



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

Case Reference : **LON/00BK/LSC/2019/0377**

Property : **Flat 92 Parke Lorne, 111 Park Road,
London NW8 7JL**

Applicant : **Mr. Alok Gupta**

Representative : **Mr. Berger of BFL (Block) Management
Limited**

Respondent : **Tanderra Holdings Limited**

Representative : **Mr. Fitch for Gold Plaza Properties
Limited**

Type of Application : **Service charges**

Tribunal Members : **Judge Tagliavini
Mr. A Harris LLM, FRICS, FCI Arb**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
27 February 2020**

Date of Decision : **12 March 2020**

DECISION

The application

1. This is the tenant's application made under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking the tribunal's determination of the reasonableness of and the liability to pay service charges incurred in the service charge years 2017, 2018 and the estimated charges in 2019.

The premises

2. The subject premises comprise a flat situate in a purpose-built block of 17 residential flats with 2 commercial units on the ground floor; two commercial units on the first floor and one commercial unit on the second floor. There was one service charge for the 22 units. In addition, there is a 'flat' in the basement which was previously used as a porter's flat and is now used by the landlord respondent as residential and as office accommodation. The tribunal was provided with a lease for Flat 14 (92) dated 15 October 1985 made between Halla International Limited and Champion Standard Investment Inc. for a period of 999 years with effect from 29th September 1985 at a peppercorn rent.

The issues

3. The service charge years 2017, 2018, and 2019 (estimated) and following issues were identified as being in dispute:
 - (i) An earlier application by the applicant seeking to challenge the service charges for the period 2013 to 2017 resulted in a mediation agreement being entered into by the parties. The parties agreed that the remaining issue in respect of the 2017 service charges and the outstanding issue before the tribunal, is whether there was a surplus of funds and if so, whether on a construction of the lease, the surplus can be retained for reserved expenses.
 - (ii) Whether the apportionment of the service charges is reasonable.
 - (iii) The reasonableness and payability of the service charges for 2018.
 - (iv) The reasonableness of the estimated service charges for 2019.
 - (v) Whether an order under section 20C of the 1985 Act should be made.
 - (vii) Whether an order for the reimbursement of the application and hearing fees should be made.

The hearing

4. The tribunal was provided with an indexed bundle of documents by the applicant. The respondent, however, provided no documents or written

evidence on which it sought to rely, although Mr. Fitch gave oral evidence to the tribunal. In addition to giving oral evidence on behalf of the applicant, the tribunal also had a witness statement signed by Mr. Berger on behalf of Mr. Gupta dated 28 November 2018.

5. At the outset of the hearing the tribunal were informed by Mr. Fitch that sinking fund charges/amounts had not been applied to the applicant's account. It was also agreed by the parties that the appropriate service charge percentage is 8.65%.
6. As the respondent had failed to provide any written evidence or documentation, the tribunal found it expedient to hear the applicant's evidence on each issue in dispute sequentially with Mr. Fitch responding after evidence had been given a particular issue.
7. Mr. Berger told the tribunal that he had found it difficult to obtain detailed information from the respondent in respect of the service charges he now challenged.

2017

Cleaning materials

8. The applicant queried why there were separate amounts charged in respect of cleaning supplies and asserted that these costs should be part of the cleaning costs. Mr. Fitch explained that there was no written contract for cleaning and that the cleaners are paid directly for their labour and provided with cleaning materials. Mr. Berger accepted this explanation and this issue was therefore agreed by the parties.

Electricity charges

9. Mr. Berger stated that these charges of over £21K were very high and should be in the region of £14K but had no documentary evidence to support his assertion. Mr. Fitch explained that there are two lifts in the building as well as communal areas and a lobby and a fan heater in the lobby which is activated when the communal front door is opened. Of the two staircases serving the building, one had no natural light and therefore artificial lighting was constantly required. A SMART meter had been installed in 2018 and the 2017 were estimated charges.

Works to Flat 52

10. Mr. Berger told the tribunal that the cost of the works, including the fitting of a new floor in the sum of £7,110.74 carried out in this Flat were the responsibility of that lessee to pay and should not have been added to the service charges. Mr. Fitch told the tribunal that these works had concerned a water leak and therefore it was necessary to "track and trace" the source and remedy it as it was

likely to go through communal areas. Mr. Fitch stated that the insurance policy excess for water damage was £10,000 and therefore the cost of these works was added to the service charge as he had been advised by his insurers CDC UK that this work was the landlord's responsibility under Schedule 2 of the lease. Mr. Fitch told the tribunal that Flat 52 was refurbished to a high standard and the damaged floor had been replaced 'like for like.'

