

7423



**Residential
Property**
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

LON/00AG/LSC/2011/0671

**SECTION 27A AND SECTION 20C OF THE LANDLORD AND TENANT
ACT 1985 as amended**

**Applicant: Mr Matthew Joseph (1)
Dr Pilanta Ali (2)**

Respondent: Mr B.M.Maunder -Taylor

**Property: Flat 15 and Flat 15a Palace Court (1)
Flat 27 Palace Court (2) all three flats
being at 250 Finchley Road London NW3
6DN**

Date of Application: 26th September 2011

**Leasehold Valuation Tribunal: Dr Helen Carr
Mr Trevor Johnson FRICS
Mr Leslie Packer**

Date of Decision 6th January 2012

DECISION

The Tribunal determined:

- (i) The service charges demanded by the Respondent in connection with the service charge period February 2011 to December 2011 are payable and reasonable other than the service charges demanded in connection with the maintenance of the lift.
- (ii) The service charges to be paid by the 2nd Applicant in connection with charges for the lift are to be calculated in accordance with the appropriate interpretation of the lease of flat 27.

PRELIMINARY

1. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 (the Act) as amended of the reasonableness and/or liability to pay service charges for the period 3rd February 2011 to the end of December 2011 following the appointment by the LVT of Mr B.R.Maunders-Taylor as a Manager. The Applicants have also made an application under s.20C of the Act.
2. The first Applicant is the leasehold owner of the flats 15 and 15A Palace Court. Flat 15 is a three bedroom flat and flat 15A is a studio flat . Both flats are situated on the first floor of Palace Court. The second Applicant is the leasehold owner of Flat 27 which is a four bedroom flat located on the fifth floor of Palace Court.
3. The Applicants were the Directors of Palace Court Limited at the time of the LVT's management order. The Applicants had strongly resisted that order and have obtained leave to appeal a term of the order from the Upper Tribunal.
4. Palace Court comprises 2 blocks of flats of varying sizes which front Finchley Road. Palace Court is fully described in the decision of the LVT ref number LON/00AG/LAM/2010/ 009 dated 3rd February 2011.

5. The Respondent in this matter is Mr B.R.Maunder-Taylor of Maunder Taylor, Chartered Surveyors who is the Manager appointed by the Tribunal for three years from 3rd February 2011. The Respondent was incorrectly identified in the Tribunal's Directions dated 27th October 2010 as PC Residents (Finchley Road) Ltd and this is hereby corrected.
6. The application was received by the Tribunal on 26th September 2011. At a directions hearing on 27th October 2011 the Tribunal identified the following issues to be determined at the hearing of the matter:
 - a. The payability of the arrears of service charges demanded for the period in dispute as the Applicants claimed that these had already been paid
 - b. The payability of the service charges for the service charge year ended December 2011 as these have already been paid
 - c. The payability and reasonableness of the advance service charges demanded in particular the demand for major works provision
 - d. The reasonableness of the charges for lift maintenance for Flat 27
7. The determination of this application took place on 6th January 2012. Mr Joseph and Dr Ali appeared at the Tribunal and Dr Ali represented the Applicants. Ms Fisher, a manager with NG properties, the previous managing agents prior to the LVT's appointment of Mr Maunder-Taylor, also attended the hearing on behalf of the Applicants and gave evidence. Mr Maunder-Taylor attended the hearing and represented himself. Also in attendance was Mr Michael Maunder-Taylor.

DETERMINATION

8. The Tribunal heard extensive evidence from the parties on the issues in dispute. It considered that evidence fully and carefully. Its determination of the issues before it draws upon that evidence and reference is made to that evidence below where salient.

Payability

9. At the time of the hearing the Applicants were not disputing their liability to pay service charges to the Respondent. In connection with the first two issues identified at the Directions hearing, the Applicants' argument was that the amounts that they had paid to NG Properties subsequent to the Management Order should

have been taken into account by the Respondent in calculating the service charge demands that he was making.

