



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

Case reference : **LON/00AG/LSC/2015/0407**

Property : **Flats 13 & 14, Blair Court, 2
Boundary Road, London NW8 6NT**

Applicant : **Mr Andrew Parissis (lessee)**

Representative : **In person**

Respondent : **Blair Court (St John's Wood)
Management Limited (former head
lessor)**

Representative : **Ms E Carr, Red Carpet Estates
(manager)**

Type of application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal members : **Judge Timothy Powell
Mr Luis Jarero BSc FRICS**

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

Date of decision : **23 December 2015**

DECISION

(in LON/00AG/LSC/2015/0407)

Summary of the tribunal's decisions

- (1) The tribunal determines that the costs incurred by the respondent in respect of portage and the maintenance and upkeep of the common parts at Blair Court, for the period between 30 September 2000 and 30 September 2008, are not payable by Mr Parissis as a service charge under the leases of his two flats; and that the amount therefore overpaid by him in respect of such costs, claimed as service charges, is **£13,775.34**;
- (2) The tribunal orders BCM to refund the tribunal fee of £440 to Mr Parissis within 28 days of the date of this decision;
- (3) The tribunal makes no order under section 20C of the 1985 Act; and
- (4) The tribunal declines to make any award for costs.

Background

1. This is an application by Mr Andrew Parissis, the lessee of flats 13 and 14 Blair Court, Boundary Road, London NW8 6NT, in relation to service charges that he has already paid for the years 2000 to 2008.
2. Blair Court is a block of flats in St Johns Wood, London NW8 comprising 78 flats in all, including one caretaker's flat, spread over 12 floors, including the ground floor. The block was built between about 1970 and 1973. The leases to the individual flats were granted on various dates between 1973 and 1974.
3. The respondent, Blair Court (St John's Wood) Management Limited ("BCM"), was the former head lessor, with responsibility under the residential long leases for delivering services and collecting service charges. BCM is owned in common by all the lessees of Blair Court, including Mr Parissis. The company's responsibilities were taken over by Blair Court Freehold Limited ("BCF"), owned by 43 of the 78 lessees, but not including Mr Parissis, when it acquired the freehold on 28 November 2008. Since then, BCM's sole function is that it owns the lease of the caretaker's flat at Blair Court; and through that it provides portage services to the building, paid for by the (now) voluntary contributions of lessees.
4. In 1999, Mr Parissis became the beneficial owner of Flat 13, Blair Court, which had been purchased on his behalf by two nominees, Christopher and Raschida Charles. They executed a declaration of trust and power of attorney in his favour on 22 March 2000, confirming the arrangement; and Mr Parissis eventually became the registered legal owner at HM Land Registry on 17 September 2001.

5. Mr Parissis then acquired Flat 14, Blair Court, on 8 September 2003. For most of the period of his ownership, Mr Parissis has let his two flats to short-term occupants, mostly, it seems, to professional Japanese businessmen visiting London.

The application

6. The application is the latest in a very long line of applications to the tribunal and claims to the court made by Mr Parissis in relation to the service charges at Blair Court. It was received by the tribunal on 15 September 2015, when the tribunal was already seized of two earlier applications, one remitted by the Upper Tribunal, under reference LSC/2010/0035, and the other made by BCM, LDC/2015/0032, seeking dispensation from statutory consultation requirements, where necessary. The three applications were joined and heard together on 11 November 2015. However, the decisions relating to LSC/2010/0035 and LDC/2015/0032 are dealt with in an entirely separate written decision.
7. In this application, Mr Parissis sought the assistance of the tribunal to quantify the precise amounts of past service charges that he had paid, but which he said BCM should refund to him, as a result of a number of earlier tribunal determinations. The sums in dispute related to certain portage costs and costs relating to the upkeep of the common parts.
8. Mr Parissis emphasised that there was no dispute that the respondent was unable to recover these costs under his lease. The problem was that BCM was not willing to refund him the sums that he had paid for these services. Apparently, Mr Parissis had made an application to the county court to enforce previous tribunal determinations relating to these costs, but the court was unable to determine from the earlier tribunal decisions precisely how much should be repaid. He therefore needed a precise figure, in order that he might apply again to the county court to enforce repayment, if BCM persisted, he said, in refusing to refund him the monies.

