



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

**IN THE COUNTY COURT at Central
London, sitting at 10 Alfred Place,
London WC1E 7LR**

Tribunal reference : **LON/00BK/LSC/2023/0086**

Court claim number : **J55YX666**

Property : **Ground Floor Flat, 108 St George's
Square, London SW1V 3QY**

Applicant/Claimant : **Mr Anthony Hambro**

Representative : **Mr Phillip Bryne counsel**

**Respondent/
Defendant** : **Dr Wafik Moustafa**

Representative : **Mr Katie Gray counsel**

Tribunal members : **Judge Tagliavini
Mr John Naylor MRICS FIRPM**

In the county court : **Judge Tagliavini**

Date of decision : **8 August 2023**

DECISION

Summary of the decisions made by the Tribunal

1. The sum of £18,530.10 is payable by Dr Wafik Moustafa to Mr Anthony Hambro in respect of service and administration charges for service charge years 2020/21 and 2021/22.
2. The tribunal makes an order under section 20C of the Landlord and Tenant Act limiting the applicant landlord's recovery of the costs incurred in the tribunal through the service charges.
3. The application is now remitted to the county court at Central London for any further determinations and orders that are required.

The proceedings

2. Proceedings were originally issued against the respondent on 1 June 2022 in the County Court at Central London under claim number J55YX666 seeking the payment of £22,634 (including contractual interest and administration charges (legal fees)). The respondent filed an Amended Defence on 11 January 2023. In response, the applicant filed and served a Response to Defence dated 19 August 2022. The proceedings were then transferred to this tribunal by the order of Deputy District Judge Clarke dated 9 February 2023 the claim was transferred for a determination of the payability of service and administration charges.
3. All other matters including claims for costs will be transferred back to the county court for determination after this decision has been sent to the parties.
4. Directions in this application were issued and the matter eventually came to hearing on 23 June 2023.

S.20ZA application

6. In addition to the transferred county court claim, the applicant made an application ref: *LON/00BK/LDC/2023/0101* to the tribunal seeking dispensation from the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985. In Directions dated 5 May 2023 (amended 25 May 2023), the s.20ZA application was directed 'to take place alongside' the claim transferred to the tribunal. Consequently, both matters were heard at the same time, although the applicant was required at the conclusion of the hearing to provide a proper bundle of

documents in support of the s.20ZA application by 30 June 2023, as this had been previously omitted despite the tribunal's directions and both parties were permitted to provide further written submissions on the s.20ZA application only.

7. As the s.20ZA application included all leaseholders at the building known as St George's Square, London SW1V 3QY, a separate decision determining that application has been issued by the tribunal to which the parties should refer.

The hearing

8. The applicant freeholder, Mr Anthony Hambro was represented by Mr Phillip Byne of counsel, instructed by Cullimore Dutton solicitors. The respondent leaseholder Dr Wafik Moustafa was represented by Ms Katie Gray of counsel.

The background

9. The subject property comprises a ground floor flat in a Grade II listed building containing 7 flats over the basement to the fourth floors. However, the flats on the first and second floors are occupied by the applicant landlord as one demise, although separate service charges are paid in respect of each of these flats. Further, the basement flat, also owned by the applicant has been sub-divided into two flats and sub-let to the applicant's family members on long leases but continue to be treated as one unit for the purposes of service charge demands.
10. The respondent is the long leaseholder of the ground floor flat under a lease dated 25 March 1998 for a term of 150 years less 10 days with effect from 25 December 1951. The respondent is liable to contribute 16.96% of the annual service charges incurred.
11. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.
12. The respondent holds a long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

13. The sums claimed by the Applicant within the jurisdiction of the tribunal were as follows:

- (i) Arrears of service and administration (legal) charges in the sum of £22,634.00 covering the service charge years 26/3/2020 to 25/3/2021 and 26/3/2021 to 25/3/2022. The outstanding sum was said to represent the actual 2021/2022 cost of maintenance works in the sum of £16,460.09 including the major works completed in October 2021
14. At the start of the hearing the parties identified the relevant issues for decision as follows
- (i) Whether the demands for payment of service charges complied with the statutory requirements pursuant to ss.47 of the Landlord and Tenant Act 1987.
 - (ii) Whether the demands for payment had been made within 18 months of the cost having been incurred pursuant to s.20B of the Landlord and Tenant Act 1985.
 - (iii) Whether it was necessary for the applicant to have complied with the statutory consultation requirements in respect of the demands and, if so, had the applicant complied with those requirements.
 - (iv) Whether the charges raised are reasonable.

