11695

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMA/LSC/2016/0018**
Property	:	**Flat 5 Maple Court, Wayland Close, Bracknell, Berkshire RG12 9PD**
Applicant	:	**Maple and Laurel Court (1993) Limited**
Representative	:	**Mr L Gibson – Solicitor Agent** **Mr N Pederson – Managing Agent** **Accompanied by Miss M Baker and Mr Pattison of the Applicant Company**
Respondent	:	**Miss Justyna Koziol**
Representative	:	**Miss Justyna Koziol** **Accompanied by Mr Graham Mays**
Type of Application	:	**Application for the determination as for the reasonableness and pay ability of service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mrs J A Hawkins BSc MSc**
Date and venue of Hearing	:	**The Reading Magistrates' Court, Reading on 29th July 2016**
Date of Decision	:	**23rd August 2016**

DECISION

DECISION

1. **The Tribunal determines that the sums claimed in respect of the French drain should be disallowed in full and the sum payable in respect of the resurfacing is reduced to £9,500 for the reasons set out below. This therefore reduces the amount payable by the Respondent to £1,508.**
2. **The Tribunal considers that an order under Section 20C should be made in respect of the proceedings before this Tribunal, it being just and equitable so to do for the reasons set out below.**
3. **The Tribunal requires Miss Koziol to contribute £95 towards the hearing fee for the reasons set out below.**
3. **It does not appear there are matters that require referral back to the County Court at Reading under claim COQZ997Q, save relating to any court costs or interest.**

BACKGROUND

1. This matter came before us for hearing on 29th July 2016 as a result of a transfer order made by the County Court at Reading in case number COQZ997Q dated 10th May 2016. The order transferred the matter to this Tribunal referring also to a claim made by the Respondent under reference CAM/OOMA/LSC/2016/0018. It does not appear that that application was progressed and accordingly matters which are common to both are dealt with in this decision.

2. In a Defence filed in the County Court proceedings the Respondent asked the Tribunal to establish whether *a. the works were warranted, b. the process of seeking quotations from reputable contractors was sufficiently robust enough to ensure value for money for the shareholders and c. that the scoping of the works was done in sufficient detail to ensure that accurate quotations could be achieved.* The Defence then went on to set out five concerns which included a question as to whether or not the decision taken at an AGM was within the duty of care of the directors and made in accordance with the memorandum of articles of association. It also raised question as to whether or not Section 20 of the Landlord and Tenant Act 1985 (the Act) had been properly dealt with and whether the dispute had been handled in accordance with the lease.

3. We can say at this stage that we do not propose to become embroiled in matters of company law and accordingly the memorandum of articles of association provisions and the AGM are not for us to decide. Equally, although the lease may include provision for arbitration, either party is entitled to proceed through the Tribunal under the provisions of Section 27A of the Landlord and Tenant Act 1985 and accordingly that also is not a matter that would concern us.

4. In a bundle of papers provided for the hearing, a number of which were duplicated because both sides decided to lodge their own papers, we had before us statements of case from both the Applicant and the Respondent, copies of the Section 20 documentation, the lease and quotes and alternative quotes put forward by the Respondent. There was also a good deal of extraneous documentation and photographs. The Respondent's own bundle contained a number of emails, some of which were of assistance and which we will refer to, further photographs and, of particular assistance, a report from Wallace Bacon Consultants in November of

2015 on the French drains and a further report in March 2016 in respect of the vertical cladding. Both these reports had been commissioned by the Applicants but were included in the Respondent's papers. We will return to those in due course.

INSPECTION

5. Prior to the hearing we inspected the subject properties. They comprise two blocks of flats, Laurel Court, the smaller one, is three stories with six flats within. Adjacent to that is are area of driveway which had been resurfaced and which was the subject of part of the proceedings before us. Maple Court was also a three storey building comprising what appeared to be four blocks on a staggered setting each containing six flats. We noted the works that had been carried out to the guttering, downpipes, fascias, soffits and cladding. Some of the cladding appeared to be missing between the blocks on Maple Court. We saw also the alleged French drains and those that had been installed previously.

6. At the Respondent's request we viewed the inside of her flat where we noticed evidence of water penetration to the wall and ceiling in her living room and also in her bedroom and to an extent in the bathroom. We also saw evidence of water penetration to the common parts, it appearing to be associated with the Velux window. Those common parts are in need of redecoration as a result of this water ingress.

HEARING

7. At the hearing the Applicants were represented by Mr Gibson who was accompanied by Mr Pederson the present managing agent. In addition, a Miss Baker and Mr Pattison of the Applicant Company attended. At the commencement of the hearing we asked the Respondent whether her offer of £1,300 was still available. She said that it was not and she had no further offer to make in respect of the major works.

