3,372.38) and surveyors fees (£1,057.00), totalling £4,429.38 (inclusive of vat)(minus the £540.00 conceded by Counsel for the Respondent).
25. The Applicant's state there was no need for a Second Licence as the First Licence covered the "disputed" third bathroom. Therefore, all the costs generated as a result of that Second Licence are unreasonable. Further, if the First Licence did not give the required consent for the additional bathroom, by virtue of the email dated 8.6.10, the Respondents agent gave the necessary consent. Therefore, a further licence was not necessary and no right to forfeit the Lease would have arisen. Further still, the Respondents surveyor had inspected the property on 9 occasions when the third bathroom was in situ and functioning. As such, any suggested breach of Clause 3(5) was waived by the acceptance of ground rent and service charges after the date of the inspections. As such, any charges relating to threats of forfeiture and the Second Licence are unreasonable. No explanation is given as to why the First Licence could not have simply been amended.
26. The Respondent states a Second Licence was necessary as the third bathroom was not permitted under the First Licence. The necessary consent was provided in the email dated 8.6.10. However, there was a breach of the

First Licence therefore costs are recoverable as they were incurred in contemplation of a s.146 Notice.

Tribunals decision and reasons

27. This was a relatively straight forward matter that was complicated by Dr Khan's conduct. It was abundantly clear that Dr Khan's workmen had commenced alterations immediately after purchase and prior to any consent with undue and unreasonable haste.
28. It was reasonable for the Respondent to refuse the first application on the basis of the information that had been provided. Mr Bland accepted in his evidence that he expected the drawings and attached letters to have been sufficient for the landlord to establish whether it was minded to grant consent but he accepted "you would not give consent by reference to these drawings". He confirmed they are not drawings based upon which works could be done. When asked by the Tribunal, Mr Bland stated he accepts, on reflection, Dr Khan was hasty and over-anxious to get consent and therefore did not allow the Respondent a reasonable time to respond. He went on to state they wanted to finish the flat and get an income from it. Mr Bland added that Dr Khan is also a lawyer and cannot be corralled easily.
29. In response to the first application being refused Dr Khan sent an email to the Managing Agent (16.7.09, page 229) criticising the way in which the Respondent had made its decision, the lack of any professional input from lawyers or surveyors, referring to case-law, and threatening to "seek compensation for losses, for this misfeasance, directly from the directors". Mr Bland sent a more conciliatory email on 16.7.09 (page 231) suggesting a meeting to resolve the impasse amicably.
30. The Directors of the Respondent company then received a "Notice of intended court proceedings (as director FFL and in their personal capacity"(page 245). The letter is undated but was received on 22.7.09 (page 247). The letter is signed by Skelly and Corsellis Solicitors, "seeking compensation arising from the unreasonable withholding of consent to proposed alterations...as contained in the letter...dated 9th July 2009". When Skelly & Corsellis were contacted by the Respondent, they denied sending the letter, confirmed it was not authorised by their firm, and the firm had no knowledge of the Notice until a copy had been received. They confirmed the letter was not signed or issued by them (page 248). Mr Bland confirmed in evidence he used to work for this firm and had introduced Dr Khan to the firm. Mr Bland stated he knew nothing about the letter sent to the Directors. Mr Bland accepted in his evidence that the letter was likely to create a difficult situation. When asked by Counsel for the Respondent "It is plain that Dr Khan sent a letter to the landlords threatening legal action, purporting it was sent by solicitors", Mr Bland replied "correct". The Tribunal are told the matter is now under investigation by the Law Society.

