



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

Case Reference : Please see attached schedule for details of the case numbers and the Respondents

Property : Tower Mansions, 86 – 87 Grange Road, London SE1 3BW

Applicant : Tower Mansions Limited (1)
Mr BalwinderDhillon (2)

Representative : Mr L Sefton-Smith and Mr A Cunliffe both Counsel, instructed by Thakrar and Co Solicitors

Respondent : Please see the annexed schedule

Representative : Miss K Gray of Counsel, instructed by TWM Solicitors

Type of Application : Section 27A of the Landlord and Tenant Act 1985 (determination of service charges payable) and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (determination of variable administration charges payable).
Section 20C of the Landlord and Tenant Act 1985 (costs)

Tribunal Members : Tribunal Judge Dutton
Mr I Thompson BSc FRICS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR on 27th and 28th January 2016 and 16th May 2016

Date of Decision : 23rd June 2016

DECISION

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DECISION

1. **The Tribunal determines that the sum payable in respect of the service charge years 2013/14 and 2014/15 is as set out on the annexed schedule. Our reasons for the findings are set out below under paragraph**
2. **Insofar as the recoverability for costs are concerned and section 20C, our findings in respect of that matter are set out at paragraphs**
3. **Insofar as the recoverability of service charge monies by Mr Balwinder Dhillon is concerned our findings in that regard are set out at paragraphs below.**
4. **It was agreed at the outset of the hearing that the costs claims referred to in the particulars of claim in the County Court proceedings should be returned to the County Court for that element to be determined.**
5. **Similarly having no jurisdiction for the recovery of ground rent, any issues relating to that matter should be returned to the County Court for determination.**

BACKGROUND

1. As a result of various proceedings commenced by Tower Mansions Limited (TM) and separately by Mr Balwinder Dhillon (BD) in the County Court cases were transferred to us during the course of 2015 for the determination of the issues raised in those proceedings. In essence the claims related to arrears of service charges and administration charges. By directions orders made by the Tribunal on 22nd September 2015 following a case management conference, it was ordered that those cases involving TM and the various leaseholders against whom proceedings have been commenced should be consolidated. It was also ordered that similarly the claims by BD against various leaseholders should be consolidated. Further, given the overlap of interests and the extent of common ground in the consolidated proceedings, a further direction was given that the two consolidated sets of proceedings should move forward together and be heard at the same time or one immediately after the other subject to the views of the Tribunal dealing with the matter.
2. It is helpful we think to give some brief background to the disputes that have made their way before the Tribunal. All the Respondents are lessees of flats in Tower Mansions of which there are 18. The freehold of the block is owned by Tower Mansions Limited incorporated for the purposes of a collective enfranchisement of the building in 2008. To enable that enfranchisement to proceed it appears that the non-participating flats, which numbered 3, 6, 7, 8, 9, 10, 15, 16 and 19 were the subject of a head lease granted to BD over those flats subject to the lessees' original occupational interest under leases, the terms for which commenced in 1994. These head leases to BD are for a term of 999 years from 10th January 2008 and it was envisaged that the occupational lessees would at some point in time purchase the head leasehold interest of BD thus become shareholders of TM and be able to fully participate. This, however, has not happened. Matters are further complicated because the original leases held in like form were granted on 25th March 1994 for 999 years (the 1994 leases) have not, it would seem from the register of title included in the papers before us, been updated to reflect the supposed new leases

to be granted to the participating flats from 14th February 2012 for a term of 999 years. Certainly it would seem that Flats 1, 2, 4, 11, 12, 14 and 18 are still recorded as being held under the terms of the 1994 lease. This becomes of relevance when one considers the terms of the head lease granted to BD and in particular the provisions relating to the recoverability of service charges to which we will refer to in due course.

3. The effect of this is that BD appears to have acquired nine leasehold interests in respect of the non-participating leaseholders who form the Respondents to his claim. It is also said that this gave him unreasonable control of the day to day running of the development, although from his point of view he denies that this is the case and that this was foreshadowed in a participation agreement entered into at the time of the enfranchisement.
4. This apparent inequality has caused numerous disputes between the parties resulting in a somewhat acrimonious relationship. It must be said, however, that the guiding light for the Respondents appears to be Miss Vanessa Dore of Flat 4. Certainly by reference to the skeleton argument prepared by the late Mr Sefton-Smith prior to the hearing in January, there were various attempts made to rest any control away from BD and TM. For example, an application for Right to Manage was made which was subsequently discontinued. Further there appears to have been proceedings between BD and Miss Dore relating to the latter's refusal to authorise shares to be issued to BD following the enfranchisement and proceedings in the Slough County Court by the right to manage company which were also struck out. It does not seem to us that these matters are of any particular relevance to the issues before us but they do set the scene as to the relationship that there is between TM, BD and the various leaseholders.
5. At the commencement of the hearing on 27th January it was agreed as follows:-
 - The claims for costs set out in the particulars of claim would be remitted back to the County Court for them to determine.
 - That we would proceed on the actual figures for 2014/15 as those were now available and it made sense to consider those rather than the budgeted figures.
 - That any and all judgments that had been entered into the County Court proceedings had now been set aside and that accordingly there was no jurisdictional point. It was noted, however, that the claim in respect of Flat 16 had not at the time of our consideration been transferred to us.
 - It was agreed that we would deal with the evidential issues in one hearing, thus consolidating in effect the claims by TM and BD.
 - We were advised that BD had only recently paid his full service charge contribution in relation to the non-participating flats to TM and that therefore he sought repayment of those sums in these proceedings.
6. Prior to the hearing we were provided with two substantial bundles of documents running to in excess of 800 pages as well as helpful skeleton arguments produced by both the late Mr Sefton-Smith and Miss Gray. We had the chance of considering those prior to the commencement of the hearing.