8. Mr Gibson relied on the Applicant's statement which we have noted and have read. He told us that in the Applicant's view the costs were reasonable and that a proper and full Section 20 consultation had been undertaken. He considered that some of the matters that the Respondent was complaining about were company matters and not within our remit. We were shown the Section 20 consultation papers. This included an initial notice dated 13th February 2014 relating to the replacement of rain water goods, the installation of a French drain and resurfacing of the rear driveway. The notice explained why this was being done. On 19th May 2014 a second notice was sent out with details of the estimates offering the ability to inspect them at the managing agent's office who were then John Mortimer Property Management (JMPM) who were situated in Bagshot Road in Bracknell. The Section 20 part 3 notice confirmed that in each instance the Applicants were going with the lowest quote received and set out the details of same and requested a "levy" of £2,000 per property notwithstanding that the fund required was £53,023.44 which would in fact have given an obligation for each leaseholder of £1,767.11. We were told the difference was a contribution to the reserve fund.

9. The Respondent disputed that the Section 20 procedures had been followed. She did not dispute the initial notice but felt that this was something of a fait accompli as it post-dated an AGM where it had been decided that the works would be undertaken. She considered therefore that this was something of a 'done deal' and that she received little information about the process and was not clear as to what was intended to be undertaken. She confirmed that she had not inspected the estimates but did later obtain some specifications from the Applicant to enable her to obtain what she considered to be helpful comparable quotes.

10. She drew our attention to a quotation from DLR Roofing from Camberley in which they had put forward a figure of £15,900 for various works set out therein. She had also produced a quote from KD Jones Roofing and Building Services from Winkfield Row of 18th June 2014 which was similar to the works undertaken by the contractors actually used, Design Roofing, where a price of £31,560 was suggested. A specification had been provided to her by JMPM on or about 18th July requiring any alternative quotes to be submitted to JMPM by 25th July. We noted the specification. In the short period of time available to her the Respondent also obtained a quote for resurfacing the car park area. One was the sum of £9,500 based on a slightly lesser specification or a figure of £12,700 which appeared to follow the specification provided by JMPM. It appears that observations were made in respect of these quotations and in a letter to the Respondent of 3rd October 2014, Mary Baker a director for the Applicant said this *"on 16th June 2014 an objection was raised by Justyna Koziol and she was advised by JMPM that she could nominate an alternative contractor under Section 20 process. Instead three quotations were sent to JMPM but they were not based on the specifications provided and could not be considered."*

11. The Respondent generally complained that she was not given enough detail about the works intended and was not provided with information when she requested same. Mr Mays, who attended with the Respondent, had written to the Respondent on 23rd June 2016 making various allegations particularly against Mary Baker which seem to be somewhat personal and to which we do not propose to refer in any detail. We did give Mr May the opportunity of making a submission to us at the end of the hearing, which he did.

12. The Respondent sought to admit further photographs taken as the works were in process, which Mr Gibson said he did not have any particular problem in accepting, although in truth they were not directly referred to.

13. Mr Gibson responded to the somewhat discursive submission made by the Respondent that in particular the quote of DLR was somewhat general in terms and did not specify the materials to be used. He pointed out that the quote from KD Jones was very close to the figures that the Applicants had actually chosen and that there was no need to go through the third process of explaining the quotations when the lowest quotes were accepted. He also pointed out that the estimate that the Respondent had received for the driveway was in fact higher than the cost charged by the Applicant using the same specification.

14. The Respondent asked us to consider a condition report by Mr Wheeler the Area Manager for JMPM and sought to draw out attention to what appeared to be a property expenditure sheet which did not seem to show a great deal of money

being spent on dealing with issues relating to guttering. She said that the gutters are still overflowing and there is moss on the roof, which in her view could be blocking the guttering. There was, she said, no report which says the replacement of guttering was required and while she accepted that the metal guttering now in situ would last longer she considered this to be an improvement which was not provided for under the lease. She thought there may have been areas that needed some work but there was not the necessity for total replacement.

15. After the luncheon adjournment we asked the Respondent to deal with the document that was her statement of case and in particular the dispute specifics. These were set out at items a to f and the challenges were:

a. Replacement of rainwater goods with deep flow aluminium seamless guttering colour brown replacement of soffit and fascia boards in brown wood grain upvc on the basis that this specification constituted an improvement in comparison with originally existing wooden soffits and fascias and plastic guttering.
b. Challenge the installation of French drains with square top concrete edging. This is an overall improvement and was previously non-existent.
c. Resurfacing of the rear car park constitutes an improvement to the previously existing gravel surface.
d. The total value of the works as per quotations received divided by 30 shareholders makes £1,767.11. The Applicants imposed a levy of £2,000 per shareholder more than the costs of repair and the share calculated prescribed by the lease.
e. No breakdown of the £1,956 has been issued detailing how this sum is made up against the three areas of major works and why it is different from the original amount.
f. Finally, she disputed the works being completed as most of the issues in previously affected flats and communal areas persist.