31. As stated in the letter sent to Dr Khan, dated 24.7.09 (page 226), the Directors found Dr Khan's overall approach overtly litigious, threatening and unnecessarily aggressive. The letter also makes reference to Dr Khan apparently making a "racial harassment" allegation to the Building Inspector. The Respondent stated it would take such unfounded accusations seriously and would defend its position vigorously.
32. Mr Pollitt stated in evidence he was so concerned with the "Notice of intended court proceedings" letter that he went to the police. He discussed the matter with Peter Hay, their Solicitor at the time. Mr Pollitt stated they were focused on the application for alteration that was before them, but when someone sends a letter like that you make sure you are careful and not make any mistake.
33. A further "Letter before action" was sent by Dr Khan (dated 27.7.09, page 249).
34. Mr Bland stated in his witness statement that Solicitors had advised Dr Khan about Clause 3(5). The Tribunal note the Respondents letters dated 9th and 24th July 2009 stated no interior structural works or any alterations to the layout of the property was to be conducted under any circumstances until the application had been concluded. Yet the Respondents surveyor noted on a site visit on 10.8.09 (page 217) extensive works had been carried out including structural works in the form of new door openings into the load bearing brick walls. Mr Bland stated in evidence he had not been to the flat and was unable to say what works had been done. But he accepted that on the basis of what was contained in the letter on page 217, there had been a clear breach of covenant. Counsel for the Applicant's conceded he could not call any evidence to dispute the letter.
35. A dispute arose in about March 2010 as to whether the addition of a third bathroom next to bedroom number three was beyond the terms of the First Licence. Dr Khan argued in his various emails that the drawings submitted with the first application referred to a third bathroom (pages 106 and 115).
36. The Applicant's relied upon a statement from Paul Webber, dated 11.1.13 (page 428), which states drawings provided to Mr Bland and the Respondents referred to a third bathroom (drawings on pages 429-431). However, at the hearing, Counsel for the Applicant's stated it is accepted that Mr Bland did not forward the drawings onto anyone.
37. Mr Bland said in evidence he accepts the Applicant's needed consent for the third bathroom as the First Licence did not cover it. He completed and sent the First Licence which did not show a third bathroom. He did not know there would be a third bathroom. He only became aware of it in March 2010 through the Respondents solicitors.

38. The Respondent denies receiving or giving permission for a third bathroom and only became aware of it in March 2010.
39. The Tribunal note from the "Licence to Alter" and the specification of the proposed works (pages 380-421) that the third bathroom was referred to as a study and not as a bathroom.
40. Based on all the evidence, the Tribunal find the First Licence did not give consent for a third bathroom next to the third bedroom. The Applicant's had built the third bathroom without the necessary consent. This was a breach of the First Licence and was a breach of covenant. The Tribunal do not accept the argument put forward by the Applicant's that the First Licence could simply have been amended without the need for a further Licence. The change of use from a study to a bathroom is in the Tribunals view a significant change that needs further and detailed consideration.
41. Dr Khan, in a letter of complaint, accused Mr Hanson of racially motivated harassment and intimidation (email dated 22.3.10, page 124). He made a formal complaint to the Respondents Managing Agent stating there should be in place procedures for dealing with the complaint. Mr Bland agreed in evidence it was an "over the top" reaction from Dr Khan and that he would not have written the letter in that way.
42. Earlier on the same day, Dr Khan made a subject access request under the Data Protection Act. He wanted all information held by the Respondent concerning the Applicant's to be disclosed. In particular, information relating to Mr Hanson's firm was specifically requested (page 123). Mr Bland stated in evidence he would not have done that and he was not aware of the request made by Dr Khan.
43. Dr Khan sent an email to the Respondents Managing Agent, dated 31.3.2010 (page 108), stating "We have a top counsel's opinion (Landmark Chambers, the best for property) and Mr Bland as consultant (Ex Herbert Smith). We are clear on the position. These are not small out of town firms giving advice."
44. The Tribunal find Dr Khan did not give the Respondent adequate time to respond to the application that was submitted. The information provided with the initial application was inadequate. Dr Khan had clearly carried out structural works without the necessary consent despite being fully aware that he should not do so. His approach was unnecessarily litigious, threatening, and aggressive. He was involved in dishonestly sending a letter purporting to be from a Solicitors firm. Allegations of racism had also been raised by him. It is clear to the Tribunal the addition of a third bathroom next to bedroom number three was beyond the terms of the First Licence. The Respondent only became aware of this in March 2010.

