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

Case reference : **LON/00BG/2016/0480**

Property : **40 Ballinger Point, Bromley High Street, London E3 3EH**

Applicant : **Ms Brownhill of Counsel**

Representative : **Capsticks Solicitors LLP**

Respondent : **Melody Property Holdings Limited**

Representative : **Ms Curtis**

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

Tribunal members : **Judge O'Sullivan
Mr A Ring**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **28 June 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £29,143.93 is payable by the Respondent in respect of the major works invoice dated 29 January 2014.
- (2) The tribunal has no application for an order under section 20C before it.
- (3) Since the tribunal has no jurisdiction over statutory interest, county court costs and fees, this matter should now be referred back to the County Court Money Claims Centre.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of a major works invoice.
2. Proceedings were originally issued in the Northampton County Court under claim no. PBA0085877. These proceedings included both a major works invoice and general service charges. A defence was served which raised various challenges to the major works invoice but raised no challenge to the general service charges. The claim was transferred to this tribunal, by order of Deputy District Judge Perry on 2 December 2016. Deputy District Judge Perry referred 4 specific issues, in particular at (a) whether the external works invoices in the sum of £29,143.93 were reasonably incurred. As the general service charges were not challenged these were not the subject of the transfer order.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Directions were made dated 23 March 2017 which provided for the parties to take steps in the proceedings leading to the hearing. The Respondent however failed to comply with those directions, in particular direction 2, which required the Respondent to send a schedule stating which of the service charges were in dispute giving reasons why, to provide the landlord with alternative quotes and other documents, a statement of case and any signed witness statements upon which it relies. Following a notice of intended debarring the Respondent was barred and a notification sent on 20 June 2017. The notice provided at paragraph 3 that the Respondent may apply for the bar to be lifted pursuant to rule 9(5) or seek permission to do so by making an application in writing. The Respondent has failed to do so. The Respondent is therefore debarred from taking any further part in

the proceedings. It therefore remained for the Applicant to comply with the directions and to attend the hearing and prove its case.

5. On 26 June 2017, one day before the scheduled hearing, the Respondent made an application for a postponement. The Respondent's grounds were that in the light of the Grenfell disaster the proceedings should be delayed until such time as the "fire safety officers have completed all relevant tests and certificates produced". This was refused on 27 June 2017 on the ground, inter alia, that the tribunal had been provided with no information to suggest there was any connection with the Grenfell disaster and that given the Respondent was currently debarred it saw no merit in allowing a postponement in any event.
6. The Respondent has sent several communications to the tribunal in an attempt to put evidence before it. Most notably by email and letter dated 27 June 2017 it wrote to enclose evidence stating "since we have been debarred for not meeting the deadline and that you have taken a view on this, we would like to put our case of reasons to be considered". The tribunal confirms that as the Respondent is debarred those reasons have not been taken into account. It had remained open to the Respondent to apply for the bar to be lifted pursuant to rule 9(5) but it failed to do so.

The hearing

7. The Applicant appeared was represented by Ms Brownhill of Counsel at the hearing. Mr Mitchell, a leasehold officer in the employ of the Applicant also attended. The Respondent was not represented.

The background

8. The Property is located on the Bow Bridge Housing Estate. The Property is a high rise block constructed in the 1960s and comprising 11 floors. The block was transferred to the Applicant by way of a large scale voluntary transfer in March 2007.
9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant 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.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The issues

12. The works in question are a major works invoice in the sum of £29,143.93. By a transfer order dated 2 December 2016 Deputy District Judge Perry transferred 4 issues to the tribunal as raised in the defence in the county court as follows;
- (a) Whether the external works invoiced in the sum of £29,143.93 were reasonably incurred?
 - (b) Whether the Defendant was entitled to receive information regarding the sale of the car park land behind the Block in which the flats are situated?
 - (c) The Defendant contends that many flats around the area received funding from the Olympic Committee. Whether this has any bearing on the payability of the major works service charges demanded?
 - (d) Whether the external works invoiced in the sum of £29,142,25 were carried out to a reasonable standard?

The issues

13. The Applicant confirms that the amount sought in the County Court was made up of major works in the sum of £29,143.93 and service charge arrears at the time making a total of £30,623.12. Since then estimated charges in the sum of £1964.37 have accrued making a total of £32,587.49. The Applicant had asked in its statement of case that this amount be included in the tribunal's determination.
14. As this is a County Court referral our jurisdiction is limited to the matters referred and accordingly we are not able to include further sums for consideration which have since accrued.
15. It is noted that as recorded in the directions at the case management conference on 23 March 2017 Ms Curtis for the Respondent confirmed that the standard of the works was not challenged. Ms Brownhill also referred the tribunal to two recent emails from the Respondent to the Applicant which had been copied to the tribunal, in particular an email of 26 June 2017 which appeared to confirm that the works were not challenged.

Reasonableness of the works

16. The Applicant set out the background to the works in detail in its statement of case. The works in question were the subject of a

competitive tender with 5 contractors having submitted tenders although one subsequently withdrew.

17. An issue had been raised previously as to whether improvements had been included despite Poplar having informed the leaseholders that no improvements would be charged. The landlord confirmed that any such items would have been removed from the final account and this appeared to be the case on comparing the pre consultation meeting documentation which outlined the proposed works including proposed improvements and the final account. However in any case we satisfied that improvements are allowed pursuant to clause 5(o) of the lease.

