



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

Case Reference : **CHI/00MS/LIS/2021/0035**

Property : **21 West Central, 20 Portland Street, Southampton, SO14 7BH**

Applicant : **Southern Land Securities Limited**

Representative : **Ceri Edmonds (Counsel)**

Respondent : **India Jean Bhagwanani**

Representative : **Alan Bhagwanani (father)**

Type of Application : **s.27A LTA'85**

Tribunal Members : **Judge D Dovar**
Mr Davies FRICS ACI Arb

Date and venue of Hearing : **12th October 2021, Remote**

Date of Decision : **27th October 2021**

DECISION

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1. This an application for the determination of the payability of service charges for the years ending 2019 to 2021. The Respondent challenges the sum of the specific cost headings claimed in these years as well as raising her own counterclaim.
2. The claim was started in the County Court by the Applicant landlord and included a claim for interests and costs and the service charge elements was transferred to the Tribunal on 2nd June 2021. A separate order will be issued by the County Court dealing with the costs and interest elements of the Applicant's claim.
3. On the matter being transferred the Tribunal issued standard directions on 15th July 2021 for the parties to file statements of case and witness evidence, for the production of a bundle and gave the Respondent permission to rely on an expert report from Mr Donvito. It was said that that report must comply with the Civil Procedure Rules, part 35.
4. The parties largely complied with the directions and the Tribunal has been provided with a bundle of 136 pages as well as a separate invoice bundle from the Applicant running to 232 pages. The Respondent has confirmed at the hearing that Mr Donvito has been called as a witness of fact, rather than as an expert.
5. At the hearing, which was held remotely, the Applicant was represented by Ms Edmonds of counsel and Ms Bhagwanani was represented by her father, Mr Bhagwanani by telephone.

Adjournment and recusal

6. Mr Bhagwanani requested an adjournment at the outset of the hearing, which was refused. He was unhappy with the fact that the Applicant had only served their skeleton argument the day before the hearing and their statement of costs even more recently. He was concerned that the skeleton raised new issues and upon which he required legal advice. The Tribunal did not consider any new issues had been raised in the skeleton argument, that had simply set out the Applicant's case by reference to the documents. The late serving of a statement of costs was not a reason in itself to adjourn the hearing.
7. After that application had been refused, Mr Bhagwanani sought a further adjournment or for the Tribunal Chair to recuse himself on the basis that he and the Applicant's counsel were from the same set of chambers; this having been pointed out to him at the beginning of the hearing. That application was also refused. The Chair was satisfied that there was no bias or appearance of bias in that both he and counsel for the Applicant were self-employed and it was not uncommon for counsel to appear before other members of their chambers.

Challenges

8. There were two broad issues before the Tribunal; both of which were matters raised by the Respondent. There were individual challenges to certain cost headings spread over the three service charge accounting years, ending June 2019, 2020 and 2021. There was also the Respondent's counterclaim, which the Tribunal considered in the

context of being a potential set-off to any sums that were found to be owing by her by way of service charge.

Cost Items

9. The Tribunal will deal with each cost heading challenged by the Respondent. As a preliminary general observation, the Tribunal found it difficult to understand the specifics of the Respondent's complaint for many of the headings challenged. There was little by way of evidence as to actual failings, the majority of the evidence and submissions made by the Respondent were very generalised in nature. The Tribunal was also left with the impression that these challenges had only been raised because of the dissatisfaction with the Applicant's approach to remedying the leaks from soil waste pipes into the garage area and lift shafts.
10. The first related to two items, general and specific **gardening costs**. The Respondent contended it had never been done and was in any event in relation to a minimal area. Indeed, Mr Bhagwanai stated that he had only needed 10 minutes to pull up the weeds. and that was all that was needed.
11. The actual cost claimed for this item was modest, around £30-40 per month and was described as garden maintenance and litter pick car park. Therefore whilst it did involve a small area of garden, it included not just weeding but also clearing up rubbish.

12. The Tribunal did not see how the Respondent could say that nothing was done in that neither she nor her father were able to monitor the Property continually. The sum appears commensurate with the work involved. The Tribunal allows these sums in full.
13. The next item was **gate maintenance**. It was said by the Respondent that these should be covered by a warranty as there had been previous repairs on several occasions. However, no specific evidence of number or nature of the repairs had been provided by the Respondent. At best it was considered that there were repairs in early 2018 and that generally they would have been in relation to locks and a sliding mechanism that kept jamming.
14. The Applicant contended that there was work that was needed to the gates in addition to the annual maintenance contract and that the sums claimed were reasonable. There was no warranty for each item of repair. The invoices provided in support contained narratives of a variety of problems and issues with the gates, which in the Tribunal's view justified the costs claimed. They also showed that a maintenance contract was in place, which was considered by the Tribunal to be justified for the day to day maintenance as opposed to individual instances of damage, requiring repair. On the face of the invoices the costs appeared to have been reasonably incurred and the standard of work reasonable. The Respondent's unparticularised challenge did not persuade the Tribunal that these sums should not be recoverable.

15. The Respondent also challenged the cost of **lift maintenance**. He contended it was poor even prior to the issue of leaking pipes (dealt with below) and that the lift had been out of order for many months. He therefore did not consider that the maintenance works had been done adequately. For the first year challenged, it had been out of service for around 2 1/2 to 3 months. More recently it had been out of service for a considerably longer period of time.
16. The costs claimed were mainly for a maintenance contract with a few additional sums where the lift had been out of repair. The fact that the lift had been out of service for a considerable period of time, was not necessarily a reason for reducing the costs incurred in maintenance and repair. The vast majority of this cost was for the maintenance contract with Otis. That was reasonable to incur given that it was advisable to have the lift under such a contract, even if it was out of order for periods of time. The balance of the sums claimed related to individual repairs when the lift was working. Those appeared to the Tribunal to have been reasonable to incur and the work carried out to a reasonable standard. The sums are therefore allowed in full.
17. One of the main challenges was with respect to **Management Fees**. The Respondent contended that the building was not being managed correctly and therefore it was not possible to justify the £5,000 per annum charged in fees. The management was said to have been poor from day one. That was the basis for the reduction, it being accepted that if they had provided a good service, then the sum was reasonable. There were continuing works outstanding with the building, apart from

the soil leaks (more fully described below), there were various other leaks; such as leaks from overflowing rain water gutters and overflow pipes and there were consequential water stains on the building.

