



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

Case Reference : CH1/43UF/LSC/2023/0075

Property : Flat 1, Castle Place, Castle Square,
Bletchingley, Redhill Surrey RH1

Applicant : Mr Garry Pickard
Tribunal Appointed Manager

Representative : Mr Wright, counsel, instructed by Dean
Wilson Solicitors

Respondent : Mr William Gerard Fabre
Mr Gerardus Bernadus Franciscus Maria
Schrijver

Representative :

Type of Application : Transfer of Proceedings from the County
Court: Determination of service charges

Tribunal Member(s) : Regional Judge Whitney
Mr M J F Donaldson FRICS
Mr D Ashby FRICS

Date of Hearing : 3rd November 2023

Date of Decision : 29th January 2024

DECISION

Background

1. The Applicant seeks and following a transfer from the County Court the Tribunal is required to make, a determination of service charges under section 27A of the Landlord and Tenant Act 1985. The amount claimed in respect of service charges is £50,560.40.
2. The Applicant is a Tribunal appointed manager. The Applicant has brought these proceedings by virtue of the powers given in the Management Order dated 25 May 2017 and varied on 14 July 2020
3. The original proceedings were issued in the County Court Money Claims Centre under Claim No. J39YX512 on 8 June 2022 and transferred on 25 July 2022 to the County Court at Guildford. On 4 July 2023 the proceedings were transferred to the Tribunal by District Judge Nightingale by order dated 21 June 2023. The question for determination is whether the service charges claimed are reasonable and payable. Following the Tribunal's determination either party may apply to the Court for the proceedings to be restored.
4. The First Respondent has not participated in the proceedings. The Second Respondent states that he has had no contact with the First Respondent for six years and that he lives in South Africa.
5. On 24 July 2023 directions were issued which were subsequently amended by direction dated 2nd August 2023. The parties had substantially complied with the directions. An electronic hearing bundle was supplied and references in [] are to the pages of that bundle. Each party had supplied a skeleton argument seen by the Tribunal.

Inspection

6. Immediately prior to the hearing the Tribunal inspected the Property. Mr Schrijver attended in person. Mr Pickard was in attendance as was Counsel Mr Wright. Various other residents also were in attendance.
7. The Property is a large Victorian house which has been converted into flats. The Property is situated on the top of a ridge at the end of a private driveway shared with other properties. From the rear of the Property it enjoys views to the South Downs although in looking that way the M23 motorway is to the right of the Property. To the front is a gravelled parking area. To the rear are lawns. Generally the external areas appeared maintained to a reasonable standard.

8. We were shown the separate wooden boiler house. It was apparent this was in need of repair and maintenance. The boilers and associated equipment seemed to be protected from water ingress.
9. We viewed the external rear elevations of the buildings and the wood work, principally window frames. We saw the rear render and guttering to the Property.
10. At the front entrance we observed the gates which appeared rotten. There was a separate pedestrian access and a bin store adjacent to the gates. We were shown the sewage treatment plant which is situated in the car parking area.
11. Flat 2 has its own entrance door to the side of the Property. The remaining 5 flats, including the Respondents, are accessed via the main front door. We observed the non-functioning intercom.
12. Mr Schrijver then took those present into his flat. This is laid out over two floors with the living space on the ground floor and the bedrooms on the lower ground floor.
13. Mr Schrijver showed all that if the shower is run in the en-suite bathrooms to the two main bedrooms due to incorrect falls on the floor the shower floods out of the bathrooms.
14. At the conclusion of the inspection all parties confirmed the Tribunal had been shown all relevant matters which may be addressed at the hearing.

Hearing

15. The hearing took place at Crawley Magistrates Court immediately after the inspection. The below is a precis only of what took place at the hearing.
16. Mr Wright appeared for the Applicant who was in attendance. Mr Schrijver attended with a Mr Pelo who was there to assist him. Mr Pelo assisted with the framing and asking of some questions although Mr Schrijver was present throughout.
17. As a preliminary matter Mr Schrijver accepted that the relevant demands has been served upon him. Further he accepted under the terms of his lease and the Management Order appointing Mr Pickard he was obligated to pay service charges. His challenge was to the reasonableness of the amounts and the apportionment of the same.
18. Mr Wright called Mr Pickard. He confirmed his statement [95-104] was true. He confirmed he was claiming the budgeted expenses for

the period 20th March 2020 to March 2022 which in fact only covered two service charge years.