45. The Tribunal find the legal fees charged by Guillaumes, £6,030.03 (inclusive of VAT and including the licence fee of £517.50) are reasonable and payable by the Applicant's.
46. Mr Pollitt stated in his evidence that they changed solicitors because of the way the case had evolved. He believed Perry Hay Solicitors did not have the expertise to deal with the matter and was told the same by them. Mr Jackson stated Perry Hay Solicitors were appointed to deal with lease extensions and assignments. When they received the application for alteration, they sent it to Perry Hay Solicitors, assuming they could deal with it. In the end they stated they could not deal with the matter in the way it was developing and withdrew.
47. Given the way the matter had evolved, the Tribunal find it was reasonable for the Respondent to change Solicitors and engage the services of a litigation Solicitor at a partner level. Dr Khan's conduct resulted in the Respondent to be, understandably, cautious. The Tribunal note Dr Khan was using Landmark Chambers, which he described as "the best for property" and Mr Bland as consultant (Ex Herbert Smith), which he described as "not small out of town firms".
48. Given the aggressive and intimidating threats made by Dr Khan, the various requests and complaints made by Dr Khan, the numerous emails and correspondence, the variations to the specified works, the dispute concerning the additional third bathroom, and two breaches, a large amount of work was generated. Guillaumes have provided a detailed breakdown of the work they had carried out. Each item of cost relates to emails and letters and advice that was given.
49. Mr Bland accepts the hourly rate (£230) charged by Penny Standon was not unreasonable.
50. Clearly the change of Solicitors inevitably meant Guillaumes would charge for consideration of the papers and advise on matters which had already been considered and advised upon by Perry Hay Solicitors. However, the Tribunal find it was necessary and reasonable for the Respondent to change Solicitors given the way in which Dr Khan was conducting matters. The Tribunal find the resulting additional costs reasonable and payable by the Applicant's.
51. Counsel on behalf of the Applicant's submitted it was fair to instruct a litigation partner when litigation was contemplated. But at the point litigation seemed no longer necessary, a non-contentious Solicitor should have been involved, not necessarily at partner level, who would cost less. There was a duty to mitigate. The Tribunal find it was reasonable for the Respondent to instruct and retain a litigation partner given the history of the matter, the aggressive and intimidating threats made by Dr Khan, and the obvious and repeated breaches. Dr Khan is a lawyer and was being assisted by a very experienced lawyer, as pointed out in his email. It was reasonable for the Respondent to ensure it had correct legal advice.

52. The Applicant's argued the Respondent was not entitled to consider the interests of other tenants. The Applicant's submitted the Respondents obligation was simply to enforce any breach of the condition of the lease based upon a tenant making a request and paying the Respondents costs. It was not legitimate for the Respondent to be so concerned with matters that only affected other tenants. The Tribunal disagree. The Applicant's agreed under the Licence not to cause or permit any damage disturbance annoyance nuisance or inconvenience whether by noise dust vibration the emission of smoke fumes or effluvia or otherwise to the owners or occupiers of any adjoining or neighbouring premises. Mr Bland said in evidence he accepts that the Landlord must consider the views of other lessees, especially above and below the Applicants' flat. Counsel for the Applicant's agreed with the legal proposition, argued by Counsel for the Respondent, that if a Landlord allows or permits or authorises a nuisance then the Landlord can be liable.
53. The Applicant's argue Guillaumes have charged for breach of covenant proceedings, which are not payable as there had not been any LVT proceedings, which is a condition precedent. The Tribunal agree with the argument put forward by the Respondent. The Applicant's were in breach of covenant by carrying out the initial structural works without consent and the addition of the third bathroom that was beyond the terms of the First Licence. With respect to the first breach, Guillaumes emailed Mr Bland on 21.8.09 (page 194) stating there was a breach of covenant and unless or until the situation was rectified, the landlord may elect to forfeit the lease, obtain the requisite declaration and commence possession proceedings. With respect to the second breach, Guillaumes emailed Mr Bland on 29.3.10 (page 114) stating there was a fresh breach of covenant and that once again the Respondent are having to elect to forfeit the lease.
54. The Respondent had the option of either granting the Licence or starting proceedings at the LVT for breach of covenant. The Respondent simply sought legal advice to consider both positions.
55. The Respondent did not on either occasion serve a s.146 Notice. However, the Tribunal find the Respondent was contemplating this, therefore the charges are payable by the Applicant's under clause 9 of the Lease.
56. Alternatively, the Tribunal agree with the Respondent that the legal fees are payable under the terms of the Licence. The Applicant's agreed under the Licence to pay the proper costs charges fees disbursements and expenses of the Landlord and their solicitors and surveyors in connection with the negotiation preparation and completion of the Licence and in connection with the carrying out of the works.
57. The Applicant's submit the Respondent could not have elected to forfeit the Lease as the Respondent demanded ground rent in July 2009 and in February 2010. The Tribunal disagree. The ground rent in July 2009 was demanded from the previous Lessee, not from the Applicant's (page 55 of the Applicant's bundle). At the time the ground rent was demanded in February

2010, the Respondent was not contemplating forfeiture as works were being carried out under the Licence. It was not until the end of March 2010, after the Respondent became aware of the third bathroom, that the Respondent again contemplated forfeiture.

