



9971

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

Case Reference : **CHI/21UD/LSC/2013/0141**

Property : **3 Greeba Court, 54 Marina, St
Leonards-on-Sea. East Sussex TN38
OBQ**

Applicant : **Mrs D Hetherington**

Representative : **Mrs G Bargery**

First Respondent : **Yewside Properties Limited**
Second Respondent : **Greeba Court Management Company
Limited**

Representative : **Miss E Dring, Counsel**

Type of Application : **Determination of service charges
under section 27A Landlord and
Tenant Act 1985 ("the Act")**

Tribunal Members : **Judge E Morrison (Chairman)**
**Mr N I Robinson FRICS (Valuer
Member)**
Miss J Dalal (Lay Member)

**Date and venue of
Hearing** : **8 May 2014 at Bexhill Town Hall**

Date of decision : **13 May 2014**

DECISION

The Applications

1. By an application dated 21 November 2013 the Applicant lessee applied under section 27A of the Act for a determination of her liability to pay certain service charges arising out of major works carried out at Greeba Court in service charge year ending 31 March 2010. The First Respondent is the lessor. The management company was substituted as Second Respondent in place of the managing agents following a case management hearing on 24 January 2014.
2. Application was also made under section 20C of the Act that the Respondents' costs of these proceedings should not be recoverable from the Applicant through future service charges.

Summary of Decision

3. The major works expenditure notified to date is all payable through the service charge, save for the fees of Survey & Design Partnership Ltd which are reduced by £3,832.85, and the service charge Reserve account should be credited by the Second Respondent accordingly.
4. An order is made under section 20C of the Act.

The Lease

5. The Tribunal had before it a copy of the lease for 3 Greeba Court and was told that leases for all the other original 56 long leasehold flats at Greeba Court were in similar form. The lease is dated 25 February 1982, and granted for a term of 120 years at a yearly ground rent of £30.00 for the first 30 years and rising thereafter. It is a tripartite lease between the original lessor, the original lessee, and Greeba Court Management Company Limited (the Second Respondent).
6. The relevant provisions in the lease may be summarised as follows:
 - (a) The lessee covenants with the lessor and the management company to pay 1/56th of the costs set out in the Fourth Schedule (the service charge);
 - (b) The service charge year runs to 31 March, and on account payments are payable on 24 June and 25 December in each year;
 - (c) After the end of each service charge year and when the actual costs have been ascertained, the lessee must pay any remaining balance to the management company (or receive a credit in the event of overpayment);

(d) The management company covenants to undertake various obligations, including the maintenance and repair of the main structure and common parts of the building;

(e) The Fourth Schedule lists those costs and expenses which can be recovered through the service charge, and include

“1. The expenses of maintaining repairing redecorating and renewing (a) the main structure ... (b) the gas and water pipes drains and electric cables and wires ... serving more than one flat (c) the main entrances passages landings and staircases ... (d) the boundary walls and fences...

7. All other expenses (if any) incurred by the Management Company in and about the maintenance and proper and convenient management and running of the Mansion including the expenses incurred in obtaining valuation for insurance purposes of the reinstatement value of the Mansion”.

The Inspection

7. The Tribunal inspected Greeba Court immediately before the hearing, accompanied by Mrs Bargery, and by Mr Aghabala from Countrywide (the managing agents). Greeba Court is a 7 storey purpose-built building thought to be constructed in the late 1970s and arranged as 56 self-contained flats. The inspection was limited to a view of the interior common parts, and attention was drawn to work carried out in 2009-10 as part of the major works. On the top floor the Tribunal was shown the front doors to three new and as yet unoccupied flats constructed on the rear side of the building. In the entrance lobby some failing plaster and peeling paint was pointed out.

Procedural Background

8. A case management hearing was held on 24 January 2014. The Respondents were ordered to provide the Applicant with a considerable amount of information, following which she was to identify those matters remaining in dispute. Statements of case and witness statements relating to those matters were then to follow. The Respondents provided a statement of case signed by Mr Aghabala, with some supporting documents, and Mrs Bargery provided a statement of case on behalf of her mother, the Applicant.