19. Mr Schrijver then cross examined Mr Pickard.
20. Mr Pickard confirmed surveys had been undertaken and that the insurance claim which was being pursued in respect of defects at the building as a whole had not been settled. This was on-going.
21. Mr Pickard accepted that disrepair can lead to further disrepair. Mr Pickard had no recollection of an invasive survey or anyone undertaking a pilot hole. He did recall requesting access for various professionals associated with the insurance claim. He accepted invasive surveys were undertaken to other flats in the building but not the Respondents. Mr Pickard accepted that certain of the floors in the building had dropped. Hence the insurance claim relating to the timbers in the house and defects associated therewith, although he did not believe this was within the Respondent's flat. He had included within the insurance claim the poor design of the shower room floors in the Respondent's flat.
22. Mr Pickard stated the arrears for the building are currently around £150,000.
23. Mr Pickard stated that currently many works are on hold due to the arrears. If the arrears were paid work could be undertaken. He stated that previous arrears of the Respondent were paid by his mortgage lender.
24. Mr Pickard stated that whilst he may budget for works he has to weigh up the expenditure against what is most needed such as heating and hot water.
25. In connection with the tank or boiler room Mr Pickard agreed works are required. He had previously started a section 20 consultation but could not proceed due to a lack of funds. He accepted the boilers need replacing and he had undertaken a section 20 consultation but was without funds. He was aware that currently at the Property there was no heating or hot water due to the failure of the boilers.
26. Mr Pickard explained that Mr Schrijver pays 1/3rd of the costs because that is what his lease requires. The flats don't pay equal amounts.
27. Mr Pickard reiterated that he cannot carry out works without funds in place. This is an answer to a great many issues at the Property as there is a serious lack of funds.

28. Mr Wright asked question in reply and Mr Pickard explained that the lessees are responsible for sorting out the defects in the lease although he offered to assist with this.
29. Mr Wright suggested that nothing had been raised by Mr Schrijver to challenge the demands subject to this claim.
30. The Tribunal gave an indication to Mr Wright that it was content for him to simply cross examine on those matters which were relevant to the items the Tribunal had to determine. It confirmed it would make no findings on other matters which went outside and beyond its jurisdiction in respect of this application and the Applicant would not be taken to agree those other points raised by Mr Schrijver within his witness statements but not relevant to this application. The Tribunal then adjourned for lunch.
31. Upon resumption Mr Pelo presented an opening of the Respondents case. The Tribunal confirmed it had copies of the Respondent's skeleton argument.
32. He suggested that the budgets were not reasonable. All could have been resolved by having a meeting. The Respondent had found the trial bundle overwhelming. It was submitted that no explanation or reasons had been given for the amounts claimed. Further the account statements were not clear and no consultation had taken place. In his submission there was a general principle of consultation pursuant to Section 20(2) of the Landlord and Tenant Act 1985.
33. Mr Schrijver felt other leaseholders were better consulted with than him
34. Mr Pelo called Mr Schrijver. He confirmed his witness statement within the bundle were true and accurate.
35. Mr Wright then cross examined Mr Schrijver .
36. Mr Schrijver accepted the sums in dispute were budgets and therefore interim figures. He believed the past sums actually expended was less than the actual sums spent and so he had overpaid. Further he believed works were done in a shoddy way.
37. Mr Schrijver referred to the fact that every year included projects which had not been moved forward. He stated when Mr Pickard took on the management it was with a near perfect building. He believes money has been spent unwisely. He believes his flat is now worth a lot less than it should be if all work had been undertaken.
38. He accepted no payments had been made by him since his mortgage lender made a payment in 2019. Mr Schrijver believes each flat ought only to pay 1/6th of the costs rather than comply

with the lease. He accepts it is not Mr Pickard who is responsible for seeking a variation of the lease to overcome the deficiencies within the same.

