

11474



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

**Case Reference** : LON/00BK/LSC/2016/0092

**Property** : FLAT C, 67 EATON SQUARE,  
LONDON SW1W 9AR

**Applicant** : MR MOHAMMED GHARBAWI

**Representative** : IN PERSON

**Respondent** : 67, EATON SQUARE LIMITED

**Representative** : MR MAX THOROWGOOD (Counsel)  
KINGSLEY NAPLEY SOLICITORS  
AUSTIN SMITH – OF SMITH WALTERS  
MANAGING AGENTS

**Type of Application** : DETERMINATION IN RESPECT OF  
LIABILITY TO PAY AND  
REASONABLENESS OF SERVICE  
CHARGES PURSUANT TO SECTION 27A  
OF THE LANDLORD & TENANT ACT 1985

**Tribunal Members** : JUDGE SHAW  
MR P. ROBERTS Dip Arch RIBA

**Date and venue of  
Hearing** : 16<sup>th</sup> June 2016  
10 ALFRED PLACE, LONDON WC1E 7LR

**Date of Decision** : 11<sup>TH</sup> JULY 2016

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## DECISION

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### Introduction

1. This case involves an application by Mohammed Gharbawi (“the Applicant”) in respect of the property at Flat C, 67 Eaton Square, London SW1W 9AR (“the Property”).
2. The Applicant is the long leasehold owner of the property which is one of four flats at the property. Flat A on the ground floor is owned by a Trust with which Mr Paulo De Philipo (who attended the hearing) is associated. Flat B is owned by a Mr Chandris (who did not attend the hearing).
3. Flat C is owned by a family trust of which the Applicant is a beneficiary and Flats D and E on the top floor and which have been combined, is again owned by the same Trust with which Mr De Philipo is associated, although Flat D/E is occupied by a Mr JeanPaul Gut (who again attended the hearing). The Respondent is a company which has been formed to own the freehold of the house, of which the property forms part, and in respect of which all the leaseholders, as understood by the Tribunal, have a shareholding of some kind.
4. The Applicant in the application seeks a determination of the reasonableness and payability of certain service charges which have been demanded of him. Those service charges related to proposed works of refurbishment and decoration of the entrance hall and lift at 67 Eaton Square. The full cost of those works as proposed is £118,338, of which the Applicant’s contribution would be two ninths, as set out in his lease and amounting to £26,297.33. The demand associated with these works can be found in the bundle prepared by the Applicant at Tab 2. There are other sums which are demanded of the Applicant relating to external works, and the regular service charges, which are not a matter for this application. The hearing of this application took place on 16<sup>th</sup> June 2016 and was preceded by an inspection of the

property (and certain other properties in the area) to which reference will be made below. The inspection and the hearing was attended by Mr Gharbawi, the Applicant. The Respondent also attended through its Counsel Mr Max Thorowgood and representatives from his Instructing Solicitors, namely Kingsley Napley Solicitors. On behalf of the Respondent, the proposed interior designer for these works, Ms Mary Gannon also attended, as did Mr Austin Smith of Smith Waters Managing Agents. As indicated above, Mr De Philipo and Mr Gut were also in attendance.

5. Before outlining the matters occurring at the attendance and the hearing, it is proposed to set out the lease provisions which govern the contractual relationship between the parties. Essentially there are two main clauses in the relevant Underlease to which Mr Thorowgood on behalf of the Respondent made reference. The main repairing covenant of relevance can be found at clause 5.4 of the Underlease by virtue of which the Respondent covenanted to perform its obligations under the Sixth Schedule to the Lease. The relevant provision in the Sixth Schedule to the Lease is that the Respondent covenants:

*“To keep the reserved property and all fixtures and fittings therein and additions thereto respectively in a good and tenable state of repair decoration and condition including the renewal and replacement of all worn and damaged parts ...”*

6. Reference was also made to clause 3(ee) of the Underlease by which the Lessee covenants with the Lessor that:

*“... the management company shall be entitled at all times during the said term to manage and conduct the business of manager of the property and the flats in all respects as it 3 4 may think fit for the purpose of constituting and keeping in being a block of high class residential flats ...”*

7. For the purposes of the Landlord & Tenant Act 1985, Section 19, costs are to be taken into account only insofar as they are “*reasonably incurred*”.