10. Ms Fisher gave evidence on behalf of the Applicants that, during the service charge period in dispute, NG Properties continued to provide services at the property, received service charge payments from the Applicants and make payments out of the accounts. The Tribunal asked her why this had been done when she was fully aware of the order, Mr Maunder-Taylor having given her a copy, sent a solicitor's letter to explain the situation, and also spoke to her in person. She answered that she did so because she was told to, by Dr Ali.
11. Mr Maunder-Taylor explained the difficulties he had had in receiving information from NG Properties. Full information was not available until August 2011, after he had obtained a Court Order. Mr Maunder-Taylor assured the Tribunal and the Applicants that there would be a reconciliation of the accounts and a full account would be made of the payments received and paid out.
12. Mr Maunder-Taylor also explained in his statement in response copied in the bundle to the Tribunal the efforts he went to in order to establish service charge liability.
13. The Tribunal understands that the situation was very confused, but considers that the confusion arises from the Applicants' lack of co-operation with the order of the Tribunal. It determines that the Applicants are liable for the service charges demanded of them and that the fact that they had made payments to NG Properties does not affect that liability. It accepts that Mr Maunder-Taylor will reconcile all the amounts paid at the appropriate time.

Reasonableness of the service charges demanded

14. The Applicants raised a series of matters with the Respondent which the Respondent has helpfully set out in a table copied in the hearing bundle at page 33. Dr Ali and Mr Joseph had raised many of these issues with Mr Maunder-Taylor in a letter of 4 October 2011. Mr Maunder-Taylor produced to the Tribunal a long, detailed response letter dated 6th October 2011 to the Applicants, which sets out in full his explanations of the items on the service charge demands. This letter was not in the bundle. Initially the Applicants denied having received it, however at a later stage of the hearing they accepted that they had received it.
15. The Tribunal noted the letter and its contents. It considers that the letter could have formed the basis of an application to strike out the Applicants' application on the basis of it being frivolous

and vexatious. The fact that the Respondent did not pursue such a course of action is indicative of his wish to be constructive in the management of Palace Court, an approach which the Tribunal regards as generous, given the way in which Applicants sought to obstruct the Respondent in carrying out his responsibilities as the LVT-appointed manager.

16. Despite the letter from the Respondent the Applicants have continued to raise certain issues. This decision will consider each of those issues in turn.

Insurance

17. Dr Ali indicated that the Applicants accepted that the insurance was paid and that the premium paid was reasonable. Her argument is that she should only have had to pay for the relevant proportion of the insurance which related to the service charge period in question. What Mr Maunder-Taylor had demanded was the full premium for 2010 – 11 followed by the full premium for 2011 -12 in advance.
18. The Tribunal endeavoured to explain to Dr Ali that this was normal professional practice and it was proper and reasonable for the Respondent to make service charge demands in connection with the insurance of Palace Court in this way. It ensured that the funds were available to insure the property.
19. Dr Ali persisted in her argument that what Mr Maunder-Taylor had done was unreasonable. The Tribunal considered that Dr Ali has not understood that she no longer manages the property and that the fact that Mr Maunder-Taylor does things quite differently from the way she would do them does not mean that what he chooses to do is unreasonable. The Tribunal drawing on its own expertise **determines that the demands for insurance premiums were not only reasonable but are evidence of proper professional property management.**

Payment in advance for major works

20. Dr Ali's arguments that the demands for payments in connection with major works were unreasonable are set out in the Applicants' statement dated 1st December 2011 at page 58 of the hearing bundle. Her first point is that Mr Maunder –Taylor wasted money by not insisting that Rossoff Waud Associates who drew up the specifications for the major work expenditure comply with the terms of the agreement that she, when she was Director of Palace Court Limited reached with that company when she was contemplating similar major works. By entering into a new

agreement with Rossoff Waud Associates she says in effect that Mr Maunder-Taylor wasted £13,500.