The hearing

15. The parties relied upon a bundle of documents containing 576 electronic pages and a supplementary bundle of 114 electronic pages. The tribunal also heard oral evidence from and on behalf of both parties.

Decisions and reasons

Demands for payment of service charges

16. The tribunal finds the demand for payment of service charges dated 25 March 2022 including arrears of service and administration charges and interest in the total sum of £23,634.10 is a valid demand. The tribunal finds this demand contained the statutory information required by s.47 of the Landlord and Tenant Act 1987 and the respondent was provided with a copy of the tenant's rights and obligations.
17. The tribunal finds that the summaries of right and obligations were substantially in the form required and are therefore valid despite referring to the Leasehold Valuation Tribunal in part of that notice and not the First Tier Tribunal as specified in the updated in the regulations in 2013. However, the tribunal finds the relevant notice also included reference to the First-tier Tribunal stated in an added paragraph:

The landlord may be able to claim additional sums from you if you do not pay by the date specified in this notice. You have the right to challenge the reasonableness of any additional sums at a First-tier Property Tribunal.

18. The tribunal also finds the demand for payment was made within 18 months of the costs being incurred.

Form of accounts

19. The tribunal finds a full and independent assessment and certification of the service charge accounts has been carried out since 2018 by Amit Ambasana Certified Account of Lawrence & Co Chartered Accountants and accepts the evidence provided in the witness statement dated 12 April 2023. The tribunal finds the lease (construed as a post 1980 lease) makes reference to the auditing of accounts as a condition precedent for payment of service charge as set out in Part 1 of the Fourth Schedule. However, the tribunal accepts Mr Byrne's submission that Mr Ambasana is an individual/part of a firm eligible for appointment as statutory auditor (s.28(1) LTA) and that his inspection a review of the service charge accounts was sufficient to constitute an 'audit' both within the ordinary meaning of the word and as prescribed by the guidance – Residential Service Charge Accounts (ICAEW TECH RELEASE 03/11).
20. In any event, the tribunal finds that in the circumstances, the requirement of an audit as submitted by the respondent, is disproportionate due to the small size of the property and the apparent agreement among the lessees that certified accounts are sufficient.
21. The tribunal finds the issue of 'estoppel' and the assertion the respondent is 'estopped' from denying the payability of service charges in the absence of an audit, was not made out by the applicant.
22. The tribunal finds the accountancy charges are reasonable and recoverable from the respondent under the terms of the lease.

Management fees

23. The tribunal finds the lease allows for the engagement of a manager and management fees are payable by way of service charges as the lease permits under Part 2 of the Fourth Schedule which allows,

'The employment and remuneration of a Surveyor or Estate Agent to manage the Lessor's Property and to carry out such other duties as may from time to time be assigned to him by the Lessor or are otherwise imposed on him by the provisions of the Lease.'

24. The tribunal finds that Mrs Hambro, who purports to provide management of the building is neither a surveyor nor an estate agent. Having heard oral evidence from Mrs Hambro as well as having considered her witness statement dated 13 April 2023, the tribunal finds Mrs Hambro is both unqualified and unsuitable to act as a manager for the subject building as the tribunal finds she carries out her role as 'manager' with a degree of self-interest with receipts going into the reserve fund and being withdrawn whenever needed.
25. Further, the tribunal finds no justification for a management fee of 10% of the annual expenditure for the limited roles carried out by Mrs Hambro in

organising cleaning and cheaper electricity deals. The tribunal considers a fixed fee within a reasonable range would be more reasonable and appropriate for a manager and the tribunal finds that Mrs Hambro did not personally receive the 10% fee charged and this appeared to go into a joint 'spare' account held with the applicant 'we can dip into.'
26. Further, the tribunal finds no justification for a charge of £8,822.92 for the service charge year ending 25/3/2022 as Mrs Hambro was neither qualified to, nor carried out the work of a project manager on the major works.
27. Therefore, the tribunal finds the 10% fee charged is unreasonable and the sums of £682.63 and £8,822.95 are neither reasonable nor payable by the respondent in his percentage of 16.96% amounting to £115.77 and £1,496.37.

