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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00BG/LSC/2012/0146
Property:	Leasehold flats on the Barkantine, St John's, Kingsbridge and Samuda Estates on the Isle of Dogs
Applicant:	One Housing Group
Respondents:	Leaseholders of flats on the Barkantine, St John's, Kingsbridge and Samuda Estates
Type of application:	For an order under section 20C of the Landlord and Tenant Act 1985
Date of hearing:	30 October 2013
Appearances:	Mohammed Aziz, 35 Glengall Grove Robert Gould, representing tenants of flats in Kelson House Colin Hammond, 46 Montcalm House David Wright, representing some 55 leaseholders Ian Kingham, representing the leaseholders of flats in Spinnaker House Peter Kristoffersson, 49 Montcalm House Antony Lane, 78 Bowsprit Point Ranjit Bhose QC, instructed by Judge and Priestley, solicitors, for the landlord
Tribunal members:	Margaret Wilson Dallas Banfield FRICS Laurelie Walter
Date of determination:	**3 November 2013**

DECISION

Introduction and background

1. These are applications by a number of leaseholders under section 20C of the Landlord and Tenant Act 1985 ("the Act") for orders that all or any of the costs incurred by the landlord in connection with its application to the Tribunal under section 27A of the Act to determine the tenants' liability to pay service charges in respect of the costs of external works to the landlord's Barkantine, St John's, Kingsbridge and Samuda Estates on the Isle of Dogs should not be regarded as relevant costs to be taken into account in determining the amount of the service charge of any of the leaseholders ("the tenants"). The Tribunal's directions dated 7 August 2013 recorded that the determination under section 20C would be limited at this stage to the costs incurred by the landlord in the period from 2 August 2012 to 21 February 2013 and the present determination therefore relates only to the costs incurred during that period.

2. A contested hearing of preliminary issues which some of the tenants had raised in connection with the landlord's application was held over twelve days in November 2012 and those issues were determined by our decision dated 30 January 2013 which sets out the background to the dispute. The preliminary issues were identified in directions made on 7 August 2012 and refined in directions made on 26 October 2012 after discussion at two case management conferences. All of them were issues of general application, mainly points of law, which had been raised in written statements of case by one or more tenants, many of them raised by or on behalf of large numbers of tenants.

3. The landlord's application to dispense with some of the consultation requirements in respect of the works was determined by our decision dated 9 March 2013. Hearings of the substantive disputes relating to the reasonable of the costs of works to individual blocks are fixed to take place in March and April 2014. The present applications relate only to the landlord's costs of preparation and representation in respect of the hearing of the preliminary issues. Our decision in relation to those issues sets out much of the relevant background to the present determination and will not be repeated in the present decision.

4. Section 20C(1) of the Act provides that a tenant may make an application to the Tribunal for an order that *all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before [the Tribunal] 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.* By section 20C(3) the Tribunal *may make such order on the application as it considers just and equitable in the circumstances.*

5. A landlord's legal costs are in principle recoverable as service charges only if the leases permit their recovery, and, by virtue of section 19(1)(a) of the Act, only to the extent that they are reasonably incurred. In our decision dated 30 January 2013, at paragraphs 156 to 158, we determined that all the different forms of lease held by the tenants in this case permitted the landlord to recover its legal costs, subject to their reasonableness and to the Tribunal's powers under section 20C. The reasonableness of the landlord's costs relating to the preliminary issues is not before us.

6. In directions dated 7 August 2013 we recorded the landlord's concession that it will not seek to recover any of the costs it has incurred in the applications under section 27A or 20C of the Act from any tenant other than through the service charge provisions of their leases. The purpose of that concession was to assure the Tribunal and the tenants that the landlord will not seek to argue that any of those costs should be recovered from tenants individually as incidental to proceedings under section 146 of the Law of Property Act 1925.

7. The directions provided that any tenant who wished to argue that an order under section 20C of the Act should be made in relation to any of the landlord's costs incurred between 2 August 2012 and 21 February 2013 should, no later than 30 August 2013, serve on the landlord a statement explaining his or her reasons for seeking an order and the order sought. The directions also provided that formal applications for orders under section 20C need not be made. The landlord was required no later than 20 September 2013 to serve on each tenant who has provided it with a statement a compendium statement in answer.