21. Mr Maunder-Taylor argued that he was required to renegotiate the terms of the agreement with Rossoff Waud Associates as there was no money in the Palace Court Ltd accounts to pay Mr Rossoff Waud. He argues that the agreement that he reached with Mr Rossoff Waud was reasonable, indeed that he has been effective in ensuring that the minimum necessary is spent on the major works.
22. The Tribunal considered the arguments of both parties carefully. In its opinion Mr Maunder-Taylor has behaved properly and professionally in agreeing new contractual terms with Mr Rossoff Waud. The messiness of the transfer of obligations to Mr Maunder-Taylor and the lack of funds required careful renegotiation of obligations. Unfortunately some monies previously expended was apparently wasted. This however was in the opinion of the Tribunal unavoidable in order to restart effective management of Palace Court. **The Tribunal therefore determines that the part of the service charge demand relating to Mr Rossoff Waud's fees is reasonable and payable.**
23. The Applicants further argued that Mr Maunder-Taylor should have included all of the arrears relating to Palace Court when calculating how much money he was going to have to require the lessees to pay towards the major works.
24. Mr Maunder-Taylor pointed to the difficulties he was facing in recouping those arrears. He assured the Tribunal that he was taking urgent steps to recover what could be recovered. However he was concerned with the current limits on his powers as manager and with the possibilities of arguments from debtor lessees that some of the arrears demanded were either not payable or not reasonable. Moreover no-one can count on recouping all arrears however assiduous they are in pursuing those arrears through the courts. In these circumstances it would be imprudent for him to calculate a budget for the major works taking those sums into account. He would of course account in due course for any arrears recovered.
25. Dr Ali and Mr Joseph considered that it would be possible to recoup at least 50% of the outstanding arrears in the three months before the works are due to commence, a time scale which the Tribunal considers to be optimistic at best. **The Tribunal agreed with Mr Maunder-Taylor and determined that**

it was reasonable to calculate the budget for the major works without taking arrears into account.

26. The Applicants' third argument in connection with the major works was that the s.20 consultation procedures had not been fully complied with and that the Applicants should not be required to pay any advance contribution towards major works until it was clear how extensive that liability was to be.
27. The Tribunal considered the arguments carefully. Mr Maunder-Taylor has complied with the relevant s.20 procedures to date. Clearly if the works carried out are not of appropriate quality then the Applicants will have the right to apply to the Tribunal under s.27A of the Landlord and Tenant Act 1985. However at this stage it is perfectly proper and reasonable for Mr Maunder-Taylor to estimate how much the external decoration is going to cost and start to gather in the money even though he has not provided details of the exact specifications and the exact amount of monies that will be expended. These details will be revealed once the tendering process is complete. Indeed there seemed to be little dispute between the parties that the approximate cost of the redecorating will be between £300,000 and £400,000. **The Tribunal therefore determines that Mr Maunder-Taylor acted reasonably and professionally and that the demands he made for advance payments for the major works are reasonable and payable.**
28. There was a discussion between the parties about the method of accounting for monies collected for the major works. Dr Ali indicated that she would like Mr Maunder-Taylor to put the money into a separate account. Mr Maunder-Taylor said that he would raise the issue with the Board of Directors and if they were in agreement he would have no problem with doing exactly that. **However the fact that has not been done to date is not in the Tribunal's expert opinion a matter which would change its determination that the service charge demands are reasonable and payable.**

Lift maintenance contract and other lift costs

29. Dr Ali considered that the money being paid to maintain the lift was being wasted. She argued that it would be cheaper to replace and update the control panel rather than delay the inevitable and pay maintenance charges pending that time.
30. Mr Maunder-Taylor agreed that the lift, which is very dated, would require replacement in the relatively near future. However, in view of the difficulties that lessees were having in raising

money to pay for major work he had made the decision to pay for the lift to be maintained until he considered that it would be appropriate to ask for funds to replace and update the control panel. His decision was that works need to be phased carefully and that those works which require scaffolding should be the priority for phase 1.

