12678

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2017/0245**
Property	:	**22 - 24 Hungerford Road London N7 9LX**
Applicant:	:	**Mr D. Lewis, (No 22) Flat 1** **Mr S. Pop, Flat 2** **Mr J Green, Flat 3** **Ms A. Foo, Flat 4** **Ms M Majos, Flat 5** **Mr T. Joyce, (No 24) Flat 1** **Ms D. Amans, Flat 2** **Mr & Mrs Abi-Gerges, Flat 3** **Ms J Gabriel, Flat 4** **Mr S Noyes, Flat 5**
Representative	:	**Mr S. Pop, and Mr T Joyce**
Respondents	:	**Hammend Limited**
Representative	:	**Mr P. Stavrou, assisted by Mr G. Palos FRICS**
Type of Application	:	**Service charges - Section 27a Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson** **Mr T Sennett FCIEH** **Mr L. Packer**
Dates and venue of Hearing	:	**12th October 2017, 10th and 19th January 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22nd March 2018**

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Decision

DECISION SUMMARY

The Tribunal decided:

A. The correct proportion of the service charge payable in respect of each lease was one twelfth of the total service charge for Nos 22 and 24 Hungerford Road, with the exception of the lease of Flat 1 at No 24, where the correct proportion was one sixth of the total service charge attributable to No 24. Thus the landlord should record the necessary costs notes and apportionments so as to be able to identify in the service charge summaries whether a cost is properly attributable to No 24, or not. The Tribunal understands that no valid statutory final service charge demand may yet have been made to the Applicants relating to the Major Works.

B. Relating to the Major Works contract - the sum of £21,987.86 was reasonable. The detailed deductions are noted in the completed Schedule below, noted as Appendix 2

C. The Supervising Surveyor's fee of 13% plus VAT was reasonable.

D. The reasonable fee for the Managing Agent for the year in question was 5% plus VAT. The fees charged in previous years were decided to be reasonable.

E. Relating to Section 20C - The account for each Applicant's property shall be liable for only 4/5ths of the contribution otherwise payable through the service charge towards the Respondent's costs in connection with this application, but only if the Applicant concerned is obliged by the lease of their property to pay such costs.

F. A reasonable charge for the preparation of the bundle by the Respondent was £19 per hour multiplied by 10 hours, i.e. £190, to which shall be added the professional copying charge of £715.

G. To make the other decisions noted below.

PRELIMINARY

1. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to whether service charges are payable relating to major external works carried out on the property in 2017, (and billed or to be billed to the Applicants in 3 stages during the

period 2016/2017). Management charges for both the major works and previous years are also in dispute, all pursuant to the terms of various long leases on the property, which are not in a common or consistent form. There are 12 flats in the building, 10 of which are held on long leases by the Applicants. At the hearing held on 12th October 2017 it was established that some leases did not allow demands for interim service charges, the items of service charge recoverable varied, and (in at least one case) the method of calculation of the service charge proportion was different.

2. The Applicants also seek an order (under Section 20C of the 1985 Act) for the limitation of the landlord's costs in the proceedings, (which may be payable by some applicants under their leases, but not by others).

3. The original Directions dated 18th July 2017 provided for a two day hearing and inspection commencing on 12th October 2017. The Tribunal duly inspected the property on the first morning, but at the hearing it quickly became apparent that the bundle prepared by the Applicants did not contain many relevant documents, and that others (relating to practical completion of the major works) had only come into existence in the last few days prior to that hearing. The Tribunal also noticed the inconsistencies in the leases noted above. It was also clear that the Applicants, (who are lay parties) were having difficulty in satisfactorily presenting their case. Mr Palos had also come to the hearing on a voluntary basis to assist the landlord, and the Tribunal, so far as he could.

4. At the hearing, the Respondents produced a list of defects (snagging list) dated 2nd October 2017, a final valuation of works dated 5th October 2017, and an Interim Certificate for Payment of the contractor dated 6th October 2017, all prepared by the supervising surveyor.

5. The Tribunal understands from the parties that the contractor has already been paid two stage payments (prior to 6th October 2017), and that the Respondent has demanded reimbursement by way of service charge demands from the Applicants under the terms of the relevant leases. A further demand will be made shortly.

