



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

Case Reference : LON/00BH/LSC/2015/2030

Property : Flats 5 (and 6) 112, Grove Road,
London E17 9BY

Applicants : (1) Natasa and James Craighead
(2) Benjamin Sunkel-Laing

Representative : Mr Murdo MacKenzie

Respondent : Grove Leaseholder Limited

Representative : Mr James Harries (Director)

Type of Application : An application for determination of the
reasonableness and payability of service
charges pursuant to Section 27A of the
Landlord & Tenant Act 1985

Tribunal Members : Judge Shaw and Ms S. Coughlin

Date of Hearing : 19th November 2015

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

Date of Decision : 14th December 2015

DECISION

Introduction

1. This case involves an application made by Natasa and James Craighead received by the Tribunal on 1st June 2015. The application is in respect of Flat 5, 112, Grove Road, E17 9BY. Subsequent to the making of the application by Natasa and James Craighead (the leasehold owners of Flat 5) a Dr Ben Sunkel-Laing (the leasehold owner of Flat 6) was joined as a further Applicant in respect of this application. Natasa and James Craighead and Dr Ben Sunkel-Laing will be referred to collectively as (“the Applicants”) and their flats, as referred to above, will be referred to as “the Property”. The Respondent to the application is Grove Leaseholders Limited (“the Respondent”) which as its name suggests, is a company formed for the purposes of holding the freehold interest in the property. Some but not all of the leaseholders comprising the nine flats at 112, Grove Road are shareholders in the Respondent company.

2. As indicated above, 112 Grove Road is a property in East London which has been converted to nine separate units each held on long leases. As understood by the Tribunal, until approximately 2013 the property was managed by a company of managing agents called Hexagon Property Company Limited. The leaseholders apparently became dissatisfied with the service offered by that company and new agents, namely Block Management Limited, were appointed.

3. As understood by the Tribunal, Block Management Limited in consultation with some of the directors of the Respondent company and

in particular, Mr James Harries (who appeared before Tribunal) took the view that very substantial works were required to bring the property generally up to satisfactory standard and as a result, high service charge demands have been presented to the various leaseholders in a manner which will be described below, to which the Applicants are objecting and in respect of which they are seeking a determination from the Tribunal.

4. The hearing of this matter took place before the Tribunal on 19th November 2015. At the hearing the first-named Applicants, who now live in Croatia, were not present and there was no appearance by Dr Sunkel-Laing who, as indicated, was joined as a joint Applicant subsequent to the issue of the application by Mr and Mrs Craighead. Instead, a friend of the first-named Applicants, a Mr Murdoe MacKenzie, handed in a Form of Submissions or Statement of Case, but otherwise took little part in the proceedings. That one and a half page document was seen by Mr Harries, who appeared for the Respondent and was not objected to, since it added relatively little to the material which had already been received from the Applicants. As mentioned, Mr Harries who is a director of the Respondent company, represented the Respondent and made detailed representations to the Tribunal.
5. It is proposed to summarise the cases put forward on behalf of the Applicants and the Respondent and, in the course of dealing with the Respondent's case, to give the Tribunal's analysis and findings in respect of the disputed matters.

The Applicants' case

6. The first-named Applicants have produced a written statement at page 44 in the bundle of papers prepared for the hearing, and the second-named Applicant prepared a statement appearing at page 43. The first-named Applicants supplemented their statement with various other documents which have been placed in the bundle, and the statement referred to above was produced by Mr MacKenzie on their behalf at the hearing. No disrespect is intended to the Applicants if all the documents produced by them are not referred to individually; a summary of their respective cases is as follows. The first name Applicants purchased their flat in the building in 2014 for a sum of £75,000. This relatively low purchase price is accounted for by virtue of the fact that the flat is very small and is a mere 12 square metres in internal area. It is a studio flat comprising one room with a small shower area. Their intention was that this investment, which had a good return from the rental income, should be in the long term a "nest egg" for their young child. They made enquiries with the previous managing agents, namely Hexagon Property Company as to the service charges they might expect and according to their statement, were led to believe that the only work planned for the building was a new fire alarm system, and that the service charges might be a little higher than the previous year's service charges of around £1300 per annum.