## **The proposed works and budget**

8. The proposed works in this case have been helpfully set out by Mr Thorowgood for the Respondent in his Skeleton Submissions at paragraph 3. The Tribunal will go through these works in a systematic way. The works and their individual costs are also set out in a spreadsheet prepared on behalf of the Respondent at Tab 3 of the bundle in the context of a comparison between certain estimates. Summarising the cases on both sides, the Respondent's case was supported by Ms Gannon, the interior designer referred to above, and Mr Austin Smith, one of the partners of the Managing Agents, Smith Waters LLP.
9. The essence of the Respondent's case was that Eaton Square is an extremely exclusive address, and the hallway and lift is now tired and in need of an uplift. Ms Gannon in her evidence before the Tribunal told the Tribunal in a graphic phrase, that the hallway could be "*stunning*" but that at present "*it looks like a grand old lady who has lost her face paint*". Ms Gannon had been approached through Mr Austin Smith to produce a design and list of works in order to produce the "*stunning*" effect which she had been invited to produce by Mr Gut, to whom reference has been made above. Ms Gannon told the Tribunal that "*It was put to me that I should produce a beautiful thing for the building*". She was given by Mr Gut, a budget of £150,000 within which to work. It was in those circumstances that she put together an original estimate, but following input from the Applicant, that estimate was brought down from its original higher level of £143,485 to the £118,338 which is 4 5 presently challenged by the Applicant. Mr Austin Smith also gave evidence to the Tribunal and once again the gist of his evidence, was that the hallway and vestibule, together with the lift, are not properly in keeping with the quality of decoration and repair generally in Eaton Square, nor are they consistent with the standard of decoration and design in Flats A, D and E occupied by Mr De Philipo and Mr Gut specifically.

10. The Applicant's position was that essentially the entrance hall and lift are "*fine*" as they are. He conceded that if anything the hallway might benefit from a new coat of paint but that essentially little else was required and certainly a budget of this kind approaching £120,000 to refurbish the hallway and lift was dramatically excessive. He told the Tribunal that he had lived at the flat from childhood (the property is presently occupied by his mother) and that he was familiar with several properties within Eaton Square. There was no issue at the hearing that Eaton Square is of course one of the premier addresses in London, and that the properties in the square demand extremely high prices. Indeed the double flat at the top of the house was purchased, so the Tribunal was informed, by the Trust which owns the property, at some £17 million. The Applicant's own flat, the property in issue, has been on the market and remains on the market for £6.25 million. These very high prices give an idea of the exclusivity of Eaton Square. Notwithstanding this, the Applicant contended before the Tribunal that the hallway and lift were in satisfactory states of decorative repair and entirely consistent with other properties in the area. He conceded that there is a range of standard of decoration in the square and that some properties have been decorated and maintained to an extremely high standard, perhaps in keeping with the interior of Flats A, D and E. However there were other properties within the square where the original features had been retained and repaired over a period of time in 5 6 a fashion not unlike the subject property. Ms Gannon, in evidence before the Tribunal, frankly conceded that the current state of repair of the hallway and lift were "*within the range*" for properties within the square, as described by the Applicant.

### **Inspection**

11. During the morning of the hearing, the Tribunal inspected the hallway concerned together with the lift and also went into Flats A and D/E in order to make a comparison of the standards of decorative and other repair of the various areas. The Tribunal had pointed out to it some

marks and fractures in the flooring in the area of the immediate entrance and elsewhere and the tiling of the hallway, and other respects in which the hallway could be improved in order to produce the beautiful or stunning effect spoken of by Ms Gannon. In particular the Tribunal was shown impressions of how the hallway could look after the proposed works had taken place involving (as will be detailed later in this Decision) the purchase of new mirrors, light fittings and installation of a stock carpet to lay on the tiling and conceal the surface. Also the lift was to be given an uplift by painting the doors and installing new leather panelling and mirror wall within, and new base or floor for the lift. In addition, the Tribunal went into Flat A on the ground floor and D and E on the top floor. Undoubtedly both of these flats have been decorated to an extremely high standard in terms of design, decoration and internal furniture and fittings. Yet further, the Tribunal went into the hallways of some nearby properties within Eaton Square. This exercise proved that there was, in the view of the Tribunal, indeed a range as described by the Applicant. Some of these properties have been recently refurbished and decorated to a very high standard of repair, whereas others had retained many of the original features which have been repaired rather than replaced over the years.

## **Analysis**

12. It is proposed to go through the individual items of proposed works and their costs which form part of the proposed budget put forward by the Respondent and challenged by the Applicant.
13. The first item is an item of £7,400 for general decorating work. The Applicant conceded that some general decorating work might be required and the Tribunal, from its inspection takes a similar view. Some of the paintwork was somewhat dull and worn and overall the Tribunal takes the view that this sum, albeit on the high side, is reasonable and would be reasonably incurred, for the purposes of the Act. The Tribunal therefore allows this sum.

