FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
IN THE COUNTY COURT at BARNET
Sitting Remotely

Case reference Court Claim No	**:**	**LON/00AW/LSC/2021/0014 G43YX307**
HMCTS code (video)	**:**	**V: CVPREMOTE**
Property	**:**	**Unit 6/C 1 Palace Gate, London W8 5LS**
Applicant	**:**	**Eperstein Sarl**
Representative	**:**	**Ms Emma Thompson-Counsel**
Respondent	**:**	**Mr Michael Maunder Taylor**
Representative	**:**	**Mr Henry Webb-Counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members In the County court	**:**	**Mr Mark Taylor MRICS (as expert member in the tribunal and assessor in the county court** **Judge Daley**
Venue and Date of Hearing	**:**	**9 August 2021, heard remotely by video link**
Date of decision	**:**	**4 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, or it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have noted. The order made is described at the end of these reasons. [The parties said this about the process: that they were satisfied with the video means of the hearing and were able to present their case.

Decisions of the tribunal

(1) The tribunal determines that the service charges are reasonable and payable.

(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.

(4) The Tribunal makes an order for costs, to be assessed if not agreed, including the cost of service on the Applicant of the county court proceedings in Luxembourg.

The application

1. The Applicant (Eperstein Sarl) sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable in respect of the service charge years. .

2. The Respondent had also issued proceedings, in the Barnet County Court under claim no. G43YX307. The claim was transferred to this tribunal, by order of District Judge Bennett on 12 October 2020. On 11 February 2021, the Tribunal made a Direction, and ordered that the two claims should be heard at the same time.

3. The Tribunal also made an order that the matter be set down for a preliminary hearing concerning the jurisdiction of the Tribunal in relation to parts of the Applicant's claim.

4. On 28 April 2021, this tribunal determined that the issue of payability and reasonableness of the service charges for the years ending 31 May 2019 and ending 31 May 2020 has previously been determined by the tribunal in the application LON/00AW/LSC/2019/0301. Therefore, the only issues to be determined by the tribunal sitting in the county court deployment capacity are: (i) What sums have been paid by the defendant and whether any further credits should be applied to the sum claimed by the claimant of £7,199.94. (ii) Interest (iii) Costs.

5. At paragraph 14. Of the decision and directions, it was stated that "Both parties' representatives accepted that there had been no determination in respect of the service charge year 2020/2021 and that this remained a live issue for the tribunal to determine."

6. At paragraph 15. The Tribunal stated that a previous tribunal had made a determination for that part of the application (Application No. LON/00AW/LSC/2019/0301), which referred to the service charges for the period 2019/20. Therefore, it was an abuse of process to seek to re-litigate the matter. It ordered that, "this part of the application is struck out pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013." It noted that a previous tribunal had found that the service charges for 2019/20 were reasonable and payable.

The hearing

7. Throughout this decision, the tenant (Eperstein Sarl) is referred to as the Applicant, and the Tribunal appointed manager, Mr Maunder Taylor, as the Respondent.

8. The Applicant is Eperstein Sarl, a company, incorporated in Luxembourg. The flat which is the subject of this application is a property held on trust, and the beneficiary for the trust is unknown. However, the freeholder, Winchester Park Limited, is controlled by Mr Alon Mahpud, who has previously also represented the tenant of Unit 6 Flat 1. The Freehold company and the owner of the premises which are the subject of this application have Mr Alon Mahpud as an agent in common.

9. The Applicant was represented by Ms Emma Thompson counsel, also in attendance was Ms Taylor. The Respondent appeared in person and was represented by Mr Michael Maunder-Taylor. All parties including the Tribunal attended by video-link.

The background

10. The property which is the subject of this application is a 3- bedroom flat on the first floor, within a five- storey property (5 residential units 3 commercial units). The flat is situated in a conservation area.

11. The building in which the premises is situated, has previously been the subject of considerable litigation including between the Applicant and the Respondent. The starting point for the litigation, was that on 26 July 2018, Mr Michael Maunder Taylor was appointed as a manager by the Tribunal pursuant to Section 24 of the Landlord and Tenant Act 1987. This order was subsequently varied to extend the period of his appointment. The appointment is extended to 31 May 2023.