7. Within the bundles there were copies of the claim forms in the County Court, samples of the various leases, statements of case from both sides and the accounts themselves as well as a number of witness statements to which we will return. Helpfully we were provided with a spreadsheet showing the items of expenditure in each year and annexed to the actual accounts for the years ending 30th June 2014 and June 2015 was a further spreadsheet with some narrative as to various items of expenditure that had been incurred.
8. On the schedule attached are our findings as to recoverable costs for each of the two years.

HEARING

9. We were shown various photographs by Mr Sefton-Smith, many of them taken by Miss Dore. At the subsequent reconvene hearing in May, she produced a schedule indicating the dates upon which these various photographs had been taken. Mr Sefton-Smith submitted that the photographs produced were in a confined time period although he accepted that the building and the grounds had not been maintained to the highest standard. He told us in his opening that there were invoices which tallied up to the costs recorded in the 2014 accounts and that by and large the same applied for the 2015 accounts. Initially it appeared that there was no contract with the managing agents which subsequently proved to be not the case as this was produced on the second day of the hearing.
10. We were told that management of the building had originally been given to the letting company (TLC) and that such management was in the control of a Mr Khurram Mirza who had provided a witness statement. It appears from minutes of a meeting held on 6th July 2013 that Mr Mirza or his company were to be appointed as an independent property manager. This was objected to by Miss Dore and the reasons for that objection are set out at page 735 of the bundle of papers before us. Notwithstanding that Mr Mirza did take on the management of the development. Previously it had been Block Management Limited who appeared to have been appointed by the now defunct RTM company.
11. Our attention was then drawn to the terms of the leases granted to BD. Within the bundle we had a copy of the lease for Flat 19 which was at page 116 onwards. This showed a lease commencing on 14th February 2002 for a premium of £1 showing TM as the landlord and BD as the lessee. The term of the lease was 999 years commencing on 10th January 2008 and referred to the subsisting lease made in 1994. The background relating to the enfranchisement is set out therein. Of interest to us, however, and that forms part of this particular dispute is clause 9 of the lease headed under Lessee's Charges. This reads as follows:

9.1 The tenant hereby assigns to the landlord the benefit of the lessee's covenants under the subsisting lease to pay service charges for the duration of the waiver period only (and the tenant covenants promptly to give notice of this assignment to the lessees of the subsisting lease) and the landlord hereby waives the obligation under the correspondence lessee's covenants contained in the lease for the duration of the waiver period only.

9.2 The landlord hereby waives the obligation under the tenant's covenant contained in clause 6.2.4 of this lease to contribute towards any reserve fund set up in accordance with that clause for the duration of the waiver period only.

9.3 For the purpose of this clause 9 the waiver period is the period from the date of this lease to the earlier of the dates of the determination of the subsisting lease or the date on which the subsisting lease is transferred to the registered proprietor of the lease or any party connected to such registered proprietor of this lease and for these purposes "connected" shall have the meaning ascribed to it by Section 839 Income and Corporation Taxes Act 1988.

12. There does not appear to have been notice of assignment given to the lessees of the subsisting leases as required by clause 9.1 but we were told that the waiver period is still relevant for all Respondents to the BD claim. Our attention was further drawn to Section 141 of the Law of Property Act 1925 which we will deal with in the findings section.
13. After this lengthy opening we heard from BD whose witness statement was to be found at page 336 of the bundle. He confirmed that the contents of his statement were correct and was then tendered for questioning by Miss Gray. He confirmed that he did not live at the property but that he visited regularly perhaps as much as eight times a year. He said that works had been carried out from time to time but that Mr Mirza had had a period of incapacity which may have affected some of those works being undertaken.
14. He was asked about the accounts which appeared in the bundle with supporting papers. He told us that he relied upon his accountant to inspect the invoices and was not really able to assist us in saying what had been done at the property as this fell within the remit of Mr Mirza. Much of his witness statement dealt with the history of the disputes between himself and Miss Dore both as to the RTM company and the appointment and actions of Block Management. As to the specifics, he accepted that the common parts may have on occasions needed cleaning and insofar as problems raised with regard to the rubbish store, he indicated that he thought only the local authority had keys to gain access. He said he had to trust the managing agent and he thought that the charges made by Mr Mirza were insufficient for the effort put in.
15. He was referred to the management agreement with TLC signed by Mr Mirza on that company's behalf. The contract appeared to be for a period of three years with a management fee at 15% of the annual service charge cost. It was pointed out to him that the contract appeared to provide for inspection by the managing agent at twice a month. It was suggested to him that the managing agent had not limited their charge to 15% of the costs incurred. The total service charge for 2014 was £18,222.37 but the management fees were £4,737.70 and for the year ending June 2015 where the total charge was £24,941.19 the management fees had risen to £5,040.
16. BD denied that Mr Mirza was a friend of his and that in fact he had been made aware of TLC and Mr Mirza following a recommendation from his accountant Mr Shah. He was then asked about accountancy charges for which there appeared to be paucity of invoices and other items of expenditure, which he was not able to deal with suggesting that Mr Mirza would be able to answer the questions. The

question of bank charges then led to further questions in respect of the bank accounts and in particular an account which appeared to have been opened in March of 2014 from which service charges appeared to be settled on a somewhat ad hoc basis. He told us that he had in fact been meeting many expenses of TM from his own funds. It was also suggested that Mr Mirza as managing agent had paid a number of items of expenditure including for example general repairs, repairs to the gates, landscaping and other items.