14. The next sum is the highest sum in the Schedule of £29,652 relating to the installation of a new partition door, lighting and foyer floor tiling.
15. Taking these items in turn, first, the installation of the partition door, is said to be to conceal a narrow service corridor. The Tribunal was also told that this might have some security benefits in addition. The Tribunal was not persuaded that there were such security benefits, given the security already provided by entrance into the main building, which is supervised by a concierge and also the restricted access available to the elevator and then subsequent barriers and locked doors pertaining in respect of individual flats. Moreover, the Tribunal was not satisfied that the installation of this new partition door comes within the repairing obligation referred to above, which essentially relates to the maintaining of fixtures and fittings “*in a good and tenantable state ...*” coupled with the “*renewal and replacement of all worn and damaged parts ...*”. This piece of work would amount to the creation of an entirely new feature within the hall which the Tribunal was not satisfied either would come within the repairing covenants within the Lease nor within the context of reasonableness for the purposes of the Act.
16. The lighting aspect of this section of the work involves the taking down of two chandeliers or light fittings presently in the hallway and replacing them with three matching chandeliers to be purchased especially for the hallway. The Applicant’s position is that those fittings have been there for some time, they work perfectly well, there is nothing wrong with them aesthetically or from a functional point of view. The light given by these fittings is supplemented by existing spotlights in the ceiling and overall their replacement with high cost individual chandeliers is unjustified and unnecessary. The Tribunal takes a similar view. The lighting in the hallway seemed to the Tribunal on its inspection, to be entirely satisfactory. It is always possible to replace light fittings with yet further more beautiful light fittings, however in the Tribunal’s view, the fittings concerned were not inconsistent with the standard to be expected in a case of this kind and

there was no suggestion that they were not in proper functioning order, so as to require repair or replacement. The purpose of the work would be entirely aesthetic and although these judgements are somewhat subjective, the Tribunal did not consider that such replacement would be reasonable within the terms of the Act or the contractual covenant between the parties.

17. As for the foyer floor tiling and the replacement of such tiling with some wall carpeting from the entrance up to the lift and within the lift, once again the Tribunal takes a similar view to that expressed by the Applicant in this case. The tiling in question is, in the view of the Tribunal, a rather elegant marble tiling, which it is true has worn somewhat over the years, but in the view of the Tribunal, that wear does not detract from the elegance and appropriateness of the tiling in a property of this kind. It is correct that with some straining of the eye, there are some marks and fractures in some of the tiles, as explained by Mr Austin Smith in his statement and at the inspection. In addition the grouting in some areas is discoloured, as one would expect ordinary usage to involve. However, such marks or imperfections as there were, were not such as to be striking in the view of the Tribunal, or to detract substantially from the overall effectiveness or appearance of this rather elegant hallway. By comparison with some of the other hallways inspected by the Tribunal at the inspection, this hallway was very much in keeping with the general tenor of the square. Insofar as may be necessary, some defects which may exist in individual tiles are no doubt capable of replacement or repair which will be allowed for in the overall budget to be referred to by the Tribunal at the end of this Decision. However, the complete abandonment of this tiling and its covering with thick wool carpet would, in the view of the Tribunal, be a style choice rather than something required by the repairing covenant or the criteria set out in the Act of reasonableness.
18. The additional factor put forward on behalf of the Respondent was that for the occupier of the ground floor flat, that is to say Flat A, there is noise created by shoes on the tiling which is disturbing for the



occupiers of that flat. It seems to the Tribunal that there are other ways of reducing such noise as exists, other than the very costly way which is now proposed on behalf of the Respondent. Either a runner of some kind as proposed by the Applicant could be provided, or there are other acoustic or insulation steps that can be taken to reduce such noise for occupiers within Flat A. However, Flat A is not the only flat within in the building and the considerations of the occupiers of that flat have to be taken into account in the context of the building generally.

