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

**Case reference** : **LON/00AY/LSC/2017/0314**

**Property** : **Flat 9 Elder Gardens Gipsy Road  
London SE27 9TJ**

**Applicant** : **Uche Enekwa**

**Respondent** : **Elder Gardens Freeholding  
Company Limited**

**Representative** : **Stapleton Long**

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

**Tribunal members** : **Judge Carr  
Mr R Shaw FRICS**

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

**Date of decision** : **24<sup>th</sup> October 2017**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £2,325 is payable by the Applicant in respect of the service charges for the year 2017.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) 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 the service charge year 2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The determination**

3. At the Case Management Conference held on 30<sup>th</sup> August 2017, the Tribunal determined that the matter could be dealt with on the basis of written representations. It gave the parties an opportunity to request an oral hearing. As no application for an oral hearing was received, the matter has been determined on the basis of the documents provided by the parties.

### **The background**

4. Stapleton Long, for the Respondent, provided, in its bundle, some important background information which was not disputed by the Applicant.
5. Elder Gardens is an inter-war block of 36 flats within an elongated three-storey building. The property is of traditional construction with non-cavity brick elevations under pitched roofs.
6. The property is owned by Elder Gardens Freeholding Company Limited, which was formed in 1991 to facilitate the purchase of the freehold. Currently thirty leaseholders are also shareholders in the freeholding company. In 1991 the leaseholder of Flat 9 became a

shareholder and when he sold his flat in 2001 he transferred his shareholding to the Applicant.

7. The Board of Directors is made up of shareholders who are also residents in the block. A significant number of the flats are not owner occupied including the Applicant's flat.
8. In 1991 the roof of the building was substantially overhauled. Over the years various localised repairs have been required, and the necessity for these has become increasingly frequent. In 2017 the entire roof was stripped and retiled together with the renewal of all the fascias and gutters.
9. 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.
10. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

### **The issues**

11. The Tribunal, in its directions issued following the Case Management Conference, identified the relevant issues for determination as follows:
  - (i) The reasonableness of the estimated costs
  - (ii) The payability of the disputed service charge
  - (iii) Whether the respondent should have put the surveyor's fees out to tender
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The reasonableness of the estimated costs**

13. Stapleton Long, on behalf of the Freeholding Company explained the decision to carry out major works as follows: The Directors, following a quick succession of water ingress complaints over the winter of 2014 – 15, instructed Stapleton Long to carry out an inspection of the roofs and gutters utilising a cherry picker that was being used by a roofing

contractor undertaking repairs to the roof. The findings were provided to the Directors on 27th March 2015.

14. Subsequently the findings were presented to the AGM of the Freeholding Company on 22<sup>nd</sup> September 2015. The shareholders authorised the Directors to instruct Stapleton Long to begin the process of preparing a specification of works for a major works project to replace the roof coverings and gutters with a view to initiating s.20 works.
15. The Directors worked with Stapleton Long to consider various options for renewal of the roof, including the possibility of doing the works in three stages over three successive years with a view to spreading costs. Three preliminary estimates demonstrated that a staged exercise would increase the overall costs by some 28% and following a further spate of complaints from leaseholders a directors meeting was held in May 2016 at which they decided that the project should be undertaken as a single project. Advice letters were sent to all leaseholders on 1<sup>st</sup> June 2016. This was accompanied by a stage one s.20 notice.
16. Seven contractors were sent the specification and invited to tender for the works. Five estimates were received and Stapleton Long reported to the Directors on 6<sup>th</sup> February 2017 with their overview on the various estimates.
17. The Applicant raises no issue in his statement in connection with the costs of the roofing works. His complaint relates to that part of the contract which relates to surveying costs. He objects to the fact that this element of the contract was not consulted upon. He refers to Stapleton Long's letter of 1<sup>st</sup> June 2016 which described the works to be carried out as: (a) roof works to include replacement of roof coverings, soffits, fascias and gutters (b) repairs of chimney stacks and repointing. He argues that there was no mention of survey work involved in the contract. He writes, 'The surveyor's costs only make an appearance after the roofing contract had been awarded, almost as an afterthought'.
18. Stapleton Long response to the Applicant's challenge is that they entered into a Long Term Agreement with the Freeholding Company following the High Court decision in Phillips v Francis, in order to protect the Freeholding Company.
19. The Long Term Agreement was consulted on and it covered all possible maintenance and service providers. A copy of the contract is attached to the Respondent's statement.
20. The Applicant refers to a letter he states that he sent on 4<sup>th</sup> March 2017 in response to the Stapleton Long's letter dated 1<sup>st</sup> March 2017. This letter, which was part of the consultation process, included details of

Stapleton Long's surveying charges. The Applicant's letter contains a number of points in relation to the proposed works, including a question about the appointment of Stapleton Long as surveyors for the works and questions about whether the surveying part of the contract had been put out to tender.

21. Stapleton Long state that they did not receive the letter, note that the letter in the bundle is a typed letter on unheaded paper, and that the Applicant had never previously communicated with the Respondent's in this way.

### **The tribunal's decision**

22. The tribunal determines that the estimated costs for the work are reasonable.

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

23. The Applicant raises no issues in connection with the charges for the roofing works. His concerns are solely with the surveying element of the major works. The Tribunal accepts the evidence of the Respondent that this element of the work is covered by a qualifying long term agreement which was consulted on and entered into in 2013.
24. The remaining issues identified by the Tribunal fall within the same set of facts. The issue raised by the Applicant in connection with the payability of the charges is concerned with the failure to consult on the surveying charges demanded by the Respondent. As the Tribunal has determined that those charges are the subject of a qualifying long term agreement the charges are payable as there was no need to consult in connection with that element of the charges. The issue raised by the Applicant in connection with whether the surveying charges should have been put out to tender is also covered by the Tribunal's determination that that element of the major works costs is covered by the qualifying long term agreement.

### **Application under s.20C**

25. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines not to make such an order.

**Name:** Judge Carr

**Date:** 24<sup>th</sup> October 2017

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

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

#### **Section 18**

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

#### **Section 19**

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

#### **Section 27A**

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

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

## **Section 20**

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



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

### **Section 20B**

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

### **Section 20C**

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

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

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

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

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

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

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

**Schedule 11, paragraph 2**

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

**Schedule 11, paragraph 5**

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

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