17. He was asked questions as to how he had incurred the liability which enabled him to now commence proceedings against the non-participating tenants. It appears that up until these years in dispute all leaseholders have been paying directly to TM. Since 2012 when new leases had been granted, although not it seems registered, TM had been demanding directly from the non-participating lessees. He told us it had been 'out of the goodness of his heart' that he had bought the leases of the non-participating lessees and was happy to sell any of those back as soon as they wished. He confirmed that he had thought that when the new leases in 2012 were created the freeholder TM would still collect the service charges and were surprised he found himself in this position. He reasserted that he had no relationship between himself and Mr Mirzanor particularly with the accountant Mr Shah although it did appear that Mr Shah was a signatory to the Lloyds Bank Account into which service charge monies had been paid.
18. As a result of re-examination he told us that, for example, he could not say how an electricity bill of £451.48 has been paid but paid it had been as evidenced apparently by an email at page 174 of the bundle from what appears to be from some form of debt collection agency.
19. He sought to explain the position with regard to the bin area. He told us that there was a double door as evidenced from photographs and a small door that the tenants could use to get in and out. He was uncertain as to whether tenants held a key to the double doors but they did appear to be opened when the local authority called.
20. He also told us that Mr Shah, the accountant, has been commended by his solicitors and that he had had no dealings with him before. He denied that he was a friend.
21. This concluded the evidence that we received on 27th January.
22. We reconvened on 28th January and prior to doing so were handed a further witness statement by Mr Mirza dated 28th January 2016. In his first witness statement, which was quite short and was made some time in November, but was neither signed nor dated, he merely confirmed that he was until recently employed to manage the flats and that he had provided copies of records for the relevant period.
23. His second statement he sought to rebut the suggestion that he had no trading involvement with TLC and also told us that he thought that he had spent something like £7,000 or £8,000 from his own pocket to meet various items of expenditure. He was also able to deal with some specific items of expenditure, in particular re-charging of cleaning products, some duplication of gardening costs,

costs relating to locks and theft and crime report and the basis of his charging arrangements under the management contract.

24. Having confirmed the accuracy of these statements he was then asked questions and in particular about the management agreement which appeared to conflict with the actual costs being charged. He said that he managed a number of properties and that agreements could be changed perhaps three or four times. These however were usually recorded in writing but that he had agreed with BD what costs he should charge. He told us that he had worked for TLC since 2011 and managed a number of properties. Asked where in the agreement it said that he could make extra charges above the 15% he said that if it was outside the contract he could charge extra at a partner rate of £190 an hour.
25. He was then taken to a number of specific invoices and challenged on those. These included costs made for the replacement of a noticeboard on more than one occasion, attendances on visits which it was suggested were excessive and that, for example, an invoice in respect of the attendance at the building to meet with the police had wrongly included VAT and the amounts were incorrect. He thought that the meeting had taken place on the 13th June 2014 and that he had been required to attend by the Police and was on site for some two hours. The management charge for that period of £3,914.75 he told us included time spent with Thakrar and Co and BD concerning the recovery of monies from tenants. He said he had records of all the time spent but these were not provided.
26. He was then taken through a number of invoices with regard to attendances on site and we noted the answers given. His attention was drawn to some invoices which appeared to relate to an individual leaseholder and whether those were properly recoverable. He was again asked whether he was friendly with BD or with Mr Shah but he denied that he was friends of either. He did tell us that AZK Services which carried out a number of items of work traded from the same offices as the accountants and was in fact a company run by his daughter. She was 18 at the time but it appears that company now no longer trades. He was asked whether it was appropriate to employ family members to carry out works but he considered that it was. The charges made for cleaning at £10 per hour he thought were reasonable and this involved cleaning the carpets, wiping down, collecting and removing rubbish from the outside area. The cleaning had originally started on a weekly basis but had been reduced to fortnightly. He had not been told that it was his responsibility to clean the bin store as he thought this was outside the estate. However, this was changed in the year 2014/15. He told us that he got some keys from the Council and had started cleaning the bin store but this had not happened in the year 2013/14. He did accept that there were certain areas of the development, particularly around the bin area, which had not been cleaned.
27. As to the gardening, he told us that AZK had been contracted to carry this out through a third party. He thought the costs were reasonable.
28. He was asked who approved these invoices for service charge costs and he said that he attended regularly and signed off against invoices produced. When asked whether his somewhat vague recollection of items was reasonable, his response said it was difficult for him to remember so far back and questioned whether he was as diligent as he might have been in respect of various invoices from AZK

given that it was his daughter's company he told us that he was. Asked why AZK had stopped trading he told us because they were not being paid. We then heard evidence from him as to the state of the electric gates and he told us that he had not been able to continue with the annual contract as there was insufficient funds and therefore it had had to be altered to an arrangement where they attended when called out. There was then questioning concerning the amount of money spent in relation to lighting at the property but he could not illuminate us as to why it had taken so long for the problems to be resolved.