9. On reading the papers prior to the hearing, it became evident that key documents were in neither party's submission. The Respondents were asked to bring to the hearing copies of (a) the relevant service charge accounts (b) an Adjudicator's decision relating to a dispute over the major works and (c) contracts/ letters of appointment between the Second Respondent and its contract administrator.

Representation and Evidence at the Hearing

10. Mrs Hetherington, an elderly lady who is hard of hearing and whom the Tribunal met briefly at the inspection, did not attend the hearing, but was represented by her daughter Mrs Bargery (with some assistance from a friend, Mr Clifton).
11. The Respondents were represented by Miss Dring, Counsel. In attendance were Mr Aghabala and Mr Green from Countrywide (the managing agents), and also Mr Alan Featherstone, the sole director of both Respondents. At the outset of the hearing, Miss Dring applied to adduce further evidence consisting of (a) a witness statement from Mr Featherstone dated 2 May 2014, received by Mrs Bargery on 7 May 2014 (b) a 2003 partly-redacted document relating to the original shareholding in the First Respondent (c) a letter sent by Mr Featherstone to the Adjudicator in response to the Adjudicator's decision. Mrs Bargery objected to the late service of these documents, but did not object to the Tribunal considering (a) and (b).
12. The Tribunal noted that the Directions provided for the Respondents' witness statements to be filed and served by 26 March 2014. However it was clear that Mr Featherstone, rather than Mr Aghabala, was the individual who had personal knowledge of relevant matters and that his evidence would assist the Tribunal in reaching a fair decision. It was therefore decided to admit his witness statement and also the document relating to his shareholding. Document (c) was not admitted, as it did not appear to have any probative value.
13. The documents that the Tribunal had asked the Respondents to produce (see para. 9 above) were provided, save for contracts/ letters of appointment between the Second Respondent and its contract administrator.

The Law and Jurisdiction

14. The tribunal has power under section 27A of the Act to decide about all 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.
15. By section 19 of the 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.
16. Under section 20C a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a 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.

Background

17. The following factual background is not in dispute. In 2008 the managing agents, purporting to be acting for the First Respondent (“Yewside”) carried out a consultation procedure under section 20 of the Act with regard to proposed major works at Greeba Court. Following that consultation the Second Respondent (“Greeba”) entered into a contract with Ellis Building Contractors Ltd (“Ellis”) on 2 July 2009 for the works to be carried out. Another company, Survey & Design Partnership Ltd (“S&DP”), acted as contract administrator for the works. Mr Featherstone is the sole director of both Yewside and Greeba. He was the sole director of S&DP until that company was dissolved in 2013. He did not challenge Mrs Bargery’s assertion that effectively he controlled all three companies.
18. In early 2009 the 56 lessees at Greeba Court were each required to pay £3,125.00 on account of the cost of the major works. This money was placed in a Reserve account. No other demands have been made on the lessees with respect to the cost of the major works.
19. In May 2009 a grant of £400,000. 00 was obtained from East Sussex Energy Partnership for external cladding and insulation to the building. The lessees have not had to pay for this work, which was entirely independent of the section 20 major works.
20. In about June 2009 a separate grant was obtained from Hastings Borough Council towards internal fire and health and safety works. These works were carried out by Ellis, alongside the section 20 major works. SD& P acted as contract administrator for these additional works.
21. The section 20 contract with Ellis provided for works to commence on 13 July 2009 with completion by 2 October 2009. The completion date was not achieved and work continued. In April 2010 Greeba purported to terminate Ellis’s contract, primarily on grounds of delay, and barred Ellis from site. Ellis contended that the termination was unlawful and that by barring access to the site Greeba had repudiated the contract, which repudiation Ellis accepted, thus bringing the contract to an end. Ellis claimed it was owed money from Greeba. Greeba disputed this and claimed damages from Ellis. Eventually in 2012 Ellis took the matter to an Adjudicator appointed under the dispute resolution clauses of the JCT contract between Greeba and Ellis. The Adjudicator upheld Ellis’s case with regard to the termination and, having valued the works and considered all other claims made by Ellis and Greeba, ruled that Greeba should pay Ellis £18,854.38 + VAT plus interest of £1,693.28 and should also pay the Adjudicator’s fee of £4,332.00. Greeba incurred legal costs of £2,673.68 in connection with the dispute. All these

payments were satisfied from the monies held in the service charge Reserve account.