16. Mr Gibson told us that Mr Broadhurst was not a chartered building surveyor but was a person with building experience. He confirmed that the sum of £2,000 originally asked for included a contingency and that no final accounts had yet been issued because there were disputes between the Applicants and the contractors G&W Groundworks who dealt with the French drains and driveway. We were also told that Mr Pederson had taken over the management of the development on 1st November 2015 after these works had been completed and really had little that he could add. He told us, however, that there was a dispute with the contractors and that the final invoice had not been issued as they were awaiting the outcome of those cases. Originally it was thought that they would not be pursuing the previous managing agents, JMPM, but that now seems to be changing to the possibility of an action being taken. Court action has been taken by GWG in respect of fees that are owed to them for the building works and there is a hearing next month. Insofar as the cladding is concerned, apparently an agreement had been reached with the contractors that they would return very soon to site to replace the cladding with an appropriate alternative without further charge to the Applicants and thus the Respondent.

17. Mr Pederson also told us that no complaints had been made to him concerning water problems to ground floor flats and that Mr Pattison said indeed he had owned a ground floor flat for some time and had never had a damp problem. It

was also pointed out that a demand which was at page 30 of the bundle made no mention of a contribution towards any reserve fund to take the "levy" up to £2,000.

18. On the question of improvements Mr Gibson's submission was that the repair and maintenance could include replacement as there would be a limit to ongoing maintenance without making changes. The roadway we were told had been subjected to pot holes for some time which could have been infilled but that did not provide a permanent solution, which it is thought now had been achieved by the resurfacing. There is, however, still some difficulties in that one side of the roadway appears to enable water to pool and that is part of the complaint against the contractor.

19. Mr Mays told us that he had owned 23 Maple Court since 1997. He was not aware that the car park area had ever been of a tarmac consistency but was the same as the turning area at the end. He accepted it needed maintenance but putting down tarmac was in his view an improvement. The Respondent agreed with this. She told us she had made offers in the past. There had been limited explanations given to her and no real response made to the offer. She felt she was being bullied and that it would not have been necessary for her to come to the Tribunal if the Applicants had engaged with her. She had suggested mediation but that had not been accepted by the Applicants and she also pointed out that the dispute pre-dated the reports which were commissioned by the Applicants.

20. Mr Gibson made certain submissions on the question of the Applicant's entitlement to recover costs, although confirmed that no claim was being made under the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

THE LAW

21. The law applicable to this matter is set out at the foot of this decision.

FINDINGS

22. There are three elements that we need to consider but there is a general reference to the question of Section 20 procedures and improvements that we should firstly address.

23. Having considered the Section 20 notices that were within the bundle we consider that the Applicant has followed the procedure. The Respondent, albeit well out of time, was given the opportunity to obtain alternative quotes which she did. It is said by the Applicants that those quotes did not follow the specifications and certainly they depart from the extent of the works carried out in respect of the guttering etc and the resurfacing of the driveway. The one that is the closest to the works actually undertaken is the quote of KD Jones which comes in at a figure not dissimilar to that which the Applicants have sought to recover. Under the Service Charges (Consultation requirements) England Regulations 2003 it seems to us that the Applicants have followed the requirements under Schedule 4 part 2. There is no need for notice to be given concerning the entering into of a contract where the lowest submitted estimate has been accepted. The estimate/quotes

which were obtained by the Respondent do not match. It may well be that she was not provided with full information to enable her to do so but she had ample opportunity to have inspected the estimates, they have been referred to in the second notice which is dated 19th May and confirmation that those estimates had been accepted was not given until 28th August 2014. In that intervening period she had obtained some alternative quotes. However, the DLR quotation is not comparable to the specification or the actual outline of works by the successful contractor who was Design Roofing. The quote from KD Jones, which included scaffolding and upvc fascia together with deep flow plastic guttering, indicates a figure of £31,560. The Respondent accepted that the metal guttering would last longer and the difference between the two of some £4,000 or thereabouts is it seems to us within the area of reasonableness that the landlord could accept. Insofar as the resurfacing is concerned, the Respondent in effect obtained two quotes, one at a lesser specification with a figure of £9,500 and the other matching the specification of JMPM giving a figure of £12,700 which is higher than the costs of G&W Groundworks which were £11,167.44.

