



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

Case Reference : **LON/00BK/LSC/2014/0009**

Property : **Flat 3, 48 Queens Gardens, London
W2 3AA**

Applicant : **46/48 QGM (Freehold) Limited**

Representative : **Mr George Woodhead (Counsel)**

Respondent : **Mr Ali Khalil Mohamed Sabir**

Representative : **Mr Alexander Ude (Solicitor)**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mrs Susan Coughlin (Professional
Member)
Miss Jayam Dalal (Lay Member)**

**Date and venue of
Hearing** : **10 April 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **23 May 2014**

DECISION

Decisions of the tribunal

- A. The tribunal determines that the Respondent is liable to pay the following outstanding sums in respect of the quarterly interim service charges for Flat 3, 48 Queens Gardens, London W2A 3AA (“the Flat”) for the year ended March 2009:

£33.94 01/07/08 (for 24/06/08-28/09/08)

£354.62 29/09/08 (for 29/09/08-24/12/08)

£384.62 05/01/09 (for 25/12/08-24/03/09)

- B. The tribunal has no jurisdiction to determine any of the other service charges claimed within the County Court proceedings, referred to at paragraph 1 below, as these have all been agreed by the Respondent.
- C. The application for reimbursement of the tribunal fees paid by the Applicant is refused.
- D. The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).
- E. Since the tribunal has no jurisdiction over interest, County Court costs and fees, this matter should now be referred back to the County Court.

The application

1. Proceedings were originally issued by the Applicant in the Northampton County Court under claim no. 1XZ75002. A default judgment was entered against the Respondent on 23 August 2011, who subsequently applied to set aside the judgment. The claim was then transferred to the Cambridge County Court and the judgment was set aside on 09 November 2011. The proceedings were then transferred to this tribunal, at the request of the Respondent, by an order of District Judge Hollow on 18 February 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared and was represented Mr George Woodhead of Counsel, who was accompanied by a director of the Applicant company, Ms Bridget O’Halloran. The Respondent attended the hearing and was represented by his Solicitor, Mr Alexander Ude.

4. The tribunal were supplied with a hearing bundle that included copies of the County Court papers, the directions, the parties' written evidence, the lease, a completed Scott schedule, various service charge documents and a decision from previous tribunal proceedings between the parties dated 03 April 2013 (case reference LON/00BK/LSC/2012/0752).
5. At the start of the hearing, the tribunal discovered that Mr Ude had not received the Respondent's copy of the hearing bundle. The tribunal supplied him with their spare copy of the bundle and adjourned the hearing briefly, for him to consider this. Following the adjournment Mr Ude confirmed that he and his client were already familiar with the documents in the bundle and that the Respondent was content to proceed with the hearing.

The background

6. The property which is the subject of this application is Flat 3, 48 Queens Gardens, London W2 3AA ("the Flat"), which forms part of 45-48 Queens Gardens ("the Building"). The tribunal were informed by Mr Woodhead that his instructions were that the Applicant is the current management company for the Building. The Respondent is the leaseholder of the Flat and is a shareholder in the Applicant company.
7. Neither party requested an inspection of the Flat and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondent holds a long lease of the Flat, which requires the Applicant to provide services and the Respondent to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
9. It appears that the previous tribunal proceedings concerned quarterly interim service charges for the Flat for the period from 25 March 2011 to 23 June 2012 and actual service charge expenditure for the years 2008/09, 2009/10, 2010/11 and 2012/13. At paragraph 17 of its decision, the tribunal determined that it had no jurisdiction to consider issues relating to the service charge years from 2008/09 up to 2010/11, as the Respondent had agreed and admitted the service charge arrears for this period.

The lease

10. The lease of the Flat was made between Advanceform Limited ("the Lessor"), 45-48 Queen's Gardens (Management) Limited ("the Management Company") and Ahmade Ibrahim Malik ("the Lessee"). It

is for a term of 120 years from 01 January 1977. The date of the lease was unclear on the copy lease in the bundle.