The Issues

22. The parties agreed that the following matters remained in dispute:
- (i) Whether construction of the 3 new flats at Greeba Court meant that the Applicant should be paying less than 1/56th of the service charge costs
 - (ii) Whether the Adjudicator's fee, the legal costs of the adjudication, and the interest payable to Ellis should be recoverable by Greeba through the service charge
 - (iii) Whether additional fees paid to the CDM co-ordinator for the major works should be recoverable by Greeba through the service charge
 - (iv) Whether the fees paid to S&DP for both the major works and the Hastings Council grant works should be recoverable by Greeba through the service charge.

(i) Apportionment of the service charge

23. Mrs Bargery contended that as the 3 new flats created on the sixth floor of Greeba Court were on the market for sale, they must therefore be complete. She felt that the lessees of the 56 original flats were subsidising the proportion of the service charges that should have been paid by Yewside or Greeba in respect of the 3 flats.
24. Miss Dring relied on the terms of the lease which provided for a 1/56th contribution by the lessee. Mr Featherstone gave evidence that the new flats were not complete; two were at "second fix" stage, one was at "first fix" stage. They were being marketed "off plan". The flats did not exist at all during the major works, as construction only began in 2011. The leases for the new flats, when prepared, would require the new lessees to make a contribution to the service charge, and once leases were entered into the contribution of the existing 56 lessees would be reduced. However that was outside the scope of the present application.
25. Determination: The Tribunal finds that any question of re-apportionment cannot affect the service charges which are the subject-matter of this application, as those charges all relate to or arise out of the major works in 2009-10, at which time the new flats did not exist.

(ii) Whether the Adjudicator's fee, the legal costs of the adjudication, and the interest payable to Ellis should be recoverable by Greeba through the service charge

26. Mrs Bargery's case in respect of all these costs was essentially that since Greeba had lost the adjudication, its position in the dispute had been proved wrong, and the lessees should not have to pay the costs of pursuing what had turned out to be erroneous arguments. She stressed that the lessees had not been informed about the dispute, and it was only yesterday that a full copy of the Adjudicator's decision had been made available to her. She was concerned that Mr Featherstone, as the driving force behind Yewside, Greeba and SD& P, had simply acted unwisely without reference to anyone else, and had thus incurred these additional costs. Ellis had been dealing with Mr Featherstone in his role of contract administrator as part of S&DP, and Ellis had not been made aware of Mr Featherstone's interest in Greeba and Yewside. Although the section 20 consultation notices had referred to S&DP as the proposed contract administrator, the lessees had not been informed that Mr Featherstone was part of SD& P. The lack of transparency about Mr Featherstone's involvement in all three companies, and the absence of any apparent involvement of anyone else, had left the lessees uneasy about the wisdom of the decisions that had been taken. She also suggested that the managing agents, Countrywide, should have played a role and intervened to prevent the prolongation of the dispute. For that reason, if anyone had to bear interest costs, incurred because of delayed payment to Ellis, it would be more reasonable to require Countrywide to bear these costs than the lessees.
27. Miss Dring's first submission was that Greeba had succeeded in the adjudication in reducing the sum payable to Ellis by about £14,000.00, compared with the sum claimed. The adjudication had therefore been justified on this ground. However, in response to questions from the Tribunal based on a full reading of the Adjudicator's decision, she accepted that much of this reduction related only to additional items claimed by Ellis as a consequence of the dispute. Ellis succeeded in recovering all their costs claimed under the original contract works and instructions.
28. Secondly, she argued that it didn't follow that the disputed service charges were unreasonably incurred simply by virtue of the adverse adjudication decision. At para. 35 of the Decision the adjudicator had noted "...I see no basis to conclude there is any want of independence on the part of Mr Featherstone. There appears to be a genuine belief on his part that there are defects and incomplete works". At para. 37 of the Decision he stated "The fact there is no disagreement over a relatively large number of items suggests to me that there is no want of independence on the part of Mr Featherstone. The Contract Instructions appear to me to have been dealt with efficiently and professionally by him".