The amounts in dispute

9. The application before the tribunal was for the period between 30 September 2000 and 30 September 2008.
10. Mr Parissis provided a schedule of the service charge costs that he said should be refunded to him, which totalled £17,110.52. At the hearing on 11 November 2015, and without any admission of liability to pay, Ms Carr acting for BCM put forward a list of deductions that she said should be made from Mr Parissis' total, which resulted in the alternative "overpayment" figure of £9,313.82: though Ms Carr made

clear (for reasons that will become apparent) that she did not believe BCM should have to refund anything at all to Mr Parissis.

Application to strike out Mr Parissis' claim

11. Ms Carr made an application to strike out Mr Parissis' claim. She said that it was an abuse of process, as the sums had been paid by Mr Parissis many years ago, without complaint. He had benefited directly from the services provided and it was too late now to claim them back from the head lessor, which (as indicated above) had not been responsible for any service charges since the freehold enfranchisement on 28 November 2008
12. Furthermore, there was an obligation in Mr Parissis' lease at clause 5, which stated that the Lessee who had taken a share in BCM "... will by all means available to him ensure that [BCM] (i) does not become liquidated ...". Ms Carr said that BCM had no income and no cash assets so that, if the tribunal made an order for the refund of service charges, the company would have to liquidate. That would be unfair to the other lessees, who would lose the porter service upon which they relied; especially since no other lessee had come forward to challenge the charges raised by BCM or to seek a refund.
13. Ms Carr said that each year provision has to be made in the BCM accounts to cover anticipated payments to Mr Parissis as a result of all the ongoing litigation that he was involved with. In her view, the whole thing needed to be brought to an end, without payment to Mr Parissis; or else other shareholders of BCM would have to make up the shortfall in funds payable to Mr Parissis, in order to continue benefiting from the portage service that BCM provided.
14. For his part, Mr Parissis said that it was no use blaming him for financial problems that arose due to a management company not doing its job properly. All he had sought to do was pay what was due under the lease. If a charge was payable, then he paid it; if a charge was not payable under the lease, then he did not see why he should have to pay it and he expected a refund if he had already paid it, when he was under no obligation to do so. Mr Parissis said that he had tried to negotiate refunds with BCM in the past but, in the absence of agreement or payment, he had been forced to apply to the court and, now, to the tribunal.
15. While the tribunal accepts that these are old charges, for the reasons given below, it declines to order the striking out of Mr Parissis' application.
16. Despite the superficial attractiveness of striking out the application, the tribunal considers that termination on technical grounds would do

nothing to stem the tide of litigation, which had been going on now for about seven years. In the tribunal's view, the best approach was to resolve the issues, if possible, once and for all; and, in any event, as will be seen below, in relation to the matters covered by this decision, the effect of the Upper Tribunal's decision appears to be automatic, not requiring any more from the tribunal than for it to quantify what has already been determined by an earlier tribunal.

