

10223



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

**Case Reference** : **LON/00BK/LSC/2014/0146**

**Property** : **1-12A Gloucester Mansions, 140A  
Shaftsbury Avenue, London WC2H  
8HD**

**Applicant** : **Southern Land Securities Limited**

**Representative** : **Mrs K Evans**

**Respondent** : **Shaftsbury Covent Garden**

**Representative** : **Ms C Fairley of Counsel instructed  
by Eversheds LLP**

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

**Tribunal Members** : **Ms N Hawkes  
Ms S Coughlin MCIEH  
Mrs R Turner**

**Date and venue of  
Hearing** : **16<sup>th</sup> June 2014 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **15<sup>th</sup> July 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Tribunal determines that the sum of £55,766.22 is payable by the applicant in respect of the major work described in the applicant's application dated 17<sup>th</sup> March 2014.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

### **The application**

1. The Applicant seeks 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 applicant in respect of major works carried out by the respondent to the exterior of the Property in 2012.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The applicant was represented by Mrs K Evans at the hearing and the respondent was represented by Ms C Fairley of Counsel instructed by Eversheds LLP.
4. The Tribunal heard oral evidence from Mr P Rought of CBRE Limited who has at all material times had responsibility for managing the Property on behalf of the respondent. The applicant did not call any witnesses.

### **The background**

5. The Property which is the subject of this application is a block built in about 1900 comprising a basement, a ground floor and five further floors. A commercial tenant occupies part of the basement and ground floor and the remainder of the Property has been converted to residential use.
6. The applicant is the current long leaseholder of the Property pursuant to a lease dated 15<sup>th</sup> November 2004 between the respondent and Parkview Homes Limited.
7. The Tribunal was informed that, in late 2011, the applicant undertook certain external works to the Property which necessitated the erection of scaffolding. The applicant instructed Lewis Berkley, surveyors, to act on their behalf in relation to these works. Whilst undertaking the

work, the applicant's contractors identified defects to the stonework and the respondent was notified of these defects in January 2012.

8. The respondent's surveyors, Fresson and Tee, then undertook an inspection and confirmed that there were defects to stonework and a risk that falling masonry could potentially harm members of the public. It is not in dispute that the responsibility for remedying these defects fell on the respondent.
9. The parties agreed that the scaffolding which had been erected by the applicant would remain in place pending the commencement of the respondent's repair work. Due to the urgent nature of the proposed work, the respondent applied for and obtained dispensation from the consultation requirements of section 20 of the 1985 Act.
10. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

### **The issues**

11. It appeared from the applicant's application dated 17<sup>th</sup> March 2014 that the sum of £55,766.22 was in dispute. However, during the course of the hearing it became apparent and was agreed by Mrs Evans that there were two issues in relation to the major works which fell to be determined (worth approximately £5,000):
  - (i) The reasonableness of the charges relating to three weeks of scaffolding hire prior to the commencement of the works.
  - (ii) The reasonableness of the surveyors' fees.
12. The applicant also applied for an order under section 20C of the 1985 Act.
13. Having heard evidence and submissions from the parties and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

### **The scaffolding hire**

14. Mr Rought gave evidence (at section 6 of his witness statement dated 22<sup>nd</sup> May 2014) that (i) to remove the scaffolding which had been erected for the purpose of the applicant's work would have increased the risk of harm to members of the public through falling masonry; and (ii) that to remove and re-erect the scaffolding would have increased the overall scaffolding costs.

15. The applicant argued that the commencement of the respondent's work was delayed by a dispute with the commercial tenant, Pizza Hut, and that this delay increased the period during which the scaffolding remained in place.
16. Mr Rought gave evidence that the dispute with Pizza Hut made no difference whatsoever to the scaffolding costs. He stated that it took three weeks for the respondent to draw up a large and complex specification for the work and that the dispute with Pizza Hut had been resolved before the end of this three week period. Accordingly, the respondent's work commenced on the earliest possible date.
17. The Tribunal accepts Mr Rought's evidence and, for the avoidance of doubt, the Tribunal is satisfied that it was not unreasonable for the respondent to take a period of three weeks to draw up the specification for major work of this nature.
18. Further the Tribunal notes, as was pointed out by respondent, that in any event it was the applicant and not the respondent who erected the scaffolding in a manner which Pizza Hut sought to challenge.

#### **The surveyors' fees**

19. The costs incurred in respect of surveyors' fees were £3,980 plus VAT for the fees of the applicant's surveyors Lewis Berkley and £3,000 plus VAT for the fees of the respondent's surveyors Fresson and Tee. Although two surveyors were used, the Tribunal was informed that the total surveyors' fees were less than 10% of the final total contract price.
20. The applicant argued that the surveyors' fees would have been lower if only one surveyor had been used but did not provide any alternative quotations.
21. Mr Rought gave evidence that the respondent usually uses Fresson and Tee and that, if only one surveyor had been retained, the respondent would have chosen Fresson and Tee with whom they have a pre-existing commercial relationship. He stated that Fresson and Tee's costs, if they had been solely instructed, would have been 10% of the contract price which he considered to be reasonable. However, through negotiations with both sets of surveyors he had been able to retain them both at a below market rate.
22. The applicant argued that it would have been cheaper to have retained Lewis Berkley alone but produced no evidence to this effect. The Tribunal notes that the respondent cannot be compelled to adopt the cheapest possible means of complying with its repairing obligations if the costs are within a reasonable range.

23. The Tribunal is of the view that surveyors' fees of up to 15% of the contract price would have been reasonable on the facts of this case and finds that the surveyors' fees which Mr Rought was able to negotiate were within the reasonable range notwithstanding that he retained two sets of surveyors.

**Application under s.20C and refund of fees**

24. At the hearing, the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

Judge Naomi Hawkes

15<sup>th</sup> July 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **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 a leasehold valuation 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 a leasehold valuation 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 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.