6. The Tribunal considered that the valuation of works dated 5th October 2017 would effectively form the basis of a "Scott" schedule in which the Applicants could dispute any items of major work with which they were dissatisfied. The parties were given a specimen Scott Schedule which they could follow. The Applicants were instructed to add the other items they had disputed to the Schedule, e.g. the managing agents charges for other years, the supervising surveyors' fees for the works, and the apportionment of charges under the terms of the relevant leases.

7. The Respondent also made a protective Section 20ZA application dated 6th October 2017 (LON/00AU/LDC/2017/0118) relating to the validity

of Section 20 notices relating to the major works, in response to the Applicants' contention in their application that these notices were invalid. The Tribunal explained to the parties at the hearing on 12th October 2017 the factors it should take into account in deciding that application, and invited the Applicants to consider whether they still wished to contest the validity of the notices, as it appeared that their main concerns were that more work should be done, and the quality and cost of the work actually done to the building. After an adjournment the Applicants agreed that they would not proceed with the point relating to validity of the notices. The Tribunal accordingly made an order by consent dated 13th October 2017 to grant the dispensation applied for by the Respondents under Section 20ZA.

8. Extracts or relevant legislation are set out in Appendix 1 for ease of reference.

Inspection

9. The Tribunal inspected the property with representatives of the parties on the morning of 12th October 2017.

10. The property appears as two terraced houses with their own gardens, conventionally built of brick under a tiled roof in about 1925. The property was generally in good condition. The Tribunal noted the following items;

a) The dormer cheeks had been replaced at No 24, but not at No 22.

b) We were informed that the leaseholder on the 2nd floor at No 24 had replaced the windows, not the freeholder.

c) At No 24, the ground floor bay windows had not been replaced, but a void above had apparently been filled.

d) Some hairline cracks were noted which appeared not to be structural.

e) Some opening windows at No 24 were reported not to be operative.

f) At No 22 some replacement double glazing had been installed. There was a curious space on the top right side of the window.

g) There was evidence of a significant amount of pointing. Some appeared a little rough in places. One item appeared to have been missed.

h) Some efflorescence in the brickwork was visible to the front. At the rear it appeared to have been removed.

i) The pigeon netting was visible outside on the flat roof, but was ineffective.

j) Some tiles had been replaced with new ones, but others had been replaced

k) The fire escape plate at No 22 appeared only to have been be painted rather than replaced. It was dished. Also there were signs that some paint on the plate had been chipped after the painting. There was no sign of red oxide paint. The whole fire escape had been painted.

l) Some guttering had been replaced,but not the downcomers.

m) generally the works had been to repair and repaint existing items rather than replace them, as had been expected by the tenant.

Hearing

11. The parties made written submissions by reference to the Schedule, supplemented by oral submissions at the hearing.

Applicant's submissions

12. The lead Applicants, Mr Joyce, Mr Lewis, and Mr Pop made submissions.

13. Generally, the Applicants considered that the property and the major works contracts were not competently managed. After an initial discussion, it was established that the Managing Agent, Mr Stavrou's company historically charged a fee equating to £240 per annum per unit, or 15% of the rents and service charges, whichever was the greater. He proposed to charge 15% in the 2017 service charge year on the value of the major works contract also. The supervising surveyor's fee was 13% of the major works plus VAT.

Variations to the contract

14. The Applicants understood the original contract work was nearly £31,000. After work started, the Respondent had produced a second valuation relating mainly to roof work which would have added £38,500 to the cost. In the end the freeholder had only added a further £4,700. The variations should not be allowed.

Quality and cost of works

15. The parties agreed the following items, by reference to the Scott schedule, and following its numbering, were omitted and thus not chargeable: 24 - £90, 59 - £160, and V5 - £165.

16. The parties agreed that following items were completed and the charge made was reasonable: 7 - £160, 9 - £100, 34 - £90, 36 - £160, 61 - £180, V6- £240, V8 - £240.

