



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

Case reference : **LON/00BK/LSC/2023/0389**

Property : **Flat 2, 5 Alexander Street, London, W2
5NT**

Applicant : **Caroline Frances White, c/o Homes
Property Management Limited**

Representative : **Adele Pullarp, Counsel, instructed by
William Heath & Co solicitors**

Respondent : **Heli Properties LLP**

Representative : **Keith Macrae, In Person**

Type of application : **1.For the determination of the liability
to pay service charges under section 27A
of the Landlord and Tenant Act 1985
2.Application for a determination as to
liability to pay an administration charge
Schedule 11 Commonhold and leasehold
Reform Act 2002.**

Tribunal members : **Judge Bernadette MacQueen
Tribunal Member Marina Krisko, FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Hearing : **2 April 2024**

Date of Decision : **22 April 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the administration charge of £563.60 being the Landlord's costs of earlier proceedings is payable by the Respondent within 28 days from the date of this decision.
- (2) The Tribunal determines that the sum of £22, 917.38 for major works is payable by the Respondent and payable within 28 days from the date of this decision.
- (3) The Tribunal determines that the on-account service charge for the half year commencing on 29 September 2023 in the sum of £1, 879.84 is payable by the Respondent and payable within 28 days from the date of this decision.
- (4) The Tribunal makes the determinations as set out under the various headings in this Decision.

The Application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent as follows:
 - i. £563.60 billed on 22 January 2020 being the Applicant's costs for legal proceedings.
 - ii. £22, 917.38 being a special levy demanded on 27 June 2023 as the Respondent's contribution to major works.
 - iii. £1, 879.84 being the half year on-account service charge due for the period 29 September 2023 to 24 March 2024.

The Hearing

2. At the hearing the Applicant was represented by Adele Pullarp (counsel). Leigh Olive of Homes Property Management (managing agents of 5 Alexander Street, London, W2 5NT) provided a witness statement dated 29 February 2024 but was unable to attend the hearing for health reasons. Sophie Rossdale, Director and Head of Property Management of Homes Property Management, attended the hearing to give evidence.

3. The Respondent, Heli Properties Ltd, was the leasehold owner of Flat 2. Heli Properties Ltd was a company controlled by Keith Duncan Macrae, who appeared at the hearing in person.
4. At the commencement of the hearing, the Tribunal considered the late service of the Respondent's statement. The Tribunal noted that this statement had been received at 01:49 on 2 April 2024 (the day of the hearing). The statement consisted of 26 pages and was not submitted in accordance with the Tribunal's directions made on 30 November 2023 and amended on 13 December 2023. The Applicant did not seek to pursue this point and confirmed that the statement had been received and read. The Tribunal exercised its discretion and allowed the statement to be admitted in evidence, having regard to rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in particular the need to deal with cases justly and fairly avoiding unnecessary formality and seeking flexibility in proceedings.
5. The Tribunal therefore had before it a hearing Bundle consisting of 190 pages, and the Respondent's statement consisting of 26 pages.
6. Neither party requested an inspection of the Property and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Background

7. 5- 6 Alexander Street, London, W2 5NT was a four storey mid terrace Victorian building which was converted into seven flats. The property which was the subject of this application was Flat 2, 5 Alexander Street, London, W2 5NT (the Property).
8. The Applicant, Caroline Frances White, was the freehold owner. The Respondent, Heli Properties Ltd, was a company controlled by the Respondent, who was the leasehold owner of Flat 2 (also known as Flat B), 5 Alexander Street, London, W2 5NT.
9. The Respondent's current lease was dated 3 October 2016, however that lease simply incorporated the provisions of the original lease that was dated 12 January 1983. This lease required 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 and will be referred to below, where appropriate.

The Issues

10. The Tribunal considered the three issues in dispute as follows:

£563.60 billed on 22 January 2020 being the Applicant's costs for legal proceedings

11. The Applicant took the Tribunal to clause 3 (e) of the original lease which stated:

“To pay to the Lessor as arrears of rent all costs charges and expenses (including solicitors costs and Counsels and surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under sections 146 and 147 Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court”.