58. The Applicant's submit the costs concerning the request made by Dr Khan for information under the Data Protection Act, regarding information held by the Respondent concerning the Applicant's, is not recoverable. The Tribunal find the costs are recoverable under the terms of the Licence as the request was directly and clearly linked to the request for consent to alter.
59. The Applicant's submit Guillaumes cannot charge for providing a breakdown of the Solicitors charges. The Tribunal find the cost is payable under the terms of the Licence.

Perry Hay legal fees

60. The Tribunal find a fee of £718.75 (inclusive of VAT) to be reasonable and payable by the Applicant's.
61. The Tribunal note from the invoice at page 257 the total fees attributable to the Applicants' property is £1,437.50 (inclusive of VAT), for 4 hours and 12 minutes work charged at £250.00 per hour and an hour's work at £200.00 per hour. According to the invoice, the work concerns "Specific instructions in connection with matters concerning 40 Flanders Mansions and breaches of the lease covenants. Numerous emails between the managing agents, the leaseholders' representative and others in connection with those breaches and advising you throughout. Continuing to monitor matters and advise on correspondence passing between the parties".
62. Perry Hay Solicitors have failed to provide a detailed breakdown of the exact work that they had done, the time spent on each occasion, and the amounts charged on each occasion. However, the Tribunal accept that they must have done some work as they considered the application for the alteration, the potential breach as a result of the works that were carried out without consent, the various emails, and the Notice of intended court proceedings sent to the Director's, after which Guillaumes were instructed.
63. The Tribunal note the evidence from Mr Jackson that he was not given any specific advice by Perry Hay Solicitors. However, it is apparent that Perry Hay Solicitors were given information which no doubt had to be considered by them. Mr Pollitt stated in his evidence that upon learning there had been a breach of the terms of the lease the matter was referred to the Solicitors to deal with the breaches. He stated he had a very brief conversation with Perry Hay Solicitors on 22nd July after receiving the letter threatening court proceedings. He spoke to them as he was threatened as a Director and they were the Respondents Solicitor. He also stated that Perry Hay Solicitors gave advice via telephone calls with another Director.

64. In view of the evidence before the Tribunal and based upon the Tribunal's own knowledge and experience of such matters, the Tribunal find a fee of £718.75 (inclusive of VAT) to be reasonable and payable by the Applicant's.

Surveyors fees

65. The Tribunal find all of Mr Hanson's fees (£1,518.00 and £1,057.00 totalling £2,575.00) are reasonable and payable by the Applicant's.
66. The Applicant's state as follows. It was a simple project therefore it was not necessary to spend 12-15 hours considering the documents. Mr Hanson was overly officious and only one site visit at the start, one visit concerning the third bathroom, one visit concerning the noise issue, and a final visit at the end were necessary. The additional site visits were unnecessary. It was unclear why a fee for the inspection was paid given the surveyor did not notice the alleged unauthorised third bathroom. The surveyor was not registered by RICS and was thus unregulated and unqualified.
67. Whilst Mr Hanson may not be RICS registered, the Tribunal find he was qualified to supervise the works undertaken by the Applicant's. The Tribunal accept Mr Hanson has been working within the building industry for about 50 years. He has managed projects ranging from small works such as the works concerning 40 Flanders Mansion through to multi-million pound contracts for multi-national companies. He has a Diploma with Distinction in Construction Health and Safety Management. He is an experienced Quantity Surveyor, Project Manager, and a Health and Safety Consultant. His work history, since 1991 to present, includes amongst other things, project management and quantity surveying services to private companies on contracts up to £5M on new build and refurbishment of commercial and residential premises. Between 1978-1988 he was the Managing Director of a family building company expanding turnover to £3M per annum. Between 1960-1978 he was a Quantity Surveyor for a professional practice rising from junior to senior Quantity Surveyor (CV on page 521).
68. The Applicant's attach much weight to the fact that Mr Hanson is not RICS registered. As pointed out by Mr Hanson, there is no requirement to be RICS registered. Furthermore, Mr Hanson states the Applicant's own surveyor, Mark Eldridge, was not RICS registered. The Tribunal note the Applicant's have not provided any evidence to the contrary.
69. Mr Hanson states his agreed hourly rate was £55. The invoice on page 285, for the sum of £825.00, is for 12 hours work (£660) and one site visit (£165). The 12 hours work covered the time spent going through the specifications provided by the Applicant's, several conversations (about 10) with the Applicant's surveyor and the inspection of 4-5 drawings that were re-issued by the Applicant's surveyor as he (Mr Hanson) was unhappy with them. The specifications purported to suit the final drawings, but these were unclear, therefore he had conversations to clarify these. There were emails that he