17. The parties agreed a reduction to the following item: V4 - £275 reduced to £140.

18. The Applicants then made submissions by reference to the Scott Schedule numbering:

a) Items 5, 42, 49 and,60 - cleaning moss, lichen, and efflorescence off the roof and walls - the work had not been completed, despite the scaffolding having been up and unused for 8 weeks during the contract. Some brickwork was cleaned at low level only. The charge for item 5 should be reduced by 50%. For the other items, no charge was reasonable.

b) Item 52 - The leaseholder, not the landlord, had done this work in February 2016 to secure the garage. The contractor had painted it. A copy of an email from the leaseholder to that effect was produced at the hearing,

c) Item 62 - The plate was rusting and in the specification it was to be replaced. The plate was still concave and the Applicants had seen no sign of a welding machine. The plate had not been replaced. No charge was reasonable.

d) Item 65 (£150)- There was no rubbish to remove, and that the item was duplication. No charge was reasonable.

e) Item V3 (£150)- Only 3 new tiles fitted. The surveyor was unable to say where the other 27 tiles were fitted.

f) Item V7 (£120) - The Applicants could not see where 10 linear metres of window fillets had been done.

g) Item Toilet and Scaffolding Alarm Charges (£1,760) - There was no mention of this item in the tender. No charge was reasonable.

h) Item 44(£265) - Totally unreasonable charge for fixing 4 pieces of boarding

i) Item 45 (£265) - Again, a totally unreasonable charge for replacing 2 timber dormer surrounds and redecorating.

j) Item V1 (£480) - The pigeons were still gaining access. £250 only was reasonable.

k) Items 2 (£1,785), 39 (£1,935), 4, (£355), and 41 (£355) - the painting had not been done to the specification. Some paint coats had been omitted.

<u>Surveyor's charges (13% or £3,250)</u>

19. The Surveyor had not overseen the actual work. He had visited several times in connection with the snagging and the Applicants accepted that the office work had been done. The surveyor had only replied to one question put to him by the Respondent. The work he did was not worth very much.

<u>Managing Agent's charge (15%)</u>

20. The charge of £240 per unit per year for the annual service charge was accepted. The 15% charge based on the cost of the major works was unreasonable.

Respondent's submissions

Contract Variations

21. The variations came about when the contractor started the work and found additional problems in the roof beyond the specification. This extra work would have cost £40,000 if the roof was replaced, as suggested. The Agent thought it was prudent to check with the leaseholders if they wanted a replacement roof. They did not, so repairs only were done. This consultation took 8 weeks. The actual extra work done was modest. It would not have been appropriate to initiate a full Section 20 process.

Quality and cost of works

22. The Respondent's submissions were:

a) Items 5, 42, 49 and 60 - It was not practically possible to scrape off all the lichen and moss without damaging the roof tiles. Only the loose lichen had been brushed off.

b) Item 52 - Mr Major stated that the contractor had claimed to have done the work. No photos existed. He had not seen the work being done himself.

c) Item 62 - The welding was done.

d) Item 65 - (links with Items 22, 24, and 36) - These items were necessary items in the contract. The amount of rubbish was impossible to measure. This was a fixed price contract, and the cheapest quote had been accepted. It was not appropriate to cherry-pick individual costs as the Applicants wished to do.

e) Item V3 - The work was necessary, and at the end of the contract the roof was in good order. The contractor had used old second hand tiles to patch where possible, and said he had used 20 tiles.

f) Item V7 - The surveyor believed the work had been done, but his notes did not record where they had been done

g) Item Toilet and Scaffolding Alarm charges - The Respondent agreed this was an unexpected cost. The figure of £1,760 was in dispute. The Surveyor valued it at £528.99, and considered the balance excessive. The matter was still in dispute with the contractor

h) and i) Items 44 and 45 - The work had been consulted and tendered upon. A carpenter charged £275 - £300 per day. It was only 4 pieces of wood, but it required 2 people to be present for safety reasons, and attending the property

would require at least half a day of their time. It was part of the lowest priced contract and had been consulted upon

j) Item V1 - The Respondent agreed that the work had not been completed satisfactorily yet. A specialist pigeon dung remover was required. The item was on the snagging list and would be completed in due course.

k) Items 2, 39, 4, and 41 - The contractor had said he had followed the painting specification. The surveyor had not been present when the work was done.

Surveyor's fees

23. Mr Palos considered that the charge was very reasonable in view of the work done. It required 2 inspections, 2 schedules of defects, reading all the leases, tender process, analysis, liaison with client, contracts and supervision. The surveyor was not a clerk of works and for the fee charged he could not be on site all the time, as the Applicants seemed to suggest.

Managing Agents' fees on the Major Works

24. The Respondent considered that the Applicants were well aware of the charging formula over many years and had not complained previously. The Respondent had canvassed other firms for quotes. Many other local firms would not even take on such a small block. Others charged a higher unit fee, and added percentage fees of between 10 and 15% for dealing with major works. It was submitted that the management fees proposed to be charged were reasonable.