12. On 3 March 2015, the tribunal made a determination in respect of service charges for the preceding period. The Tribunal also noted that "By the time of the adjourned hearing the parties had reached agreement that service charges ought to be apportioned according to the "relative area of each of the units." Those new measurements had been agreed and the percentages to be applied was also agreed. Within that decision at paragraph 28 (b) the tribunal noted that "The question of the terms on which the commercial units were let was a matter for the landlord, and the absence of a requirement on the leaseholders in contribute to external repairs was a commercial matter for the landlord in letting the units and on the premium and rent agreed."

13. On 15 July 2020, the Tribunal made a determination that "the lease of the ground floor and basement unit 6 Place Gate London W8 5LS … should be interpreted as obliging the tenant of Unit 6 to pay a service charge in respect of the Service Costs as defined in the lease, in accordance with the provisions of clause 8 of the lease. (2) The proportion of service charge payable by the tenant of unit 6 should be a fair proportion, calculated by reference to the net internal floor area of the premises demised in the lease…"

14. The Applicant in these proceedings has been a party to much of that litigation.

15. The Tribunal was provided with a Statement of Case from the Applicant setting out what was in issue. In paragraph 3 the Applicant stated that "The Applicant has been provided with a copy of the percentages that the Respondent attributes to each residential flat or commercial unit. The Applicant has not been advised by the Respondent how such apportionments were decided upon and calculated. The Applicant requested that the Respondent provide "full mathematical calculations".

16. The other issues were-:

General Repairs in the sum of	£5,000

Lift Consultancy	£2,000
Lift Repairs	£6,800
Management Agent Fee	£9456.00
Legal Fees &Professional fees	£10,000 (legal) £15,000 in respect of fees
Health and Safety Survey	
Man safe	£1,500
Reserve Fund	£109,000
Insurance	£15,952

17. At the hearing, the Applicant went through each of the heads of the service charges which were disputed and put the Respondent to strict proof of the reasonableness and payability. In respect of the Service charge apportionment, we heard from the respondent that the apportionment was based on square footage of each unit as per the agreement reached by the parties.

18. Clause 2 (b) of the lease provided that "The lessee shall pay the Interim Building Charge by equal payments in advance on 1st day of June and 1st day of December in the Accounting Period or on such other dates at an interval of six months as the Lessor may in its sole discretion specify…" Paragraph 1 of Part 1 of the Third Schedule states that the Applicant is to pay insurance rents and service rents in the sum equal to "*…a due proportion fairly attributable to the premises reasonably determined by the Lessor's surveyor".*

The Decision of the Tribunal on Apportionment

19. The Tribunal noted the lease, provided the Landlord with a wide discretion in how to apportion the service charges. The Respondent in this case, is the Tribunal appointed manager who stands in the shoes of the landlord. The Tribunal heard that the issue of apportionment had previously been the subject of a determination by the Tribunal.

20. This Tribunal accordingly decided that it had no Jurisdiction to hear this matter again. In any event if the Tribunal is wrong, there was no evidence before it that the Applicant's premises had been incorrectly measured. Accordingly, had this matter been within our jurisdiction, we would have made a finding that the apportionment by square foot is in accordance with the lease.

General building and repair £5000

21. Ms Thompson stated that the Applicant queried why the Respondent was budgeting for general repairs, when there was a programme of major works and the leaseholders had been paying into the reserve since 2019.

22. She stated that there were no works being carried out and substantial funds for works had been collected.

23. In reply, Mr Michael Maunder Taylor stated that the amount for general repairs was a budgeted sum, which was based on historical information from the past two years. In respect of the major works this was provided for by the budget for the reserve which was separate.

24. Mr Maunder Taylor referred to the Tribunal decision dated 23 July 2020, in particular paragraphs 27 & 28, it was noted within that decision that the plan was to finance the major work by contribution to the reserve. The estimated cost of the work was in excess of £200,000, the Tribunal on 23 July 2020, acknowledged the plans for collecting the sums for the major work and found that they were reasonable.