31. The Tribunal again considered the arguments put before it carefully. Mr Maunder-Taylor was behaving in a professional and prudent manner by working out a phased programme of works. It is not open to Dr Ali simply to say she would have organised the programme of works differently. What she has to demonstrate is that Mr Maunder-Taylor has made unreasonable demands. In the expert opinion of the Tribunal she has failed to do this. **It determines that the monies demanded for the maintenance of the lift are reasonable and payable.**
32. A further issue arose in connection with the lift, which related to the contributions of the ground floor flat, flat 18, to the costs of maintaining the lift. Dr Ali considered that the ground floor flat should pay an equal contribution to the maintenance of the lift. Mr Maunder-Taylor took the Tribunal to the lease of flat 18 pointing out that it was a ground floor flat and that there was a blank space where the percentage of the contribution to the maintenance of the lift should have been completed if indeed there was a contribution to be paid. All the other leases he had had sight of which had the benefit of the lift had inserted a contribution percentage of 10%. Indeed if he asked flat 18 to contribute he would be collecting 110% of the costs of the maintenance of the lift (including the 10% which he believed was payable by Dr Ali)..
33. Dr Ali pointed out that in her lease the contribution to lift maintenance was also blank. Therefore logically, although she was on the fifth floor, she should not be required to pay towards the lift. Mr Maunder-Taylor argued that as she was on the fifth floor and had always paid contributions in the past that was an untenable argument.
34. **The Tribunal determines that the contributions to the cost of the maintenance and repair of the lift must accord with the proper interpretation of the relevant leases.** It does not make a final determination on this matter; arguments may need to be made in connection with mistake, the history of the past payment records needs to be investigated, and it is also possible that a reasonable settlement of this issue can be reached.

The costs of maintaining the Entry Phone system

35. Dr Ali made a similar argument in connection with the Entry Phone system as she made about the lift. She considered it to be unreasonable to pay for it to be maintained when it would be cheaper in the medium term to replace it. Mr Maunder-Taylor did not contest this, but repeated his concerns about the affordability of the maintenance programme for the lessees at the present time and argued that he was exercising proper professional judgment in entering into a terminable contract for the maintenance of the entry phone system pending phase 2 of a works programme.
36. The Tribunal, drawing on its expertise, considers that Mr Maunder-Taylor has made sensible decisions in connection with the phasing of works and therefore **determines that the monies demanded for the maintenance of the entry phone system are reasonable and payable.**

Repairs

37. Dr Ali considered that the sum of £4000 to be held in reserve for repairs and maintenance for the period February 2011 to June 2011 and then the sum of £10,000 as reserve for the following year to be unreasonable. She considered that on the past history of the property annual sums of somewhere between £2000 and £3000 would be reasonable. Mr Maunder-Taylor explained how he had reached the figure. He wanted to ensure that he held sufficient funds to deal with any repair or maintenance need. These were always unpredictable. To budget for £500 roughly per flat per year for repair and maintenance costs seemed reasonable to him. **The Tribunal agreed and determined that the sums demanded were reasonable and payable.**
38. The Tribunal considers that the reasons above respond to all the substantive arguments made by the Applicants. However for the avoidance of any doubt **the Tribunal determines that all of the matters for which the Respondent has budgeted as set out in the table on page 33 of the bundle are reasonable and payable.**

Section 20C

39. **The Tribunal refuses the application made by the Applicants for the reimbursement of their fees and costs and the 20C application.** It would not be just and equitable to grant the applications in the light of the decision it has reached. Specifically, the Tribunal had found no merit in any of the arguments put forward by the Applicants, and it considers that

the Respondent has more than adequately dealt with all of the issues raised. Indeed, the Respondent had done so in his firm's letter dated 6th October 2011, pre-dating not only this hearing but also the pre-trial review. If the Applicants had given due consideration to that letter, the Tribunal considers that there should have been no need for the hearing.

40. The Tribunal asked the Respondent if he wished to pursue the application for costs that he had made in his statement. This was based up on the basis of the frivolous and vexatious nature of the application. Mr Maunder-Taylor declined to do so. He had thought when he was preparing his statement that the application was motivated solely by a continuing desire to obstruct his role. He had changed his mind; he now thought that the application was based on misunderstanding of what he was trying to do. He was glad to be able to address those misunderstandings.

41. The Tribunal considered that Mr Maunder-Taylor was behaving in a gracious manner in not pursuing his application. It considered that this augured well for the future of Palace Court and hoped that it would form the basis of a more harmonious future relationship between the Applicants and the Respondents.

Signed

A handwritten signature in black ink, appearing to read 'Helen Carr', written in a cursive style.

Helen Carr

6th January 2012