29. On pest control he was asked about the difference between the costs of £640 in November 2013 through AZK Services and the replacement company ABC Pest Control Services who appeared to charge £75 per quarter plus VAT. He said he had worked with ABC in Harrow, found them cheaper and therefore gave them the contract instead of AZK. He denied that AZK had made any mark-up on this particular element. It was pointed out that there appeared to be an overlap in the days in respect of the quarter invoices. He told us that he had paid something between £7,000 and £9,000 out his own pocket. When asked why he was told he was reassured by BD that he would be paid and told us that in fact he had done this on other properties where he had been reimbursed. He told us that in fact he was still owed money in relation to this property, perhaps between £8,000 and £9,000 for the two years.
30. He was then asked some questions about accounting issues and we noted the responses. On re-examination certain matters were clarified. Insofar as the electric gates were concerned he thought those had been forced open and the electric arm was broken. He had received an email from the tenants and had responded. There was some discussion about potential major works but those had been put on hold and did not proceed due to lack of funding. He confirmed that although he was not a member of any professional body he considered himself experienced.
31. In the afternoon of 28th January we heard from Miss Dore who had made two witness statements to be found at pages 361 and 366 of the bundle. She was firstly asked by Miss Gray about the circumstances relating to the intercom and a charge of £1,095. We were told that the RTM company had put in a new system in 2011/12 but BD had not allowed access. She believed he had now arranged for it to be fixed and connected up and was passing this cost through as a service charge. There was also questioning about the installation of CCTV and repairs to a leak in Flat 3. As to cleaning, she said that it was not generally in a good state and relied on a particular photograph and that no dusting had taken place for ages. On landscaping, in her view it was the worst it had ever been and was cut infrequently. Communal lighting to the exterior was faulty, although she did concede she may not have reported this. As to the electric gates, she said that she had noticed frayed cables some six months before she took photographs of this and did not understand, therefore, why the repairs had not been carried out during the annual contract. As to the bin store, it was only in the year 2014/15 that this had been cleaned and then only a couple of times. A good deal of cross-examination was undertaken by Mr Sefton-Smith relating to the historical issues. We noted all that was said but it did not in truth help us in reaching our determination. She did tell us that in the year 2014/15 she was working four days a week Tuesday to Friday, which had subsequently reduced three days a week. At the conclusion of the

second day of the hearing we issued some additional directions and some further disclosure was also agreed.

32. The matter reconvened on 16th May 2016 with Mr Cunliffe filling the shoes of the late Mr Sefton-Smith. He continued the cross examination of Miss Dore she clarified the dates of various photographs in the original bundles. Asked about some CCTV cameras which had apparently been secretly installed she said that she was not aware of those having been put in but had been told by a tenant that a "spy camera" had been installed but she didn't know who had done this. Apparently she said BD accepted that he had put up the camera to record actions of tenants. This was while the RTM company was managing and he had no right to do so. It was she said evidence of him seeking to try to manage the building even though the RTM company was involved. Asked whether she was aware of items being removed from the cleaning cupboard, she said she did not but doubted that they had been stolen and doubted that the truth was being told. The RTM company had been dissolved on 6th January 2015.
33. She then confirmed that Hilton Fox had been appointed to manage but without the leaseholders' consent and that she had refused to pay service charges to them. They said that they wanted money paid directly to Mr Shah but she did not consider the accountant could be trusted. She did however, tell us that an offer to settle had been made but we were not given any further details. There was some discussion as a result of re-examination. It appeared that there should have been some money in the RTM account, perhaps £16,000, but it appeared they in fact related to monies that were due rather than cash readily available.
34. We were also provided at the commencement of the reconvened hearing in May with some additional documentation in particular letters from a Lucy Lo on behalf of her sister Roselyn who is the leaseholder of Flat 11. This related not only to an application for a new manager to be appointed but sought to rebut some of the allegations made by Miss Dore in her witness statement particularly with regard to cleaning. There were some additional papers contained within the second bundle and we noted the contents of same.
35. We should record that in the Respondents' skeleton argument the suggestion that Section 20B of the Landlord and Tenant Act 1985 may impact on this case was withdrawn it being said "not to be arguable contention."
36. Also at the start of the reconvened hearing in May Miss Gray had presented us with further submissions. This confirmed that we were only to deal with the two years and on the basis of actual not budgeted figures. It confirmed that all the occupational tenants occupied their flats under the 1994 leases and although pleaded in the TM case that the participating tenant occupy under 2012 leases it came to light that these had never been registered.
37. As a result of files still being awaited from previous solicitors the claim for costs was to be returned to the County Court as we have recorded above. Importantly it was agreed that the management agreement produced at the hearing referred to above was a qualifying long term agreement and finally that we needed to determine whether legal costs were claimable through the service charge and if we did so find then submissions would be made in respect of the provisions of Section

20C of the Act at a later date. The further submissions were of help to us in reaching our determination.

38. Likewise, Mr Cunliffe had produced a short submission dealing with the relationship of the lease between TM and BD and in particular clause 9.1 thereof viewing it in the light of a Tribunal decision made under case number LON/OOBK/LSC/2013/0608 *White v Enfranchise Investment Properties LLP (1) and 36 Buckingham Gate Limited (2)* as well as by reference to the case of *Three Rivers District Council and others v The Governor and the Company of Bank of England (1)* [1996]QB292 at 298. It was suggested that as TM was a party to these proceedings they would be bound by any decision of the Court. It further went on to say that even if notice of assignment had been given, that the service charges were purportedly reassigned to TM. It was submitted that it would only take place as a partial assignment of the right to sue for rent rather than absolute one that section 136 of the Law of Property Act 1925 applied and that accordingly the assignment could not have been perfected and the reasoning of the Buckingham Gate decision did not apply. It was submitted therefore the claim in respect of BD action should proceed against those Respondents and that BD was entitled to recover the service charges he had now paid.
39. In oral submissions Miss Gray expanded upon payments that appeared to have been made by BD as a director, for example electricity, building insurance and meeting fees. There appeared to be no loan account showing monies due to BD. Mr Mirza had paid some £7,000 to £9,000 for both years from his own account including, for example, general repairs and cleaning but again there were no cash withdrawals and no loans recorded. It was suggested that where BD and Mirza paid the matters themselves TM could not recover them from the leaseholders. The evidence of BD and Mirza should be treated with caution and Mr Mirza in particular was vague and unreliable. We were also asked to consider the role of AZK, a company owned by Mr Mirza's daughter. We were told we should prefer Miss Dore's evidence and it was clear she that she had sought assist the Tribunal notwithstanding attempts to undermine here credibility. On some specific items she referred us to the management fees and the agreement which limited the costs to 15% of the annual service charge over a three-year period. She said the figures charged were considerably in excess of that amount. Further, it was said that this was a qualifying long term agreement for which no formal dispensation for application had been made and accordingly the costs should be limited.
40. As to cleaning and gardening, she reminded this was run by a family company and that Mr Mirza in her opinion had not been checking that the work had been done. Miss Dore said that the cleaning was done perhaps once a quarter. However, the hourly rates were not in dispute just the frequency.
41. In respect of gardening, photographs provided clearly show that gardening had not taken place on a monthly basis and was generally not carried out as frequently as suggested, perhaps quarterly.
42. As to the door entry phone, the figure of £1,095 appeared to be repair works and should not be charged. As to lighting, it was said that Mr Khan had produced a report but this was never shown to us but that the costs incurred in respect of the lighting at the development were excessive. On the question of the gates, the