8. The following tenants or groups of tenants provided statements (listed in the order in which they appear in the hearing bundle):

Elizabeth Alexander, the tenant of 58 Bowsprit Point,
Peter Cole, the tenant of 62 Bowsprit Point,
David Wright, the tenant of 65 Bowsprit Point,
Antony Lane, the tenant of 78 Bowsprit Point,
Mohammed Aziz, the tenant of 35 Glengall Grove,
Robert Gould, the representative of the tenants of some of the leasehold flats in Kelson House,
Kong Lee, the tenant of 44 Knighthead Point,
John Luck, the tenant of 48 Midship Point,
Mr and Mrs Shohid, the tenants of 1 Montcalm House,
S K Arora, the tenant of 22 Montcalm House,
N Edwards, the tenant of 26 Montcalm House,
Olga Venzhyna, Peter Kristoffersson and Chris Jones, the tenants of, respectively, 48, 49 and 53 Montcalm House,
The lessees of leasehold flats in Montcalm House,
Junh Hae Oh, the tenant of 11 Scoulding House,
Ian and Jane Kingham, the representatives of the tenants of the leasehold flats in Spinnaker House, and
Lisa Goulding and Jason Pye, the tenants of 55 Topmast Point.

9. Of those tenants, David Wright, Antony Lane, Mohammed Aziz, Robert Gould and Ian Kingham attended and made oral submissions at the hearing on 30 October. Colin Hammond appeared as representative for the tenants of flats in Montcalm House. Other tenants attended but did not make oral submissions. Ranjit Bhose QC, instructed by Judge and Priestley, solicitors, appeared for the landlord.

The arguments

10. The written submissions of Elizabeth Alexander, John Luck, Junh Hae Oh and Lisa Golding and Jason Pye were prepared by David Wright and adopted the arguments he had advanced in his written submissions. Those arguments included:

i. the Tribunal does not have jurisdiction in respect of the costs because it is concerned only with the period from 1 April 2010 to 31 March 2011, the accounting period in which the landlord claimed the costs of the works;

ii. the landlord did not indicate at the outset that the contract was to be procured on a Design and Build basis;

iii. the tenants had a prima facie case that the service charges for the works were unreasonable or fraudulent;

iv. the tenants received no benefit from the services of Judge and Priestley, with whom they have no contract, and the landlord had not consulted the tenants in accordance with section 20 of the Act about the instruction of Judge and Priestley;

v. the landlord made a number of concessions at and after the hearing, including the concession that its agreement with Baily Garner was not a qualifying long-term agreement ("QLTA");

vi. the landlord's Scott Schedules were inadequate;

vii. the charges for the works included an element for risk and were therefore uncertain in amount and, as such, could not be service charges because, under the leases, service charges were recoverable as rent which had to be certain;

viii. Judge and Priestley may have been instructed on a conditional fee basis;

ix. the landlord's consultation under section 20 of the Act was flawed.

11. Mr Wright expanded on some of his arguments at the hearing. His arguments included the following. It would be unfair to adopt Mr Bhose's submission that tenants who had not made representations in support of an application under section 20C should not obtain the benefit of any order made under that section. The group of tenants whom he had represented at the preliminary hearing had not, through him, advanced any arguments in respect of a number of the issues identified by the Tribunal in its pre-trial directions and therefore should not bear the landlord's costs relating to them. The

landlord had admitted a number of errors in its management of the works. The landlord had failed to make proper disclosure of relevant documents.

12. Peter Cole said that it was unfair that the landlord could use expensive lawyers whereas the tenants, many of whom were pensioners, could not afford to do so. He said that the landlord had used the threat of charging costs to reach settlements with a large number of tenants, and that the landlord had not been transparent in its methods of procuring and invoicing for the works.

13. Antony Lane complained in his written and oral submissions that the landlord had improperly taken control of the estates and was an incompetent, unresponsive and unsympathetic landlord. He said that the Barkantine Estate had not needed a major works programme and that regard should be had to the effect of the cost on the tenants, many of whom had little money and could not afford their own legal representation. He said that the landlord ought to offer impartial legal advice to tenants.

