



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

Case reference : **LON/00AW/LSC/2021/0024 (Flat 2)
LON/00AW/LSC/2021/0129 (Flat 9)
LON/00AW/LSC/2021/0315 (Flats 2 &
9)**

HMCTS code : **Face to face hearing**

Property : **Flats 2 & 9 Hamilton Court, London
SW5 9SG**

Applicant : **Hamilton Court (SW5) Management
Company Ltd**

Representative : **Mr Jamie Corrora, TLC Estate Agents**

Respondent : **Mr Claudio Costagliola Di Fiore (Flat 2)
Ms Dalia Dabbs (Flat 9)**

Representative : **In person**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr K Ridgeway MRICS
Mr A Ring**

**Venue and hearing
date** : **10 Alfred Place, London WC1E 7LR
23 & 24 March 2022**

Date of decision : **19 April 2022**

DECISION

Decisions of the tribunal

- (1) The lessees are liable to pay £13,500 towards the costs of the major works identified in the Notice of Intention date 18 February 2020 and as demanded.**
 - (2) The lessees are liable under the terms of the leases to contribute to the costs of Directors and Officers Insurance as demanded.**
 - (3) The lessees are liable to contribute to the Company costs/expenses/liabilities/secretarial under paragraph 14 of The Third Schedule to the leases as demanded.**
 - (4) The respondents are liable to pay to the management costs of TLC as demanded.**
 - (5) The lessees are liable to contribute to the cost of the Professional fees under The Third Schedule to the leases as demanded.**
 - (6) The lessees are liable to contribute to the annual service charges demanded for the service charge years 2019, 2020 and 2021 without deduction.**
 - (7) The lessees are liable to contribute to the annual service charges for the service charge years 2016, 2017 and 2018 without deduction.**
 - (8) Administration fees in the sum of £35 (including VAT) are payable in accordance with the terms of the leases as demanded.**
 - (9) The lessees are liable to pay the landlord's legal fees incurred in respect of the proceedings before the tribunal under clause 6(2) of the leases.**
 - (10) Legal costs incurred by TLC in respect of seeking advice as to management of the building are recoverable under the terms of the Management Agreement.**
 - (11) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.**
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The applications

1. In applications* LON/00AW/LSC/2021/0024 (Flat 2) and LON/00AW/LSC/2021/0129 (Flat 9) the applicant landlord 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 tenants in respect of major works and annual charges for the service charge years:

Flat 2: 2019, 2020 and 2021

Flat 9: 2020 and 2021

In application** LON/00AW/LSC/2021/0315 the lessee of Flat 2 brought an application against the landlord seeking a determination of the reasonableness of service charges for the years 2016, 2017, 2018, 2019 and 2020. In a written request to the tribunal the lessee of Flat 9 sought to be joined as an applicant to this application.

**Directions dated 21 May 2021 and **16 November 2021*

The background

2. The property which is the subject of this application are two flats within two converted properties comprising 10 leasehold flats. The applicant is the head leaseholder and landlord of the building known as Hamilton Court, London SW5 9SG of which Mr Costagliola Di Fiore and Ms Dabbs are the long lessees of Flats 2 and 9, respectively. The lessees of the 10 flats in the building each own a one tenth share in the Freehold Company with the building being managed by TLC Estate Agents (“TLC”).
3. The lessee of Flat 2 holds an interest in the subject flat pursuant to the following lease and deeds of variation:
 - (i) Sub- underlease dated 1 January 1964.
 - (ii) Deed of variation dated 22 April 1970.
 - (iii) Deed of variation dated 13 January 1981.
 - (iv) Deed of surrender and grant of new lease dated 9 December 1987.
 - (v) Deed of variation dated 28 June 1998,
 - (vi) Deed of variation dated 13 June 2002.
4. The lessee of Flat 9 holds and interest in the subject flat pursuant to the following lease and deeds of variation:
 - (i) Sub-underlease dated 21 August 1964.