29. Mr Featherstone told the Tribunal he had taken legal advice, as the invoices from Maxwell Winward showed, and he had not acted against any advice he had been given. The contract had overrun by 3 times its agreed length and Mr Featherstone had genuine concerns about Ellis's performance which had led to his actions, through S&DP and Greeba, in attempting properly to terminate the contract with Ellis. There had followed a long period of negotiation in an attempt to resolve the dispute. Once Ellis initiated the adjudication process in 2012, it had to be dealt with. Neither Yewside, Greeba or S&DP had any interest in prolonging the dispute. S&DP had done work in connection with the dispute and adjudication but had not charged for any of it.
30. It was submitted that Mr Featherstone had acted reasonably and properly in obtaining legal advice. There was no challenge to the amount of the legal costs. Yewside was not involved in the major works. Greeba and SD& P were separate companies. It made no difference that Mr Featherstone was involved with both of them.
31. In response to a question from the Tribunal as to where any of these costs appeared in the service charge accounts, Miss Dring accepted that the accounts did not show them. The costs appeared to have been incurred in service charge year ending 31 March 2013. However the Income and Expenditure account for this year did not list any of these costs as expenses. The Tribunal was told that the costs would have been paid out of the Reserve account. The only expenditure information provided for the Reserve account was a note of the total sum "utilised during the year". It emerged that it was only following the case management hearing in January 2014 that an income and expenditure account specifically for the major works had been separately prepared and provided to the Applicant (Page 80 Respondents' Bundle). However this did not provide dates of expenditure. Nor did it detail which costs had been funded by the Reserve account.
32. As to payability under the lease, the Respondents' statement of case submitted that the costs were recoverable under paragraph 7 of the Fourth Schedule. At the hearing Miss Dring said that, in the alternative, the costs would fall under paragraph 1 of the Fourth Schedule. (Mrs Bargery made no submissions on payability).
33. Determination. Pursuant to section 19(1) of the Act, costs can only be recovered as a service charge to the extent they are reasonably incurred. The Adjudicator's fee, the legal fees, and the interest payable to Ellis are all costs incurred as result of the dispute between S&DP/Greeba on the one hand and Ellis on the other. The question for the Tribunal is therefore whether Greeba acted reasonably in pursuing the dispute beyond the point in time after which there was a risk of incurring these extra costs. The interest would have begun to accrue almost immediately in Spring 2009, but the adjudication and legal costs were not incurred until early 2012.