14. Mohammed Aziz said that he and his wife had sought on numerous occasions to settle the dispute with the landlord but that the landlord had refused to negotiate on a reasonable basis. He said that he and his wife had taken action in the Tribunal three years ago (LON/00BG/LSC/2011/0292) but their application, which related to the external works as well as to routine service charges, had been subsumed in the landlord's application against his and his wife's will, and as a result they had lost the *pro bono* representation which they had arranged for the hearing of their application. He said that the Tribunal had in those proceedings already decided that each side should pay its own costs. (It was explained to us at the hearing that the Tribunal had not made any decision in relation to the costs of those proceedings but that the part of the proceedings which related to the costs of the major works had been treated by the Tribunal as withdrawn with no order as to costs.) He submitted that the landlord had been extravagant in instructing Queen's Counsel and solicitors when they had in-house lawyers who could have done the work at much less expense. He said that there had been real questions to be answered about the tender and consultation process, that the landlord had not attempted to go beyond the bare minimum of consultation and its conduct had given rise to suspicion, and that it was only right that the tenants should in those circumstances have scrutinised the processes which the landlord adopted. He said that the landlord had repeatedly failed in the preliminary proceedings to produce necessary documents, such as its contract with Baily Garner, and that it was only after extensive cross-examination that it had conceded that the contribution of each tenant to Baily Garner's fees should be limited to £100. He said that, while many of the discrepancies between the contract and the actual scope of the works would be clarified when the reasonableness of the costs were considered at later hearings, the tenants had genuine grievances about the manner in which the major works were tendered, consulted on and performed. He said that it was far too early to say that the landlord had "won" the case because many substantive issues remained to be determined. He said that in any event, the landlord should not be permitted to recover all its costs against the tenants who had not settled.

15. In oral submissions Mr Aziz said that he and his wife had been dragged into a difficult and complicated preliminary hearing in which they had not wished to be involved and that the determination of the preliminary issues had been unnecessarily prolonged by the landlord's inadequate disclosure of documents. He said that questions relating to the landlord's compliance with the consultation requirements had taken an enormous amount of time at the preliminary hearing; a number of questions relating to compliance required investigation and the landlord had lost on some of them and had only narrowly won on others. He said that the preliminary hearing had diverted him and his wife from the issues relating to the reasonableness of the costs of the works on which they had wished to focus. In response to the suggestion that they could, by writing to the landlord and to the Tribunal, have disassociated themselves from the arguments relating to the preliminary issues, he said that it would have been difficult to do so for social reasons because they were part of a group of tenants in the block. He submitted that the present proceedings were premature because it would not be apparent whether the landlord had "won" until the issues as to reasonableness of the costs had been determined in due course.

16. A group of tenants in flats in Kelson House submitted that an order under section 20C of the Act should be made because the landlord failed properly to consult the tenants or to manage the works or complete them to a satisfactory standard. They said that the landlord had not been conciliatory and had issued county court proceedings against some tenants without first attempting to negotiate, and it was still unwilling to negotiate with the Kelson House group of tenants. They said it would be unfair if the Kelson House tenants were penalised for being part of a very large action which was not of their making and in which they did not wish to become embroiled. They said that there was still a clear case to be made against the landlord for using a JCT Design and Build contract and for choosing a contractor who was significantly more expensive than the perfectly adequate under-bidder, and that many of the costs of the works had yet to be justified. They said that the landlord had been extravagant in that it had instructed Queen's Counsel and solicitors and that its costs were disproportionate.

17. In oral submissions on behalf of Kelson House tenants Robert Gould said that he and those whom he represented had at a very early stage made strenuous efforts to seek alternative methods of resolving their disputes with the landlord but had been rebuffed, and that the first time he had become aware of the Tribunal proceedings was when he was served with the directions of 14 February 2012. He said that the landlord had refused to meet him and those he represented in order to attempt to resolve the disputes. He said that while he accepted that it was fair that tenants should pay through their service charges for arguments they had advanced and lost, it would be unfair to expect them to pay for arguments they had not advanced. He said that he had persistently written to the landlord to say that Kelson House should be considered independently of other blocks and that the landlord should have made a prospective application to the Tribunal under section 27A of the Act before it started the works, a course which, he said, his solicitor had suggested to the landlord at an early stage. He said that the until very recently the landlord had failed to make adequate disclosure of relevant documents.