39. Mr Scvhrijver took issue with the fact that work is budgeted and for certain works section 20 consultations are undertaken but the work is not done.
40. Mr Schrijver was concerned that the adjacent building was connected to the sewage plant yet they make no contribution. He feels frozen out and is not consulted.
41. In answer to questions by the Tribunal Mr Schrijver agreed he accepted the following items within the Estimates for each year:
 - Electric
 - Cleaning
 - Gas Supply
 - Water supply
 - Insurance
 - Fire Alarm
 - Gardening
 - Bank charges
 - Accountancy fees
 - Management fee basic
 - Fire Precautions
 - FRA
42. The cross examination then continued.
43. Mr Schrijver stated that he thought when drawn up he would have agreed the budgets if he was consulted but given the works were not done properly or completed and so (in his words) should be scrapped. He accepts these are budget figures.
44. Upon questioning by the Tribunal Mr Schrijver was adamant he should only pay 1/6th of the costs. He did not accept it was reasonable for him to pay more.
45. Mr Pelo then called Mr Chisholm. He confirmed the contents of his witness statement was true.
46. He was cross examined.
47. He confirmed he lives at Mr Schrijver's flat although he has no financial interest in the flat or this dispute. He was aware Mr Pickard was a Tribunal appointed manager and had looked at the budgets. He had nothing to add to his statement.
48. Mr Rapoport was called for the Respondent. He agreed his witness statement was true.

49. In cross examination he confirmed he lives rent free at Mr Schrijver's flat. He thought he understood Mr Pickard's role although he had not looked properly at the budgets.
50. He accepted he did not know why the entryphone had not been repaired. He could not comment upon the priorities or reasons why it was not repaired. Equally he could not comment on the costs of the repairs.
51. Mr Pelo indicated he had not analysed the budgets but had observed various things contained within them had not been undertaken.
52. Mr Pelo wished to admit further witness statements but the Tribunal refused the same as being too late.
53. Mr Pelo confirmed he relied on the skeleton arguments and the tribunal confirmed it would read and consider the points raised in making its determination. Mr Schrijver accepts he will have to pay something but not the amounts claimed.
54. In reply Mr Wright suggested Mr Schrijver was trying to litigate matters not before the Tribunal. His dispute is as to past conduct and not produced credible alternatives to the sums budgeted.
55. The Tribunal confirmed with Mr Schrijver and Mr Pelo they had said what they wanted. Mr Schrijver stated he hoped he could still discuss matters with Mr Pickard. He hoped matters could be dealt with as work was needed not least to the heating which was not working at the time of the hearing.

Discussion and Decision

56. We thank all parties for their submissions and documents. We have considered carefully all including the bundle of 546 pdf pages.
57. This is a claim for interim services charges based on budgets for each year at [107 and 108]. It was commenced in the County Court [1-8] and defence by the Respondent. The claim was transferred by Order of District Judge Nightingale dated 21st June 2023 and this is our determination of the service charges. All other amounts have been reserved to the County Court and either party may apply to the County Court to determine all remaining matters.
58. The lease of the Respondent's flat is at [503-533]. Clause 4(17) of the lease [517 & 518] sets out the requirement to pay service charges by reference to the floor area of the flat. Pursuant to Orders made by the Tribunal on 26th October 2016 Mr Pickard was appointed as Manager and his appointment was extended by

decision dated 14th July 2020 [24-39] The Order (by way of a variation made on 25 May 2017) allowed Mr Pickard to issue ad hoc interim demand and quarterly demands on account.