Porter's costs

11. Mr. Berger challenged the cost of the works to Basement Flat said to be used the Porter in the sums of £2,007.99; £833.77 and £483.37 and submitted that there was no provision in the lease for a Porter's Flat although accepted that the costs were reasonable. Mr. Fitch told the tribunal that there used to be a resident porter but now the role was carried out by three non-resident porters who had a reception desk with an office behind in the communal lobby and who worked in shifts 24/7. Mr. Fitch told the tribunal that the old Porter's Flat in the basement had been refurbished and was now used by him as an office and for occasional overnight stays when on building related business. Mr. Fitch stated is in effect a small studio flat with a spiral staircase connecting kitchen to the bedroom/ensuite.

Building works

12. Mr. Berger queried the cost of building works in the sum of £9,840 carried out by Aseurer Ltd and invoiced on 09/08/2017. Mr. Fitch told the tribunal that this was in connection with guttering works and works to the ceiling of the covered garage which had been in danger of collapse. Mr. Fitch confirmed that no section 20 consultation notices had been sent out to the applicant. Mr. Fitch accepted that the cost of these works exceeded £250 per leaseholder and that there had been no application to the tribunal to dispense with the consultation requirements.

Accountancy fees

13. Mr. Berger told the tribunal that based on his own experience these were too high at £1,800 and should be in the region of £600.

Insurance

14. Mr. Berger stated that these costs of £28,643.32 was too high in comparison to the 'like for like' quote he had obtained in the region of £22K. Mr. Fitch stated that the alternative quote obtained by the applicable was not 'like for like' as it did not include employer's liability insurance. Mr. Fitch accepted however that the insurance charge was unreasonable and since then a survey had been carried out in 2018 and a new way of formulating the insurance costs had been adopted.

Management fees

15. Mr. Berger told the tribunal that these at £3,000 per month (including VAT) are unreasonable and represented a long-term agreement between Gold Plaza Limited and the landlord. Mr. Berger submitted that these costs should reasonably be in the region of £450 per annum per flat thereby total £9,900 (plus VAT) per annum. Mr. Fitch told the tribunal that he was self-employed and sub-contacted to Gold Plaza to carry out its management obligations on a 24/7 basis and to deal with any emergencies. Mr. Fitch stated that he does not have a written contract with Gold Plaza.

Sundry charges

16. Mr. Berger queried the charges of £6,742.22 and £3,950.00 which both appeared under invoices dated 31/12/2017. Mr. Fitch was unable to explain why these charges had been incurred and fell back on his submission that as the accounts had been certified they were recoverable costs.

Professional fees

17. These amounted to £330 which were said by Mr. Fitch to have been incurred when he had sought legal advice when considering terminating the Head Porter's residential employment which had been subsequently acted upon. Mr. Berger accepted that these fees were allowable under the terms of the lease.

Pest control

18. Mr. Berger queried the sums of £900 and £900.30 spent on pest control and asserted that the landlord had exceeded his authority. Mr. Fitch told the tribunal that mice had been reported in 8 of the flats and in the common parts and had acted upon as they needed to be got rid of, as soon as possible.

Wages and salaries

19. Mr. Berger queried the sum of £93,722.00 that was charged in respect of wages and salaries. Mr. Fitch explained in his oral evidence that he was contacted to Gold Plaza to manage the building but did not have a written contract and that £21K is allocated to a Head Porter. Mr. Fitch stated he carries out a Head Porter's duties alongside the 3 or 4 other porters employed on an hourly rate at a minimum of £7.83 per hour. Mr. Fitch also stated that this sum included amounts for overtime and Bank Holidays as well as company pensions.

2018

20. In addition to the heads of service charges challenged in 2017 and repeated in 2018, the applicant also sought to dispute the reasonableness and liability to pay a number of other items.

Garden wall work

21. Mr. Berger challenged the reasonableness of the cost of these works in the sum of £2,600 and queried what work had been done. Mr. Fitch told the tribunal that there is a communal garden area which is mainly gravelled with a car park. These areas required weeding.

Cleaning costs

22. Mr. Berger queried the costs of £1,064.00 which were attributed to an individual flat. Mr. Fitch agreed that this item should be removed from the service charges and billed to the lessee.

Bin hire

23. Mr. Berger queried the basis of the charge for this item and asserted that these two paladin bins should be charged to the commercial units only. Mr. Fitch told the tribunal that these bins were used for both residential and commercial waste and charged accordingly.

Lift maintenance

24. Mr. Berger queried the cost of these works in the sum of £5,814.00 as no invoice had been provided. Mr. Fitch explained that the lifts were old and regularly broke down.

