



**FIRST-TIER TRIBUNAL**

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**PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00AW/LAC/2013/0030

**Property** : Flat 10, 39 Cheyne Walk, London SW3 5HJ

**Applicant** : Ms K. Maitland

**Representative** : Mr R. Maitland (Applicant's brother)

**Respondent** : 39 Cheyne Walk Management Ltd (Lessees' Management Company)

**Representative** : Miss Y. Mistry; Partner, JPC Law; Solicitors

**Type of Application** : Administration Charges – Schedule 11, Commonhold and Leasehold Reform Act 2002,

**Tribunal Members** : Mr L. W. G. Robson LLB (Hons)  
Mr M. C. Taylor FRICS

**Date and venue of Hearing** : 27<sup>th</sup> March 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 22nd April 2014

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**DECISION**

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## **Decisions of the Tribunal**

(1) The Tribunal decided that the Applicant had admitted liability for and paid the fees charged by JPC Law, and Earl Kendrick Associates at the time of completion of the transactions concerned without making any reservation or objection to the fees demanded at that time. Thus the Tribunal had no jurisdiction to determine the fees by reason of Schedule 11, Paragraph 5(4) of the Commonhold and Leasehold Reform Act 2002. The Tribunal notes the agreement reached by the Applicant and Farrar Property Management relating to Farrar's fees on 12<sup>th</sup> February 2014 (noted below) and therefore makes no substantive finding on those fees under Paragraph 5(4).

(2) Alternatively, if the Tribunal's finding at (1) above was incorrect, the Tribunal decided that the Applicant was liable to pay the administration charges in respect of the Respondent's managing agents, solicitors and surveyors as follows:

Farrar Property Management - £725 plus VAT as agreed between the parties' representatives by email on 12<sup>th</sup> February 2014.

JPC Law - £1,716 plus £671 plus £3000, totalling £5,387 inclusive of VAT is reasonable and reasonable in amount, as determined by the Tribunal for the reasons given below.

Earl Kendrick Associates Ltd, Surveyors - £1,734 plus £450 totalling £2,184 inclusive of VAT is reasonable and reasonable in amount, as determined by the Tribunal for the reasons given below.

(3) The Tribunal made NO order under Section 20C of the Landlord and Tenant Act 1985 to limit the Landlord's costs in connection with this application.

(4) The Tribunal made an order under Rule 13 (1)(b) (relating to acting unreasonably) of the Tribunal Procedure (First-tier Chamber) (Property Chamber) Rules 2013 that the Applicant pay the fees of the landlord's solicitors, JPC Law for preparation for, and attendance at the hearing of £1,637.50 plus VAT, and pay the fees of Earl Kendrick Associates, the Landlord's surveyors of £937.50 plus VAT for preparation for and attendance at the hearing, such costs to be paid within 21 days of the date of this decision.

(5) The Tribunal made the other determinations as set out under the various headings in this decision.

## **The application**

1. The Applicant seeks a determination pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether the fees of Farrar

Property Management, JPC Law, and Earl Kendrick Associates are reasonable and reasonable in amount, and thus whether the administration charges demanded by the Respondent are payable pursuant to the terms of a lease dated 8<sup>th</sup> October 1990 (the Lease).

2. After a Case Management Conference, which the Applicant's representative (Mr Maitland) did not attend, Directions were given by the Tribunal on 16<sup>th</sup> January 2014 for this hearing. At that time the Respondent's representative was Farrar Property Management (Farrars). With the agreement of Farrars, the Tribunal also gave Directions for a possible mediation. The attempt to mediate was ultimately unsuccessful.
3. The notes to the Directions dated 16<sup>th</sup> January 2014 made it clear that failure to comply with Directions could result in serious detriment to a defaulting party, including costs sanctions.
4. In preparation for this hearing, the Applicant sent the Tribunal a bundle of documents which did not comply with Directions in a number of important respects. For example, there was no copy of the Respondent's case, and the bundle clearly omitted replies to the Applicant's emails from the Respondent's representatives. The Tribunal queried these omissions, and as a result JPC Law and Earl Kendrick sent in emailed representations to the Tribunal, on the 24<sup>th</sup> and 25<sup>th</sup> March 2014 respectively. On 25<sup>th</sup> March the Applicant emailed the Tribunal with comments on the JPC representation, but made no comment then or later on the Earl Kendrick representation. At the hearing, evidence was given that Mr Maitland had not sent a copy of the Applicant's statement of case to the Respondent, (although an email with this statement was sent to the Tribunal on 7<sup>th</sup> March 2014, but giving no indication it had been sent to Farrars). No attempt had been made to agree, or even notify Farrars of the existence of the Bundle sent to the Tribunal. Thus the Respondent had made no statement of case, until JPC Law attempted to remedy this matter on 25<sup>th</sup> March, as noted above.
5. At 10.00am on 27<sup>th</sup> March 2014, the scheduled start of the hearing, no representative of the Applicant was present, nor had any reason been given for non-attendance by that time. Ms Mistry and Mr J. Davies of Earl Kendrick were present but Ms Mistry had no instructions from the Respondent, nor did she know if Farrars would appear. In view of this unsatisfactory state of affairs the Tribunal granted a short adjournment to allow the Tribunal case officer to contact Mr Maitland, and Ms Mistry to discover her client's intentions. When the hearing restarted at 10.45am the Case Officer handed the Chairman a note and confirmed that she had telephoned Mr Maitland who had stated that he considered that all that he wished to say was in the papers, and that he would not be attending. Ms Mistry stated that she had obtained instructions to act for the Respondent, and had discussed the case with Farrars briefly.
6. On examination of JPC Law's file during the hearing, Ms Mistry noted copies of emails between Farrars and Mr Maitland, in which Farrars offered to settle the matter on the basis of a reduction of their fees to £725 plus VAT (i.e. 50%). Mr Maitland had unequivocally agreed this offer. Farrars thus believed that the matter had been settled, and wrote to the Tribunal confirming their understanding on 17<sup>th</sup> March 2014. The Tribunal noted that Mr Maitland failed to