monthly contract giving a total charge of £2,500 per annum was excessive. This had not been renewed but in the following year some £3,380 had been spent on works to the gate which had not been covered by an agreement. There was no explanation for the vast difference. As to pest control, there was an overlap of contracts but the sums involved were fairly minor and going to the question of mismanagement.

43. As to the recoverability of the service charges, Miss Gray was of the view that Tower Mansions Limited is the correct Applicant. The impact of Section 141 of the Law of Property Act 1925 is not disputed but that this does not preclude further assignment. Clause 9 of the lease we have referred to above is intended to specifically override Section 141 and we were referred to the case of *Re King deceased Robson v Gray 1953K no. 196* where at page 488 the words of Upjohn L J are recorded: "*The assignor has by the operation of Section 141 assigned his rights to the benefit of the covenant and so has lost his remedy against the lessee. Of course, the assignor and the assignee can always agree that the benefit of the covenant shall not pass in which case the assignor can still sue if necessary in the name of the assignee.*" Miss Gray was of the view that BD did not think that he would be liable to make payments to TM in respect of service charges and indeed had only paid the sums that were being claimed at the start of the proceedings. No notice of assignment had been given to the lessees although it was accepted that no specific form was required, however in her view the parties had proceeded on the basis that TM would make the demands. There was a covenant by BD to give notice under the terms of the lease which he had not done. In her view the BD claim must fail. There was no evidence that TM had demanded service charges from him and he therefore had no liability to pay them. In her view if there was no demand there was no liability but equally no evidence of payments had actually been made. It was for BD as to how he recovered the money.
44. We were then asked to consider the question of costs. This relates to the Section 20C point only. It was agreed that if we were of the view that costs were recoverable under the lease, then we would invite submissions under Section 20C. In particular, we were drawn to the terms of the lease and the fact that there was no mention of lawyers in the relevant clauses. It appears to be accepted that there are two clauses in the 1994 lease which may give rise to a liability the first which is at paragraph 3 of the fourth schedule which says as follows: "*The service charge may include the proper and reasonable fees of any surveyor, agent or accountant employed by the landlord for the purposes of managing the estate and preparing any accounts relating thereto or the running thereof.*" The other clause relied on by the Applicants is at paragraph 13 of the sixth schedule which says as follows: "*In the management of the estate and the performance of the obligations of the landlord hereunder to employ or retain the services of any employee, agent, consultant, contractor, engineer or professional adviser that the landlord may reasonably require.*" We were referred also to the Court of Appeal case of *St Mary's Mansions Limited v Limegate Investment Company Limited and Valerie Sarruf and others [2002]EWCA Civ 1491* and the Court of Appeal case of *Sella House Limited v Martin John Patrick Mears [1989]WL649695* where judgments were given assisting in the termination of the lease enabling recoverability of legal costs.

45. Following Miss Gray we heard from Mr Cunliffe. His view was that the suggestion that payments had been made by BD and Mr Mirza was a bad point. There was no suggestion that they had been operating for their own pecuniary benefit and the charges are all raised on invoice to TM. If they are not recorded as a director's loan, then this was just an example of poor record keeping. There was no evidence of any benefit to BD in paying the costs himself. He apparently had tenanted properties and it was too great a leap to say that if he paid them himself that constituted a gift. This applied also for Mr Mirza who was an agent for TM and for BD and there was no basis to find that the payments were made on behalf of the company and constitute loans whether recorded or not. The question is whether or not they were reasonable and just part of the accounts and this is relevant to the Tribunal's impression. It was, Mr Cunliffe said, no evidence of any form of money making scheme. Miss Dore seems to suggest there was some form of scam but this was badly organised and evidence of that is the AZK invoices where there appear to be no mark-up. AZK has gone into liquidation. There was no evidence to show that there was anything untoward and there was unequivocal denial about Mr Mirza and BD being friends. There are indeed no long standing friendships involved. Thakrar and Co had introduced BD to Mr Shah the accountant and matters had progressed from there.
46. The evidence adduced from Miss Dore was insufficient to mount allegations about the frequency and the standard of services. Four hours' cleaning may have been insufficient time but if the service charges are not paid then the lessees have to expect a poor standard. The photographs are a snap shot only and show no conclusive evidence. Mr Cunliffe took us through some of those photographs. On the question of the assignment, he told us that the right to collect the monies rested initially with BD. The assignment in equity assigned this to the new landlord but no notice of assignment was given which is different to the Buckingham Gate case. The assignment happened in equity. The covenant, he said, runs with the lease and the assignment under paragraph 9 requires that notice should have been given saying that TM should still receive the rent. No notice of such assignment was given and accordingly Section 141 still applies. He accepts that in equity there has been a transfer and that TM must be a party to BD's case. The consolidation, he said means that that decision is binding on all parties and that therefore TM is a party to the consolidation proceedings once notice is given. The cause rests with Mr Dhillon in law, he remains entitled to receive the money, the only question is whether or not he can join TM as a party to the claims to protect the leaseholders. BD is seeking an order from the Court/Tribunal and it was the submission of Mr Cunliffe that if whatever is required to enforce this right is covered by the consolidation and that TM will be bound. In this regard he considers that the Three Rivers case supported his position.
47. On the question of costs, he asked us to consider the 1994 leases as a whole and that professional adviser could include lawyer. Indeed, it must. "Management of the estate" must include collection of the service charges and performance of the obligation. In his view, therefore, costs were recoverable under the provisions of paragraph 13 of schedule 6.