18. The London Borough of Tower Hamlets uses rateable value as their main apportionment method. Floor area is used as an alternative method where there are no rateable values. However the Applicant says that as rateable value was last updated in 1973 it is regarded as generally undesirable method of apportionment. Poplar HARCA therefore changed to floor area when it took an LSVT of the Council's stock and has been used since 1999/2000 for the following reasons;
 - It is measurable
 - It is easily understood
 - It is widely used for service charge apportionments
 - It is permitted by leases which allow any reasonable basis
 - It can be calculated consistently for new dwellings/alterations
 - It was approved by a panel of residents after consultation
 - It can be corrected where appropriate and is therefore more reliable rather than RV

19. In July 2006 following a ballot of residents the Applicant arranged for Pellings Surveyors to carry out a stock condition survey for the Bow Bridge and Rainhill Way Estate properties. A copy of the report was exhibited to the statement which commented;

“investment is required to overhaul roofs and associated services; fabric repairs to arrest the continued decline of concrete and brickwork components; replacement of individual flat entrance timber doors; repairs to private and communal balconies; replacement communal balcony screens, services upgrades; substantial roof renewal is required

as the finishes are reaching the end of their economic life; upgrade to the existing door entry system; upgrading the communal ground floor entrance doors and making these secure. “

20. On 3 August 2009 a stage one notice under section 20 was served on all leaseholders in the block informing them of the Applicant's intention to carry out the works. On 10 May 2010 following completion of a public procurement the Applicant issued the Stage 2 notices. The Respondent raised no point on consultation in its defence in the County Court.
21. On 30 June 2010 the Applicant also began consultation on the complete renewal of the lifts as they had reached the end of their serviceable life.
22. On 12 June 2012 and 30 April 2013 notifications under section 20(B) were sent to all residents in respect of the external works and lift renewal. On 29 January 2014 an invoice for the works undertaken was issued to the Respondent. This provided a full breakdown of how the charge had been calculated and apportioned. The Respondent raised queries on 1 December 2015 and the Applicant replied on 10 December 2015.

Other issues contained in the transfer order

23. Although the Respondent has not served a statement of case for the sake of completeness the tribunal would mention the three other items which were the subject of the transfer order.
24. First, the Respondent had asked whether it was entitled to receive information regarding the sale of the car park land behind the block. We are satisfied that the lease makes no reference to the grant of car parking space or rights and accept the Applicant's submission that the car park land was hired out for general car parking to the general public. We therefore find that this is not relevant to the issue of service charges under the lease.
25. Secondly the Respondent contended that many of the flats in the area received Olympic funding. We do not consider that the availability of funding for different developments would have any bearing on the payability of service charges due under the Respondent's lease.
26. Lastly as far as whether the works were carried out to a reasonable standard is concerned Ms Curtis confirmed at the case management conference that the Respondent does not challenge the standard of the works.

The Lease

27. The Common Parts are defined by clause 1(10) as comprising “*any entrances, passages....and other areas included in the Title (NGL 320394) or comprising part of the Lessor’s Housing Estate*”.
28. By clause 4(4) the lessee covenants to “*pay the interim charge and Service Charge at the times and in the manner provided in the fifth schedule*”.
29. Clause 5(5) defines Expenditure of Service Charge as;
- (i) the main structure of the Building
 - (ii) ..
 - (iii) the Common parts
30. Clause 1.(1) of the Fifth Schedule defines the Total expenditure as “*Total Expenditure incurred...carrying out obligations under clause 5(5) of this Lease*”.
31. Clause 192) of the Fifth Schedule defines the Service Charge as being “*such reasonable proportion of the Total Expenditure*”.

The tribunal’s decision

32. We find the major works invoice in the sum of £29,143.93 to be reasonably incurred.

Reasons for the tribunal’s decision

33. We considered the consultation served under section 20 and found that there had been a valid consultation. We considered the tender report, and final account and found them to be in order. We were satisfied that the works had been carried out in line with the consultation documentation and noted that there was no challenge to the standard of the works.

Application under section 20C and for reimbursement of fees

34. There was no application for an order under section 20C.
35. At the hearing the Applicant also made an application for reimbursement of the hearing fees in the sum of £200. This was made

under Rule 13(2) of the Tribunal Procedure (First tier tribunal) (Property Chamber) Rules 2013 which provides that;

13.—(1)....

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

36. The power to award the reimbursement of fees is unrestricted otherwise than by the overriding objective.
37. The overriding objective provides that:

Overriding objective and parties' obligation to co-operate with the Tribunal

3.

—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2)

Dealing with a case fairly and justly includes—

(a)

dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b)

avoiding unnecessary formality and seeking flexibility in the proceedings;

(c)

ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d)

using any special expertise of the Tribunal effectively; and

(e)

avoiding delay, so far as compatible with proper consideration of the issues.

(3)

The Tribunal must seek to give effect to the overriding objective when it—

(a)

exercises any power under these Rules; or

(b)

interprets any rule or practice direction.

(4)

Parties must—

(a)

help the Tribunal to further the overriding objective; and

(b)

co-operate with the Tribunal generally.

38. Having regard to the overriding objective we are minded to make an order for the reimbursement of the hearing fees in the sum of £200 paid by the Applicant. The Respondent has failed to comply with directions which has resulted in its being debarred. It appears to have confirmed in correspondence with the Applicant that it no longer challenges the costs but has failed to confirm the same to the tribunal. At the same time it has sought a postponement of the hearing. As a result the Applicant has been put to the expense of instructing Counsel to attend on its behalf when such costs could have been avoided.
39. The Respondent may make submissions in relation to the application for reimbursement of fees within 14 days. If none are received the order will be made forthwith without reference to the parties.

The next steps

40. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court Money Claims Centre.

Name: S O'Sullivan

Date: 28 June 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.