How this application is linked to earlier decisions

17. When considering the current application made by Mr Parissis, the tribunal had regard to the very long history of previous tribunal applications and court proceedings. Although only a few details were known of the latter, so far as is relevant to the current application, the position appears to be as follows.
18. In November and December 2010, the tribunal received two applications from Mr Parissis challenging various past service charges. These cases were allocated reference numbers LSC/2010/0814 and LIS/2010/0035 (sometimes referred to as LSC/2010/0035). The first appears to relate to the payability of the cost of external decorations in 2010. The second application challenged major works costs for external decorations in 2001, lift repairs in 2002, roof repairs in 2003-4 and legal costs.
19. A preliminary determination on the papers was carried out on 11 April 2011. By that stage, the issues in dispute appear to have expanded and are described in paragraph 3 of the tribunal's determination as follows:
 - "3. The tribunal identified the following issues to be in dispute:
 - (a) whether the applicant is entitled to question whether or not the correct consultation procedures were followed in relation to major works in 2001 in the sum of £44,785 for external decorations, 2002 in the sum of £37,600 for unspecified works, 2003/4 for roof repairs in the sum of £54,943
 - (b) satellite expenditure in 2004 in the sum of £13,579 and in 2004 in the sum of £8,388
 - (c) whether the lease allows the charge of legal costs of £470 in 2001, £1,489 in 2002, £705 in 2003 and £2,732 in 2005
 - (d) whether the respondents were entitled by the construction of the Lease to recover costs on water supply charged, common parts heating, porter's desk telephone, paladin hire, porters and running costs of the porter's flat."

20. That tribunal determined that issues (a) and (b) were time-barred, as being incurred prior to 4 November 2004, i.e. more than 6 years prior to the date of that application, so that the tribunal had no jurisdiction to consider them. This is the conclusion in paragraph 17 of its decision, where the tribunal appears to say that the only issues that can go forward are those where Mr Parissis was not time-barred, i.e. those costs arising in the period between 10th November 2004 and 10 November 2010.
21. That being the case, the only matters that could go forward to the final determination were (c) and (d) though, in both cases limited to the periods between 10 November 2004 and 10 November 2010.
22. The substantive hearing of the remaining issues (c) and (d) commenced on 30 June 2011, but was only concluded at a subsequent hearing on 6 November 2011. Between those two dates, Mr Parissis issued two further applications: LSC/2011/0452 (challenging the managing agents fees for 2011) and LSC/2011/0614 (challenging "all items charged for that are not provided for in the lease" for 2010 and 2011). Referring to previous applications, Mr Parissis stated that:

"I would like the tribunal to direct that the respondent do provide me with service charge demands that are properly compliant with the lease terms whilst at the same time reflecting the impact of the various LVT decisions on my service charge liabilities. I am of course aware of the time and cost implications for the tribunal in relation to these applications and therefore request that the matter be dealt with in a thorough enough manner so as to avoid any further applications being made in relation to the same issues. This will require full cooperation from the respondents. I have urged the respondents on numerous occasions over the past three years to provide me with proper service charge demands, they have not provided any. My last request was made on the third May this year, that request went unanswered."
23. Following the hearing on 6 November 2011, the tribunal issued its combined decision on LSC/2010/0814, 2010/0035, 2011/0452 and 2011/0614, by a written decision dated 18 December 2011 (which was subsequently corrected by certificate dated 16 January 2012).
24. With regard to issue (d), the portage and common parts costs, the tribunal recorded at paragraph 17 that Ms Carr for the respondents "conceded that the lease made no provision for water supply, common parts heating, porter's desk telephone, paladin hire, porters and running costs of the porter's flat." The tribunal relied upon that concession when it concluded, in paragraph 33, that such costs are not recoverable as a service charge. As Mr Parissis emphasised at the hearing on 11 November 2014, all he sought was to apply that finding (in paragraph 33) to the years 2000 to 2008.

25. It appears from the narrative of the subsequent correction certificate dated 16 January 2012 that the respondents sought to resile from certain concessions made to the tribunal and to vary the evidence given, but the tribunal did not consider that these formed grounds for a correction notice to be issued. Of its own motion, however, the tribunal made a correction to the text immediately underneath the heading “Managing Agents Fees” [immediately following paragraph 31 of the substantive decision], which, it said, should now read:

“The tribunal finds that clause 2(a) of the leases allows for the appointment of a managing agent. Further, the tribunal finds that the costs of the porter, the porter’s telephone, the water charges, the security systems, the television aerial/satellite and the communal heating system are not payable under the terms of the lease.” (The underlining being added by that tribunal).