THE LAW

48. The law applicable to this case is set out in the appendix attached.

FINDINGS

49. There are a number of matters for us to consider and to make findings upon. We will, however, deal firstly with the service charge issues and our findings as to the payability and reasonableness of various items. We have set out on a schedule attached those items of service charges that we have been asked to consider with the actual costs claimed for both years and the amounts that we have allowed. We will go through each year but where we find a commonality in respect of the disputes our findings we will record it in that way. In the year 2013/14 there are a number of items of expenditure set out under the actual cost column at page 166 of the bundle. Going through those, we make the following findings:

- a. On the accountancy charge we consider a charge of £840 for both years to be a reasonable cost. The accounts are fairly full, containing all that one would expect and in truth no real challenge was raised to these items by Miss Dore. Indeed, it is appropriate to record there was throughout very little evidence, if any, of any comparable quotes that we could utilise to say that any particular item of costs being claimed were excessive.
- b. Continuing with the 2013/14 accounts the next items of expenditure relates to the automatic gates where a charge of £2,500 was sought. The idea of an annual contract seems to be reasonable. However, the evidence of Miss Dore, which was not in truth challenged was that the wiring had been defective during the existence of this annual contract. We do not understand, therefore, why this was not attended to or at least flagged up for attention during this time. Doing to the best we can on the evidence before us and considering the subsequent costs, we would allow 50% of the amount claimed, therefore £1,250 is allowed for this item. For the following year we allow the charge of £1,980 at page 240. The annual inspection fee of £900 is reasonable and is allowed when contrasted with the previous years £2,500 for the annual charge.
- c. The next item of expenditure is insurance, which was not challenged and insurance details were provided. We therefore allow the amounts in each year of £2,121.65 in 2013/14 and £2,333.82 in the year 2014/15. On a per unit basis that seems to us to be perfectly reasonable.
- d. We then turn to the question of the cleaning and refuse collection costs. In 2013/14 the sum claimed is £1,886.30 and in the following year £2,339.96. One photograph has been provided, taken at a snap shot at page 541 which appears to be outside the period under dispute. No evidence has been produced challenging the quantum of this cost. It does not seem that £10 per hour is unreasonable nor is there any particular challenge to the time spent, although there was some dispute as to the frequency and what was actually done. However, no real evidence was put to us to challenge these figures. In the absence of any realistic challenge we allow the sums claimed for those two years.
- e. The next item of expenditure which was under challenge was the gardening. In 2013/14 there appears to be some duplication of a charge of £180 (page 181).

The gardening is generally charged at £100 per month which appears to be throughout the year. We would not consider that gardening would be necessary for the winter months. We find that six months at £100 gives a fair reflection of gardening costs based on the invoices produced. For the following year it appears that the gardening was carried out by Ken Handyman. The total recorded for the year is £2,488.33, compared to only £1,230 for the previous year. There is no real explanation for this doubling in costs and some of the charges seem excessive for example £454.33 for grass trimming on 30th July 2014. There are also charges of £300 per day on occasions with no explanation, see the invoice showing this daily rate for 24th and 25th May. This we find is excessive for gardening costs but in truth we had no comparable costing provided but the photographs were indicative of irregular attendance. Some expenses are beyond gardening, for example jet washing areas which appear in an invoice dated 30th June 2015 for £860, which we will allow. Doing the best we can on the information available we would allow £1000 for the standard gardening during the year and the invoice referred to above of £860.

- f. We then turn to the question of minor repairs which are recorded as contingencies but in 2013/14 the actual cost was £1,300.24 and in the following year £5,654.71. The sum claimed in 2013/14 is not inconsistent with the invoices produced and does not seem an excessive sum for a development of this nature. It was not in reality challenged. For 2014/15 this seems to include as we understand it a considerable sum spent in relation to the light fittings as well as over £1,000 incurred in dealing with leaks to guttering. In particular, an invoice from PDBC Limited indicates repairs to gutters of £294.20. However, a sum of £324 is recorded under the repairs column on the service charge account details. The balance appears to relate checking an alarm and replacing lights. There are in the main invoices to support these items. No particular is given other than the costs are excessive. It is clear there were some issues with regard to lighting in 2014/15 and to sums spent in replacing light bulbs and further inspections is quite high. It is clear that in May 12 new light fittings were purchased and it would appear that they were subsequently fitted. That in itself comes to over £1,400. In the absence of any compelling challenge and with invoices supporting these costs, we find that the amounts claimed for these two years are recoverable.
- g. We then turn to the door entry system. In the year 2013/14 the sum is £1,095 and represents the costs we were told of Mr Dhillon having his flat connected as he had refused to be involved in the initial set up. The following year there is no charge. The cost being claimed seems to be excessive. If one considers the second bundle at page 24 this gives a cost of around £110.50 per flat for the inclusion of a new system in 2012. Allowing for some uplift it seems to us that to carry out a repair should not exceed something in the region of £125 and that is the amount that we will allow in respect of the door entry system for 2013/14.
- h. The next item of expenditure is landlord's costs of electricity. These appear to be evidenced by the invoices. There is some confusion over the £451.48. There is clearly an invoice for this amount at page 213 of the bundle which appears to have been paid it would appear on 12th June 2014. In that regard there is an email from Actius at firstlocateleads.co.uk which records the successful payment by Mr Mirza in the sum of £451.48 and it is said that this payment relates to the electricity account. We believe this to be a debt collection agency. There is no challenge to this, the figures tie in and we therefore allow the

