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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2015/0476**
Property	:	**Queen Court, Queen Square, London WC1N 3BA**
Applicant	:	**Queen Court RTM Company Limited**
Representative	:	**Mr Michael Corker Director**
Respondent	:	**West End and District Properties Limited**
Representative	:	**None**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr C P Gowman MCIEH MCMI BSc**
Date and venue of Hearing	:	**Monday 8 February 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25 February 2016**

DECISION

Decision of the tribunal

1. The tribunal determines that the application shall be dismissed.

2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the tab and page number of the hearing file provided to us for use at the hearing.

Procedural background

3. In July 2012 the applicant acquired the right to manage the development known as Queen Court, which comprises 45 self-contained flats laid out over seven floors.

4. In November 2015 the tribunal received an application made by the applicant pursuant to section 27A Landlord and Tenant Act 1985 (the Act) [1/125]. The application referred to service charges incurred in 2007 and 2008 when the development was managed by the respondent landlord. The application concerned major works carried out to the electrical installation within the development and the associated fire detection and alarm system between November 2007 and November 2008.

5. Directions were given on 18 November 2015 [1/111] and the application was listed for hearing on 8 February 2016.

6. The applicant's statement of case is at [5/1], the respondent's statement of case in answer is at [5/5] and the applicant's reply is at [5/13].

7. At the hearing the applicant was represented by Mr Michael Corker, a director who was accompanied by Dr Robert Brown BEng (Hons) PhD CEng MIET IntPE (UK), a chartered electrical engineer who was to give evidence as an expert witness. The respondent was neither present nor represented. The respondent's solicitors had informed the tribunal that the respondent did not propose to attend the hearing or be represented at it.

8. We gave consideration to rule 34 which provides that the tribunal may proceed with a hearing if it is satisfied that an absent party has been notified of the hearing and that it considers it is in the interests of justice to proceed with the hearing. We were satisfied that the respondent had been notified of and was aware of the hearing because its solicitors had made reference to it in correspondence. We considered it in the interests of justice to proceed with the hearing because the applicant was present with its expert witness and the respondent had stated it did not propose to attend and did not seek a postponement of the hearing.

9. We may also mention at this stage that the persons who are currently the directors and shareholders of the respondent are not the same persons who were directors and shareholders in 2007/8 when the

subject works were carried out and billed through the service charge. It is not clear to us what records and files were passed to the current shareholders on the acquisition of their shares and what efforts (if any) the current directors and shareholders have made to try and obtain historic files and records. In the run up to the acquisition of RTM the management of the development was somewhat chequered with a change-over in managing agents. We were also told that the contractor which carried out the subject works was now insolvent. In the result the respondent has given some, but not full disclosure of material documents concerning the project. Whether this is because it cannot do so or whether it is because it is unwilling to make the effort to do so we do not know. Mr Corker, rightly in our view, made the submission that whilst the persons who were shareholders and directors of the respondent might have changed over the intervening years that does not affect the corporate liabilities of the respondent company.

The project

10. From the documentary evidence before us we are able to make the following findings.

11. It does not appear to be in dispute that:

12. At the material time the respondent's managing agent was HML Hathaways Limited.

13. A specification for the works was drawn up in 2004 by T Dunwoody & Partners, consulting engineers. Invitations to tender were drawn up by that firm in August 2006. A tender report was issued in November 2006. In its statement of case [5/6] at paragraph 6 the respondent stated that it had a copy of tender report but evidently it was not disclosed, or at any rate, if it was disclosed, a copy was not provided to us.

14. Cubit Consulting was appointed as contract administrator

15. The main contractor was MDS Electrical Contractors Limited, engaged on a JCT contract. At [5/9] is the tender breakdown submitted by MDS in the sum of £140,237.00. The respondent's statement of case [5/6] refers to the contract sum as being £127,000, a sum which had been quoted by a different contractor Lindfield Electrical earlier in the process. The respondent also states that it does not have a copy of the JCT contract nor a copy of the priced specification submitted by MDS.

16. At [2/25] is a letter dated 29 October 2007 sent by MDS to each flat owner stating that it has been engaged to carry out upgrading to the electrical supplies and to rewire the lighting system and small power to the common parts as well as the installation of a new Fire Alarm System. Following various observation on the proposed works it states:

"It will be necessary for the electrical installation within every dwelling to comply with the current BS 7671 IEE Wiring Regulations before connection to the new electrical supply will be permitted."