11. The Lessee's service charge contribution is 3.55%.
12. The Lessee's covenants are contained in the sixth schedule and include:
 17. *The Lessee shall pay and contribute to the Management Company by way of Service Charge in each year of the said term in respect of all proper costs charges and expenses incurred by the Management Company in carrying out its obligations under the Seventh Schedule hereto and the amount of the Service Charge shall be known as the Service Charge Contribution and in respect of every Maintenance Year the Lessee shall pay the Service Charge Contribution to the Management Company by four equal quarterly instalments on the usual quarter days in each year as hereinbefore provided and also shall pay a due proportion of any Service Charge Adjustment pursuant to paragraph 3 of the Eighth Schedule PROVIDED THAT in respect of the Maintenance Year current at the date hereof the Lessee shall on the execution hereof pay a due proportion of the Service Charge Contribution in respect of the period from the date hereof down to the date upon which the next instalment shall fall due.*
13. The detailed service charge provisions are to be found in the eighth schedule and include:
 1. *The annual Service Charge Contribution in respect of each Maintenance Year shall be computed as soon as possible immediately following the commencement of the Maintenance Year in accordance with Clause 2 below.*
 2. *The annual Service Charge Provision shall consist of: -*
a sum comprising: -
 - (i) *the expenditure estimated by the Management Company or Surveyors or Agents appointed to it for that purpose as likely to be incurred in the Maintenance Year by the Management Company for the purposes mentioned in the Seventh Schedule hereto together with*
 - (ii) *an appropriate amount as a reserve for or towards those of the matters mentioned in the Seventh Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term or this Lease or at intervals of more than one year during such unexpired term including (without*

prejudice to the generality of the foregoing) such matters as the painting of the common parts of the exterior of the Property the repair of the structure thereof the repair of drains and the overhaul renewal and modernisation of any plant or machinery (the said amount to be computed in such manner as to ensure so far as is reasonably foreseeable (but without imposing any liability or responsibility on the part of either the Management Company or the Lessor or its or their Surveyor or Agents appointed for the purpose) that the annual Service Charge Contribution shall not unduly fluctuate from year to year).

The issues

14. A telephone case management hearing took place on 28 January 2014, when directions were issued. The directions identified that the issues to determined include:
 - (i) Whether service charges are payable in the sum of £3,696.86, as claimed in the County Court;
 - (ii) Whether the service charges are reasonable and correctly calculated; and
 - (iii) Whether an order for reimbursement of application/hearing fees should be made.

15. A breakdown of the sum of £3,696.86 was contained in a statement from Mr Giuseppe Mirabelli-Centurione, dated 25 October 2011 that had been served in the County Court proceedings. Mr Mirabelli-Centurione is also a director of the Applicant company. The breakdown is set out below:

£361.71 Quarterly Service Charges from 25/03/10 to 23/06/10

£361.71 Quarterly Service Charges from 24/06/10 to 28/09/10

£361.71 Quarterly Service Charges from 29/09/10 to 24/12/10

£2,250.02 Opening Service Charge Arrears from 30/06/10 to 30/06/10

£361.71 Quarterly Service Charges from 25/12/10 to 24/03/11

16. The Respondent's mortgagees have paid the sum claimed within the County Court proceedings.

17. During the course of the hearing, Mr Woodhead referred the tribunal to a service charge statement for the Flat. This revealed the “*Opening Service Charge Arrears*” figure was an accumulation of interim quarterly charges demanded between July 2008 and January 2010, as broken down below:

£414.62 01/07/08 (for 24/06/08-28/09/08)

of which £33.94 is remains due

£354.62 29/09/08 (for 29/09/08-24/12/08)

£384.62 05/01/09 (for 25/12/08-24/03/09)

£361.71 17/06/09 (for 25/03/09-23/06/09)

£361.71 23/07/09 (for 24/06/09-28/09/09)

£391.71 25/09/09 (for 29/09/09-24/12/09)

£361.71 28/01/10 (for 25/12/09-24/03/10)

18. In the Scott schedule the Respondent disputed County Court costs, interest and certain items of actual service charge expenditure for the years ended March 2010 and 2011. He also alleged various breaches of duty by the Applicant and its directors. At the start of the hearing, the tribunal explained that it had no jurisdiction to deal with any of these issues. Interest and County Court costs are matters for the County Court. Actual service charge expenditure for the years ended March 2010 and 2011 had been agreed and admitted by the Respondent, as confirmed in the previous tribunal decision. Further any claims for breach of duty would have to be dealt with by the County Court of High Court.
19. Mr Ude informed the tribunal that the Respondent did not accept that he had agreed and admitted the actual charges for the years ended March 2010 and March 2011. However the Respondent had not sought to challenge the previous tribunal decision, by way of an appeal or a review and he is bound by that decision.
20. Following a second short adjournment of the hearing, the parties informed the tribunal that all of the service charges were agreed save for the quarterly, advance charges for the year ended March 2009. These charges had been calculated with reference to a service charge budget for the year in question, detailing total anticipated expenditure of £43,107. The only item in the budget that was disputed was a sum of

£55,000 claimed for “*Repairs & maintenance*”. It follows that this was the only service charge item to be determined by the tribunal.

