FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LSC/2020/0226**
Property	**:**	**12 Belsize Park Gardens, NW3 4LD**
Applicant	**:**	**Jasia Reichardt**
Representative	**:**	**The Brooke Consultancy LLP**
Respondents	**:**	**1.Mr Avigail Ben-Ari Kayser (12a)** **2.Ms Beverley Bonner (12b)** **3.Mr Nigel Stephen Hall (12c)**
Representative	**:**	**IBB Law LLP for the Third Respondent**
Type of application	**:**	**Liability to pay service charges** **Dispensation from consultation**
Present at Case Management Hearing (conducted by CVP)	**:**	**Mr Alev (Solicitor for Applicant)** **Mr Kayser** **Ms Bonner** **Mr Hall**
Tribunal	**:**	**Judge Mullin** **Mr. Ridgeway MRICS** **Ms. West**
Date of Decision	**:**	**25th January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to by the Applicant are in a bundle of 169 pages, the documents that we were referred to by the Respondent are in a bundle of 28 pages, the contents of which we have recorded. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The Tribunal determines that the service charges are payable as sought in the application.

(2) The Tribunal grants dispensation from consultation requirements.

The hearing

1. The hearing took place via the Cloud Video Platform on 18th December 2020. The Applicant was represented by her solicitor at the hearing and the Respondents appeared in person. The Tribunal is grateful to the Parties for the helpful and courteous way they conducted the hearing.

Background

A. This application concerns a period property converted into four flats. The Applicant holds both the freehold interest in the building and the leasehold interest in one of the flats. The Respondents hold their respective leasehold interests in the other three flats.

B. The application arises out of exterior works of decoration carried out in 2018. The total cost of the works is £30,120.00. The Applicant seeks a declaration as to the payability of those costs. The Applicant also seeks partial dispensation from the consultation requirements in respect of those works.

C. The Respondents seek an order limiting the Applicant's costs pursuant to section 20C Landlord and Tenant Act 1985 and pursuant to paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002.

D. The Respondents, except Mr. Hall, confirmed that they did not have an issue with the standard of the works carried out; their issue is the cost of the works and the consultation procedure. The Respondents state that the Applicant should have chosen the quote from an alternative contractor which was for substantially less than the contractor chosen by the Applicant and by not doing so rendered the charges in excess of that lower quote unreasonably incurred.

The Issues

Dispensation

1. The Respondents made clear at the outset of the hearing that they did not oppose the dispensation application and the tribunal therefore grants the application.

2. The Respondents' position on the application generally was not that they should pay no services charges or that the charges should be limited to £250 per leaseholder, but that they should only be liable for an amount equivalent to the lowest quotes provided to the Applicant during her tender exercise. These are arguments which sit most appropriately in the Tribunal's consideration of the reasonableness of the service charges rather than the application for dispensation.

Reasonableness

3. The basis of the application is adequately set out in the Applicant's statement of case at paragraphs 4 – 54 and need not be repeated here. Indeed, the basic underlying facts of the case are not disputed.

4. In August 2017 the Applicant and her late husband obtained a number of quotes for the redecoration of the exterior of the building. This is work that needs to be done every 7 or 8 years. The last set of works had been carried out in 2009 and had cost in the region of £34,500. These quotes were:

    a) 3 August 2017 we received an estimate from Clive Richardson & Glen McDonald, who had done the work in 2009, for £37,500 including a 10% contingency, and the price of the scaffolding.

    b) 15 August 2017 R. Stone Building Contracts Limited gave an estimate for £30,342 excl. VAT, including scaffolding.

    c) 13 July 2017 aynax.com, Neotti & Lima Building Services, i.e. 'Leo', gave an estimate for £20,810, including £8,500 + VAT £1,700, for scaffolding.

d) On 24 January 2018 Marcin Nawara presented a new copy of his estimate of summer 2017 for the same price, £23,530 which did not include scaffolding. He provided a scaffolding quote from another contractor for £4,500.

5. Mr. Hall wrote to the Applicant shortly afterwards recommending Leo, who had done similar work for him before on another property and by whom he had been extremely impressed. The Applicant's late husband replied to him in the terms set out at paragraph 19 of the Applicant's statement of case, essentially stating that the landlord preferred to go with Marcin Nawara who was a known entity (as far as the Applicant and her late husband were concerned) and that Leo's quote wasn't sufficiently comprehensive or credible.

6. As it happens the works were delayed until early 2018 to give Mr. Kayser more time to have the funds ready to pay the costs of the works.

7. The Applicant's late husband sadly passed away on 1st November 2017. Thereafter the Applicant took over conduct of facilitating the required works.