18. Kong Lee said in written submissions that the application was outside the Tribunal's jurisdiction since it related to a period which was not before it. He said that the tenants had a *prima facie* case that the works were substandard and the costs excessive, that they had received no benefit from the work carried out by the landlord's solicitors, that the landlord had made a number of concessions in the proceedings, and that the tenants ought not to have to pay for risk as they were obliged to do under the Design and Build contract.

19. Mr and Mrs Sohid, SK Arora, N Edwards, Olga Venzhyna, Peter Kristoffersson, Christopher Jones and the tenants of Montcalm House submitted that the landlord had made a significant concession in the preliminary proceedings that the contributions of each tenant to Baily Garner's fees should be limited to £100, that, as had been demonstrated in the preliminary proceedings, the costs of the works had increased enormously by reason of the use of a Design and Build contract, that the landlord had failed to disclose relevant documents at an early stage and had failed to provide any evidence in support of the evidence of Stuart Wigley of Baily Garner that the use of a Design and Build contract would yield economies of scale.

20. Colin Hammond, in oral submissions on behalf of the tenants of flats in Montcalm House, said that although the landlord had been successful in respect of some of the issues relating to the adequacy of its compliance with the consultation requirements, the Tribunal had found that the consultation procedures were but poorly carried out, particularly in the early stages. He said that the question whether the landlord's agreement with Baily Garner was a QLTA was an important one and the landlord's concession that it should be treated as if it were a QLTA was not made until well into the hearing. He submitted that the landlord had only just succeeded on the very important issue of its choice of Mulalley as the contractor in preference to a contractor whose tender was significantly lower. He said that the landlord had failed to disclose the relevant and significant consultation notices in relation to a previously proposed specification and drawings contract for very similar works to the external works later carried out, and disclosure of the earlier notices would have enabled the tenants and the Tribunal more easily to judge whether the Design and Build contract used was an unreasonable method of procurement, and that the landlord's inadequate disclosure in that respect had put the tenants at a massive disadvantage in pursuing their arguments about the method of procurement.

21. Ian and Jane Kingham said in their written submissions made on behalf of the tenants of flats in Spinnaker House that, in previous proceedings which they had brought in the Tribunal under section 27A of the Act (LON/00BG/LSC/2010/0270) before the external works were started, the Tribunal had made an order under section 20C of the Act and its decision included "it would be unfair on the lessees to have to pay for such explanations as had been forthcoming at the hearing but which should have been made available to them at a much earlier stage and especially as the tribunal as been able to only make an interim determination pending full information as to the costs expended" and "the Tribunal was concerned that

there was unnecessary work being done and thus unnecessary costs could be saved" and "it is regrettable that a more professional job was not done".

22. In oral submissions Mr Kingham said that it was only after months of frustrating correspondence with the landlord in which he and his wife had sought information from the landlord as to its proposals for the external works to Spinnaker House that they had made their application to the Tribunal and that if the landlord had taken heed of the Tribunal's criticisms and advice many of the subsequent problems and disputes could have been avoided. He said that the landlord had wholly failed to have regard to his observations as to the need for the works to Spinnaker House and had taken no notice of a tenants' survey which showed that many of the works were not required. He said that he had not appreciated that he had the option of distancing himself from the preliminary hearing.

23. Mr Bhose said that the landlord's costs incurred between 2 August 2012 and 21 February 2013 in relation to the determination of the preliminary issues had been apportioned equally among the 773 respondent tenants, notwithstanding that 336 of them had reached confidential agreements with the landlord. He said that the amount which the landlord would seek to recover from each tenant in relation to its costs incurred in connection with the preliminary issues on that basis was £263.49, and that that sum was included in the landlord's recent service charge demand of £436.18 for legal costs. He confirmed that it remained open to any tenant to seek an order under section 20C of the Act in respect of balance of £172.69 in respect of costs incurred outside the period considered in the present application, and to challenge the reasonableness of all or any of the legal costs which had been demanded as a service charge. He said that the costs which were the subject of the present hearing were limited to external legal costs, professional fees, venue hire, photocopying and stationery, website maintenance, the cost of transporting files and the costs of employing paralegals specifically for this case, and did not include any element for the landlord's in-house lawyers or other employees although, he submitted, they might reasonably have done so.