59. We record that Mr Schrijver conceded that all relevant demands had been issued and were valid demands. We also record that many of the heads within the budget figures at [107 & 108] he expressly agreed with.
60. He challenged the reasonableness of such demands and whether or not Mr Pickard should be charging one third of the costs to his flat. He suggested all flats should pay equally.
61. We address this point first. The lease under which he owns and occupies his flat is clear that he should pay a service charge proportion relative to the size of his flat to the totality of the floor area of the Building as a whole. At [212-216] is a measured survey undertaken by Michael R Lee BSc (Hons) MRICS which suggests Flat 1 should pay 33.52% of the total costs. For each of the years we are to determine Mr Pickard looked to recover 33% of the total cost from Mr Schrijver (see [107 & 108]). Mr Pickard seeks this modestly lower proportion given the survey was undertaken after the dates of the demands in dispute. It is clear that the demands are reasonable as a proportion of the expenditure.
62. We are satisfied that Mr Pickard has properly apportioned the service charges to the Respondent's flat and in seeking to recover 33% of the total costs he has complied with the terms of the lease and his management order.
63. We turn now to the challenge to amounts.
64. We are satisfied that we have jurisdiction to determine this dispute. It was transferred from the County Court and the determination of both the question of a leaseholders liability to pay and the reasonableness of service charges falls squarely within the Tribunal's jurisdiction within Section 27A of the Landlord and Tenant Act 1985.
65. It is the role of this Tribunal to satisfy itself that the Applicant has demonstrated both that the leaseholder is liable to pay and the reasonableness of the sums claimed.
66. Given Mr Schrijver accepts the demands were issued and takes no issue over the same and we have determined that the apportionment applied was correct we are satisfied that the Respondent has a prima facie liability to pay the sums claimed.
67. Turning to the issues. We limit ourselves to certain general comments and to looking at those line items not accepted by the Respondent.

68. It was suggested for the Respondent that Section 20 of the Landlord and Tenant Act 1985 provides a general requirement to consult. This misapplies the requirements of statutory consultation which applies only to the costs of major works and qualifying long term agreements. Even if engaged this would apply to the actual costs and not the budgeted sums in any event.
69. The Respondent suggests that within the budget, year on year items are included for works which have not taken place. Mr Pickard agrees this is true. He states that there are works he wishes to undertake and agrees are required to be undertaken. However due to arrears at the Property as a whole (including the substantial sums owed by the Respondent) he has not had funds to undertake works. He explained that without funds he cannot undertake works.
70. We accept Mr Pickard's explanation. We are satisfied it is quite correct for him to include such items that he considers reasonably ought to be undertaken within the budget for each year. Obviously if such works cannot be undertaken within that year due to pressures on funds then it is likely they will appear in subsequent years. This approach is reasonable in our judgment.
71. Mr Schrijver within his skeleton sets out the history leading to the appointment of Mr Pickard. Sadly Managers are not appointed unless there are problems with the management of a building. Mr Pickard is obligated to manage in accordance with the Order appointing him. This does mean that he quite correctly would not become embroiled in disputes with the neighbouring owner Mr Foster. Mr Schrijver should take his own advice in respect of the works Mr Foster has undertaken.
72. Reference was made to the on-going insurance claim. We accept Mr Pickard's evidence that the claim has not been finalised but that he continues to pursue the same on behalf of the Building.
73. It was hard to identify what items specifically Mr Schrijver objected to save for a general objection to the costs.
74. We remind ourselves that the sums we are to determine are simply interim charges which have been levied based upon budgeted figures. Such figures are always a matter of Mr Pickard exercising his skill and judgment to determine what sums he will require in any 12 month period to undertake his obligations pursuant to the Management Order and the leases.
75. We are satisfied having considered the budgets [107 & 108] that Mr Pickard had in mind his obligations referred to above. There is nothing within these sums or items which we believe is unreasonable as an item to be included or by amount.

76. We record that Mr Fabre has taken no part in these proceedings but we are satisfied that he remains a joint leaseholder and that he is properly named as a Respondent. He is liable for all sums we find due and owing along with Mr Schrijver .
77. We are satisfied that all sums demanded as set out in paragraph 4 of the particulars of claim [6] are sums for which the Respondents are liable and are reasonable as to amount. We find the sum payable in respect of service charges is £50,560.40.
78. We are satisfied that whilst Mr Schrijver s conduct of the litigation before us was reasonable it is clear his defence to the service charges had little merit.
79. We understand that since this claim further sums have fallen due. We record that Mr Schrijver accepted he had not personally paid any monies for what is now many years. The last payment being made by the mortgage lender. This situation is unacceptable and untenable. Mr Schrijver appeared to accept monies would need to be paid and it is for him to ensure he has funds to settle his indebtedness. A failure to do so will only impact upon the maintenance of the building as a whole which as he himself suggested may affect the capital values of the flats at the Property.
80. We remind the parties that they should now refer this matter back to the County Court to determine all remaining issues including interest and costs.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