7. It came therefore as a shock to them to be presented with a service charge bill for 2015 based on a budget for that year which resulted in a total service charge for the year of £5,492. This sum was calculated (as

will be referred to in the summary of the Respondent's case) by the addition of £3,055.56 for various proposed works and a figure of £444.44 for estimated legal and professional costs.

8. Whilst they do not dispute that the building is in need of repair, their case is essentially that there is no need for the presentation of such a large bill within the first year of proposed remedial works and that the cost can be more sensibly and indeed reasonably, (for the purposes of the Act), spread over a number of years in order to do the work on a gradual basis, and in such a way as to make the work affordable for the several leaseholders. They have made comparisons with the service charges that they have to pay in their own home in London at Spectrum Tower, Ilford, where charges are much lower, although their suggestion is that this property is of a better standard and quality.

The Respondent's Case and the Tribunal's Analysis

9. Mr Harries for the Respondent prepared a full statement which appears at pages 4 to 10 of the bundle and, during the course of evidence to the Tribunal, took the Tribunal to the report prepared by Court Buckingham, whom the Tribunal understood to be Chartered Building Surveyors who had carried out a very full survey upon the property in January of this year. The results of that survey can be found in the report starting at page 15 in the bundle. Mr Harries took the Tribunal in particular to a schedule of proposed works and estimated costs in that report, the summary of which appears at page 17 in the bundle. Also pertinent for

this exercise was the budget to which the Applicants object, which appears at page 76 in the bundle.

10. By way of background, Mr Harries told the Tribunal that he purchased his particular flat in 2012. He and other leaseholders thereafter became surprised that the building was not being well managed. Six of the leaseholders knew each other, and elected to purchase the freehold through the Respondent company. Mr Harries emphasised several times that the Respondent is a non-trading company whose only asset is the property, and it was a vehicle through which proper maintenance might be effected. He stressed that the directors and shareholders are not professional investors, and that he now has two units in the building and therefore has a vested interest in doing the best for the property overall. Because he and his fellow shareholders had no experience of management, in the spring of 2013 they appointed the new managing agents, Block Management Company Limited. It was at approximately that time or shortly thereafter, that the Applicants purchased their flat.

11. He told the Tribunal that he was unaware as to what the Applicants may or may not have been told by the managing agents, but that for its part, the Respondent had commissioned an RICS survey, (to which reference is made above), by Court Buckingham which was concluded in January of this year. In fact as can be seen from page 17 in the bundle, that firm of building surveyors recommended that £75,000 worth of work was required. In the event, the directors, in combination with some builders

with whom they had contact, managed to bring these costs down to about half that figure.

12. The Tribunal went through the schedule with Mr Harries and it transpired that there were four main items that in the view of Mr Harries were of most pressing urgency. Those items, together with the estimated cost were, damp proofing at £6,222, the complete renovation of the guttering and soil pipes together with the making good of a dangerous chimney - £5,000; electrical testing and security lighting - £850, and pressing girder repair work over the entrance area (which was insecure) costing about £850. These figures were cost figures without the inclusion of VAT and they totalled £12,922 which, with the addition of VAT, would come to £15,511.

13. It was these works principally that the Respondent was seeking to raise funds for, in the context of a contribution to a reserve fund as appearing at page 76 in the proposed budget for 2015. In fact however, it is common ground that there is no provision for a reserve fund in this lease. Nonetheless, a claim has been made as being a necessary part of the overall maintenance required sensibly to keep this property in appropriate repair. Had the charge been such as to be reasonable from the point of view of the Applicants, the Applicants have indicated that they would not have objected to the creation of such a reserve fund, notwithstanding the fact that there is no such provision in the lease. However the size of the claim is such that they object to the raising of these monies.