bring this agreement (or other the Respondent's true position on the matter) to the Tribunal's attention as he should have done at that time, or in his emailed submissions on 25<sup>th</sup> March 2014. Thus it appeared that on 27<sup>th</sup> March 2014 Mr Maitland was representing to the Tribunal that all matters were still in issue, and to the Respondent that all (or at the very least, that some) matters had been agreed.

### **Applicant's case**

7. The Applicant's submissions are summarised as follows:

a) The building is a Grade II listed building. The Applicant bought Flat 10 on 30<sup>th</sup> January 2012, intending to fully refurbish it. A licence to alter was required, but the combined fees of the Respondent for this licence and for an alleged breach of the Lease were unnecessary and unreasonable. Mr Maitland submitted that these fees were due to poor management and erroneous assumptions. Work started on or about 5<sup>th</sup> February 2012. On 7<sup>th</sup> February 2012 JPC Law wrote a very threatening letter claiming that the Applicant was doing unauthorised works, and risked forfeiture of the Lease. At that time the Respondent's combined fees were claimed to be £1,400 plus VAT. On 8<sup>th</sup> February 2012 Mr Maitland replied stating that JPC Law's facts were wrong, in that the Applicant was only stripping out unwanted and defective finishes along with some dangerous electrical installations. The Applicant was not in breach of Clause 3(15) by failing to obtain a licence for alterations. Mr Maitland submitted that on that occasion he had explained very clearly what the Applicant's intentions were, challenged the fees relating to the alleged breach, and how the fees for the licence for alterations should be dealt with.

b) On 16<sup>th</sup> and 24<sup>th</sup> February 2012 he had written to Farrars sending relevant documents to enable them to progress the licence, together with a draft licence to alter for them to amend. Farrars stated their fee would be £600 plus VAT for approving the licence.

c) Earl Kendrick gave the basis of an estimate of their fees on 1<sup>st</sup> March 2012 (based on the Applicant's schedule of services). Using that Mr Maitland calculated that their fees should be based on 11 hours at £85 per hour plus VAT, i.e. £1,122

d) JPC Law had written on 20<sup>th</sup> June with a draft licence to alter stating that their fees were £4,322. Prior to this on 14<sup>th</sup> June he had offered £1,950 for these fees.

e) Thus, based on his experience of the cost 10 previous licences to alter he had obtained in recent years Mr Maitland considered that all the fees incurred should be:

Farrars -	£600 (Demanded £600 + £1,740(sic) = £1,740)
Earl Kendrick -	£1,122 (Demanded £1,734 + £450 = £2,184)
JPC Law -	£1950 (Demanded £1,716 + £671 + £3,000 = £5,387)

(f) His total offer (which the Tribunal notes is less than the amounts he apparently accepts were payable) was £2,472. He had paid the total demanded of £9,311 on completion, therefore considered he should be reimbursed with £6,839, due to mismanagement, misunderstanding, erroneous assumptions, lack

of relevant expertise, unnecessary site visits, and correspondence over the landlord having delayed in descaling the sewers, resulting in the Applicant having to arrange for a specialist to unblock them at her own cost.

g) In his submission of 25<sup>th</sup> March 2014 in reply to Ms Mistry's letter of 24<sup>th</sup> March 2014, Mr Maitland again stated that the works alleged to be unauthorised were not. At the time of the complaint on 7<sup>th</sup> February 2012 the Applicant was simply stripping out defective finishes and services prior to a visit by the conservation officer in order for the Applicant to agree a way forward. The managing agents should have asked for a site meeting, rather than the solicitor sending lengthy and extremely threatening letters. He further denied that he was deemed to have accepted the costs by writing to say that he would pay them, and paying them. In his view it was clear from previous correspondence that he was not prepared to meet the unreasonable costs charged. He had no choice but to pay them otherwise the licence for alterations would have been withheld. He attached a copy of his email dated 14<sup>th</sup> May 2012 to the Directors of the Respondent as evidence of this point. He did not comment on the Rule 13 application referred to by Ms Mistry at the end of her letter dated 24<sup>th</sup> March.