17. A certificate of practical completion – instalment 8 with an issue date of 12 January 2009 [5/11] states:

Description of works:	Electrical mains replacement and common area fire alarm
Contract date:	29 October 2008 *
Date of practical completion:	19 November 2008
Expiry date of defects liability period:	20 May 2009

* This date may be an error and perhaps it should have read '29 October 2007'

18. A letter dated 20 February 2009 [5/10] sent by Cubit Consulting to HML Hathaways headed:

"Queen Court, Queen Square, London WC1N 3BB- Electrical Mains Replacement And Common Areas Fire Alarm Contract"

Referred, amongst other things to the satisfactory completion of the contract and enclosed a replacement certificate of practical completion together with a replacement certificate for payment No.8 issued in the sum of £10,286.81 excl VAT. Also enclosed was a final account detailing the variations arising under the contract, excluding the landlord's works which were to be discharged separately.

Unfortunately, a copy of the final account referred to has not been made available to us.

At the foot of that letter is the expression *"cc. Jason Salter"*.

At [2/23] is a document which might be, or bear some resemblance to, the, or a, final account. It was issued on the letterhead of Jason Salter Limited (said to be in association with Cubit Consulting). It states:

"Queen Court Queen Square London WC1

Refurbishment Works
Excluding Lift Works

Original Electrical Quotation	*£127,001*
Dunwoody fees – As proportion of original cost	*£ 13,313*
VAT on above – 17.5%	*£24,555*
Subtotal	***£164,869***

Final contract sum net of individual items	*£137,370*
Cubit Consulting fees @ 3.5%	*£ 4,808*
Dunwoody fees - As proportion of original cost	*£ 13,313*
VAT @ 17.5% on major portion @ 15% on final tranch [sic]	*£ 29,133*
Subtotal	***£184,624***
Balance to be charged	***£ 19,755***

At [2/24] is a table evidently prepared at the same time as the above letter which shows how the sum of £164,869 had been billed to the respective lessees and how the remaining £19,755 is to be billed to them.

Mr Corker produced service charge accounts for the year ended 31 March 2008 which included a sum of £164,869 said to refer to refurbishment works related to electrics. Mr Corker said his recollection was the total cost of the works was billed out in two parts. It may be that the balance of £19,755 was billed in the subsequent year ended 31 March 2009.

The gist of the case for the applicant

19. Following the acquisition of RTM the applicant has been required to comply with testing and inspection obligations. It commissioned two Electrical Installation Condition Reports from YS Electrical. One of them, the second one dated 26 May 2014 is at [2/5]. The overall assessment was that the system was unsatisfactory and that works were required. These are identified on [2/18 and 19]. Most are classified as C2 or C3.

The classifications are defined as:

C1 = Danger present: Risk of injury. Immediate remedial action required

C2 = Potentially dangerous: Urgent remedial action required

C3 = Improvement recommended

20. In September 2015 a fault in the fire detection and alarm system was put right and in the course of an inspection of the system by Chameleon it was revealed that further works were required to bring it into current standard.

21. Mr Corker has obtained estimates for cost of those remedial works:

Electrical system: YS Electrical £31,770.70 [2/45]

Fire alarm system:	Chameleon	£ 1,756.80 [2/50]
		£33,527.50
VAT at 20%		£ 6,705.50
		£40,233.00

22. The argument was that the major works carried out in 2007/8 should have been compliant with the then British Standard (BS) and that to put those works into that standard today would cost £40,233 so that cost of works of £184,624 billed through the service charge previously should be reduced by the £40,233. With a determination to that effect, the outcome that Mr Corker was seeking was that the lessees between them should be able to recover from the respondent a total of £40,233, by way of county court proceedings if need be.

23. The applicant relied in support on the evidence of Dr Brown. His report is at [1/5]. Dr Brown gave oral evidence and spoke to his report. He answered a number of questions put to him by the tribunal.

24. The gist of his report, which we accept, is that the difference in BS when the major works were designed in 2004 and the current BS is marginal and technical and were made principally to comply with European Standards. The works now required were to install kit that ought to have been installed in 2007/8 when the works were carried out and the consequent making good. Examples include the provision of additional smoke detectors, additional sounders and a manual call point, installation of RCBO's to the ground floor and basement, some rewiring to correct standards and associated works as described in the YS quote at [2/45]. We note that some items on the list are to replace cracked or damaged items of equipment. Dr Brown was unable to say whether the 'missing items of kit' had been allowed for in the cost of works paid to MDS. Dr Brown was unable to assist us as to whether the damaged kit had been caused by MDS or was occasioned during the works carried out by MDS or whether it was subsequent accidental damage.

25. Dr Brown was able to say that in his opinion he would have expected a professional specification drawn up in 2004 should have included the missing items and that such omissions should have been picked up by a professional contractor supervising and certifying the works.

26. Dr Brown was not able to say whether the cost of £184,624 was a reasonable cost of the actual works that were carried out in 2007/8. Without sight of a specification of works he was unable to give an expert opinion whether the price of the works was a reasonable price.

27. Further Dr Brown was unable to give an expert opinion on whether the quotes for the remedial works mentioned in paragraph 14 above are reasonable in amount. Dr Brown was equally unable to say what the

cost of carrying out the remedial works would have been in 2007/8 if they had been carried out as part of the major works project.