26. Accordingly, any of these charges post-dating 10 November 2004 had been found to be not payable. As stated above, any earlier charges remained time-barred by reason (only) of the tribunal’s preliminary decision of 11 April 2011.
27. Mr Parissis then appealed to the Upper Tribunal (Lands Chamber) against the tribunal’s preliminary decision.

The Upper Tribunal’s decision and its effect

28. The tribunal’s preliminary decision of 11 April 2011 was eventually overturned by the Upper Tribunal (Lands Chamber) in the decision of HHJ Huskinson dated 11 November 2014 (see: [2014] UKUT 0503 (LC), LRX/55/2011). The Upper Tribunal remitted the case to the First-tier Tribunal (as successor to the Leasehold Valuation Tribunal that had made the original decision), so that this tribunal could now consider the applicant’s outstanding applications under section 27A.
29. In relation to issues (a) and (b), this simply meant that the First-tier Tribunal now had to consider the payability of those charges (which, as stated above, has now been done in an entirely separate decision, under reference LON/00AG/LSC/2010/0035 & LDC/2015/0032).
30. In relation to issues (c) and (d), it meant that insofar as the tribunal had already determined any such charges were not payable from 10 November 2004, the bar on applying that existing determination to periods prior to 10 November 2004 was removed.
31. In the tribunal’s view, this must mean that the tribunal’s determination that these charges are not payable from 10 November 2004, must automatically extend backwards in time to any earlier periods, which would otherwise have been under consideration had it not been for the preliminary determination that earlier such charges were time-barred.

32. It follows from this, that the tribunal has no work to do in relation to charges (c) and (d), other than to quantify them, so that Mr Parissis may seek a refund of the earlier service charges that he has overpaid.
33. The issue of (c), being legal costs, has been dealt with adequately in paragraph 28 of the tribunal decision of 18 December 2011: none are payable by Mr Parissis and the amounts are clearly specified there. That leaves the tribunal with the task of specifying the overpaid (d) costs, being the portage and common parts costs.

The tribunal's determination

34. With regard to the current application, LSC/2015/0407, the tribunal determines that the costs incurred by BCM in respect of portage and the maintenance and upkeep of the common parts at Blair Court, for the period between 30 September 2000 and 30 September 2008, are not payable by Mr Parissis as a service charge under the leases of his two flats; and that the amount therefore overpaid by him in respect of such costs, claimed as service charges, is **£13,775.34**.
35. Whether and to what extent Mr Parissis is entitled to claim recovery of this sum is a matter for the county court, on any application that Mr Parissis may make for restitution of the sum overpaid. Any possible arguments that may be raised against such an order being made, alluded to by BCM, are beyond the jurisdiction of this tribunal.

Calculating the costs that are not payable as service charges

36. The parties agreed that Mr Parissis was claiming £17,110.52 as a refund of those service charges he had paid since 1999, but were later found not to be payable under the leases to flats 13 and 14. At section 4.3 of the Respondent's Reply to the Applicant's Claim, Ms Carr said that there were several errors in Mr Parissis' calculations, by which she meant that he had over-stated the amount that could be reclaimed by way of refund of overpaid service charges. She then proceeded to deal with each "error" in turn, and sought to reduce the sum claimed as a result. Initially, she appeared to reduce the claim to £4,034.89 (at paragraph 4.3.13), but when it became clear that some of her own deductions were incorrect, this was amended and a revised sum of £9,313.82 substituted.
37. In evidence, Ms Carr said that while this sum is the amount of paid service charges that she would accept is not payable under the terms of the leases, she would not admit that any part of it should be repaid to Mr Parissis now. She said that the question of all and any repayments to Mr Parissis was covered by the Tomlin Order made in the Central London County Court on 2 April 2012, in claim number 1CL10045. Mr Parissis disputed this, saying that the Tomlin Order did not affect the

amount of any refund that he was due, as it related to proceedings brought by him against BCF, not BCM.