34. The Tribunal cannot go behind the decision of the Adjudicator, but it is far too simplistic to suggest, as Mrs Bargery does, that just because Greeba did not win the adjudication, it was unreasonable to have pursued the dispute with Ellis to that point. It is clear that Ellis exceeded the contractual completion date by many months. It was this delay that led to the attempted termination of the contract by Greeba. The Adjudicator found that Greeba had not followed the strict requirements of the contract as to the timescale for termination, and because of this finding the Adjudicator did not need to go on to make substantive findings about whether there had been proper grounds for the attempted termination. However, although the Adjudicator found that Greeba played a part in the extended duration of works, he also indicated that he accepted that there was culpable delay on the part of Ellis and/or its suppliers (para. 67 of Decision).
35. Although Mr Featherstone appears to have been the only individual orchestrating matters for Greeba and SD& P, it is noted that lawyers were consulted before and during the adjudication process. This would have been reasonable and prudent and shows that he did not simply act without seeking professional advice.
36. Taking everything into account, and doing its best on the available information, the most cogent evidence being the Adjudicator's decision, the Tribunal is not satisfied that Greeba acted unreasonably in pursuing the dispute with Ellis through to the end of the adjudication process and therefore finds that these costs were reasonably incurred. Adjudication is a relatively low-cost and speedy method of dispute resolution used in the construction industry. There is no evidence that Mr Featherstone, through Greeba, was attempting to do anything other than protect the lessees from what he regarded as excessive claims by Ellis. There were a significant number of issues and the Tribunal does not read the Adjudicator's decision as indicating that Greeba's case never stood any real prospect of success. Certain sums claimed by Ellis were disallowed. Mrs Bargery conceded that had Greeba been successful, the lessees would not be complaining.
37. As to payability under the lease, the Tribunal does not accept that any of these costs fall under the very general words of paragraph 7 of the Fourth Schedule. They are not clearly expenses of a type incurred "in and about the maintenance and proper and convenient running" of Greeba Court and there is no reason to give these words a liberal construction. On the other hand, they are all costs incurred directly in connection with the maintenance repair redecoration and renewal of the building, and for that reason the Tribunal determines that they are payable under under paragraph 1 of the Fourth Schedule to the lease.

(iii) Whether additional fees paid to the CDM co-ordinator for the major works should be recoverable by Greeba through the service charge

38. It is legal requirement that a CDM coordinator be appointed on a construction project that is likely to last more than 30 days. Greeba appointed a company named CDMe in connection with the works at Greeba Court. CDMe submitted one invoice for all its work, made up of fees based on the original estimate of £1,510.18 + VAT, and an additional fee of £1,150.80 + VAT. The additional fee was described as “Additional costs due to the Principal Contractor’s non completion of the project within a reasonable lapse in the contracted period, thus requiring additional time and resources spent in reviewing existing information, additional correspondence and creation of specific documentation for the former PC to comply with. Preparation of documents for the new Principal Contractor to complete the works”.
39. Mrs Bargery objected to recovery of the additional fee through the service charge. Her argument again rested on the outcome of the adjudication; she said that if Greeba had caused the delay, the lessees should not have to pay for the consequences of this.
40. Miss Dring referred to the wording of CDMe’s invoice, which specifically refers only to delay by Ellis. The CDM co-ordinator was a statutory role.
41. Determination Given that the contract duration was several times that originally intended it is understandable that CDMe has charged for the additional time it had to spend on the project. There is no cogent evidence that these costs were unreasonably incurred by CDMe or were incurred only because of unreasonable conduct by Greeba. The amount has not been challenged as unreasonable. Accordingly, they are recoverable through the service charge pursuant to paragraph 1 of the Fourth Schedule of the lease.

(iv) Whether the fees paid to S&DP for both the major works and the Hastings Council grant works should be recoverable by Greeba through the service charge.

42. S&DP have received 3 payments from the service charge monies in respect of their services:
- (a) The sum of £10,771.70 invoiced on 12 January 2009, as fees for contract administration of the major works, being 10% of the value of the works carried out to that date, + VAT
- (b) The sum of £4,616.45 invoiced on 12 December 2011, as fees for contract administration up to completion of the works, being 10% of the value of the balance of the works, + VAT