12. On behalf of the Applicant, Leigh Olive set out at paragraph 6 of his statement (page A038 of the Bundle) the action that led to the Applicant's claim of £563.60 being made. The statement confirmed that the Respondent had failed to pay half year service charges (including a contribution to reserve fund) due on 29 September 2019. Solicitors were therefore instructed and a letter before action was sent to the Respondent on 3 December 2019 by post and email (A100 and A101 of the Bundle). This correspondence pointed out that the Applicant had instructed solicitors with a view to serving a notice under section 146 Law of Property Act 1925 and the terms of clause 3 (e) of the lease were referenced. The Applicant stated that no response was received to that letter from the Respondent and therefore on 21 January 2020 the Applicant's solicitors sent the claim form and particulars of claim to the County Court Money Claims Centre. Prior to submitting this claim the solicitors emailed the Respondent enclosing the claim form and particulars stating that these would be sent to the court today [21 January 2020]. They further confirmed that the claim included the service charge together with interest and costs (page A104 of the Bundle).
13. Leigh Olive stated at paragraph 8 of his statement (A039 of the Bundle) that as a result of receiving that email the Respondent paid the service charges but did not pay interest or costs. The Respondent's email confirming payment of the service charge was at page A104 of the Bundle and was sent at 17:42 on 21 January 2020. The Landlord's solicitors wrote to the Respondent on 22 January 2020 and attached their bill which totalled £563.60 (£400 plus VAT, the court fee and Land Registry copy fees).
14. Whilst Leigh Olive was not at the Tribunal hearing, Sophie Rossdale gave evidence at the hearing and confirmed that the statement given by Leigh Olive reflected the background and facts of the case that she had read from the case file.
15. The Respondent told the Tribunal that the solicitor's fees and court fees were not reasonable and were unwarranted. Additionally, the

Respondent stated that four years had passed and that the behaviour of the Applicant and their agents was bordering on harassment. Further the Respondent stated that the claim was raised in the Respondent's personal name initially which was not correct. The Respondent therefore asked the Tribunal to find that the amount was not payable.

Tribunal Finding in relation to £563.60 billed on 22 January 2020 being the Applicant's costs for legal proceedings.

16. The Tribunal found that the amount for £563.60 was payable by the Respondent to the Applicant. This was because the Tribunal accepted the evidence of the Applicant that the amount had arisen because the Applicant had to commence legal proceedings as the Respondent had not paid the service charge. The Tribunal found that the terms of the lease (clause 3 (e) as set out above) allowed for this fee to be charged. Further, the Tribunal was satisfied that the Respondent had been adequately informed that a notice under section 146 Law of Property Act 1925 would be served and the Respondent was liable under clause 3 (e) of the lease (letter dated 3 December 2019 page A100 of the Bundle). The Tribunal found that the sum of £563.60 properly reflects the amount namely £563.60 (£400 plus VAT, the court fee and Land Registry copy fees).
17. The Tribunal did not accept the arguments put forward by the Respondent. Considering each of these in turn, the Tribunal did not find that the costs were unreasonable and unwarranted. It was because the Respondent did not pay the service charge as required that the Applicant had to instruct solicitors. Whilst the Tribunal noted that the Respondent did pay the service charge, this was only after proceedings were issued and was payment for the service charge only. The Applicant's pre action correspondence warned the Respondent of the likelihood of costs being incurred if the amount was not paid. In terms of the Respondent's argument that four years had elapsed and that the agent's behaviour was bordering on harassment, the Respondent did not refer to any specific provision to show that the proceedings were out of time. The agents had sought to recover a debt that was outstanding. The Tribunal was satisfied that the debt remained outstanding and did not consider the claim to be time barred in any way. Finally, the Tribunal noted the Respondent's argument that the claim was issued incorrectly in the Respondent's personal name, however this was not reflected in the documents that were before the Tribunal, particularly the letter at A100 and subsequent claim form A105). The Tribunal therefore did not accept that as a reason for the Respondent not to pay the amount outstanding.
18. The Tribunal therefore found that the £563.00 for the Applicant's costs for legal proceedings were payable and must be paid within 28 days from the date of this decision.

£22, 917.38 being a special levy demanded on 27 June 2023 as the Respondent's contribution to major works.

19. Leigh Olive at paragraph 12 of his statement (page A039 of the Bundle) set out the background to how this contribution had arisen. In particular, Leigh Olive stated that the landlord wished to carry out major work at the Property and a notice of intention to carry out works was sent to the Respondent and the other lessees on 11 July 2022. The works were put out to tender and four contractors prepared detailed tender reports. The lowest quote was from PPM Specialist Works Limited and this was the firm that Bishop & Associates (who were the surveyors who had prepared the tender report) recommended be instructed to complete the work.
20. At paragraph 15 of his statement (page 040 of the Bundle), Leigh Olive set out the calculation for the Respondent's contribution, namely 31% of £73, 927.01 (that being the total cost of the work, including VAT and less the amount from the sinking fund). The Respondent's contribution was therefore £22, 917.38.
21. At paragraph 16 of this statement, Leigh Olive confirmed that a statement of estimates was sent to all leaseholders on 2 May 2023. No response was received from the Applicant or other leaseholders and so on 27 June 2023 a demand for payment was made for the Respondent's share, namely £22, 917.38. However, the Respondent did not pay their share and so a letter before action was sent on 11 August 2023.
22. In oral evidence to the Tribunal, Sophie Rossdale confirmed that the facts set out in Leigh Olive's statement were accurate from her reading of the case file.
23. The Respondent raised two issues in relation to the major work, namely that the contractor he nominated was not included and also that the works were too expensive and were not reasonable or warranted.
24. Turning firstly to the section 20 notice procedure, the Respondent stated that the managing agents had failed to comply with the procedures for issuing section 20 notices in accordance with the Landlord and Tenant Act 1985 or issue a Notice of Waiver. The Respondent stated that the Applicant had disregarded the contractor he nominated and they were not included in the tender list for the works. Further, at page 12 of his statement, the Respondent reproduced an email dated 10 April 2020 where the landlord stated "inform the managing agent of the clause in your lease that obliges them to obtain a tender from your preferred contractor for any proposed work on the common parts". The Respondent stated that this demonstrated that the landlord did not understand her obligations to include his nominated contractor.