- (ii) Sub under-lease dated 26 June 1985 resulting from the surrender and grant of the sub under-lease dated 21 August 1964.
 - (iii) Deed of variation dated 22 April 1970.
 - (iv) Deed of variation dated 13 January 1981.
5. It was agreed by the parties that the leases (as varied) allow for the collection of service charges in advance in quarterly instalments. Any excess of funds can be retained and used for the expenditure incurred in the subsequent year and thereafter any excess must be returned to the respective lessees.
6. The respondents' long leases of their respective flats require 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 are referred to below, where appropriate.
7. The service charge year runs from 1 January to 31 December of each year with provision for the collection of estimated service charges in advance in quarterly instalments during each service charge year. It was agreed by the parties that the respondents' leases do not make provision for the collection of a reserve/sinking fund as any excess sums paid had to be re-credited to the lessees' service charge accounts for the following year. The respondent lessees are each required to contribute 1/10th of the service charge/major works costs.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination in applications LON/00AW/LSC/2021/024 & /0129 as:
- (i) The payability and/or reasonableness of service charges for major works in the service charge year 2020 in the sum of £13,500 in respect of each respondent.
 - (ii) The payability and/or reasonableness of actual annual service charges (including building insurance) for the years 2019, 2020 and 2021(Flat 2) in the sum of £6,116.61 including a £65 late payment fee in addition to legal costs of £4,290 and additional fees of TLC of £540.
 - (iii) The payability and/or reasonableness of actual annual service charges(including building insurance) for the service charge years 2020 and 2021 in respect of Flat 9 in the sum of £2,013.04 including £35 late payment fee and in addition legal costs of £1,950 and additional fees of TLC of £216.
9. In application LON/00AW/LSC/2021/0315 both lessees challenged the heads of service charges which were narrowed to include:

- (i) Management fees and management expenses/administration charges– excessive and not recoverable under the lease.
- (ii) Bad debt charges.
- (iii) Section 20 levy fund – reserve fund is not recoverable under the terms of the lease.
- (iv) Directors and Officers insurance – a company charge and not recoverable under the terms of the lease.
- (v) Secretarial costs – as (iv) above.
- (vi) Contribution to Company expenses and liabilities – as (iv) above.
- (vii) Legal fees - not recoverable under the terms of the lease.
- (viii) Professional fees – not recoverable under the terms of the lease.

The hearing

- 10. At the oral face to face hearing of the applications, the applicant was represented by Mr Jamie Corrora of TLC Estate Agents and the respondents appeared in person. An inspection of the building and subject flats was not carried out as neither party requested one and in event the tribunal was provided with extensive photographs of the building.
- 11. Applications LON/00AW/LSC/2021/0024 and /0129 were heard together. Application LON/00AW/LSC/2021/0315 was heard immediately afterwards with the tenants as applicants and the landlord as the respondent.
- 12. Having heard evidence and submissions from the parties in respect of all three applications and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision and reasons

Major works

- 13. The tribunal finds that in respect of both respondents the consultation process for the major works notified in 2020 were properly notified by the service of Stage 1 and Stage 2 Notices. The tribunal finds that these

notices were sent by email to the respondents with attachments and hard copies were also posted to the lessees at their respective addresses.