24. He submitted that there were no proper grounds for making an order under section 20C. He reminded us of what was said in the Court of Appeal in *Iperion Investments Corporation v Broadwalk House Residents Ltd* [1995] 2 EGLR 47 (at 49H) and by His Honour Judge Michael Rich QC in the Lands Tribunal in *Tenants of Langford Court v Doren Ltd* (LRX/37/2000) and in *Schilling v Canary Riverside Development PTE* (LRX/26, *31, 47 and 65/2005)* about the purpose and effect of section 20C and submitted that in the light of those authorities the principal ground for the making of such an order, within the Tribunal's broad discretion, was the outcome of the proceedings. The most important question for consideration was, he submitted, who had broadly won and who had broadly lost. He particularly relied on what HHJ Rich had said at paragraph 10 of his decision in *Schilling,* namely: *there is no automatic expectation of an order under section 20C in favour of a successful tenant. So far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under section 20C in his favour.*

25. Mr Bhose submitted that there could be no doubt that the landlord had been successful in the vast majority of the issues considered by the Tribunal at the preliminary hearing. Of the preliminary issues identified by the Tribunal in its pre-trial directions of 26 October 2012 the landlord had, he said, been successful on the questions (i) whether various works were within the landlord's covenant and the cost recoverable as a service charge; (ii) whether ground floor tenants were liable to pay for the costs of the lifts and door entry systems; (iii) the absence of a sinking fund; (iv) the arguments about interim and final demands and the effect of section 20B of the Act; (v) the arguments about the effect of section 21B; (vi) the claim based on estoppel, (vii) the appropriateness of letting one contract; and (viii) the decision to award the contract to Mulalley.

26. In relation to the landlord's compliance with the consultation requirements, he said that there were nine sub-issues, and that on the sub-issues of principle the Tribunal had found in favour of the landlord. It had held that there was potentially serious con-compliance with the requirements in respect of only three blocks. He said that the issue as to whether the landlord's agreement with Baily Garner was a QLTA, though important, did not have to be decided because the landlord had conceded that the tenants' payments towards the costs of it should be limited. In relation to what he called those very limited areas of success for the tenants, Mr Bhose submitted that it would not be just and equitable to impose any limitation on the landlord's recoverable costs, because the Tribunal had subsequently dispensed with compliance with those consultation requirements with which it had found that the landlord had not complied, and it would be unfair to penalise the landlord for its "fair and pragmatic" decision in relation to Baily Garner's contract an issue which, he submitted, took only a small amount of preparation and hearing time, and if the Tribunal had in mind to make some allowance to reflect the landlord's concession on the issue during the course of the hearing it should be a small one, such as £10 for each relevant tenant.

27. He submitted that any order under section 20C should be limited to those tenants who had complied with the Tribunal's directions to lodge statements in relation to the present dispute, because it should be assumed that those who had not done so did not wish to argue that an order under section 20C should be made.

28. Dealing in his written submissions with such of the tenants' statements as he considered to require a response, Mr Bhose submitted that it would be unfair and irrelevant to conclude and take into account that the landlord had not settled with some of the tenants who sought an order under section 20C. He said that the landlord had always been willing to settle and had now settled with 47% of the tenants and that it had not been able to do so with all of them was simply a fact for which blame could not, without reference to without prejudice discussions, and should not, be apportioned.

29. He submitted that it was not the case that some of those who sought an order under section 20C had no alternative but to take part in the preliminary hearing. He said that if any of the tenants had wanted to protect themselves against a potential liability for costs they could have notified the landlord and

the Tribunal that they did not wish to take part in the preliminary hearing and were content to admit the landlord's entitlement subject only to issues relating to the reasonableness of the cost and standard of the works to their blocks. All tenants who did not so protect themselves - and none of them had done so - should be regarded as having sought to benefit from all the arguments relating to the preliminary issues which other tenants had made.

30. He said that it was appropriate for the landlord to be legally represented in respect of the preliminary issues given the value of the works and the nature of the points raised and that the reasonableness of engaging legal representation was demonstrated by the fact that a number of tenants had, before the preliminary hearing, said that they intended to be legally represented, some had relied on statements drafted by counsel, and it was only in the days before the hearing that it became apparent that they were not to be legally represented.