Major works and maintenance charges

28. It was accepted by the applicant that full consultation had not been carried out and therefore the s.20ZA application was required. The tribunal finds the major works comprised works to structural exterior supports and were carried out and completed by October 2021.
29. The tribunal finds the cost of the works carried out and completed by HCM were reasonable both in extent and cost. The tribunal has considered the report obtained from structural engineers (CWT) (although this was obtained in respect of the application for dispensation from consultation and finds it is limited in its conclusion as to whether the works carried out were reasonable in extent and cost. Despite these limitations, the respondent did not seek to obtain HCM's scope of works through the tribunal or seek to provide them to CWT.
30. The tribunal finds the payment of a deposit of £16, 995 (including VAT) to BSL during the carrying out of initial works of which only £6,227 has

been recovered as per the credit note from BSL dated 7/5/2021 to be an unreasonable charge. The tribunal finds the applicant has made no attempt to recover any balance from BSL through litigation but has chosen instead, to pursue the respondent in respect of his contribution to these costs without providing a comprehensive explanation as to why more of the deposit sum for the abortive works has not been recovered. Therefore the tribunal considers the respondent's 16.96% share of the unrecovered sum of £10,768 amounting to £1,826.25 is not payable by the respondent

31. The tribunal finds the work/report of Empace was duplicated to some extent but does not accept that the totality of its work was unreasonable. Therefore, the tribunal considers the sum paid to Empace in the sum of £7848.00 of which the respondent's 16.96% share is £1,331.02 should be reduced by 50% to reflect this duplication, thereby amounting to a reduction of £665.51.
32. The tribunal finds the Building Control fee payable to Westminster Council in respect of the major works to be reasonable and payable but considers the fee incurred by the loss adjuster DB Kritzler of £761.21 who was said to have perused documentation, advised on structural defects and insurance at a site meeting for nearly 4 hours. The tribunal finds the respondent offered no evidence to challenge this payment or its amount. The tribunal, therefore, finds this sum is reasonable and payable by the respondent.
- 33 The tribunal accepts the works were completed by Home Construction & Maintenance in the sum of £77,790.00 of which the respondent's 16.93% share is £13,169.85. The tribunal finds the works were necessary and carried out to a reasonable standard and cost and are payable by the respondent less the reductions at itemised above.

Invoices

34. The tribunal accepts the invoices on which the applicant relate to services provided for the subject property even where they are not addressed to the applicant. Consequently, the tribunal finds the invoice represent charges reasonably incurred by the applicant and are payable by the respondent in his percentage share.

Administration charges and interest

35. The tribunal finds clause 1.4 of the lease makes provision for the payment of estimated service charges in advance and if paid late is subject to interest at the rate of 3% above the base rate. Therefore, the tribunal finds the respondent is liable to pay interest on any service charges paid late.

36. The tribunal finds that clause 3(16) of the lease makes provision for the payment of all expenses including solicitor's cost incurred by the lessor in contemplation or preparation of a notice under s.146 of the Law of Property Act 1925. The tribunal considers the legal costs of £994 claimed by the applicant fall within this clause and are reasonable in amount and are payable by the respondent.

Conclusion

37. In conclusion the tribunal finds the following sum is payable by the respondent:

Sum claimed: £22,634.00

Less:

Managers fees of : £ 115.77

£1,496.37

Unrecovered sum from BSL: £1,826.25

Reduction of sum paid to Empace: £ 665.51

Amount payable by respondent: £18,530.10

Section 20C application

38. The respondent made an application pursuant to section 20C of the Landlord and Tenant Act 1985 seeking an order from the tribunal that the costs of the proceedings in the tribunal are not added to the service charges.
39. The tribunal considers that in all the circumstances it is reasonable to make the order sought as the respondent has been partially successful in opposing the claims made by the applicant. Further, the tribunal finds the unsubstantiated and unreasonable demands in respect of manager's fees and the increased cost of major works due to the abandoned first attempt as well as the late served section 20ZA application seeking dispensation from consultation, provided the

respondent with reasonable grounds for objecting to and defending the claim made by the applicant.

Name: Judge Tagliavini

Date: 8 August 2023

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.