14. The tribunal prefers the evidence of the landlord to that of the lessees on the issue of service and receipt of these notices. The tribunal finds that the lessees both received the Notice of Intention dated 18 February 2020 as the lessees subsequently provided a detailed joint letter dated 8 June 2020 opposing the major works, although Ms Dabbs told the tribunal that she received an email with an attachment of the Notice of Intention which she could not open. Mr Costagliola Di Fiore told the tribunal he had subsequently received the Notice of Intention but had not received the Notice of Estimates, although Ms Dabbs accepted, she had received this document.
15. The tribunal is satisfied by the applicants that the respondents received both the Notice of Intention dated 18 February 2020 which set out with sufficient detail the intended works and the Notice of Estimates dated 23 September 2020. The tribunal is also satisfied that as the applicant selected the contractor (C&N Building Services Ltd.) as with lowest quote, it was not required to serve a Stage 3 Notice on the respondents. Further, the tribunal finds the argument raised by Ms Dabbs that the Notices had to be served in accordance with the Law of Property Act 1925 refers only to notices required by the lease (unless varied by practice and agreement) and not those required by statute under s.20 Landlord and Tenant Act 1985.
16. The tribunal finds that the earlier consultation process started by way of the service of a Notice of Intention dated 26 April 2019 was subsequently abandoned by the applicant when further works were identified and on legal advice the section 20 process was restarted. Therefore, the earlier notice is not relevant to the current major works consultation.
17. In the absence of any alternative expert or professional evidence relied upon by the respondents, the tribunal is satisfied that the works specified by Bishops & Associates, Independent Chartered Surveyors, are reasonably required and fall within the applicant's repairing and maintenance obligations under the terms of the respondents' leases. The tribunal finds that applicants have been required by the local authority to install railings at the front of the building as a health and safety measure and that it is reasonable for the applicant to incorporate these works into the schedule of major works and to which the lessees are required to contribute.
18. The tribunal finds that the demands for payment of the major works by way of demands for the service charge year 1/1/2020 to 31/12/2020 to the lessees dated 23/12/19, 4/3/20, 11/6/2020, 17/9/2020 and requesting quarterly payments of £3,3750 totalling the £13,500 required from each lessee in respect of their respective 1/10 share of the estimated

costs of the major works, were made in accordance with the terms of the respondents' leases. As accepted by the applicant, there is no provision for the collection of a reserve fund, therefore costs of major works have to be collected in full before they were commenced.

19. The tribunal finds that the four demands for payment of £13,500 (in four equal instalments) as set out above were made in accordance with the leases (as varied) and were made in respect of service charges for the service charge year 1/1/20 to 31/12/20. The tribunal finds that the respondents cannot now seek to argue that any sums now paid in respect of these quarterly demands are 'out of time' as they constitute expenditure anticipated in 2021 or 2022. The tribunal finds that the expenditure of the costs of major works was clearly anticipated and identified in 2020 and demands for this anticipated expenditure sent out for the service charge year 2020 are therefore payable by the respondents.

Annual service charges 2016 – 2021

20. The tribunal finds in respect of the specific items of annual service charges disputed by the respondent lessees the following:

Directors and Officers insurance and company costs/secretarial costs

21. The tribunal finds these charges are reasonable and payable by the respondent lessees in respect of each service charge year payable.
22. The tribunal finds that paragraph 14 of The Third Schedule (costs expenses outgoings and matters in respect of which the lessee is required to make a contribution) makes provision for the collection of such costs. This paragraph states

The costs and expenses of the Lessors in complying with the covenants on their part contained in Clauses 4(1) 4(2) 4(3) 4(4) and 4(5) and not specifically referred to in this Schedule.

23. The tribunal finds that the Directors of the landlord company are unremunerated and that it is reasonable and prudent for Directors insurance to be in place. The tribunal finds the secretarial and other company costs are associated with the Directors' duties and also are costs to which the lessors are required to contribute under paragraph 14 of The Third Schedule. In the absence of any evidence to the contrary, the tribunal finds these sums are reasonable in amount and are properly included in the service charge demands.

24. The tribunal also finds that the landlord company secretarial costs are recoverable under the terms of the Management Agreement as specified in Appendix Three.

Professional fees

25. The tribunal finds these costs are chargeable under the provisions of The Third Schedule and form part of the reasonable costs incurred by the carrying out of major works and are reasonable in amount.
26. Professional fees have been incurred by surveyors in respect of the specification of works and the tender analysis as well as damp reports. The respondents' argument that these sums are __?__ is rejected by the tribunal.