31. He submitted that the landlord could not be criticised for the fact that a preliminary hearing was directed, and that all the preliminary issues were derived from the statements of case of one or more of the tenants. He said that it should be remembered that the costs related not only to twelve days of hearing time but also to months of preparation.

32. He said that of the 773 tenants there remained only 82 active respondents, 55 or thereabouts of whom were represented by Mr Wright and 13 by Mr Gould. He agreed that it would have been open to the landlord to make a prospective application under section 27A of the Act before the works had been commenced but it was far from clear that to have done so would have saved costs or time. Similarly, he submitted, if the works had been packaged differently, with separate contracts for, for example, each of the four estates, it did not follow that the costs or complexity of the legal proceedings would have been less than they were, and they might well have been greater. He did not accept Mr Aziz's argument that the present hearing was premature, because, he said, the preliminary hearing was a discrete matter which could reasonably considered separately.

33. Addressing, at our request, some of the issues raised by some of the tenants in the present proceedings Mr Bhose confirmed that Judge and Priestley had not entered into a conditional fee arrangement and said that their relationship with the landlord was a retainer and not a QLTA as Mr Wright had suggested. He submitted that questions about the adequacy of the landlord's disclosure were for consideration in the substantive hearings in March and April of 2014.

Decision

34. The Tribunal has, as Mr Bhose acknowledged, a wide discretion under section 20C of the Act, and must make such order as it considers just and equitable in the circumstances. There is no limit to the circumstances which may be taken into account in deciding whether to make such an order, provided that they are relevant. While we of course attach importance to the

words of HHJ Rich QC in *Langford Court* and *Schilling,* we do not regard them as fettering the discretion given to us by section 20C.

35. We accept Mr Bhose's submission that the outcome of the case is an important, and usually the most important, consideration in deciding whether an order under section 20C should be made. But it is not the only consideration, as HHJ Rich himself accepted when he said in *Schilling* that there was not an automatic expectation of an order under section 20C in favour of a successful tenant. In the preliminary hearing in the present case the outcome was not clear-cut, and a more nuanced approach than that suggested by Mr Bhose is in our view required in order to arrive at the just and equitable order that we are required to make.

36. It is a fact that, as Mr Bhose submitted, the landlord was successful in relation to the majority of the issues considered at the preliminary hearing. Some of the issues in which it was completely successful were, however, very short points which required little preparation, few, if any documents, and occupied little time at the hearing, either because there was not much argument in relation to them or because they were intrinsically short points. Such issues were whether various works fell within the landlord's covenant in the leases, whether ground floor tenants were liable to contribute to the costs of lifts and door entry systems, the absence of a sinking fund, and the adequacy of the summaries of tenants' rights and obligations. Other issues in which the landlord was wholly successful, such as Mr Wright's arguments about interim and final demands and Mr Gould's arguments based on estoppel, took rather more, although not a great deal more, time.

37. The issues which occupied by far the most time at the preliminary hearing and which in our opinion would be likely to have required the greatest amount of preparation and documents were the adequacy of the landlord's compliance with the statutory consultation requirements, the decision to award one JCT Design and Build contract for all the works, the decision to award the contract to Mulalley rather than to Breyer, and the question whether the landlord's agreement with Baily Garner was a QLTA.

38. On the issues relating to compliance with the consultation requirements, the landlord was not wholly successful. We found serious breaches in some instances, and although those tenants who might have been successful or partly successful in resisting an order to dispense with compliance in respect of such breaches as caused prejudice chose not to participate in the subsequent hearing of the landlord's application for dispensation, the costs of that hearing are not before us. And although it is correct to say that we found for the landlord on most of the issues of principle relating to compliance with the consultation requirements, we had criticisms to make of the standard of compliance in the early stages of the consultation process as will be seen, particularly, from paragraph 89 of the decision. In our judgement the landlord's failures in the early stages of the consultation process to take as much care it should have taken did much to foment the suspicion and discontent which has been such a feature of these proceedings.

39. Similarly, in relation to the issues concerning the choice of a JCT Design and Build Contract and the choice of Mulalley, the landlord was successful only by a very narrow balance as will be seen from, particularly, paragraphs 144, 145, 153 and 154 of our decision. Those issues had inevitably to be explored, whether at a preliminary hearing or at the later block-specific hearings, and in our view it was in the interests of all the parties that they should be explored at a preliminary stage rather than in a number of hearings relating to specific blocks where, almost certainly, different or repetitive arguments would be likely to be deployed.