amount claimed in this year. For the following year, two invoices are produced, one showing a current balance of £295.60 and the other a current balance of £182.12. These two amounts add up to £477.72 and there are no other invoices to support any other matters. We appreciate this is only for part of the year but in the absence of invoices we are only prepared to allow for £477.72 for the electricity in the year ending June 2015.

- i. Management fees are in our findings caught by the provisions of Section 20 of the Landlord and Tenant Act 1985. No application for dispensation was sought. Accordingly, the amount claimed is limited to £100 per property per annum and we therefore limit the management charges to that amount for each year.
- j. The next items of expenditure that we needed to consider was the crime report for which a claim for £200 is sought in the year 2013/14 but does not appear in the following year's accounts. We do not consider that this is a charge that should be met by the leaseholders although it is fair to say that the cost was not really challenged. There was no real evidence of any criminal problems and no crime report was produced. No time spent has been recorded and in those circumstances, therefore, we disallow the sum of £200.
- k. The next item is that of pest control where in the year 2013/14 £640 is sought and in the following year the sum of £270. We have no evidence as to what contract was entered into by AZK to give rise to the claim for £640. The invoice produced is at page 189 of the bundle and merely refers to a pest control annual contract for £640. No contract is produced and in those circumstances we are not minded to allow that sum at all and it is, therefore, dismissed. In the following year, there are invoices to support the £270 claimed and although there is some duplication it is very limited and not in our view sufficient to interfere. Accordingly, the sum of £270 is allowed.
- l. Another item of expenditure is a leaseholder meeting in the year 2013/14 which is supported by invoices from NM Shah and Company. The first is at page 171 which is for the sum of £500 in connection with the company meeting advising the company on accounting statutory matters and other company matters. The second invoice to make up the amount claimed is at page 203 where a similar sum of £500 is sought and this in connection with arranging an introduction to Lloyds Bank for the purposes of opening a bank account for property management and other issues. These are disallowed as we do not consider the time spent related to service charge issues. It would seem that included within the meetings are site visit costs of £150 relating to it appears five attendances to repair a notice board and one to view the CCTV security arrangements. The damage caused to the noticeboard is evidence of the disharmony within the block and the somewhat unreasonable actions of the parties. It seems to us that the repairs to the noticeboard could have been undertaken at the time when the normal monthly site visits were to be completed. Doing the best we can we are prepared to allow half the amount claimed which is £75.
- m. We do not consider that the bank charges should be payable. There is no evidence to show what these expenses were or how they were incurred. No contract with the bank leading to an indication as to bank charges has been provided to us and in those circumstances we do not accept that they are a service charge recoverable from the leaseholders.
- n. We must also deal with the question of call outs and site visits. In the year 2014/15 the sum of £1,083.76 is claimed. This appears to be made up of £720 for attending on site following a call out it is said by Miss Dore and various

other attendances dealing with the provision of information to leaseholders perhaps by way of telephone. In addition, also, there was a sum paid for a plumber to inspect in the amount of £245.76 which we are prepared to allow as there is an invoice at page 272 from PGS setting out the total sum for fixing a leak to the soil pipe and other issues relating to condensation in the cold water main. This sum was not in reality challenged. The remainder of the charges for that year we disallow as the invoice giving rise to the claim for £471.60 refers to various calls to directors and leaseholders and a meeting with directors and solicitors in Southall. The telephone attendances seem to us to be something that should fall within the normal management arrangement and the meeting with the director and solicitor in Southall has no evidence to link this as a service charge liability. Insofar as the £720 is concerned at page 259 of the bundle this is a charge that merely says inspection police report from V Dore £600 plus VAT. There is no additional breakdown given and although Mr Mirza in his evidence suggested he was there half a day we have no idea why this has arisen or why this was a charge that would not fall within the normal management remit. No clear breakdown on the invoice is available to us and in the absence thereof we disallow the sum of £720 leaving only the amount of £245.76 as payable for the year 2014/15.

- o. As to fire risk assessment the only sum claimed is £240 for Amax safe and secure, which is not challenged. Likewise the general expenses which only amount to £34.51 and were not the subject of challenge at the hearing.

50. That we consider concludes our findings in respect of the service charges and as we have indicated they are set out on the attached schedule for ease of understanding.

51. We then turn to the other questions raised of us and the first we will deal with is the recoverability of service charge monies by BD from those leaseholders who are the Respondents to his action.