### **Respondent's Case**

8. Ms Mistry referred to her letter of 24<sup>th</sup> March 2014. She submitted that:

a) The correct Applicant in this case was Ms Kate Maitland, not "Rupert and Kate Maitland" as stated in the application. Office Copies from the Land Registry were produced as evidence. The Respondent accepted that Mr Maitland was the Applicant's representative.

b) Her clients had been led to believe that the case had been resolved between the parties, but now understood that this was incorrect. The Respondent landlord was owned by Lessees. JPC Law and Earl Kendrick had attended as their fees were in dispute. Ms Mistry and Mr Davies gave evidence of matters within their own knowledge substantially following the JPC Law letter of 24<sup>th</sup> March 2014, and were examined by the Tribunal.

c) The fees of JPC Law and Earl Kendrick demanded were as stated by the Applicant; i.e. £1,716, £671, and £3,000 for JPC Law, £1,734 and £450 for Earl Kendrick. Copies of the invoices were in the bundle.

d) The Tribunal had no jurisdiction in this case. Pursuant to Schedule 11 Paragraph 5(4), the Applicant had already agreed and admitted that the sums noted above were due and payable. As evidence, emails from the Applicant dated 24<sup>th</sup> April 2012 and 17<sup>th</sup> September 2012 were produced. The emails were sent in open correspondence, and without any dispute or reservation of the right. Relating to the fee of £3,000 this was additionally subject to an undertaking from the Applicant's solicitors. The Application should therefore be dismissed.

e) Alternatively, the Lease provided for the payment of such costs, particularly Clauses 3(5), (7), (14)(a), (15), (20), and (22). Mr Maitland had disputed this on several occasions in correspondence, and had threatened to apply to the Tribunal for a ruling on the point, but in the event had not done so.

f) The Applicant's own chronology of events dated 14<sup>th</sup> June 2012 (in the bundle) demonstrated that the amount of work done by both JPC and Earl Kendrick was considerable, and was reflected in the time costings (produced to the Tribunal) used to calculate the bills. In fact JPC's costings were very considerably more than the fee charged, because Ms Mistry recognised from previous experience that her client was not in a position to pay more than the amount charged.

g) Contrary to Mr Maitland's submissions, what in fact had happened was that the Applicant had purchased the property on 30<sup>th</sup> January 2012. On 6<sup>th</sup> February 2012 a number of residents complained that the Applicant had commenced work on the property without any prior consent of the Landlord or the Planning Authority. Due to the nature and extent of the work being undertaken it was not of a cosmetic nature and complaints were made about noise, dust and debris in neighbouring properties and common areas. Copies of emails from the lessees concerned were attached to the letter of 24<sup>th</sup> March 2014. JPC were instructed to review the Lease and advise the Respondent on remedies to resolve what appeared to be a flagrant breach of the Lease. The letter dated 7<sup>th</sup> February 2012 was then sent outlining the problems, the apparent breaches, and demanding that the work be halted immediately, with an invitation to apply for retrospective consent for approved works. Mr Maitland replied refusing to halt the works, denying there was any breach of the Lease, and refusing to pay any costs relating to an inspection of the property by the landlord's agents. He stated that all paperwork would be sent to the landlord once he had agreed on a design with the conservation officer and submitted (planning) applications. The managing agent visited the site on 10<sup>th</sup> February, and ascertained that the work was in fact in breach of the Lease. Mr Maitland agreed to stop work, but did not do so until 17<sup>th</sup> February 2012.

h) Long and complex negotiations then followed. Mr Maitland restarted work without permission on 7<sup>th</sup> March 2012. The main problem was that the Applicant had not provided certain information, and when it finally arrived it led to further questions. In June 2012 a draft licence was issued, but matters dragged on until 24<sup>th</sup> September 2013 when a final version was sent to the Applicant's solicitor for execution. By that time several Lessees had sold their flats due to the noise and inconvenience. The Applicant had meanwhile failed to pay any service charges. Those arrears by 18<sup>th</sup> September 2013 amounted to £6,316.90, which was a very significant sum for the Respondent. Ms Mistry submitted that the Applicant's conduct generally showed a blatant disregard for the residents and the Respondent. Much time and expense had been caused by the Applicant's refusal to accept advice or guidance from the landlord, and dealing with complaints from lessees caused by the way the works had been executed. Ms Mistry refuted the Applicant's submissions of lack of expertise, misunderstanding and delay on the part of the Respondent's advisers.