Management Fees of TLC

27. The tribunal finds The Third Schedule to the leases make provision for the collection of service charges incurred as a result of the lessor complying with its obligations under their terms. It was not disputed by the lessees that the landlord was entitled to engage the services of a managing agent in order to meet its obligations under the leases.
28. At the hearing it was conceded by the lessees that the fees of TLC for the service charge years 2016, 2017, 2018, 2019 and 2020 were reasonable. Therefore, only the fees incurred in 2021 remained in dispute. The tribunal finds that the annual charge of £500 per annum per lessee to be reasonable and payable.
29. The tribunal finds that the services provided by TLC have been extensive and in accordance with the terms of the written Management Agreement. The tribunal also finds that TLC have spent extensive periods of time dealing with issues raised by the condition of the building, the directors, and the lessees.

TLC additional fees/late payment fees/bank charges

30. The tribunal finds that the fees chargeable by TLC are set out in the written contract made between the landlord freeholder company and the managing agents TLC. This written contract sets out the fees chargeable and their rate and is regularly updated to reflect increases in costs. A copy of the 'Agreement between the client and the Manager setting out the terms of appointment for management' dated 19th November 2020 was provided to the tribunal. The tribunal was informed that this Agreement is updated on an annual basis in respect of the level of charges but was otherwise an accurate statement of the terms and conditions under which TLC provided its services.

31. The tribunal finds these fees have been properly incurred under the terms of Agreement and as specified in Appendices 2 and 3 and are reasonable in their amount.

Land Registry costs

32. The tribunal finds it reasonable that TLC should request copies of leases from the Land Registry in the course of managing this building and that in accordance with the terms of the written contract, these costs are passed on to the lessees except where they relate to specific flat licences to alter or applications for lease extensions for which the individual flat is liable.

Reserve fund/Section 20 Levy

33. The tribunal finds this has been more accurately renamed Section 20 Levy and has not and does not reflect any attempt by the landlord to collect a reserve fund, as it is accepted by all parties that there is no provision in the leases to do so. The tribunal finds that the use of the heading 'Reserve Fund/sinking Fund' has been misleading and its renaming to Section 20 Levy more accurately reflects what the sum represents namely charges incurred by TLC in respect of managing major works including the service of notices,
34. Further, where the term 'sinking fund' appears in the service charge demands or other documentation, the tribunal accepts that the use of a 'sinking fund' by the landlord is a mechanism by which funds for major works paid by other lessees are 'ring fenced' from the annual service charges as the lease allows excess sums to be retained in this way for a 12-month period before being returned to the respective lessees. The tribunal also finds the respondent lessees, have no legal standing to argue that sums should be returned to other lessees who have in fact paid the service charge demands as and who are not a party to this application.

Bad debts

35. This sum is attributable to sums not collected by previous managing agents on behalf of the landlord in respect of works of repair to Flat 2 and are therefore recoverable under the terms of the lease under The Third Schedule at the reduced sum of £425 per leaseholder.
36. In conclusion, the tribunal finds that both the costs of the major works and the annual service charges demanded by the landlord during the period 2016 to 2021 are reasonable and payable by the respondent lessees and as demanded.

Legal costs

37. The tribunal finds that the leases make reference to the recovery of costs in Clause 2(6) which states the lessees are required,

To pay unto the Lessors on demand all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessors or Superior Lessors in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925 or any statutory provisions re-enacting those sections with or without alteration notwithstanding forfeiture may be avoided otherwise than relief granted by the Court

38. The landlord seeks the legal costs incurred through its instruction of its solicitors JB Leitch in respect of seeking advice on major works and in respect of these applications. The lessees argue that the leases make no provision for legal costs (other than for forfeiture) and therefore, these cannot be charged to the lessees.
39. Although neither party referred the tribunal to the leading case of *Kensquare Limited v. Boakye* (2021) EWCA 1725 this was brought to the parties' attention during the course of the hearing, in order to allow them an opportunity to make representations in respect of this decision on costs.
40. Following and applying the decision in *Kensquare* the tribunal finds that the costs of the applicant incurred in respect of the tribunal proceedings are recoverable under clause 6(2) of the leases.
41. The tribunal finds that other legal costs incurred in respect of seeking advice about major works are recoverable under the terms of the Management Agreement.

Application under s.20C

42. In the statement of case and at the hearing, the respondents applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an order.

Name: Judge Tagliavini

Date: 19 April 2022

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).