21. Neither Ms O’Halloran nor the Respondent had produced witness statements for the tribunal. At the request of both parties, the tribunal gave permission for these witnesses to give oral evidence to deal solely with the repairs and maintenance item in the budget for the year ending March 2009.

The Applicant’s evidence and submissions

22. Ms O’Halloran is the leaseholder of Flat 11 at the Building and has lived there for over 30 years. She was appointed as a director of the Applicant company in 2013.
23. Ms O’Halloran was not involved in setting the service charge budget for the year ended March 2009 but is familiar with the figures in the budget. She explained that the amount of each budget is discussed at the Applicant’s annual general meeting and all shareholders are invited to the AGM. Copies of the service charge budget are then sent to all leaseholders. The leaseholders also receive regular service charge statements, showing the sums in the reserve funds.
24. Ms O’Halloran informed the tribunal that the repair and maintenance figure in the budget represented the anticipated cost of external works to the Building, to remedy various leaks and the internal refurbishment of the lifts. The budget shows that the total estimated cost of these works was £55,000. The external works and the refurbishment of the lifts took place during the summer of 2008. The directors’ report and unaudited financial statements for the year ended March 2009 showed that a total sum of £56,140 was actually spent on repairs and maintenance.
25. Ms O’Halloran advised the tribunal that the Applicants operate two reserve funds. The main fund is used to meet the cost of major works and emergencies. Previously a reserve contribution of £10,000 per annum had been paid into the main fund. Prior to the external works and the refurbishment of the lifts there was approximately £105,000 in this fund. There is also a separate reserve fund containing approximately £13,000, which is not touched.
26. Ms O’Halloran’s understanding is that the repairs and maintenance item in the budget was a means of “*topping up*” the reserve fund, which would be severely depleted once the external works and lift refurbishment had been paid for. Additional funds were needed at that time as further major works were planned for the Building. In cross-examination, Mr Ude suggested that the “*Repairs & maintenance*”

description was very confusing. Ms O'Halloran reiterated that the figures in the budget were all explained at the AGM.

27. In his closing submissions, Mr Woodhead invited the tribunal to approve the £55,000 figure and suggested that the evidence of Ms O'Halloran should be preferred to that from the Respondent. He also suggested that there was no basis for the criticisms of the Applicant's directors or the allegations of deceit.

The Respondent's evidence and submissions

28. The Respondent has owned the Flat since 2000 but has never lived there. Rather it is sublet, normally to professional tenants. Currently the Flat is sublet to 3 students.
29. The Respondent complains that he has very little interaction with the Applicant. The only contact he has from the company is when he receives quarterly service charge demands at his home in Cambridge. The Respondent alleged that he had not seen the service charge budget for the year ended March 2009, prior to the hearing. He also stated that he did not receive any annual service charge accounts until he started to challenge the service charges in August 2009. At that point he was informed by the Applicant's accountant that there would be a charge of £1,000 plus VAT for answering his enquiries, which he was unwilling to pay.
30. The Respondent described the Applicant company, as a "*private members club*" that he was not allowed to join. He complained that all decisions were made by the directors, without any form of discussion with the shareholders.
31. In cross-examination, the Respondent confirmed that the last time he had paid any service charges voluntarily (without the threat of legal action) was before 2008. He has asked the directors to have the service charge accounts audited, which they have refused due to a lack of funds. The Respondent has informed the directors that he will not pay any service charges without examining the "*bogus*" invoices and has reported the matter to the police.
32. The Respondent has never attended any of the Applicant's AGMs. He claims that he has not been invited and only became aware that the company held such meetings at the previous tribunal hearing. The Respondent pointed out that there was no documentary evidence that he had been invited to these meetings and that there was no reference to any of the meetings in the email correspondence in the bundle.
33. The Respondent owns other investment properties, some of which are freehold and some are leasehold. He has no problem with the service

charges for his other leasehold properties, which are all properly managed and where the accounts are certified by professionals rather than “cowboys”.