24. In those circumstances we take the view that there is no merit in the suggestion that Section 20 procedures had not been followed. Further the Respondent was given the opportunity to obtain alternative quotations but for the reasons we have indicated above those were not accepted and it seems reasonable for the Applicants to take that course of action.

25. As to the question of improvement, it seems to us accepted that a repair can result in an improvement. Matters progress, materials improve and there is no doubt in our view that to undertake a renewal of the soffits, fascias, downpipes and guttering in one go makes economic sense. The Respondent appeared to accept that some works were required but a patch and mend arrangement would only result in further works being required at a later date which could also include additional scaffolding or other costs associated with working at this height. We consider that the installation of deep flow guttering is a good idea when the roofs are of a shallow pitch. We accept there appears to be some moss but the suggestion by the Respondent that there could be bi-annual cleaning of same seems to us to be unrealistic. Accordingly, insofar as the works to the guttering, downpipes and other matters are concerned, we allow that. However, we do so on the clear understanding that the Applicants will be arranging for the contractor to come back in the very near future to replace the vertical cladding and to reinstall the horizontal cladding where it had blown away from the side of the building. This, we understand, is being done at no additional cost either to the Applicant or in that case to the Respondent. Our decision is, therefore, made on that basis.

26. We turn then to the question of the driveway. It seems to us that again there is clear evidence that the driveway was in need of repair and patching pot holes is only a temporary arrangement. We understand there are still some problems which are the subject of proceedings and we take into account the estimate that has been obtained by the Respondent. The email that was sent to the Respondent by Drive Care indicates a possible cost of £9,500 for slightly less thick layer. The alternative quote is £12,700 and is higher than the sum being put forward by the Applicant. However, there are problems with the resurfacing, which has been accepted by the Applicants and is the subject of proceedings. It is not wholly clear whether those proceedings will be successful. We consider that tarmac is a

reasonable repair even though it may constitute something of an improvement. One cannot continue to fill pot holes and the tarmac will ensure that there is no need for that to be an ongoing problem. However, it is accepted by Mr Pattison on behalf of the Applicants that the work had not been done well. An alternative quote was put forward at £9,500 and we consider that that should be the amount which is paid by the leaseholders, a share of which will be the Respondents. We, therefore, reduce the amount that will be payable in respect of that element accordingly.

27. We then turn to the French drains. To be frank these appear to be something of a disaster. It is not wholly clear why they were ever commissioned in the first place and the report of Wallace Bacon Consultants in November 2015 prepared for the Applicants is fairly damning in its conclusions. The conclusion at paragraph 9.05 and 9.06 says as follows:

9.05 If it is accepted that a French drain was necessary, why was it not continuous around the perimeters of Maple and Laurel Court including the various paved patio areas? Secondly, why was a rigid land drain not used that could be laid to falls. Thirdly the specification of the French drain produced by JMPML leaves a lot to be desired as it does not specifically deal with any collected rainwater.
9.06 The work completed by GWGL was completed under the supervision of JMPML. However, neither party really knew what they were trying to achieve other than a bed of retained pea shingle close to the perimeter walls of Maple and Laurel Court. This they have achieved but as to this being called French drain it is not. Neither does it nor will it ever collect rainwater and discharge it away from Maple and Laurel Court. At present it serves in our professional opinion no specific purpose.

28. Mr Gibson was honest enough to say that he could not depart from this expert's report. It seems to us, therefore, that this was an expense that should not have been incurred and we do not consider the Respondent should make any contribution towards the French drains at all.

29. Accordingly, we determine with the caveat that the cladding will be put right at no cost to her that the Respondent should pay the sum of £1,508 on a total cost of £45,250. This is the sum claimed in respect of the works undertaken by Design Roofing at £35,760 and the costs established by the Respondent for the resurfacing of £9,500. Her share is £1,508.

30. We consider it would be appropriate to make an order under Section 20C of the Landlord and Tenant Act 1985. The Applicants clearly had reports from Wallace Bacon Consultants by November of 2015 with regard to the French drains and by March of 2016 with regard to the cladding. This should have led the Applicants to approach the Respondent with a view of affecting some form of compromise. Instead it seems proceedings were viewed without any real attempt to affect some form of compromise. The works with regard to the tarmac are not without their problems which may result in further legal action and of course there is still the difficulty in respect of the cladding. In those circumstances we think it would be inappropriate for these costs to be recoverable as a service charge, although quite

where that leaves the parties given that the Applicant is a lessee-owned management company is something that will need to be considered.

31. As to the reimbursement of the fees paid to the Tribunal we consider that there has been some success on both sides. We think it would be appropriate to order that the costs of the hearing be shared between the parties and require Miss Koziol to pay £95 towards that fee.

Judge: Andrew Dutton

A A Dutton

Date: 23rd August 2016

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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 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.