8. The works were carried out by Marcin Nawara between March and May 2018. The Applicant gives her reasons for selecting Mr. Nawara at paragraphs 34 & 35 of her statement of case:

> *The reason why I chose Marcin Nawara over the others was that he had worked on the building on many other previous occasions, in both maisonettes at 12 and 12A and I was more than satisfied with the work. He had a proven track record and I trusted him, so much that he had keys to my maisonette.*
>
> *Furthermore, I considered that Leo's estimate of £12000, being the lowest estimate, was not enough to pay two/three men for two+ months' work (that's what it usually takes) and to buy all the necessary materials. The estimate was not realistic at all. It did not provide for all of the work that was likely to be needed and may have even been simply seeking to undercut other estimates just to win the job. It did not sound right.*

9. The Applicant sets out the sums demanded of the Respondents at paragraph 54, in addition to the sums said to be outstanding.

10. The 1st and 2nd Respondents' case is effectively that the Applicant should have chosen Leo as the main contractor, in combination with the scaffolders identified by Marcin, and this would have resulted in them paying a reduced bill for the works. This is most clearly set out in the statement of case from Mr. Kayser and Ms. Bonner at paragraphs 29 & 30. They say that as a result, the service charges were not reasonably incurred.

11. They also complain that the 10% management fee levied by the Applicant was unreasonably high and suggest an alternative of 5%.

They feel that the level of communication and collaboration from the Applicant was inadequate and that there should have been a round table meeting where all these matters were discussed and resolved.

12. The 3rd Respondent (Mr. Hall) makes the same point that Leo should have been proceeded with in combination with the scaffolders identified by Marcin.

13. Mr. Hall is of the opinion that had a lawful consultation process happened, there was the prospect of a different result, in that Leo would have been selected as the contractor. He is also critical of the level of communication and engagement with the leaseholders over the work.

14. He also is of the view that the works were not carried out to as high a standard as would have been the case if Leo had been the contractor. In making his case on this point he took us to a number of photographs of Leo's work in another property that Mr. Hall owns and compared them to photographs of the subject property. In his words, if Leo had been the chosen contractor it would have been better in terms of cost and outcome.

15. The Applicant asserts and the Respondents accept that a landlord is not required to accept the cheapest quote. This is correct as per *Forcelux v Sweetman* [2001] 5 WLUK 197.

16. The law as per *Regent Management v Jones* [2011] UKUT 369 (LC) & *Southall Court (Residents) Ltd v Tiwari* [2011] UKUT 218 (LC) is that there may be a range of reasonable decisions which could be reached as to whether or not a particular cost should be incurred; the decision is for the Landlord rather than the tenants or the tribunal and, so long as the decision falls within a reasonable range, the costs will be reasonably incurred.

17. In this case there is no suggestion that the works were not required or should not have been carried out when they were. The criticism is solely that a different contractor would have resulted in a lower price and potentially may have done a better job of the works.

18. In the tribunal's decision, nothing the Respondents have referred to indicates that the Applicant's decision on which contractor to use was outside the reasonable range of decisions she could have taken. Whilst it is true there was a cheaper quote, the contractor selected was far from the most expensive. It is not possible to say, even with the benefit of hindsight, whether Leo would indeed have been able to carry out the works in line with his quote and whether his quote was indeed realistic.

19. It is correct that the consultation was unlawful, because it breached the relevant regulations, but it is also correct that the Claimant did obtain a number of quotes and did test the market to at least some degree. It was legitimate for the Applicant to consider that a contractor with whom she was familiar and had a good working relationship was

preferable to an unknown, albeit cheaper, contractor. The tribunal appreciates that one of the Respondents was familiar with Leo's work but that does not remove the Applicant's decision from the range of reasonable decisions available to her.

20. It terms of the standard of the works carried out, the tribunal, having looked at the photographs referred to and noting that only one of the Respondents criticises the standard of the works at all, is not satisfied that the works were done to an inadequate standard bearing in mind the character and location of the building. Again, it seems to the tribunal that there is a range of standards which would be permissible, and the work does not fall outside of that range. In the tribunal's opinion the works represented reasonable value for money. It may be that Leo would have done as good or better a job, but that is not the relevant question for the tribunal. The question for the tribunal is whether these service charges were reasonably incurred and whether the works were done to a reasonable standard. In the tribunal's view they were.

21. In relation to the percentage of the management charge, the tribunal is of the view that 10% is a reasonable percentage to charge. As can be seen from the bundle, the process of organising the work, running a tender and communicating with leaseholders is a time consuming one, requiring extensive correspondence. Professional managing agents would very likely have charged a higher fee. In all the circumstances and bearing in mind the tribunal is an expert one with some knowledge of the standard management fees in these sorts circumstances, the management fee as charged is reasonable.

22. The Applicant has been successful on her application and thus the Respondent's s.20C application for an order limiting the Applicant's costs pursuant to section 20C Landlord and Tenant Act 1985 and pursuant to paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002 is dismissed.

Name: Tribunal Judge Mullin
Mr. Ridgeway MRICS **Date:25th January 2021**
Ms. West

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). **9(7) and (8) of the 2013 Rules.**