34. In relation to the reserve fund, the Respondent stated that he was unaware of its existence until the hearing. He accepts that a reserve is appropriate if a block of flats is going to be managed properly. The Building is substantial and needs to be looked after. The Respondent’s primary grievance is not the need for a reserve fund or the amount of the reserve contributions but the mismanagement of the Building.
35. The Respondent informed the Tribunal that he visits the Flat every 2 or 3 months, to check on his tenants. The Flat is on the ground floor and he was unaware of the refurbishment of the lifts until the previous Tribunal proceedings were issued. The Respondent was aware of the external works but was not supplied with any information as to the costs.
36. When asked by the tribunal, the Respondent stated that he considered a reasonable reserve fund contribution to be £20,000 and this was being “generous”. In previous years the contribution was £10,000. The Respondent accepted that a higher contribution was appropriate for the year ended March 2009 but there was no need to increase the contribution so substantially, given the amount that was already in the reserve fund.
37. In his closing submissions, Mr Ude explained that the suggested reserve fund contribution was the best figure that the Respondent could come up with, having only just seen the service charge budget. He pointed out that the dispute between the parties goes beyond the reserve fund and invited the tribunal to take account of the limited information provided by the Applicant, when determining the case.

The tribunal’s decision

38. Having heard evidence and submissions from the parties and considered all of the documents provided the tribunal has determined the application, as follows.
39. The tribunal determines that the “*Repairs & maintenance*” item in the service charge budget for the year ended March 2009, in the sum of £55,000, is payable in full.
40. Assuming that the Applicant is the current management company for the Building then the Respondent is liable to pay the following sums to the Applicant for the quarterly interim service charges demanded for the year ended March 2009;

| | |
|---------|----------------------------------|
| £33.94 | 01/07/08 (for 24/06/08-28/09/08) |
| £354.62 | 29/09/08 (for 29/09/08-24/12/08) |
| £384.62 | 05/01/09 (for 25/12/08-24/03/09) |

Reasons for the tribunal's decision

41. The Respondent does not dispute the need for a reserve fund contribution. Rather he simply challenges the amount of the contribution. His grounds for doing so relate to the management of the Building as a whole and the conduct of the directors.
42. The tribunal finds that it was reasonable for the Applicant to “*top up*” the reserve fund, as stated by Ms O’Halloran. Further the amount of the contribution (£55,000) was reasonable given that:
 - (a) this was the estimated total cost of the lift refurbishment and external works, as stated in the service charge budget; and
 - (b) the actual cost of the works was £56,140 and the Respondent has agreed and admitted the actual service charge expenditure for the year ended March 2010.
43. The tribunal cannot accept that the Respondent first saw the service charge budget at the hearing, as this was exhibited to the statement from Mr Mirabelli-Centurione dated 25 October 2011. Further the tribunal accepts Ms O’Halloran’s evidence that budgets are sent out to all leaseholders and that all shareholders are invited to the Applicant’s AGMs.
44. The tribunal has some sympathy for the Respondent in that the original particulars of claim from the County Court proceedings were very brief and did not make it clear that the service charges being claimed were all quarterly, interim charges. Further the description of the reserve fund contribution in the budget, as “*Repairs & maintenance*” was confusing. The Applicant should ensure that the headings in their service charge budgets are clearer in future and that any substantial items are properly explained in a covering letter.

Application under s.20C and refund of fees

45. At the end of the hearing, Mr Woodhead made an application for a refund of the fee that the Applicant had paid for the tribunal hearing¹.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

The tribunal refuses this application. Although the Applicant has been successful, the basis of their claim was not clear at the start of the tribunal hearing. Rather it was only after questions were raised by the tribunal that it became apparent that the sole issue to be determined was the reserve contribution in the 2008/09 budget. The tribunal concluded that the hearing fee should be treated in the same way as all other costs that the Applicant has incurred in pursuing the current proceedings (see paragraph 46 below).

46. At the hearing Mr Ude applied for an order under section 20C of the 1985 Act, on behalf of the Respondent. Having heard the submissions from the parties and taking into account the determination above, the tribunal determines that it is not just and equitable to make a section 20C order. The Applicant has been successful and it is only right that it should be able to recover its costs from the service charge account for the Building, including the tribunal hearing fee, assuming that there is provision for this within the lease.

The next steps

47. The tribunal has no jurisdiction over interest, County Court costs and fees. This matter should now be returned to the County Court to decide these issues.
48. In evidence the Respondent stated, quite correctly that all leaseholders have the same interest in ensuring that the Building is well managed and maintained. With this in mind, the tribunal encourages the parties to meet and try and resolve their differences before embarking upon any further litigation.

Name: Jeremy Donegan

Date: 23 May 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.
- (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.
- (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).