Decision

25. The Tribunal considered all the evidence and submissions.

Contract variations

26. The Tribunal preferred the Respondent's submissions. It was very likely in a cyclical repairs contract that new problems would be discovered after work commenced. Section 20 existed to give leaseholders reasonable notice of the type of work to be done, but did not require a cast iron guarantee either on the cost, or the exact specification of the works. It was a matter of fact and degree. In this case the landlord went for a cheaper repairs option, rather than the option to substantially renew the roof, and none of the work done appeared to be a major departure from work which was specified. The extra cost was a modest percentage when compared with the tendered costs.

Quality and cost of works

27. The Tribunal initially considered the effect of this contract being a fixed price contract, and given to the lowest tender received. The Applicants had not objected to the work or specification at the Section 20 notice stage. It was therefore not open to them to challenge the specification in relation to the

cost. The Tribunal considered that if the work actually done was reasonable, the contract cost should be payable

28. Using the parties' numbering, the Tribunal decided as follows:

a) Items 5, 42, 49 and,60 - cleaning moss, lichen, and efflorescence off the roof and walls - The Tribunal noted signs of fresh efflorescence, but this was normal. It accepted that fully scraping out the moss and lichen would incur a considerable risk of affecting the surface of the tiles and could result in the cracking of the tiles, and mortar joints could be weakened. The Respondent had done what was reasonable. The Applicants suggested that only 30% was reasonable. However they agreed that the work done had been completed. The Tribunal decided that the costs of all these items were reasonable.

b) Item 52 - there was clearly a major issue as to who had done the work concerned. The Tribunal decided that the Respondent's evidence was insufficient and vague. The whole amount of £90 was therefore unreasonable.

c) Item 62 - The Tribunal saw the plate was rusting and apparently it was the original plate. In the specification it was to be replaced. The Tribunal decided that the whole amount of £275 was unreasonable.

d) Item 65 - The Tribunal considered items 29, 35, 36, and 65 as a whole. These items totalled £650. Some had been accepted by the Applicants. The Tribunal considered that the Respondent's evidence was very vague. In the end the Tribunal decided to allow only £450 for these items, as it was unclear as to how much rubbish had been removed. It appeared that rather less was removed than expected.

e) Item V3 - the Tribunal preferred the Respondent's evidence. It had seen on inspection that some secondhand tiles had also been used, as well as new ones, and they lessened the starkness of new tiles. The Tribunal considered that the roof was now in good order. The Tribunal decided that the whole amount of £150 was reasonable.

f) Item V7 (£120) - The parties' evidence was vague,except that there appeared to be outstanding work to a front window of Flat 2, at No 24. The Tribunal found on inspection that a considerable amount of window fillet repairs had been done,which was accepted by the Respondents fulfilling V6 and also V7. The Tribunal decided that the whole amount was reasonable.

g) Item Toilet and Scaffolding Alarm Charges(£1,760) - The Tribunal noted that the Respondent was still in dispute with the contractor over this item. It was not in the contract. However the Contractor had produced 2 invoices from 3rd parties totalling £1,760. The Surveyor had valued the claim at £528.99, although there was no agreement from the contractor yet. The Tribunal decided that £528.99 should be allowed for this item, in the light of the surveyor's valuation of the work.

h) and i) Items 44(£265) and 45(£265) were considered together. While the Tribunal accepted the Respondent's submission relating to the daily rates

for carpenters, it considered that the two items could have been done on the same occasion. The total figure of £530 was reduced to £300.

j) Item V1 (£480) - The Tribunal decided that the tenant had some security that the work would be done. The matter was being actively pursued by the surveyor. The Tribunal decided that the full amount of £480 for this work was reasonable

k) Items 2 (£1,785), 39 (£1,935), 4, (£355), and 41 (£355) - The Tribunal preferred the Applicants' evidence. The Respondent had not in fact rebutted the submission. The contractor had apparently not followed the specification on the Respondent's own evidence, and the red oxide coating appeared to be missing in places, raising uncertainty as to whether the paint would last the usual 5 years. The Tribunal considered that the total cost of £3,720 for items 2 and 39 was too high and reduced it to £2,500. The corresponding work noted as items 40 and 41 was also too high. The Tribunal considered that there was no evidence of a red oxide coat, as specified. The Respondent submitted that the work of stripping had been done by a hot gun, but this was not in accordance with the contract. The Tribunal decided to reduce the figure of £710 to £475, i.e by one third.