also had to deal with. Mr Hanson states the hours he has billed were marked in his diary. He had logged the time spent on the project. He did not have a copy of these as he was not asked to supply it.

70. Counsel for the Applicant's was unable to state in closing submissions what would have been a reasonable time to have spent considering these documents. The Applicant's have failed to provide any evidence from their surveyor or any other surveyor to show that the time spent by Mr Hanson was excessive.
71. Applying the Tribunal's own knowledge and experience of such matters the Tribunal accept Mr Hanson spent 12 hours on the initial documents submitted and that it was reasonable to do so given the numerous discussions, variations to the drawings, and alterations to the specifications.
72. Mr Hanson stated the site visit was on 10.8.09 (report on page 217). The visit took about 45 minutes by public transport from the office. At the site, he discussed the project, looked around the flat, and discussed what he had seen. He then wrote a report after returning to his office. He charged £165 for the site visit and the report. (The same applied for each of the 10 subsequent site visits also).
73. The Tribunal find the need for this visit was justified bearing in mind what the Respondent suspected and was subsequently confirmed, namely, structural works being carried out without consent.
74. The invoices on pages 286-287 relate to the 10 additional site visits (£165 per visit) which took place between 3.11.09 and 27.1.11 and a charge of £100 for the various emails and correspondence that were dealt with by Mr Hanson. The reports for each of the site visits are on pages 490-510.
75. Mr Hanson states the visits were necessary as the works were not in accordance with the agreed plans and specification. The visits were necessary to ensure compliance with the agreed works.
76. The Tribunal have read each report. It is not necessary to repeat here the contents of each report. The Tribunal is satisfied that each visit was justified for the reasons given in each of the reports.
77. Furthermore, given that structural works had been carried out without consent despite two letters from the Respondent and the advice that had been given to Dr Khan by his Solicitors, the letter to the Director's threatening legal action and purporting to be sent by solicitors, the addition of a third bathroom which was clearly beyond the terms of the First Licence, the Tribunal find each of the visits was reasonable and necessary to ensure compliance with the agreed works.

78. The Applicant's argued that some of the visits related to issues concerning matters between the Applicant's property and neighbouring properties, which did not concern the Respondent. Therefore, visits on behalf of the Respondent were not justified or reasonable. The Tribunal disagree. The Applicant's agreed under the Licence not to cause or permit any damage disturbance annoyance nuisance or inconvenience whether by noise dust vibration the emission of smoke fumes or effluvia or otherwise to the owners or occupiers of any adjoining or neighbouring premises. Mr Bland said in evidence he accepts that the Landlord must consider the views of other lessees, especially above and below the Applicants' flat. Counsel for the Applicant's agreed with the legal proposition, argued by Counsel for the Respondent, that if a Landlord allows or permits or authorises a nuisance then the Landlord can be liable.
79. The Tribunal find the overall fee charged by Mr Hanson, considering the substantial works involved, the numerous variations, and the general background to the matter, is actually very reasonable. Had the Respondent used a Chartered Surveyor, the fee would have been significantly higher.

Application under s.20C and refund of fees

80. The Applicant's made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application and hearing and an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determine the Respondent was successful on nearly all the disputed issues, therefore the Tribunal decline to make an order under section 20C and does not order the Respondent to refund any fees paid by the Applicant.

Chairman: L Rahman (signed electronically)

Date: 22.4.13

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).