25. In paragraph 14 of his witness statement, Mr Maunder Taylor stated that based on the sums of money which had been spent on repairs the sum in the budget was reasonable and prudent.

26. Mr Maunder Taylor updated the Tribunal concerning the major works. He stated that the section 20 notices would be going out to tenants sometime in August 2021. Ms Thompson stated that her client was unaware of the potential section 20 notice.

The Decision of the Tribunal

27. The Tribunal noted that the sum of £5000.00 for general repairs was separate from the major works. It was to deal with ongoing reactive,

urgent repairs. The Tribunal is satisfied that the respondent in accordance with the terms of the lease has made provision for general repairs in the budget, and that this is reasonable and based on their knowledge and experience of the type and nature of repairs over the last two years.

28. Accordingly, the Tribunal is satisfied that the sum budgeted for repairs is reasonable and payable.

The lift maintenance and lift repair

29. The Applicant's case was that the sum of £2000.00 was unreasonable for lift consultancy. The Applicant also queried the lift repairs budget which was a separate item to the consultancy, Ms Thompson queried why this was necessary and why it was budgeted for in the sum of £6800.00.

30. Mr Michael Maunder Taylor referred to the report from Ilecs, the lift consultants, dated 28 May 2021. This report considered the viability of the lift. Mr Maunder Taylor stated that this report had been costed under the heading lift consultancy.

31. The report stated that the lift, which had been installed over 36 years ago, and modernised in 2002 which was almost 20 years ago. The report stated that because of the obsolete design of many of the lift components there was a risk of failure of the lift. 4.2.1 of the report, recommended modernisation or replacement of the lift at a cost of £90,000-£100,000, or £110,000 to £120,000 for lift replacement.

32. In respect of the lift repairs, it was submitted by Mr Webb, that this is a reasonable sum to provide for repairs given the report and the history of repairs at the building.

The Decision of the Tribunal

33. The Tribunal heard and accepted that the sum for the lift consultancy was for a one-off report on the viability of the lift. The Tribunal noted that the report was costly at £2000.00, however, the Tribunal had no comparative information upon which to determine whether the Applicant's objection to the cost was well founded. Further the Respondent appears to have misunderstood what was included under the hearing "lift consultancy".

34. The Tribunal was provided with details of the provision of the lease which was relied upon. Under clause 4(3) of the landlord's covenant, and the services to be provided under part 2, of the third schedule of the lease.

35. The Tribunal is satisfied that the provision of the lease which provides for the maintenance of fixtures fittings, and machinery and equipment is sufficient to enable consultancy and repair to be carried out. In addition, the respondent is entitled to carry out any services he deems reasonably necessary under the terms of the lease.

36. Mr Maunder Taylor, explained that as a result of the consultant's report which had set out the potential cost of refurbishment or replacement of the lift, any lift refurbishment or replacement would not take place during the term of the management order. Accordingly, Mr Maunder Taylor considered that it was necessary to make reasonable provision within the budget for the lift for reactive repairs. The Tribunal heard that the budgeted sum includes parts and call out charges.

37. The Tribunal is satisfied on the information provided that given the age of the lift, it was reasonable to commission a detailed report. The Tribunal is satisfied that the cost of this report is reasonable and payable in accordance with the terms of the lease.

38. The Tribunal is also satisfied that the provision for ad hoc repairs is on the balance of probabilities reasonable and payable.

The Management Fees

39. The Applicant in their statement of case stated that ", The respondent is seeking to recover £9456.00 for service charges when there were only 5 units at the premises. Given that this, the Applicant considered the cost to be unreasonable, as it was more than £1000.00 per unit. The Applicant referred to the Leaseholders Association Guidance, which gave the guide of £200-£380 per annum.

40. Mr Maunder Taylor in response, referred to the management order which was put in place by the Tribunal which had included details of his cost, which at that time were fully explored by the Tribunal. He also referred to the list of tasks undertaken. He noted that the premises was subject to a management order as it had proven difficult to manage with longstanding issues and varied cooperation from the leaseholders and continued difficulty in collecting service charges. Given this, Mr Maunder Taylor considered the cost of management of the premises to be reasonable and payable.

