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

**Case Reference** : LON/00AY/LAM/2013/0017

**Property** : 1 – 50 Beechcroft Close, Valley Road, London SW16 2EW

**Applicant** : Fausto Selmi (Flat 34) (plus 9 other lessees)

**Representative** : Fausto Selmi

**Respondent** : Morribrook Investments Limited (1)  
Beechcroft Close Management Limited (2)

**Representative** : Amanda Gourlay instructed by TWM Solicitors (1)  
Michael Dallas and James Cox

**Type of Application** : For the determination of the reasonableness of and the liability to pay a service charge

**Tribunal Members** : Dr Helen Carr  
Mr Hugh Geddes  
Mr Alan Ring

**Date and venue of Hearing** : 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 16<sup>th</sup> December 2013

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the Applicants will not be reimbursed by the Respondent for the hearing fees in this application.
- (2) The tribunal was not required to make any other determinations.
- (3) The tribunal makes the determination as set out under the various headings in this Decision

### **The application**

1. The Applicants seek 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 Applicants in respect of proposed major works for the replacement of windows and in connection with insurance payments.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicants were represented by Mr Selmi at the hearing, Respondent 1 was represented by Ms Amanda Gourlay of Counsel and Respondent 2 was represented by Mr Dallas and Mr Cox, both directors with the company.
4. Immediately prior to the hearing the parties handed in further documents, namely documents in connection with insurance provision and further documents in connection with the window dispute.

### **The background**

5. Beechcroft Close is a development of fifty self-contained apartments comprising a mix of studio, one bedroom and two bedroom accommodation laid out in blocks A – F.
6. The Applicants hold long leases of the property which requires the landlord and the management company to provide services and the tenant to contribute towards their costs by way of a variable service charge.

### **The issues**

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for charges relating to proposed major works to be carried out to the windows
  - (ii) The payability and/or reasonableness of charges relating to insurance
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**Service charges relating to the major works carried out to the windows**

9. The issues before the Tribunal in relation to the major works to the windows are
  - (i) The respective liability of the management company and the leaseholders under the leases, for the maintenance, repair and replacement of the windows of the flats
  - (ii) If the management company is liable for such works, the adequacy of the consultation process and the tender process and the reasonableness of the proposed cost and scope of the works
10. The Tenth Schedule to the lease imposes obligations on the Management Company to maintain the maintained property. In paragraph 1 of that Schedule the Management Company covenants to carry out works provide the services and facilities and otherwise and do the acts and things set out in the Sixth Schedule to the lease.
11. The lessees' obligations to contribute to the costs of maintaining the maintained property is set out in paragraph two of Part two of the Eighth Schedule to the leases.
12. Paragraph 1 of the Seventh Schedule sets out the apportionment of the maintenance expenses. Lessees are obliged to contribute a 'fair proportion to be determined by the Management Company'.
13. Payable maintenance expenses are set out in the sixth schedule. The first paragraph includes monies actually expended or reserved for periodical expenditure in respect of 'Repairing rebuilding repointing or

otherwise treating as necessary and keeping the maintained property and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof.

14. The maintained property is defined within the Second Schedule as follows:

- (i) FIRST the entrance halls common halls passages landings staircases lifts bin stores and other parts of the Flats which are used in common by the owners or occupiers of any two or more of the Flats together with glass in the windows of such common parts  
SECONDLY the structural parts of the Development including the rooms gutters rainwater pipes foundations floors all wall bounding individual flats therein and all external parts of the Development and all Service Installations not used solely for the purpose of one flat (but not including the glass in the windows of the individual flats non-structural walls within the Flats the interior joinery plaster work tiling and other surfaces of floors ceilings and walls of the Flats and Service Installations which exclusively serve individual flats or the exterior doors of the Flats except the external surfaces of them)

15. All parties agreed that the provisions were ambiguous. The 2<sup>nd</sup> Respondent conceded during the course of the hearing that it would accept the Applicants' argument about the meaning of the provisions pending legal advice about possible variation of the terms of the lease. This meant that it agreed that the individual lessees should bear the costs of repairs/replacement of their own windows.

16. The parties wanted the tribunal to determine the reasonableness of the proposed charges relating to that element of the proposed works which related to the replacement of the windows to the communal area. However the tribunal declined to make such a determination as the tenders and estimates before them were based upon proposed works to the whole block. Whilst it would be possible to identify the costs that could be attributed to the works to the communal areas there was no saying that those costs would remain the same once the company was instructed to carry out the more limited works. It was not appropriate for the tribunal to make a determination about the reasonableness of proposed costs when it was not clear what those proposed costs might be.

### **The insurance payments**

17. Documents were produced from the 1<sup>st</sup> Respondents indicating that the insurance premium had been paid although it was not clear whether the freeholder had been reimbursed for that payment by the previous managing agents.
18. Both the Applicants and the 2<sup>nd</sup> Respondents wished to challenge the reasonableness of the insurance payments. However neither party had produced clear evidence, nor was it clear how many years were being challenged. The parties therefore decided not to pursue the challenge at present. They would submit a fresh application in connection with the reasonableness of the insurance premiums if, once they had had a chance to peruse the papers and consider evidence of reasonableness, it became clear that a challenge was appropriate.

### **Reimbursement of application and hearing fees**

19. Mr Selmi asked the tribunal to consider whether the fees he paid in connection with the hearing of the matter should be reimbursed. His argument was that the application was necessary to clarify the lease on behalf of all of the residents.
20. The 2<sup>nd</sup> respondent opposed his application as they had been prepared to make concessions and discuss the matter fully without the need for a hearing.
21. Mr Selmi made it clear that it was his decision to continue with the application despite the concessions made.

### **The decision of the tribunal**

22. The tribunal determined to reject Mr Selmi's application.

### **Reasons for the tribunal's decision**

23. It was Mr Selmi's decision to pursue the matter to a hearing on behalf of himself and other lessees. In these circumstances it is appropriate that he should bear the costs of the hearing fees.

**Name:**

**Date:**

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are



not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).