- (c) The sum of £7,721.72 invoiced on 12 December 2011 and described in the invoice as fees “To negotiate and obtain a grant and act as CA on grant funded extra works to internal communal areas”.
43. The sum of £7,721.72 was described in the Respondents’ account of major works expenditure (Bundle page 80) simply as “Surveyor’s fees to negotiate and obtain council grant for elements of major works”. Mrs Bargery was concerned that, in obtaining the grant, Mr Featherstone had failed to inform Hastings Borough Council of his own interest in the property (via Yewside). If he was thereby acting improperly, his company S&DP should not receive a fee for its services.
44. The Respondents’ case was that the sum of £7,712.72 had been paid to S&DP from Council grant funds, so it was not a service charge cost. Further documentation was then produced which appeared to be the Council’s breakdown of the eligible grant fees totalling £82,365.31, which included a sum of £7,403.62 for “admin fees 10% + VAT”. However this document also noted that the gross amount of the grant was to be reduced by £24,709.59, producing a net grant figure of £57,665.72. The account at page 80 showed that the actual grant received was £58,424.46.
45. Furthermore, in response to the Tribunal’s questions, it was accepted that the fee in connection with the grant was not a fee for negotiation as had been stated, but was wholly a fee for contract administration of the works. This raised the question of whether there was any overlap between the grant-funded works and the section 20 works. Mr Featherstone then admitted there was “a small amount of overlap”.
46. Mrs Bargery also queried whether Mr Featherstone, acting through SD& P had the necessary professional qualifications to act as a contract administrator. He was not a qualified surveyor. If he was not qualified, the fees paid were excessive.
47. The Respondents accepted that Mr Featherstone was not a chartered surveyor but he had a diploma in Building Surveying and relied on his experience to establish his competence. He had founded S&DP in 1999, which had carried out building surveying, architectural and structural engineering work for mostly commercial clients until it was dissolved in 2013. A Practice Profile document was produced listing Mr Featherstone and two other individuals. A fee of 10% of the value of the works was the market rate (section 20 estimates noting a 10% fee for two other contract administrators were produced). When asked how S&DP had been appointed by Greeba, Mr Featherstone said that Countrywide had obtained an alternative quote, but with Greeba had decided that S&DP was the more appropriate firm to appoint based on its knowledge and experience of the building.

48. Determination The account at Bundle page 80 sets out all monies received and expended by Greeba in respect of both the section 20 and Hastings Borough Council grant-aided works at Greeba Court. The account shows that the grant monies received totalled £58,424.46. The fees of £7,712.72 paid for what was now established to be contract administration of the grant-aided works considerably exceeded 10% of the net grant-aided building costs. Therefore, to that extent it is wholly inaccurate for the Respondents to have asserted that these fees were not paid out of service charge monies.
49. Furthermore, it is clear that there was an overlap between the section 20 works and the grant-aided works. S&DP should not be paid twice for the same work.
50. Mrs Bargery's concerns about what Mr Featherstone may have or have not told the Council about his role in Yewside and/or Greeba are not relevant to the Tribunal's consideration. It is for the Council to raise any concerns with him.
51. There is no legal requirement that a contract administrator must be a qualified surveyor or have any other particular professional qualification. There is nothing to prevent a freeholder or management company using a connected company to provide services so long as the arrangement is a genuine commercial agreement and not a sham: *Skilleter v Charles* [1992] 1 EGLR 73. It is clear that SD& P was in business for many years with many clients and was a separate legal entity to both Yewside and Greeba. There was no evidence that S&DP's work as contract administrator was not carried out to a reasonable standard or that 10% was not the market rate for contract administration services. Accordingly the Tribunal finds that SD& P is entitled to be paid a 10% fee for the services it provided, and that this is payable from the service charge insofar as it is not met by grant monies.
52. Appended to this decision is a breakdown, based on the figures in the account at page 80, of the total fees of £19,277.02 properly payable to SD& P. Set against the fees paid of £23,109.87, there has been an overpayment of £3,832.85. The service charge Reserve account should be credited by the Second Respondent in this amount.

Section 20C Application

53. The Applicant requested a section 20 order. Mrs Bargery said that the case put forward on behalf of the Applicant had been arguable, the lessees were people on a very low income and they had already paid a lot of money. Miss Dring opposed an order, noting that there should be no automatic expectation of a section 20 order even if a lessee was successful.