19. The Tribunal's view and finding is that this marble hallway is in a good and tenable state of repair for the purposes of the Act and the Underlease and that insofar as there may be some defects or discolouration, they are capable of remedy by local repair work rather than the purchase of carpeting at a cost of £14,442, as will be referred to below. This item therefore is disallowed and the Tribunal finds that such costs would not be reasonably incurred for the purposes of the Act.
20. The next two items were £745 and £825 for the provision of wallpaper for the wall panelling and the labour to hang the wallpaper respectively. This wallpaper is, as understood by the Tribunal, to hang within the existing panelling in the hallway. The wallpaper itself is a compromise, in the sense that a much more expensive cracked gesso finish had originally been proposed. These two items seem to the Tribunal to be entirely reasonable and are allowed.
21. The next item is that of the purchase of a new antique wall mirror at a cost of £6,912. Once again, the Applicant's position was that the existing mirrors are perfectly adequate and in good repair and they are positioned one at the first part of the entrance hall and the other at the end of the entrance hall close to the lift. There is no need says the Applicant for the purchase at just under £7,000, of a new antique mirror to go within the hall. The Tribunal finds that the existing mirrors remain within good and tenable repair. It was not suggested that they are not in such repair, but that an overall more pleasing aesthetic effect could be achieved by their removal and replacement by

a new antique mirror. This may or may not be the position, but again the question it seems to the Tribunal, is whether or not there is anything rendering the existing mirrors no longer in good and tenantable state of repair or requiring replacement because of worn or damaged parts. The Tribunal concludes that there is no such reason for replacing the existing mirrors which are not in any way offensive and in many respects, are decorative and in keeping with the hallway as it presently stands. The Tribunal therefore concludes that this extra cost is also not reasonable within the provisions of the Act.

22. The next two items on the list are for £17,784 and £2,381 respectively for the fitting of new glass and leather panels to the three lift walls and the supply of leather hide to be fitted in those panels. The Respondent's position was that this further cost of some £20,000 was both reasonable and consistent with the needs of the building. The Tribunal inspected the lift. It presently has, in the view of the Tribunal, perfectly acceptable wood panelling within the interior, and the flooring too, seems to the Tribunal to be of an acceptable standard. Once again, it was never suggested to the Tribunal that any of these fittings had become so out of repair or so worn as to require replacement. This seemed to the Tribunal to be another aspect of beautifying the premises – which may or may not be the case and is something of a style choice, as mentioned above. For present purposes, the Tribunal cannot see that this work is such as to bring the property into good and tenantable state for the purposes of the Underlease, nor is it reasonably incurred for the purposes of the Act.
23. The next item on the list is tied in with the above item relating to lighting and in respect of which comments have already been made. What is proposed in the works is the purchase of three chandeliers at an overall cost of £18,200. These chandeliers would no doubt be of very high quality and appearance, but for the reasons indicated above, the existing lighting seemed to the Tribunal to be perfectly satisfactory and in good and tenantable repair for the purposes of the Lease. The

Tribunal finds that such expenditure would not be reasonable or reasonably incurred for the purposes of the Act.

24. It follows from what the Tribunal has said above in relation to the flooring, that the purchase of the carpet to cover that flooring at a further cost of £14,441 is not required for the purposes of the Act, nor is it necessary in order to keep the premises in a good and tenable state of repair. This further item is also therefore disallowed.
25. The effect of the above findings is that sums totalling £9,950 are allowed, which sum includes a further figure of £980 contained within the estimate of Charles Alexander Limited referable to the making good of all walls in preparation for the redecoration (including cost for plastering). To this sum should be added the £5,000 contingency sum and the overall 15% for interior design and supervision, bringing the figure to £17,192.50. There is a further allowance which the Tribunal considers would be appropriate in this case, to be made for that part of the entrance hall which is to be found immediately upon entry to the building and in the small foyer area before entering the main entrance hall. The Tribunal did note some discolouration of the tiling in that area, which perhaps receives some greater wear than elsewhere and in order to cover this contingency and the possibility or need for installing new carpet or a sunken entrance mat within that area, and to meet any other further contingencies which may arise generally, overall in doing the best it can, the Tribunal would allow a further sum just in excess of £12,000 to be added to the overall budget. This would bring the figure to **£30,000**, and this is the sum which the Tribunal, on the evidence before it, and taking into account the matters referred to above, considers a reasonable budget for such work as is reasonable within the property.

## **Conclusion**

26. For the reasons indicated above, the Tribunal's finding is that the budget which would be reasonable for the works to the entrance hall is

£30,000 and in respect of which the Applicant should make his appropriate contractual contribution of two ninths. Of course it goes without saying that it is obviously open to other leaseholders within the building to invest further sums within the hallway, should they so desire. The Tribunal's finding however is that the sum referred to is the sum which would be reasonably incurred for the purposes of the Act.

**JUDGE SHAW**

**11<sup>th</sup> July 2016**