18. Further, the problems with dealing with the car park gate meant that the Property had ended up with homeless people sleeping rough there as the agents had not dealt with the locks on the car park properly.
19. There were also serious issues with the soil stacks in the Property which had resulted in effluent leaks into the car park and the lower lift void. An injection of foam into the system had only exacerbated the issue and not cured it. It had caused the effluent to go through to other areas of the Property and then flow into the lift shaft, causing the lift to stop working. In all it was said that the agents had dragged their heels on this issue.
20. The Applicant denied that they had dragged their heels. The invoices from 2018 and 2019 showed that they had been taken steps to identify the source of the leaks, but that it had not been an easy task. Part of the problem is that it was not clear whether the leak was from within one of the flats or in the communal parts. The foam had only been applied as a temporary measure in May 2019, whilst they tried to ascertain what was needed to permanently remedy the situation. The anticipated significant major works has now been the subject of a dispensation application, which despite numerous leaseholders objecting, the Tribunal granted in March of this year.
21. Without underestimating the unpleasantness of the issue and the difficulties that the leaseholders face, the Tribunal is not persuaded that

this is the fault of the managing agents or that they have dragged their heels. The evidence provided to the Tribunal was of a series of attempts to bring in experts to ascertain what the problem was and how to fix it, not that nothing had been done. A similar picture emerged in relation to the issue of the gate maintenance. The Tribunal did not form an impression that the managing agents had ignored the problems, they had sought to address them. Accordingly, the Tribunal allows these costs in full.

22. The Respondent challenged the **Qualifying Works** charged in the year end June 2019 in the sum of £10,532.70 for internal redecoration. It was said that that was a lot of money for the works and that another contractor would have charged 1/5th of the price. However, the Respondent had not provided any evidence of that comparison. The Respondent also maintained that she was unaware of the s.20 procedure that had preceded this charge. However, the Applicant provided the statement of estimates that had gone out which showed that this figure had been arrived at through a s.20 consultation and after competitive tendering. The Respondent had not commented during the s.20 process. No complaint was raised with the quality of the works. The Tribunal allows this sum in full.

23. The next challenge was the cost of **cleaning**. The Respondent maintained that there should not have been a separate charge for bin cleaning and cleaning; and that the former should have been included in the cost of the latter. The Applicant stated that these were different types of work and that if they had been included under one heading the

sums would have been added together. The Respondent has not provided any alternative quotations for either service. There was no challenge to the actual work. The Tribunal considers that in the absence of any comparable cost evidence, there was nothing to suggest that either of these costs was not reasonably incurred and they are therefore allowed in full.

24. **Insurance** was challenged on the basis that there should not have been an additional amount for terrorism insurance. The Applicant provided one insurance certificate which showed that there was one premium, but that that consisted of different headings, including terrorism. The lease provides for insurance for ‘...*loss or damage by fire storm tempest explosion and all such other risks as are usually covered by a comprehensive policy of buildings insurance ... as the Landlord reasonably thinks fit ...*’ There was therefore nothing wrong with including that as part of the cover. The sum is allowed in full.

25. Whilst there were a few other queries to some of the cost headings, they were more in the nature of enquiries rather than fully substantiated challenges. Therefore, the Tribunal considers that the sums claimed for the years in questions are, subject to any counterclaim, payable in full.

Counterclaim

26. The Respondent raised a number of counterclaims, none of them are sustainable for the following reasons.

27. Firstly, £1,425 legal costs were claimed by way of legal costs. On further enquiry, it was explained that this was based on the Applicant's own legal charges and that they should bear their own costs. It was said they should do so due to their incompetence and negligence in managing the Property. It was explained to the Respondent that issues of costs were limited in the Tribunal to orders either under section 20C of the Landlord and Tenant Act 1985 or under Rule 13 of the Tribunal Procedure Rules 2013 and that neither of those would be considered at this stage. It was further pointed out that the County Court could award costs, but that the usual order was that costs would follow the event, so that if any sum was found to be owed by the Respondent, then it was likely that she would have to pay costs.
28. Secondly, £750 was claimed for two surveyors' reports. The Respondent was not able to establish the legal basis that the Applicant should pay this amount. Nor had any invoices been provided. This claim fails.
29. Thirdly £975 was claimed for plumbing work from the Respondent's brother's company, RRB. However, it was accepted that no invoice had been sent to the Applicant nor any demand made in that respect. Whilst there was a suggestion that the Applicant had asked for an invoice to be sent, it was difficult to see on what basis these sums were claimed by the Respondent from the Applicant. This claim therefore also fails.
30. Finally, Mr Bhagwanani claimed £1,625 for his time, based on around £5 per day over three years. He claimed to have spent time inspecting the Property and keeping out the homeless. He had requested payment from

the Applicant for this, but they had not agreed to pay him. Again he was unable to provide the legal basis for any such claim and it also fails.

Conclusion and Section 20C

31. The sums claimed by way of service charge are allowed in full and no deductions are made as the counterclaim is dismissed. It also follows that no order will be made under Section 20C. Not only has the Respondent failed in her attempt to reduce the service charges, but her counterclaim has also failed.

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.