The Tribunal's decision on the management fees

41. The Tribunal noted the terms of the management order, in particular paragraph 15, of the management plan dated 4 June 2020. The Tribunal also noted that the management fee was approved by the Tribunal in its order dated 23 July 2020. The Tribunal accordingly, find that as this aspect of the Applicant's claim has already been determined by the

Tribunal that it lacks the jurisdiction to re-visit the fee charged by the Respondent in this matter.

42. If the Tribunal is wrong concerning this, the Tribunal is satisfied that the order was put in place because of the issues that existed at the property, prior to Mr Maunder Taylor's appointment.

43. The Tribunal were presented with no comparable evidence of management fees involving properties with a tribunal appointed managers. Accordingly, the Tribunal finds on a balance of probabilities that the sum of £9456.00 (inclusive of VAT), is payable in accordance with the terms of the order.

The Legal and Professional Fees

44. In the Statement of Claim, the Applicant noted that the Respondent had not provided details of why the sums that were sought in the budget in relation to the legal fees and the professional fees of £15,000 were necessary. The Applicant stated that the fees were unreasonable, and full details were sought as to what the fees related to.

45. Mr Webb in his skeleton argument filed on behalf of the Respondent provided details of three litigation cases which had been brought by Mr Mapud in which costs had been incurred by the leaseholders from the service charge account. Mr Webb submitted that it was reasonable to make provision within the budget for legal costs. He also submitted that the actual cost was likely to exceed the budgeted sum.

46. The legal fees were in relation to service charge arrears and their recovery from flat 1, Unit C, Unit D and in relation to service charge arrears owned by Winchester Park Limited.

47. In respect of Professional Fees; the Respondent had put within the budget provision for £15,000 which took account, the fees for the independent building Surveyor in relation to the major works, the fees for investigating the feasibility of creating a bin storage area, and his own fees which were not covered by the management fees. This was in respect of the applications to the County Court and the Tribunal.

48. In the Statement of Case, it was noted that there were no fees spent in respect of the bin storage project as it was aborted. However, professional fees for a surveyor would be incurred for the major work, and it was reasonable and prudent to take account of these fees when preparing the budget.

49. In respect of his fees, in his statement, Mr Maunder Taylor noted that his involvement in the litigation consisted of providing instructions to

counsel preparing witness statements and attending to give evidence at hearings.

The Decision of the Tribunal on legal and provisional fees

50. The Tribunal noted that the Applicant did not dispute that these costs fell within the provision of service charges set out as "Service Rent" within the provisions of Part 1 clause 1 of the lease. Part 2 clause 13 of the lease provided that "…The setting aside by the Lessor of such sum or sums by way of reasonable provision for anticipated future expenditure in respect of management and upkeep of the building…"

51. The Tribunal is satisfied that on the explanation put forward by the Respondent that the provision of service charges for legal and provisions fees within the budget is reasonable and payable.

Health and Safety Survey and the Tribunal's decision

52. The Applicant in their statement of case, set out that whilst they accepted that surveys were necessary, they did not need to be undertaken on an annual basis.

53. The Tribunal heard from Mr Maunder Taylor, that one of the commercial units included a restaurant, he stated that the risk assessor, had set out that this meant that more regular checks were necessary and he recommended annual health and safety checks.

54. The Tribunal having heard the objection to this head of cost, and the response from Mr Maunder Taylor is satisfied that an annual health and safety survey, is reasonable and payable. The Tribunal finds that the cost of this item should not exceed £500.00

Man safe the provision and the Decision of the Tribunal

55. The Applicant queried the reason for the fee of £1500.00. Mr Maunder Taylor explained that Man safe system was installed on the roof of the building in order to allow contractors to use a harness system to safely and securely carry out inspections and maintenance work. As the system needs to be tested annually provision needed to be included in the budget for the testing of the equipment.

