



Case Reference : **LON/00AG/LSC/2021/0117**

Property : **19c Wolsey Mews, Kentish Town
London NW5 2DX**

Applicants : **Ms Zorica Mutadvic-Canak**

Representative : **In person with the aid of an in-
terpreter Miss Davis.**

Respondent : **JMPK Limited**

Representative : **Mr John Beresford of Counsel**

Type of Application : **The determination of the reasona-
bleness of and the liability to pay
service charges under section 27A
of the Landlord and Tenant Act
1985**

Tribunal Members : **Mr D Jagger MRICS
Mr S Mason FRICS**

**Date and venue of Hear-
ing** : **9th August 2021
By video conference**

Date of Decision : **24th August 2021**

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Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because the parties agreed the issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 567 pages, the contents of which we have noted. In addition, Mr Beresford submitted skeleton argument together with a bundle of authorities. The applicant emailed the Tribunal on the day of the hearing objecting to the late submissions of these documents. The Tribunal explained that it was quite normal practice for legally represented parties to submit such documents just before the hearing, The skeleton argument does not introduce new evidence but provides a summary of the case and indeed the Tribunal finds such documents extremely helpful. The Tribunal offered the applicant additional time if so required to read through the seven page document.

Prior to the hearing, Ms Canak requested an interpreter in order to assist her. Such a request was granted. Miss Davis attended the hearing and it was agreed she would interpret every word of the hearing on behalf of Ms Canak The Tribunal provided them 15 minutes before the start of the hearing for Ms Canak to explain the case to the Miss Davis.

Background

1. This is an application dated 16th March 2021 made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of their liability to pay and/or the reasonableness of service charges claimed by the Respondents for the years 2017-2018, 2018-2019, 2019-2020 and 2020-2021. The three elements being challenged are dealt with below . The total value in dispute stated in the application is £8,125 and the applicant has also made a Section 20C application and an application under paragraph 5A of section 11 to the 2002 Act.
2. On the 28th April 2021 Judge Hamilton Farey issued directions for this case. A further set of directions were issued by Judge Carr on the 8th June 2021 which extended the timescales for the various submissions
3. Within the bundle before us we had statements of case from the parties, together with replies. Various invoices, and expenses, bank statements, service charge accounts and a copy of the lease.
4. Since on or around April 2017, the respondent (JMPK) has been the registered freeholder of 224 Kentish Town Road and 19 Wolsey Mews London NW5 2DX

6. Since acquiring the building JMPK has engaged Robert Irving Burns (RIB) as its managing agents. At pages 5-52 of the bundle copies of the bank account statements for JMPK's client account shows an opening balance of £28,076.22 which comprises of the funds transferred from JMPK's predecessor following JMPK'S acquisition of the freehold interest.

6. The previous freeholder contemplated major works of repair and redecoration to the front elevation of the building and this landlord served each of the the leaseholders notices under Section 20 of the 1985 Act in respect of these works which are at pages 147-149 of the bundle. These works however did not proceed and subsequently, when JMPK acquired the freehold the scope of the works was extended to the front and rear elevations of the building. A new schedule of works was prepared by surveyors and the Section 20 process had to be restarted afresh. The leaseholders contributions towards these anticipated major works paid to the previous freeholder was transferred to JMPK and it is stated this sum stands at £17,994.82 which we will come back to later.

6. The subject property is Flat 19C Wolsey Mews ("the property") and is described as being a third floor one bedroom flat which forms part of Victorian building containing three flats on the first, second and third floors. There is a commercial property on the ground floor and basement which is let to Waitrose. The residential area has its own entrance and common parts comprise entrance corridors and staircase to the upper floors.

7. The Applicant is the present leasehold owner of Flats 19C which she holds under a long lease.

The Lease Arrangements

8. The Lease defines the 'parts of the building comprising the flats and the ground floor access thereto' as **the property**. The service charge provisions are to be found at clause of the lease which provides;
 - (i) *The service charge shall consist of one third of the costs expenses and outgoings and matters mentioned in the fourth schedule hereto (hereinafter called the 'the service charge expenses'*

 - (ii) *the service expenses for each calendar year shall be estimated by the Lessor's managing agent (hereinafter called the "managing agents") or if none the Lessor (whose decision shall be final) as soon as practicable after the beginning of the year and the lessee shall pay the estimated contribution by two equal instalments on the 25th day of March and the 29th day of September in that year.*

 - (iii) *As soon as reasonably may be at the end of each calendar year when the actual amount of the service expenses for the said year has been ascertained the Lessor shall give notice thereof to the lessee and the Lessee*

shall within 14 days pay the balance due to the lessor with any amount overpaid'