Surveyor's charges (13% or £3,250)

28. The Tribunal decided that the surveyor had been to see the property prior to the work commencing. The Surveyor's function was not to oversee the actual work, but to visit periodically. He had visited several times in connection with the snagging and the Applicants accepted that the office work had been done. The surveyor had only replied to one question put to him by the Respondent, but his contract was with the Respondent, not the Applicants. The surveyor had done all that could reasonably be expected of him. The Tribunal decided that the full amount (13% plus VAT) was reasonable. At the hearing the Applicants queried why the surveyor's contract had not been the subject of a Section 20 consultation. The Tribunal pointed out that Section 20 only required building works to be so treated.

Managing Agent's charge (15%)

20. The charge of £240 per unit per year for the annual service charge had been accepted by the Applicants. The Tribunal questioned both the surveyor and the Managing Agent carefully at the hearing as to the work they actually did. No management agreement was produced to the Tribunal. There seemed to be some element of duplication. The surveyor appeared to be doing most of the work, including for example the conduct of the Section 20 consultation. which a managing agent would usually do. On the basis of its expert knowledge the Tribunal took the view that in similar transactions the surveyor's and managing agents' aggregated fees were about 18% of the cost. The Tribunal considered that the Surveyor's 13% charge was reasonable for his well-identified work. On that basis, and in the absence of more detailed information on the work carried out by the Managing Agent, the Tribunal decided that a 5% charge based on its work would be appropriate.

Section 20C

21. The Applicants made a Section 20C application. It appeared that some leases did not allow the landlord to recover its costs of this application, while others allowed it When considering the exercise of its discretion, the Tribunal accepted that the Applicants had little alternative to bringing the case due to the Respondent's lack of engagement, and had made the case for material reductions. Where the relevant lease so provided, the Tribunal therefore decided to reduce by one fifth the Respondent landlord's costs chargeable to the service charge in connection with this application.

Preparation and copying of bundle

22. The Respondent proposed a time charge of £1,980 for 16.5 hours' work (i.e. £120 per hour) to produce the bundle plus a disbursement of £715 for having the copies professionally copied. The Respondent did not charge VAT.

23. The Tribunal decided that the proposed hourly rate was much too high for the work done. It was in essence a clerical task, and was not particularly well done. The work had been done by Mr Stavrou personally. It seemed to be a professional charge out rate that was being demanded. The Tribunal decided that a reasonable hourly rate was £19 per hour using the County Court rate applied to litigants in person. Also 16.5 hours (or more than 2 days' work) appeared to be too great for the collation of a relatively modest bundle. The Tribunal decided that 10 hours was adequate, plus the disbursement of £715 (plus VAT if charged). Thus the Tribunal allowed the sum of £19 x 10 hours for preparation = £190 plus £715 = £905.

Tribunal Judge: Lancelot Robson **Dated: 22nd March 2018**

Appendix 1

- <u>relevant legislation</u>

<u>Landlord and Tenant Act 1985 (as amended)</u>

<u>Section 18</u>

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  (a) the person by whom it would be payable,
  (b) the person to whom it would be payable,
  (c) the amount which would be payable,
  (d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 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.

Appendix 2
Reconciliation Schedule

Amount claimed per Anderson, Wilde and Harris valuation 23.11.17	25,973.86	
Less additional item in next financial year per email 6.10.17		815.00

Less		25,158.86
Items in dispute per Scott Schedule	11,455	

NOT Disputed		13,703.86

Items agreed or allowed in full by Tribunal
(following numbering in Scott Schedule)

5	270
7	160
9	100
10	200
32?	110
34	90
42	270
49	120
60	120
61	150
V3	150
V6	240
V8	450
V1	480

	2,910

Items reduced or agreed to be reduced:
29, 35, 36, 65

Asked 110+270+120+150=	650; reduced to 450	
24	90; reduced to Nil	
52	90; reduced to Nil	
59	160; reduced to Nil	
62	275; reduced to Nil	
V4	275; reduced to 140	
V5	165; reduced to Nil	
V7	120; reduced to Nil	
44, 45; 265+265=	530; reduced to 300	
2, 39: 1785+1935+	3720:reduced to 2500	
4, 41; 355+355=	710; reduced to 475	
Toilet & scaffldg alarm	1760; reduced to 528.99	
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	8,545:	4,393.99