Rates

25. Mr. Berger queried what the sum of £1,093.00 represented. Mr. Fitch told the tribunal that these were in respect of communal areas, basement storage areas, the Porter's (basement) flat, the internal and external car parking areas.

Professional fees

26. Mr. Berger queried how these charges in the sum of £4,416.000 had been incurred and the reasonableness of them. Mr. Fitch explained to the tribunal that Mandy Larcombe and Lousie McArdle were employed by Gold Plaza to carry out book-keeping duties for it.

Telephone charges

27. Mr. Berger queried what these charges of £1,909.00 related to. Mr. Fitch explained that the building is provided with a telephone landline on the porter's desk and a line is provided for Gold Plaza management and a Broadband service to the building.

Printing, postage and stationery

28. Mr. Berger queried why these charges of £74.00 were a service charge expense. Mr. Fitch explained to the tribunal that he uses stationery and postage as part of his services.

Insurance

29. Mr. Fitch told the insurance that the building was insured for £4m+ which is based on a figure that was agreed in 2018/19.

2019

30. Mr. Berger told the tribunal that at present there were no actual invoices for the 2019 service charges but that the estimated costs had increased for nearly all heads of service charges. Mr. Fitch told the tribunal that the estimates were set by the freeholder after conversation with the book-keepers and not by Gold Plaza. Mr. Fitch also told the tribunal that there was currently £300k in the Reserve Fund and that the building would require recladding in the future which was likely to cost in the region of £500k.

The tribunal's decision and reasons

31. The absence of any written statements or any other documentary evidence from the respondent, the tribunal found the majority of the applicant's challenges to the service charges to be more persuasive than Mr. Fitch's unsupported oral evidence to the tribunal. Therefore, the tribunal makes the following findings.
32. The tribunal disallows the 2017 cost of the works to Flat 52 in connection with the leak and the associated costs of repair and reinstatement, as in the absence of any proof as to the cause of this leak, these costs are properly payable by the lessee concerned.
33. The tribunal disallows any costs attributable to the role of Head Porter in 2017, 2018 and 2019 as this role has not existed for some time. Further, the tribunal finds that although the lease allows for a Head Porter's flat, the tribunal finds that the refurbishment of the basement flat is unreasonable in the absence of a resident Head Porter. Its use from time to time by Mr. Fitch is a matter of convenience rather than in connection with his role as manager. The tribunal finds that all the costs associated with the work of refurbishment are unreasonable and are not payable by the applicant.

34. The tribunal disallows the costs of major works to the gutters and car park ceiling to the extent they exceed £250. The tribunal finds and the respondent accepts that there was no section 20 consultation carried out and no application made to the tribunal for dispensation from consultation under section 20ZA of the 1995 Act.
35. The tribunal finds that the service charge costs referable to the 2017, 2018 and 2019 rates are reasonable and payable.
36. In the absence of any persuasive evidence to the contrary the tribunal finds the insurance costs for 2017, 2018 and the estimated costs for 2019 to be reasonable and payable.
37. The tribunal finds the management fees charged to be grossly excessive for all of the service charge years in dispute. The tribunal finds that the book-keepers fees should reasonably be included as part of the service provided for in the management fee and not as a separate item. The tribunal finds that the management fee should be limited to the sum of £500 per annum per lessee for the service charge years in dispute, as the tribunal determines that this sum is reasonable for the level of management provided for this building.
38. The tribunal finds that the respondent gave no clear oral or documentary explanation for the sums charges as wages and salaries for the service charge years in dispute. The tribunal also finds that there is some element of duplication of roles carried out by Mr. Fitch, the porters and the book-keepers. Therefore, the tribunal reduces the sums claimed by 25% and allows only 75% of the costs in respect of the service charge years in dispute.
39. The tribunal finds the costs of the auditors, the bins, the telephone and broadband as well as the costs of the gardening to be reasonable and payable in respect of the service charge years in dispute.
40. The tribunal disallows the cost of printing, postage and stationery as it reasonably expects those sums to be included in the cost of the management service.

Section 20C and reimbursement of fees

41. The tribunal finds that in light of its decisions set out above, the respondent's poor compliance with the tribunal's directions which are intended to assist the tribunal in its determinations that it is reasonable to make an order under section 20C of the 1985 thereby limiting the respondent from adding the costs of this application to the applicant's service charge.
42. The tribunal also finds it reasonable and appropriate to direct the respondent to reimburse the applicant the amounts of the application and the hearing fees.

Name: Judge Tagliavini

Date: 12 March 2020

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).