38. The copy of the Tomlin Order provided amongst BCM's papers was incomplete, in that it did not include Annexes A and B. However, having considered the wording of the order very carefully, the tribunal is not satisfied that it precludes a determination of the service charges apparently overpaid by Mr Parissis to BCM up to November 2008; although it clearly appears to resolve apparent overpayments by Mr Parissis to BCF after 28 November 2008, and up to April 2012.
39. That appears to be borne out by Mr Parissis' assertion, in a separate county court claim issued in May 2012, in 2CLO1109, that credits due to him for the period post-28 November 2008 had been satisfied by BCF; and that "this application therefore only deals with the liabilities of [BCM] for the period up to and including the service charge y/e 30-9-2008. Up until that date I had paid in full all service charges demanded of me such that included what were in fact non recoverable costs that are the subject of this application."
40. Returning to the calculation of the costs that are not payable as service charges, the parties proceed from the same position, namely Mr Parissis' Schedule of Sums Claimed in respect of flats 13 and 14 Blair Court, where the total overpayment (and refund) claimed from 1999 to 2008 is £17,110.52. Ms Carr sought to establish the following deductions against that sum:

2006 lift repairs & CCTV access control

41. Ms Carr sought a reduction of £500, to reflect the fact that the tribunal dealing with applications LSC/2010/0052 & 0057, in its decision of 24 June 2010 had, when refusing dispensation from a failure to comply with consultation requirements, had still allowed two capped contributions of £250 per flat (i.e. for flats 13 and 14). Mr Parissis agreed with this, so the tribunal makes a £500 deduction from the sums claimed by him.

Charges for 1999 to 2001

42. Ms Carr sought a further reduction of £1,279.66 for the two years between 1999 and 2001, to reflect the fact that Mr Parissis did not become the registered legal owner of Flat 13 until 17 September 2001. However, the tribunal accepts Mr Parissis' oral evidence that Flat 13 was purchased by nominee purchasers on his behalf and that he, as beneficial owner, was responsible for payment of, and he did in fact pay, all the service charges from 1999 onwards.

43. Mr Parissis' evidence was supported by a declaration of trust and power of attorney dated 22 March 2000 that he produced to the tribunal; and notwithstanding the Tenant Ledger produced by Ms Carr (which originally had the names of Mr and Mrs Charles, the nominee purchasers, on it) there was no evidence to the contrary concerning Mr Parissis' payments. Therefore, the tribunal does not make this reduction to the sum claimed by him.

Charges for 2002 to 2004

44. Ms Carr sought a further reduction of £3,863.14 to reflect the fact that "the decision of 18 December 2011 also only refers to the period from 10 November 2004 and the LVT have made no determination in respect of any period prior to this date in relation to those services provided for which there is no provision in the lease." The deduction was in respect of three years ending 30 September 2002, 2003 and 2004 for Flat 13 and for the one year ending 30 September 2004 for Flat 14, which Mr Parissis acquired on 8 September 2003.
45. The tribunal's view is that the tribunal of 18 December 2011 limited its determination to the period after 10 November 2004, being a period of 6 years prior to the date of the application, only because the tribunal of 11 April 2011 had, in its preliminary decision of that date, wrongly applied the limitation period to Mr Parissis' application (as confirmed by the Upper Tribunal in its decision of 11 November 2014). As the application of the limitation period was wrong, it must follow that Mr Parissis is entitled to a determination that any post-10 November 2004 charges that are not payable under the lease, must equally be not payable for any relevant period pre-10 November 2004.
46. Insofar as a specific tribunal determination to this effect is needed, this tribunal makes such a determination. It follows that the tribunal does not make this further reduction of £3,863.14 from the sum claimed by Mr Parissis.
47. However, adopting Ms Carr's later arguments in relation to the properly-payable proportions of the wages and salaries costs (one-eighth of the figures in the accounts being payable in respect of cleaner's wages, which Mr Parissis should pay) and of the light and heating costs (five-sixths of the figures in the accounts being payable by Mr Parissis for the common parts lighting), the tribunal allows a reduction from the sum claimed by Mr Parissis of £681.28, to reflect his liability for these, as follows:

Flat	Year ending	Wages & salaries per accounts £	Cleaning proportion (one-eighth) £	Flat %	Payable by Mr Parissis £	Common parts light & heating per accounts £	Lighting proportion (five-sixths) £	Flat %	Payable by Mr Parissis £
13	9/2002	78,068	9,758.50	0.84	81.97	11,694	9,748	0.84	81.86
13	9/2003	72,201	9,025	0.84	75.81	10,039	8,365.83	0.84	70.27
13	9/2004	74,875	9,358	0.84	78.62	8,413	7,010.83	0.84	58.89
14	9/2004	74,875	9,358	1.43	133.81	8,413	7,010.83	1.43	100.25
			TOTALS:		370.21				311.07

Charges for 2005 to 2008

48. In the same fashion as above, the tribunal allows (and, indeed, at the hearing, Mr Parissis accepted) further reductions of £876.30 and £1,214.06 to reflect the properly-payable proportions of the wages and salaries costs and of the light and heating costs claimed by Ms Carr in paragraphs 4.3.10 and 4.3.11 of her Reply.

Legal costs 2005

49. Ms Carr sought a reduction of £62.02 for legal costs charged and paid by Mr Parissis that he had apparently conceded and did not wish to pursue, as recorded in paragraph 10 of the tribunal decision of 18 December 2011. Although the position was not entirely clear, the tribunal then did record that Mr Parissis “did not seek to challenge” the particular legal costs mentioned, so the tribunal will allow this further reduction.

Repairs 2007

50. Ms Carr claimed, and Mr Parissis conceded, a reduction of £1.62 for an error in the repairs calculation.

Overall reduction

51. The total of the reductions allowed are:

	£	£
Amount of refund claimed by Mr Parissis:		17,110.52
Less reductions allowed by the tribunal:		
2006 lift repairs & CCTV access control	500.00	
Charges for 2002 to 2004	681.28	
Charges for 2005 to 2008:		
Cleaner's wages	876.30	
Common parts lighting	1,214.06	
Legal costs 2005	62.02	
Repairs 2007	1.62	
Total reductions:		3,335.18
Amount of charges overpaid by Mr Parissis:		13,775.34

Application for a refund of fees and costs

52. At the hearing on 11 November 2015, Mr Parissis said that if the tribunal found in his favour, he wished to apply for a refund of the £440 fee that he had paid in the current application.
53. Given that previous tribunals had found that the leases do not provide for the recovery of certain sums charged to Mr Parissis, but paid by him, and given the documentation provided to the tribunal that showed attempts by Mr Parissis to achieve a refund of the sums that he had overpaid, it seems only right that Mr Parissis should be refunded the £440 tribunal application fee in this case. The tribunal therefore orders BCM to refund the tribunal fee of £440 to Mr Parissis within 28 days of the date of this decision.
54. As there is no provision in the lease for BCM to recover its legal costs through the service charge, the tribunal declines to make any order under section 20 C of the Landlord and Tenant Act 1985.
55. The tribunal also declines to make any order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Although Mr Parissis had to come to the tribunal to obtain clarification and quantification of the sums that were not payable by him to BCM, the hearing on 11 November 2015 would have had to take place in any event, following the remission of the earlier case LSC/2010/0035, by the Upper Tribunal. In any event, the figures first proposed by Mr Parissis were too high and, by coming to the hearing,

BCM was able to reduce the amount that had been overpaid by him quite substantially.

56. The whole matter is blighted by the history of dispute and litigation between the parties; but there was nothing on the part of Ms Carr or BCM that could be said to constitute acting unreasonably in defending or conducting proceedings, so as to justify an award of costs under rule 13. In the absence of any unreasonable conduct on the part of BCM, the tribunal declines to make any award of costs under rule 13.

Name: Judge Powell

Date: 23 December 2015