14. Quite apart from the works necessary to renovate the property, there are other ongoing charges as set out in the annual budget appearing at page 76 of the bundle. As to the second of the challenged items of costs in the budget, i.e. £4000 for Legal and Professional costs, these charges, argues Mr Harries, are properly to be added to the overall cost for the carrying out of what are in effect major works at the property. Mr Harries told the Tribunal that this estimate incorporated the cost of the Chartered Building Surveyors' report, together with supervisory fees of the substantial work to which reference was made. On this basis, the Tribunal considers that the £4,000 is a reasonable estimate.

15. The Tribunal does consider that the damp-proofing works, and the other³ items of work listed above, are of a pressing nature on the basis of the evidence before it. However the rest of the items in the building surveyors' schedule, seem to the Tribunal to be in the nature of works, the cost and execution of which could and should be phased over a period of time, in order to render them reasonable and reasonably incurred for the purposes of section 19 of the Landlord and Tenant Act 1985 – see **Garside v RFYC Ltd and another [2011] UKUT 367 (LC)**. Accordingly the figures in the budget appearing at page 76 are approved by the Tribunal as being reasonable estimates save for the figure for £200 for gutter maintenance, which is to be deleted since it would be incorporated in the major gutter works which are to take place, and the so called reserve fund contributions of £32,000 which are reduced to the figure of £15,500 as calculated above.

16. The addition of the £15,500 and the remaining figures amended as referred to above, totals £32,720 as opposed to the £49,420 contained in the budget at page 76. The Tribunal finds that the figure of £32,720 is the overall total figure which it would have been reasonable for the Respondent to include in the budget for 2015 and this computes to a charge of £3,635.55 for each of the nine leaseholders as opposed to the charge of £5,492 which was in fact levied. From this £3,635.55 should be deducted any sums which have already been paid either by these Applicants or other leaseholders. The Tribunal considers that the amount referable to the four substantial items set out above is more properly described as part of the general repairs than a reserve fund, for which there is no provision in the lease as already set out above. It is perfectly open to the parties, in the context of an application to the Tribunal to seek a variation of the lease in order to create provision for a reserve fund (as mentioned to the parties at the Tribunal) or indeed if the matter is uncontroversial then no doubt such a variation can be arranged by Deed of Variation through solicitors appointed by the parties.
17. Some of the individual items referred to above, in particular the damp proofing and work to the guttering and soil pipes, would result in a contribution for these items in excess of the statutory £250 threshold, under section 20 of the Landlord and Tenant Act 1985. The parties should take advice as to such statutory consultation as may be needed,

without which, the amount recoverable upon finalising the actual figures, may be limited by the statutory cap.

18. The Tribunal would further stress that it is dealing with a budget in this case, rather than actual costs, and although the Tribunal has found the costs as referred to above to be a reasonable part of the budget, in the event that they are carried out, there would be no bar to the leaseholders bringing an application under Section 27A of the Landlord & Tenant Act 1985 to challenge the quality or cost of the work once completed.
19. The Tribunal was asked to consider making a Section 20C Direction to the effect that no part of the costs of this application should be set against that service charge account. Mr Harries also, on behalf of the Respondent, sought an order for costs as outlined in his letter of the 5th August 2015 appearing at page 4 in the bundle.
20. The view of the Tribunal is that although all parties have endeavoured to do the best they can in this case, the sum arrived at by the Tribunal as a reasonable sum is indeed below the figure which was originally estimated, and therefore there was some merit in the making of the application. The Tribunal has reached the conclusion that it will make, and does make, a Section 20C Direction in this case, to the effect that such costs as have been incurred in the making of this application should not be recoverable as a service charge against the named Applicants in this case.

Conclusion

21. The overall costs found by the Tribunal to be a reasonable budget for 2015 are in the sum £32,720, amounting to a service charge of £3,635.55. These sums are payable subject to such statutory consultation as may be necessary, upon which the parties should take advice. The Tribunal makes a Section 20C Order to the effect that any costs incurred by the Respondent in these proceedings should not be charged to the service charge account of the Applicants in this case. The Tribunal does not consider that any further orders for costs should be made.

JUDGE SHAW

14th December 2014