52. We have set out above the provisions of clause 9 of the reversionary lease. It is quite clear from that wording that the intention was that the rights to recover the service charges would continue to rest with TM until such time as the individual leaseholders had taken leases from BD following the enfranchisement. We have considered the case of *Re King* and our colleagues' decision in the *Buckingham Gate* case. The difference in this case and the *Buckingham Gate* case is that no notice of assignment has been given by BD to any of the other leaseholders. We accept that Section 141 of the Law of Property Act 1925 would ordinarily result in BD being able to recover the service charges but we are aware, and take into account, the words of Upjohn LJ saying that the parties can change this arrangement, a finding which found support with our colleagues in the *Buckingham Gate* case. Mr Cunliffe in his submissions to us says that the matter can be corrected by TM becoming co-applicants with BD in his proceedings and that this has happened as a result of the consolidation. We do not agree with that proposition. The directions consolidated the various claims made by TM and by BD so that those separate actions taken by both applicants became one action by TM and one action by BD. It did not consolidate the claims further than that. What it did was to arrange for those cases to be heard at the same time because the facts were pretty much the same. In those circumstances, therefore, we conclude that the provisions of clause 9 of the lease prohibit BD from recovering the service charges from the Respondents. However, we suspect that may be something of a

pyrrhic victory for those Respondents and would urge that no unnecessary proceedings subsequently flow. We were told during the course of the hearing that BD had settled the service charges. Much was made of the fact that apparently no formal demand had been made of him. We accept that lessee is not obliged to pay monies unless and until a demand is made. That does not mean, however, a lessee cannot make payments in respect of costs that have been incurred. We do not consider there is an argument that because some of the expenses may have been met by BD or Mr Mirza that this somehow releases the lessees from a liability to pay. Both gentlemen would appear at least to be agents of TM who have incurred the liability even if it has been paid by another. In the circumstances the monies we have determined are due are payable subject to the point we make below.

53. The findings that we have made in connection with the service charges we believe should stand just as much in the TM case as they do in the BD case. However, if it is necessary for TM to be joined as a party in BD's case that we think needs to be dealt with by the County Court. However, it seems to us there is little to be gained by the Respondents making BD jump through hoops to get the correct party to sue them. Miss Gray conceded the provisions of Section 20B of the Landlord and Tenant Act 1985 did not apply and in those circumstances if correct demands are issued then the monies that we have found to be due and owing should be paid by the Respondents to the BD case. As we indicate it seems to us that would just incur unnecessary costs and expenses when the matter is capable we believe of being resolved without that. It is, however, for the parties to decide but we take the view that our findings made in respect of the reasonableness and pay ability of the service charges should stand for both cases.
54. As to the management agreement which we have determined was a qualifying long term agreement, a view we believe both sides agreed with. No application for dispensation has been made. This is somewhat surprising given that this was clearly an issue. Equally we are somewhat surprised that before the matter got to us some application had not been made to the County Court to join Tower Mansions into BD's case.
55. We need also to consider the recoverability of costs of these proceedings. We have borne in mind the two authorities, St Mary's Mansions and Sella House. We have noted the comments made by the learned judges. The two clauses that are relevant we have referred to above. Clause 3 of the fourth schedule makes no mention of any legal costs. It is specific as in fees of surveyors, agent or accountant employed by the landlord for the purposes of managing the estate and preparing accounts. Accordingly, it seems to us that the only clause that can assist the landlord in this case is clause 13 of the sixth schedule where the costs incurred refer to the management of the estate and the performance of the obligations of the landlord hereunder. There is clear authority not least the Sella House case which indicates the need to have fairly clear language if one is going to seek to include the ability to recover costs incurred against one lessee as a service charge against which all lessees have a responsibility. We cannot find that the wording in clause 13 of the sixth schedule can be read and construed as to persuade a lessee that it is clear they would have to contribute towards the costs incurred in suing another of their number who failed to comply with the terms of their lease. No reference is made to any legal adviser but merely professional adviser and we believe that it takes the wording of clause 13 too far to suggest that this would include the costs of lawyers

involved in the collection of service charges. For those reasons, therefore, and bearing in mind the long line of authorities which even now is being updated in the Upper Tribunal that the lease does not include the rights for costs to be recovered by the Applicants in either matter.

Andrew Dutton

Judge:

A A Dutton

Date: 23rd June 2016

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and 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.

Case Reference Numbers:

LON/OBE/LSC/2015/0381, 0383, 0397,0395, 0398, 0387, 0396, 0392, 0386, 0394 & 0396

Applicant	Tower Mansions Limited
Respondents	
Flat 1	Rom Summerskill
Flat 2	Nicola Jefferies
Flat 4	Vanessa Dore
Flat 12	Lo Yee Kam and Kong Wai Chun
Flat 14	Kenneth Li
Flat 18	Phillip Neil Norgate

Applicant	Mr Ballwinder Dhillon
Respondents	
Flat 6	Jagtar Shima
Flat 7	Bob Devades Samuel
Flat 8	Lamfat and Yeung Koon Lang
Flat 9	Muniamah Malai and Shun Mugam Malai
Flat 10	Robert Morland-Smith
Flat 15	Madame Khad Liew Bte Abdulla

Actual Costs 2013/14	Actual Costs 2014/15	Total Amount Allowed by Tribunal	
		2013/4 £	2014/5 £
Accountancy £840	Accountancy £840	840	840
Automatic Gates £2,500	Automatic Gates £3,480	1250	2880
Building Insurance £2,121.65	Building Insurance £2,333.83	2121.65	2333.83
Cleaning and Refuse £1,886.30	Cleaning and Refuse £2,339.96	1,886.30	2339.96
Contingency for Minor Repairs £1300.24	Contingency for Minor Repairs £5,654.71	1300.24	5654.71
Door Entry System and security £1095		125	
	Fire Risk Assessment £260		240
Landlord Cost of Electricity £451.48	Landlord Cost of Electricity £944.44	451.48	477.72
Landscape and Grounds Maintenance £1,230	Landscape and Grounds Maintenance £2,448.33	600	1860
Management Fees £4,737.70	Management Fees £5,040	1800	1800
Pest Control £640	Pest Control £270	0	270
Crime Report £200	General Expenses £34.51	0	34.51
Leaseholder Meetings £1,150		0	
Bank Charges £70	Bank Charges £212.37	0	0
	Call outs and site visits £1083.76		245.76
£18,222.37	£24,921.90	10,374.67	18,976.49