56. The Tribunal having heard the explanation offered by the Respondent, is satisfied that the sums claimed under this head of the budget is reasonable and payable.

The Building Insurance

57. The Applicant accepted that the Respondent had to insure, the building pursuant to clause 4.1 of the lease, however the Applicant noted that the property had previously been insured within the region of £8,000

58. Mr Webb informed the Tribunal that the premium for the period August 2020 –21 was £22,876.00, and that the insurance cover was provided for by Aviva. The cover included terrorism cover and Insurance Premium Tax.

59. The total commission earned on the premium for handling and brokerage is 16.86%, this was lower than the 20% premium which was permitted by paragraph 19 of the management order. The bundle included a copy of the Schedule and the policy details.

60. The Tribunal was informed that in October 2018 the building was re-valued and the building was found to be under insured. The sum insured reflected the re-valuation of the building, and changes which had occurred in the insurance market.

The Decision of the Tribunal

61. The Tribunal having considered the terms of the lease is satisfied that the provision for the insurance is reasonable and payable. Further the Applicant did not seek to persuade the tribunal by providing comparable evidence for the tribunal to consider.

The Reserve Account

62. The Applicant objected to the sums claimed for the reserve charges. The Tribunal was informed that the sums set aside by way of reserve were for major works, which had been approved by the Tribunal in its decision to extend the management order. Further the issues concerning the reserve account had been the subject for litigation for 2019/20. It was submitted on behalf of the Respondent that the matter was Res Judicata.

The Respondent's County court claim

63. The County court claim issued by the Respondent was for the sum of £7199.94. The directions of the Tribunal were that Mr Mauder Taylor was to clarify the sums that had been paid and the sums outstanding. The Tribunal were informed that the sum that was in issue related to the reserve fund contribution, which had been determined as reasonable and payable by the Tribunal following a decision dated 12 February 2020.

64. The Applicant had not paid the service charge demand that was issued following the Tribunal decision and the Respondent had had to issue proceedings in the county court on 23 March 2020.

65. The Respondent stated that he had hoped that they could simplify the issuing of proceedings, as they were aware that although the Applicant's registered company address was in Luxembourg that as the Applicant had solicitors who had acted on their behalf before, they would accept proceedings. However, the solicitors had refused and the court had declined to make an order for service.

66. The Tribunal were informed that the Respondent had had to arrange to translate the documents into French. As a result, service had cost £1700.00 Mr Maunder Taylor sought to recover this cost as an administrative charge. He also sought interest in accordance with the terms of the lease.

67. Mr Maunder Taylor accepted that the service charges had been paid in August 2020, however he sought the costs of issuing proceedings, including the cost of service in Luxembourg as an administration charge, interest at 4% and the costs set out in the schedule either in accordance with clause 3(9) or in accordance with the CPR rules, rule 44 (2).

68. Mr Maunder Taylor sought an order that the cost which were set out in the sum of £13,523.00 and the cost of £1700.00 for service on a summary basis.

69. The Applicant objected to the payment of interest on the grounds that Mr Maunder Taylor had no right to claim interest as this was contractual under the lease. In respect of the costs claimed for the proceedings the Applicant claimed that the costs were disproportionate.

70. The Respondent stated that the interest would be held in trust for the freeholder. Mr Maunder Taylor had provided a schedule of costs.

The tribunal's decision

71. The tribunal determines that it is reasonable to make an order in accordance with Rule 44(3) of the CPR rules. However, given the cost schedule and the fact that the Tribunal has not assessed the costs, the Tribunal determines that costs should be payable by the Applicant, and that unless the costs are agreed the costs should be subject to assessment.

72. The Respondent shall provide details of whether the costs are agreed or alternative their object to the costs within 28 days. The matter concerning the cost shall be determined, if necessary, by a paper determination.

73. The Tribunal determines that the Respondent is entitled to interest in accordance with the terms of the lease.

Application under s.20C and refund of fees

74. In the application form, 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 not to make an order under Section 20 C or for a refund of the Applicants application and hearing fees.

Name: Judge Daley **Date:** 4.10.21

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).