54. In deciding whether to make an order under section 20C 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. The result of this application is that the Applicant has succeeded in reducing one of the disputed charges. The remaining matters in dispute have been resolved in favour of the Respondents. However the Tribunal is of the view that the application was reasonably made and that the Respondents very much brought this application upon themselves. At the time of the application, the Respondents had not provided the Applicant with any proper breakdown of how the service charge monies collected for the major works had been expended. The last two years' service charge accounts are incomplete and inadequate in that they do not provide any information as to how monies held in the Reserve account to fund the major works have been spent. After the case management hearing, the account at Page 80 was produced but this is also open to criticism in that it gives no dates and the description of the £7,712.72 payment to SD& P is misleading. It was understandable why, given the apparent lack of transparency about Mr Featherstone's roles in the various companies, and the lack of information provided to the lessees about the dispute with Ellis, the Applicant did not feel able to accept the page 80 account at face value without further challenge. The Tribunal is also concerned about the way these proceedings were conducted by the Respondents. Critical evidence, notably the Adjudicator's decision, was not produced until the day before the hearing, and the witness statement of the Respondents' key witness, Mr Featherstone, was prepared, in breach of the Directions, only at the eleventh hour, requiring the Applicant's lay representative to absorb a great deal of information in a very short amount of time. New but very relevant documentation relating to the grant was produced only towards the end of the hearing. For all these reasons the Tribunal determines that it is just and equitable for an order to be made that, to such extent as they may otherwise be recoverable, the Respondents' costs, in connection with these 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 Applicant.

Concluding Remarks

55. It is clear that over recent years, substantial works have been carried out at Greeba Court and Mr Featherstone has been instrumental in obtaining significant grants towards these works which have upgraded the building and benefited all concerned. However the Tribunal has seen copies of three earlier Tribunal decisions concerning Greeba Court over the same period. It is suggested that an improved level of information from Greeba and/or Countrywide to the lessees might assist in avoiding further disputes and proceedings. Comment has already been made about the inadequacy of the service charge accounts. Another issue which arose during the hearing was whether any interest

had been earned on the monies in the service charge Reserve account. No-one was able to provide the Tribunal with a clear answer. It is to be hoped that full information covering all relevant periods will be made available to the lessees at the earliest opportunity.

Dated: 13 May 2014

Judge E Morrison (Chairman)

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

Greeba Court, 54 Marine, St Leonards on Sea

Calculation of fees due to Surveying & Design Partnership on major works based on schedule of expenditure prepared by Countrywide Estate Management at Page 80 of the documents.

Paid to Contractors (including VAT):

Ellis		
Invoice 0809/8658	£ 27,145.31	
Invoice 0809/8679	£ 27,693.68	
Invoice 0910/8729	£ 25,257.41	
Invoice 0910/8769	£ 11,937.73	
Direct by Council	£ 18,497.09	
Direct by Council	£ 20,289.08	
Invoice 1112/9691	£ 23,375.82	
Invoice 0910/8769	<u>£ 6,885.28</u>	£ 161,081.40

AB Electrical & Security Ltd		
Invoice 227471	£ 7,101.25	
Invoice 228137	£ 14,349.02	
Invoice 228602	£ 211.32	
Invoice 228639	£ 281.45	
Invoice 228972	£ 3,796.44	
Invoice 229129	£ 240.86	
Invoice 231556	£ 569.37	
Invoice 235615	£ 559.20	
Retention release	<u>£ 1,170.15</u>	£ 28,279.06

Feature Architectural Fabrications		
Invoice 12532/1	<u>£ 3,409.75</u>	<u>£ 3,409.75</u>

Total Paid: **£ 192,770.21**

Fees due to S+DP at 10% (including VAT): **£ 19,277.02**

Fees paid to S+DP

Ref H-J-102	£ 10,771.70	
Ref H-J-110	£ 4,616.45	
Ref H-K-108	<u>£ 7,721.72</u>	<u>£ 23,109.87</u>

Refund Due from S+DP **£ 3,832.85**

NOTE: All invoices include VAT. S+DP's fees were chargeable on the figures net of VAT with VAT then chargeable on the fees. The refund due from S+DP/Greeba is therefore the VAT inclusive figure.