40. The question whether the landlord's agreement with Baily Garner was a QLTA was an important issue in that the answer to it would have a significant effect on the service charges. The question occupied a considerable amount of time at the hearing until, at the beginning of the second week, the landlord conceded that the service charges in respect of the cost of the services of Baily Garner should be limited to £100 for each tenant. In our view the issue is likely to have occupied a fair amount of the landlord's preparation time, if only on the fruitless search for a written contract.

41. We do not consider that, in the circumstances set out in the preceding paragraphs, Mr Bhose's tentative suggestion that we deduct £10 from each demand submitted to the tenants who, either personally or through their representatives, submitted statements in support of applications under section 20C of the Act meets the requirements of justice and equity. Taking, as Mr Bhose acknowledged that we must, a broad view, we consider that 75% of the landlord's reasonable costs may be treated as relevant costs in determining the amount of any service charge payable by any tenant, with the exception only of the tenants who have settled their disputes with the landlord. We prefer to apply a percentage rather than a particular sum because the reasonableness of the costs has not yet been established. We do not accept Mr Bhose's submission that only those tenants who have supplied written submissions in relation to the present proceedings should benefit from the order. Just as all the tenants, whether or not they took part in the preliminary hearing, stood to gain or lose by its outcome on most of the issues, in our view they should all be treated equally in relation to its cost.

42. For the sake of completeness we will deal, though shortly, with arguments presented by one or more tenants which we regard as, to a greater or lesser extent, either without merit or without relevance to this dispute, or both.

43. i. Mr Wright's argument that we do not have jurisdiction because we are concerned only with the accounting period from 1 April 2010 to 31 March 2011 is without any merit whatever, as are his arguments that the tenants obtained no benefit from the services of Judge and Priestley or that Judge and Priestley's retainer is a QLTA or that the service charges were not recoverable because they were uncertain in amount.

ii. Mr Wright's argument that the landlord did not indicate at the outset that the contract was to be Design and Build and his argument that the service charges which were the subject of this dispute were *prima facie* unreasonable or fraudulent are not relevant to the hearing

of the preliminary issues, nor is his argument that the Scott Schedules were inadequate and that the charges included an element for risk.

iii. Mr Cole's argument that, unlike the landlord, many of the tenants could not afford lawyers is not relevant.

iv. Mr Lane's complaints about the way the landlord had acquired control of the estates are not relevant.

v. We are not satisfied on the evidence we have that the landlord has unreasonably refused to negotiate with some tenants. Indeed the impression we have is that the landlord has throughout been willing to negotiate, and it is not possible for us to know, and it would be wrong for us to guess, why it is that in some instances agreement has not been reached.

vi. It is unfortunate for Mr Aziz and his wife that they lost their *pro bono* legal representation by the College of Law when the Tribunal decided not to proceed with its determination in respect of the external works but we are not satisfied that the outcome of the preliminary hearing would have been any different if they had been represented. Nor do we accept his argument that the present applications under section 20C of the Act are premature. The preliminary issues were discrete points, the costs of which can properly be considered separately.

vii. Mr Kingham's argument that the landlord failed to take the advice given by the previous Tribunal may be relevant when the reasonableness of the costs is considered but is not relevant at this stage.

viii. Arguments about the reasonableness of the amount of the landlord's legal expenses are not relevant because the present dispute does not relate to that issue.

ix. Arguments relating to the landlord's alleged inadequate disclosure of documents are of only marginal relevance to the preliminary issues. Insofar as they are relevant we are not at this stage satisfied that its disclosure has been inadequate.

x. We do not accept the arguments of Mr Aziz, Mr Kingham and others that they were effectively forced to take part in the preliminary hearing. They could if they wished have informed the landlord and the Tribunal that they did not wish to take any of the preliminary points and preferred to hold their fire until the block-specific issues relating to the reasonableness of the charges are considered at later hearings. Nor do we think it is practicable, as Mr Wright and Mr Gould suggested, to give credit to individual tenants who did not take particular preliminary points. All the tenants stood to gain from all or most of the arguments and in our view they should be treated equally unless they have settled their disputes.

Judge: Margaret Wilson

DATE: 3 November 2013