



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

Case Reference : **CHI/00HN/LIS/2023/0018**

Property : **Grand Marine Court,
8 Durley Gardens
Bournemouth, Dorset
BH2 5HS**

Applicant : **Alum Court Ltd**

Representative : **Mr Mullin (Counsel)**

Respondent : **The Leaseholders**

Representative : **Mr Nickless (Counsel for Mr and
Mrs Sherwood of Flats 12 & 19)**

Type of Application : **Section 27A**

Tribunal Members : **Judge Dovar
Mr Robinson FRICS
Mr Davies FRICS**

**Date and venue of
Hearing** : **23rd September 2024, Havant**

Date of Decision : **9th October 2024**

DECISION

© CROWN COPYRIGHT

1. This is an application under section 27A(3) of the Landlord and Tenant Act 1985 to determine whether if costs were incurred for the repair or maintenance of the balconies of Flats 11 and 12 (both to the structure and surface thereof), would a service charge be payable for those costs. That was the question posed and the issue identified at the Case Management Hearing of 22nd May 2024.
2. At that hearing, directions were given for the parties to file and serve their Statements of Case. The only leaseholders who complied with those directions were Mr and Mrs Sherwood. Despite Ms Biachill of Flat 11 and Mr Godfrey of Flat 14A having filed statements prior to that hearing, they did not engage further with these proceedings.
3. At the hearing, the Applicant informed the Tribunal that it adopted a neutral stance to the application, it had brought it in order to attain certainty in light of conflicting legal advice. The Respondent contended the following:
 - a. The surface of the Balcony, forming a waterproof membrane and any item above, was part of the demise and repair of the same was the responsibility of the leaseholder;
 - b. The concrete slab on which the membrane sat was part of the structure of the Property and was outside of the demise. That was the responsibility of the Applicant to repair and maintain and as such the cost of doing so, was a cost that fell to the service charge.

Lease Terms

4. Both flats have been subject to lease extensions since the first demise. The relevant terms are divided between the original lease and terms set out in the extended lease.

Flat 11

5. By a lease dated 17th February 1959, Alum Court Limited demised to Dorothy Russell Taylor

‘ALL THAT Flat forming part of Grand Marine Court ... known as Flat Number 11 ... which said Flat is for the purpose of identification only delineated in the plan annexed hereto and thereon coloured pink TOGETHER with the roof balcony shown on the said plan and with the ceilings and floors of the said Flat and the joists and beams on which the floors are laid but not the joists and beams to which any ceilings are attached...’ (The Third Schedule).

6. It reserved out of that demise

‘... ALL THOSE the main structural parts of the buildings comprised in Grand Marine Court including the roofs foundations and external parts thereof but not the surface of any roof balcony ... and the joists and beams to which are attached any ceiling except where such joists or beams also support the floor of a Flat.’

7. The Fifth Schedule subjects the demise to a right of access for the Lessor *‘as may be necessary for the proper performance of their obligations...’*

8. The Sixth Schedule sets out the 'Contributory Services' which are those obligations undertaken by the Landlord to which the Leaseholder is liable to contribute (under clause 2) , they include

*'(1) The maintenance repairing renewing repainting and cleaning of:
(a) The roofs (other than the roof balconies specifically included in this or any other demise of any other Flats ...'*

9. The Eighth Schedule set outs the Landlord's obligations, including

'To keep the Reserved Property ... in good tenantable repair and condition ...'

10. By the Seventh Schdule,

a. paragraph (13) the Leaseholder covenants to *'keep the ... roof balcony in good and substantial order repair and condition.'*

b. Paragraph (15) gives the Landlord the right to enter for the purpose of *'Executing any repairs or works to or in connection with ... any contiguous property belonging to the Lessor.'*

c. (paragraph(22)(b) *'To provide and lay over the whole of the roof balcony included in the demised premises and thereafter to maintain over the whole area of the same adequate boarding decking ... to the intent that the surface area of the said roof balcony and every part thereof shall be preserved and protected from damage and to make good forthwith all any damage that may be occasioned thereto ...'*

11. On 25th January 2000, that lease was surrendered and a new lease was granted for a term of 999 years. By clause 1 that demised '*the property described in the Second Schedule hereto and comprised in and demised by the Former Lease.*' The Former lease was the lease of 1959 referred to above. The Second Schedule confirmed the demise of the Flat '*TOGETHER WITH the roof balcony shown on the said plan ...*' The material parts of the 1959 lease were either incorporated by reference or mirrored.

Flat 12

12. By a lease dated 10th October 1958, Alum Court Limited demised Flat 12 to James Graham. The terms are materially the same as with the 1959 lease of Flat 11. The plan attached to this lease shows the flat and balcony coloured pink.
13. On 15th October 2009, the Applicant demised to Abert Oakland and Derek Patrick '*ALL the property described in the Second Schedule hereto and comprised in and demised by the Former Lease.*'
14. The Second Schedule omits the reference to the balcony that was contained in the Former Lease. It demises '*ALL THAT flat forming part of the Grand Marine Court ... known as flat Number 12 ... which said Flat for the purpose of identification only delineated in the plan annexed to the Former Lease and thereon coloured pink...*'

Construction of lease terms

15. It was common between the parties that the physical construction of the upper parts of the Property comprise a concrete slab with a waterproof membrane. Further that the membrane forms the surface of the balcony. The result of that is that that falls within the demise of the respective leaseholder under the original leases, as that is clearly expressed as being excluded from the reservation in the Third Schedule. It was not contended by either party, nor any leaseholder that that formed a 'main structural' part of the Property so as to fall outside the demise. The Tribunal agrees with that assessment.
16. It also follows that the concrete slab is a main structural element of the Property. It provides support and structure to the entirety of the Property. For that reason, it falls outside of the demise as being one of the reservations set out in the Second Schedule: '*main structural parts ... including the roofs.*' The reference to roofs does not seem to be directed solely to external parts or parts outside of the balconies. Any doubt about that is resolved by the express reference to the surface of the roof balcony falling outside of the reservation.
17. The 2009 Lease of Flat 12 omits the express inclusion of the balcony from the area demised. However, in light of the fact that the demise is of that flat known as flat 12, which would include that, not least by reference to the original demise, but also that the plan coloured pink includes the balcony, the Tribunal considers that as a matter of construction, the 2009 Lease includes the same demise as the 1958 one. With the result that the service charge liability is the same, as is the responsibility to repair their own demise.

Conclusion

18. It follows that whilst the leaseholders have the obligation to repair and maintain the surface of their balconies, if the Applicant needs to repair the slab beneath that surface and as a result needs to take up the surface to access the slab, that it has an obligation to make good any damage to the surface; *McGreal v. Wake* (1984) 13 HLR 107, CA 112. Further the costs of making good would then form part of the service charge.
19. Ms Biaxhill has raised an issue about waiver in relation to the cost of repairing the surface of the balconies. The Tribunal considered that correspondence, but that was simply a waiver by the landlord of the obligation on the leaseholder to lay boarding or decking. It was not a waiver in respect of maintaining the surface.
20. The Applicant confirmed that it would not be seeking to recover the cost of this application through the service charge or from any individual leaseholder.

Appeals

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 .

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.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.