25. The Applicant's evidence to the Tribunal was that the Respondent had not nominated a contractor in response to the section 20 notice for the works the subject of this application. In oral evidence to the Tribunal the Respondent stated that three section 20 notices had been issued for the Property and therefore it was difficult to keep track. The details of these section 20 notices were clarified by the Applicant who confirmed that three section 20 notices had been issued. The first was on 24 October 2018 and related to internal redecoration works, the second was on 28 April 2021 and related to fire safety measures and the third was the notice which was the subject of this application (July 2022). In reply to questions asked by the Respondent, the Applicant confirmed that the internal works, the subject of the 2018 notice, were delayed as the Applicant wanted to complete external works first. The justification given was that if any damage occurred to internal areas as a result of the external works, this could be rectified following the external work. Additionally, the Applicant confirmed that any money paid as a result of the 2018 notice was refunded to leaseholders. The Applicant took the Tribunal to page A126 of the Bundle which showed the debit and credit for this work. The Applicant also confirmed that the Respondent had not made any payment for this work which was why a refund was not made to the Respondent.
26. The Respondent further stated that the works were excessive and entirely unreasonable. In particular, the Respondent said that the cost of the work for the Property were almost four times the amount quoted for exterior painting and roofing works which took place at a six storey building nearby in Powis Square. The Respondent pointed out that this building was entirely stucco whereas the Property was predominately stock brickwork with white stucco detailing to the windows and ground floor. Within the Respondent's witness statement, particularly at pages 5 to 11, a photograph and cost details for Powis Square were given which the Respondent asked the Tribunal to take into account.

Tribunal's Finding in Relation to £22, 917.38 being a special levy demanded on 27 June 2023 as the Respondent's contribution to major works.

27. The Tribunal found that the lease contained provision for variable service charges to be paid and in particular considered the fourth schedule of the lease. The provisions allowing for the payment of the service charges were not an issue in dispute.
28. Turning to the procedure followed, the Tribunal found that the Applicant had correctly served notice under section 20 and had engaged in a tender exercise. The Tribunal considered the notice of intention to carry out works (page A123 of the Bundle) dated 11 July 2022. The notice explained that because of their expertise in this work, Bishops & Associates Surveyors were proposed to prepare the informal specification of works and Homes Property Management Ltd supervise

the works. The notice invited written observations and gave the 30-day consultation period as ending on 12 August 2022. Further the notice also invited the submission of names for obtaining estimates for carrying out the proposed work by 12 August 2022. On 2 May 2023 the Applicant wrote to the Respondent with a statement of estimates in relation to proposed external repairs and redecoration including the roof (page A159 of the Bundle). This letter confirmed that one contractor nomination was received (Mako Expert) and this firm was invited to tender but declined. Bishop and Associates Surveyors therefore invited other contractors to tender for the works. The letter set out the four contractors who had tendered and the contract sums, fees and total costs were set out in table form. As PPM were the cheapest tender, the letter confirmed that Bishop and Associates proposed they were contracted to do the work. The letter then quoted paragraph 6(2) (b) Schedule 1 of the Service Charges Consultation Requirements England Regulations 2003 and invited written observations, confirming that the consultation period would end on 5 June 2023. Finally, the letter stated that all of the estimates may be inspected.

29. The Tribunal did not accept the submissions made by the Respondent that the procedure was not correctly followed, and that the landlord disregarded the Respondent's nominated contractor. There was no evidence before the Tribunal that the Respondent nominated a contractor within the relevant consultation period as set out above. Whilst the Tribunal had before it evidence of previous occasions when the Respondent had nominated a contractor (for example the email at page 20 of the Respondent's statement dated 28 April 2021, and page 23 of the Respondent's statement dated 19 August 2020) the Respondent did not put before the Tribunal evidence to show a nominated contractor for the works which were the subject of this application. The Tribunal did not accept the Respondent's interpretation of the email of 10 April 2020 (page 12 of the Respondent's statement) where the landlord had asked the Respondent to notify the managing agent of the clause in his lease that obliged them to obtain a tender from the Respondent's preferred contractor as evidence of the landlord not understanding her obligations. Instead, the Tribunal accepted the explanation given by the Applicant that the landlord has used the expertise of a managing agent.
30. Additionally, the Tribunal accepted the evidence given by the Applicant that the email dated 5 March 2024 (page A185 of the Bundle) confirmed that the Applicant had not been able to find any evidence of the Respondent suggesting an alternative contractor. The email confirmed that the Applicant "carefully checked but have not been able to find any evidence that you suggested getting a quote from a contractor".
31. The Tribunal did not find that the works were excessive and unreasonable. The Tribunal accepted the evidence of the Applicant