## **Decision**

9. The Tribunal considered all the evidence and submissions. The Applicant had not challenged the terms of the Lease, and the Tribunal was satisfied that it gave the Respondent the power in principle to charge for the fees incurred.

10. The Tribunal substantially accepted Ms Mistry's submissions that the matter had been agreed and that therefore Tribunal had no jurisdiction under Schedule 11 Paragraph 5(4) of the 2002 Act. Mr Maitland considered that he had at all times disputed the amounts of the Respondent's fees, but in the end he agreed to pay the fees as demanded without any reservation. As an experienced developer, which he claims to be, this seemed a significant omission. The documents, taken as a whole, pointed to an agreement relating to the fees.
11. If the Tribunal is wrong in its decision above, then the question of the reasonableness of the fees needs to be considered. Again, the evidence, even from the Applicant's account of events, suggested considerable impatience and lack of attention to detail on the part of Mr Maitland. The Tribunal was in no doubt that the work being carried out, although not originally structural, was in breach of the terms of the Lease from a very early stage, and certainly prior to 7<sup>th</sup> February 2014. He appeared to be single mindedly pursuing his goal of completing the work on his terms, with scant regard for the legitimate concerns of the Respondent and the other lessees. He appeared to drip feed information to the Respondent. His allegations of ineptitude against the Respondent's professionals were not borne out by the facts. They appeared to have done the best they could in difficult circumstances. Their hourly rates and final accounts seemed very reasonable for the area.
12. The Tribunal therefore decided that all the legal and surveying fees of the Respondent demanded from the Applicant were reasonable, and reasonable in amount.

### **Costs and Fees**

13. The Applicant made an application under Section 20C for an order that the Landlord's costs of this application should not be considered relevant costs to be added to the service charge. The Tribunal noted evidence that the Applicant had already sold her interest in the property, but this may not be a relevant consideration. The Tribunal's power was discretionary. The Tribunal noted that the Applicant had been completely unsuccessful in her application. Further, the Applicant's conduct of the application itself was not attractive, her representative had not attended any hearing, and ignored Directions, causing considerable inconvenience and expense to the Landlord. The Tribunal decided to make NO order.
14. The Respondent applied for an order for payment of costs due to unreasonable conduct by the Applicant under Regulation 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Applicant made no submission on the point.
15. The Tribunal considered that in this case the Applicant's' conduct reached the high threshold imposed by Regulation 13, which had to be read in the light of Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, the governing rule prior to the passing of the 2013 Regulations, i.e. the conduct has to be of a kind which was vexatious, frivolous or otherwise

unreasonable. The Tribunal decided that the Applicant's conduct in bringing and pursuing the application was very unreasonable for the following reasons;

a) Her representative had agreed to at least a partial settlement of a major issue without informing the Tribunal and also proceeding with the application without informing the Respondent.

b) failure to attend any hearing, without good reason, despite having the conduct of the application. Following from this failure the Applicant's representative had deprived himself of reasonable opportunities to plead the Applicant's case.

c) Significant multiple failures to comply with Directions, causing the Respondent major confusion, and causing the bundle to be a very inadequate reflection of the factual nexus of the application, thereby jeopardising the hearing. The Tribunal was put to much inconvenience in trying to unravel the sequence of events, and has had considerable difficulty in ensuring a fair hearing without an adjournment, which would have caused significant unnecessary expense to the parties and the public purse.

16. The Tribunal examined Ms Mistry and Mr Davies on their costs of the application and attending at the hearing. The Tribunal accepted Ms Mistry's estimate for costs prior to the hearing of £500 plus VAT, and for attending the hearing for 3.5 hours costs of £1,137.50 plus VAT (equating to £325 per hour). The Tribunal also accepted Mr Davies costs estimate of £500 plus VAT to prepare for the hearing, and £437.50 plus VAT for attending (equating to £125 per hour).
17. The Tribunal therefore ordered the Applicant to pay the Respondent's costs under Rule 13 as set out in paragraph 18 above, to be paid within 21 days of this decision.

Signed: Lancelot Robson  
Mr L. W. G. Robson LLB (Hons)  
Tribunal Judge

Dated: 22nd April 2014

## Appendix

### *Landlord & Tenant Act 1985*

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and



- (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **Section 27A**

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

- (4) No application under subsection (1) or (3) 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.

### **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.

### **The Tribunal Procedure (First-tier Tribunal)(Property Chamber)** **Rules 2013**

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
    - (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
  - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.
- (4) – (9)...
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