- 9 The Fourth Schedule sets out the matters which comprise “*service expenses*” which includes inter alia “*The expenses incurred by the lessor in carrying out his obligations under clause 6 of this lease*” .
10. Under clause 6 (c) of the lease , JMPK is obliged “ maintain repair re-decorate replace and renew as necessary
 - (i) *the roofs(including the roof immediately over the flat) foundations external walls and main structure of the property and the chimney stacks gutters and rainwater pipes thereof*
 - (ii) *the gas and water pipes sewers drains and electric cables and wires in under and upon the property and enjoyed and used by the lessee in common with the owners and occupiers of the other flats in the property.*
 - (iii) *the entrance of the property from Wolsey Mews the external staircase leading to the main entrance door of the property and the entrance hall and staircases of the property leading to the flat.*
 - (iv) *the security light situated in the entranceway to the property.*
- 11 Under clause 6 (c) of the Lease JMPK is obliged “ *decorate the exterior of the property heretofore or usually painted and in particular will paint the exterior parts of the property usually painted with two coats at least of good quality paint at least every four years*”
- 12 The sinking fund provisions are dealt with under paragraph 8 of the Fourth schedule and we shall consider this matter later in the decision.

Relevant Law

6. This is set out in the Appendix annexed hereto.

Decision

13. The application in this case was heard by remote video hearing on 9th August 2021 January 2021. The Applicant Ms Canak, appeared in person with the assistance of Miss Davis an interpreter. The Respondents: were represented by Mr Beresford of counsel. On the day before the hearing a skeleton argument was received from Mr Beresford which was shared with the applicant.

The Years in dispute

- 14 2017-2018
2018-2019

- 2019- 2020
- 2020-2021

- 15 The Directions prepared by the Tribunal on the 28th April, amended by Judge Carr clearly stated *'copies of the bank accounts, showing the deposit of the reserve/sinking fund and details of the expenditure/income into that account especially in relation to the major works. At the same time, the landlord must supply copies of the service charge accounts for the years in question, demands for payment and budgets prepared as per the lease(if applicable) together with s20 documentation, tenders and invoices/receipts for the works.* The Tribunal is satisfied that the respondent complied with these disclosures.
16. At the start of the hearing the Tribunal asked Mr Beresford to provide a background and history for this case with particular reference to the previous three attempts at complying with the s20 schedule of works together with a brief resume of the accounting and budgets for such works which of course to this date have not taken place.

The Applicants case

17. Before giving her evidence the Applicant was asked by the Tribunal to consider the three specific matters in her application as these are the only matters to be determined by the Tribunal. In fact the applicant gave evidence for the greater part of the morning and a short period after the lunch interval.
 - (a) The applicant sets out a statement of case and evidence found in the bundle at pages 246-260. The evidence includes supporting documents and a detailed final response to the Respondents Statement of case.
 - (b) The Tribunal carefully considered the Applicant's statement and the main points are considered in her evidence. Essentially, the Applicant's principal case appears to deal with the hand over between the former freeholder and JMPK Ltd and an alleged sum of £11,700 paid over to the previous managing agents which cannot be accounted for by the current managing agents RIB.
12. The Tribunal provided the Applicant the opportunity to identify the various matters in her statement of case. The applicant agreed that a landlord should comply with RICS Code of Practice in connection with the collection of a sinking fund in order to reduce a large financial burden to the leaseholders when major works are carried out. In fact, the applicant stated she was not against the introduction of such a sinking fund to provide a fund for future maintenance. Where the applicant disagrees is that there has been an element of double counting and she is against the manner in which the sinking fund was 'unilaterally' demanded. She considered this to be completely one sided.

13. The applicant then when on to run through the lack of accounts, the nature of the accounts where funds were held and transparency during the handover with missing documents and no audited accounts.
- 14 The applicant further contended that the respondent had not complied with the directions insomuch that no bank accounts have been provide and a lack of information in connection with transfer of the funds held for the major works. The Tribunal disagree with this assertion as the bundle does include such financial documents and Mr Beresford took the Tribunal through each of these documents.
- 15 The applicant considers the handover was not transparent and she took the Tribunal through various schedules of accounts. It is alleged by the applicant that she paid over £11,700 to the previous managing agent for the proposed major works which cannot now be accounted for. So the applicant wants to know what happened to these monies and why haven't they been allocated into her service charge account.. She contends that she has contacted RIB on many occasions to get an answer to this question without success . This is somewhat borne out by the findings of The Property Ombudsman who directed RIB pay£200 in compensation to the applicant. This award was for the service shortcomings of RIB. The Tribunal therefore has some sympathy for the applicant in this matter, however, based upon the evidence before it, the Tribunal is unable to confirm whether this sum was in fact paid over to the previous managing agents. In fact, the analysis on page 286 of the bundle shows the applicant to be £4,400 in arrears upon handover. What the Tribunal does know is that there was an opening balance of £28,076.82 with a sum of £17,994.82 ring fenced in a separate ledger. The Tribunal would consider it to be best practice for RIB to use its very best endeavours to allocate each of these sums to the three separate leaseholders. Surely this must be the best way forward particularly given the fact that the applicant has not paid any service charges since 25th April 2017 (page 140) This is a building in need of significant major works and if this dispute is allowed to persist the fabric of the structure will continue to become dilapidated and the maintenance and repair costs will increase. This however is not a matter that the Tribunal is being asked to consider
- 16 The three specific matters set out in the application that the Tribunal is being asked to consider are as follows:

The Sinking Fund Contributions

17. The applicant denies that the lease allows JMPK to demand a contribution towards the sinking fund .When we look at paragraph 8 of the Fourth schedule it states

‘Such sums as shall be estimated by the managing agents to provide a reserve towards the costs expenses and outgoings and matters mentioned in the foregoing paragraphs of this Schedule which the managing agents... anticipate will or may arise during the three years that

follow such estimation and during recurring of the three years thereafter'

- 18 The Tribunal considers this to be a clause that makes it very clear the landlord has the right to demand a 'reasonable sum' from the tenants and £1000 per annum is considered to be reasonable given the up to date tenders for the major works and therefore this is allowed. It should be noted that the applicant has not paid any of the sinking fund demands.

The on account demands for the periods: 24th June 2016 to 28th September 2016 (£1275): and 29th September 2016 to 24th December 2016 (£2250) Total : £3,525.

19. The applicant states she was invoiced for these costs on 12/02/2019 three years after the s.20 notice and leasehold payment schedule were issued by previous freeholder in May 2016, for the proposed major works that did not take place. In other words, the applicant contends she has been invoiced twice for the sums in question.
20. Mr Beresford took the Tribunal to the demand issued on 12 February 2019 (pages 466-467) This demand was for a zero balance as the applicant had failed to make payment for these amounts when such demands were previously raised by the former landlord. The Tribunal was told a zero balance was made for these unpaid sums was to add it to RIB's accountancy system as previous arrears and to ensure it had the correct balance going forward. In the first instance, the Tribunal agrees with the respondent and the amounts were in fact invoiced on the 18th March 2016 and have not been further demanded on the 12th March 2019.
- 21 Further, the applicant disputes that such sums should be demanded as no major works have been undertaken to date. Mr Beresford took the Tribunal to Section 19(2) of the 1985 Act which provides, that in respect of an advance demand (that is, a demand for a service charge which is payable "before the relevant costs" are incurred) must be "**no greater amount than is reasonable**"
- 22 The Tribunal considers these demands to be reasonable, particularly given the fact that the previous freeholder had every intention to undertake the major works and indeed notices under s.20 of the 1985 Act were served. The fact that the works were not carried out does not make such a demand unreasonable. Otherwise, under the terms of the lease Clause 6(c) and 6(f) the leaseholder is liable to contribute in advance towards the cost of works contemplated by the freeholder.

The £600 cost of the surveyor included in the balancing demand for the year 26th March 2018-25th March 2019

- 23 The applicant disputes this fee as she contends that this fee was paid in 2016-2017 by the previous landlord in connection with the preparation

of the tenders for the previous s.20 proposed works. In fact, this fee has been raised in connection with the preparation of the tender process in connection with revised s.20 major works which now involve both the front and rear elevations. This has been undertaken by a company of Chartered Surveyors and ensures value for money to the leaseholders. Therefore, this fee is payable and is not duplication.

Conclusion

- 21 Whilst, the Tribunal has every sympathy for the Applicant in this matter, on the basis of the material before the Tribunal, the Applicant has not made out her case in the three parts of the application. The service charges alleged to be owing are payable for the years in question.

Costs - Section 20C & Fees

22. In the application, the Applicant invited the Tribunal to make an order preventing the Respondent from recovering its costs incurred in these proceedings. as part of the service charge.
23. This matter was not examined at length during the hearing. However, considering the success achieved by the Respondents in this decision. The Tribunal considered it just and equitable not to make a Section 20C order preventing the Respondent from recovering the costs it had incurred in these proceedings.
24. For the same reasons, the Tribunal determines that the Applicant is to bear the costs she has incurred to have this application issued and heard.

Tribunal Judge D Jagger

24th August 2021

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.

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) a leasehold valuation 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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) ...