that they had relied on recommendations from Bishop Associates Surveyors throughout the process and Sophie Rossdale's oral evidence was that the Applicant had used a condition report to scope the work. The Tribunal found the analysis of the tenders (pages A137 to A156) was thorough and accepted the evidence of the Applicant that the difference between the lowest and highest price was only 7%. In relation to the cost of the works, whilst the Respondent has provided costings in relation to the nearby Powis Square property, the Tribunal noted that no evidence was provided of the detail of the work completed. The Tribunal was not provided with evidence of the extent and scope of the work so as to be clear of the nature of this work. In particular, there was no like for like or direct comparison completed. The Respondent included within his statement an email dated 7 September 2022 which gave costs but the email simply quoted prices with no further detail given. The Respondent included a quote for scaffolding services in his statement but again the basis that this price was offered not detailed.

32. For all of these reasons, the Tribunal was satisfied that the procedure had been correctly followed, that the Respondent had not nominated an alternative contractor and that the works were reasonable. Therefore the Tribunal found that the Respondent was liable to pay £22, 917.38 being a special levy demanded on 27 June 2023 as the Respondent's contribution to major works.

£1, 879.84 being half year's on-account service charge due for the period 29 September 2023 to 24 March 2024.

33. At paragraph 21 of Leigh Olive's statement (page A041) he confirmed that the Applicant had prepared a budget for the service charge year ending 28 September 2024. At page A169 of the Bundle the estimated service charges for the year ending 28 September 2024 were set out. This evidence was confirmed by Sophie Rossdale at the hearing as being accurate from her reading of the case file. The Applicant stated that the sums sought were not unreasonable.
34. The Respondent raised concern about fire safety issues which were detailed at point iii of his statement. Additionally, he stated that he had requested a copy of the Fire Risk Assessment and the current EICR for the common parts, but that this request has been declined. The Respondent stated that he did not think it reasonable for the landlord's agents to demand the half year's on -account service charge when statutory obligations were not being met.
35. In evidence to the Tribunal the Respondent confirmed that he was not saying that he would not pay but rather he was not paying until the fire and electricity safety issues were resolved. Regarding the figures given in the estimated service charges, the Respondent confirmed that his only dispute with the figures was that £600 for health and safety was

not high enough for the work that was required. Additionally, he felt that the management fee was too high and that the figure for repairs was also too high.

Tribunal Decision - £1, 879.84 being half year's on-account service charge due for the period 29 September 2023 to 24 March 2024.

36. The terms of the lease allowing for half year on-account service charges were not in dispute. The Tribunal was therefore satisfied that the fourth schedule of the lease set out the accounting period and in particular, at 2, that the interim charges were paid "by equal payments in advance on the 25 day of March and the 29 day of September in each year" (A077 and A078 of the Bundle).
37. Turning to the Respondent's submission, whilst the Tribunal understood the concern that the Respondent had for the fire safety and compliance with statutory obligations for the Property, the Tribunal did not accept that this was a reason to withhold the half year's on-account service charge for the period 29 September 2023 to 24 March 2024. The demand had been properly made in accordance with the lease. With regards to the figures that were contained in the on account charge, the Respondent did not put before the Tribunal evidence as to why the management fee was too high or that the figure for repairs was also too high. The Tribunal found that the charges had been properly calculated, but noted that these were on-account charges at this stage.
38. Whilst not part of the Tribunal's decision, the Tribunal would urge the Applicant to provide a copy of the Fire Risk Assessment and EICH to the Respondent and as appropriate, discuss the Respondent's concerns regarding the safety of the building.

Decisions of the Tribunal

39. For the reasons set out above the Tribunal determines:
 - I. that the administration charge of £563.60 being the Landlord's costs of earlier proceedings, is payable by the Respondent within 28 days from the date of this decision.
 - II. that the sum of £22, 917.38 for major works is payable by the Respondent and payable within 28 days from the date of this decision.
 - III. that the on-account service charge for the half year commencing on 29 September 2023 in the sum of £1,

879.84 is payable by the Respondent and payable within 28 days from the date of this decision.

Name: Judge Bernadette MacQueen **Date:** 22 April 2024

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).