28. Dr Brown made reference to category C1 works identified in the first YS Electrical inspection report which evidently were carried out in 2013 and which were urgent but relatively inexpensive and which do not feature in the current claim.

29. Dr Brown made the point although he had not carried out a site visit his understanding was that Queen Court is a large old building with a complex wiring system. He suspected that the contract provided for a complete rewire and the YS reports suggested to him that the contractors took short cuts and (incorrectly) utilised some old wiring when it was convenient (or easier) for them to do so and on other occasions adopted a cheap fix instead of doing a thorough job. Evidently in arriving at his opinion Dr Brown had relied quite heavily on the first YS report but a copy of it had not been attached to his report or provided to us by the applicant.

30. In his final submissions to us Mr Corker made the point that the 2007/8 major works should have been delivered as a project compliant with the relevant BS. It was not and remedial works had been identified. He said that it would have been highly unusual if the original project had not been intended and specified as a compliant project and such that we may infer it was priced as such by MDS. In the light of the remedial works now identified we may infer that the price of £184,624 for a non-compliant project was unreasonable in amount and that it should be adjusted. Mr Corker submitted that the appropriate adjustment was what it will now cost to comply with the relevant BS standards.

31. Mr Corker acknowledged that he could not show that in 2007/8 the then lessees were charged for items of kit not supplied, but he said the landlord should have delivered a compliant project. He submitted that it was unfair that the lessees now had to incur further costs in putting matters right.

32. Mr Corker explained that a further reason for bring the application was that the applicant was obliged to carry out the works to comply with its statutory obligations as to the safety of the development. If the applicant goes ahead and incurs the costs of remedial works, lessees who contributed to the 2007/8 costs might argue that having paid once it was unreasonable for the applicant to incur further costs for them to contribute to.

Discussion

33. First we wish to record that we have sympathy with the application and the dilemma facing the applicant. That said it seems to us quite clear that the applicant is required to carry out remedial works as recommended by its advisers. We consider it most unlikely that any current lessee could successfully argue that it was unreasonable to

incur the cost of doing so. Certainly as regards the electrical works at least, the applicant will require to carry out a consultation exercise compliant with section 20 of the Act and will be able to take into account any observations lessees might make.

34. This is an application made under section 27A of the Act. The applicant asks us to determine that costs of £184,624 evidently billed over two accounting periods were unreasonable in amount and that a downwards adjustment should be made in one or both of those accounting years. One of those years was the year ended 31 March 2008. We do not know what the other year was; we can only speculate.

35. Unfortunately, the applicant has not been able to produce a priced copy of the tender submitted by MDS or the specification of works which will set out in detail exactly what works should have been delivered for the price of £184,624.

36. We have been invited to assume or infer that the project should have been BS compliant and that if it had been the remedial works now identified should have been carried out in 2007/8 and incorporated into and included in the price of £184,624.

37. We decline to do so because that is speculation. What is clear to us is that as far back as 2004/5 the development was not being well managed. There might be several reasons for that. The works were designed in 2004 and were the subject of a section 20 consultation exercise. There was delay in progress of the project. The original preferred bidder was Lindfield Electrical whose bid was £127,000 but for some reason which we were not told the contract was placed with MDS which had bid £140,237 but which evidently took it on for £127,000. It is clear from the Cubit Consulting letter dated 20 February 2009 [5/10] that variations took place. We simply do not know whether there were omissions identified on behalf of the landlord to reduce the price which might explain why some of the kit Dr Brown would have expected to have been supplied and fitted was not.

38. In the absence of the material documents the applicant was simply unable to persuade us the remedial works now identified were all included in the works undertaken by MDS. There is simply no linkage to the remedial works and the 2007/8 works.

39. Even if the applicant had been able to show that all or some of the remedial works now identified had been included in the 2007/8 specification we were far from persuaded that the adjustment to make to the 2007/8 costs of works was the 2015 estimated cost of the remedial works. We have already commented that it is not obvious all of the remedial works are required to make good 2007/8 deficiencies. It may be that in the meantime some accidental damage has occurred.

40. Furthermore sections 19 and 27A of the Act requires us to have regard to the works carried out in 2007/8 and whether the cost of those works

was reasonable in amount. If the cost of £184,624 had included some items of kit which had not in fact been provided it seems to us that the starting point for the adjustment is to identify the price which had been included in the bid and to strip it out. The approach adopted by the applicant was akin to a claim for damages for breach of contract which is not the same as looking at works actually carried out and assessing a reasonable cost of those works to which the long lessees were required to contribute.

41. In the absence of supporting evidence we are simply unable to properly conclude that the costs of £184,624 which are said to have passed through two accounting years were unreasonable in amount.

42. In these circumstances we have no alternative but to dismiss the application.

Judge John Hewitt
25 February 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 Tribunal 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 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.

4. 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.