

12325



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/OODA/LSC/2016/0089**

Property : **Flats 2 & 4, 232 Harehills Avenue, Leeds LS8
4HX**

Applicant : **G & O Real Estate Limited**

Represented by : **Blue Property Management UK Limited**

First Respondent : **Flat 2 – Mr Ira Mandela Siobhan**

Second Respondent : **Flat 4 – Mr T A Coleman and Ms I J O’Neil**

Represented by : **Steel & Switalskis Solicitors**

Type of Application : **Landlord and Tenant Act 1985 – s27A**

Tribunal Members : **Mr J. Platt FRICS, FIRPM (Chairman)
Ms J Jacobs MRICS**

Date : **13 October 2017**

AMENDED DECISION

© CROWN COPYRIGHT 2017

DETERMINATION

1. The total costs currently recoverable as service charges from the First Respondent (Flat 2) for the years 2010/11 – 2015/16 is **£1,070.49**.
2. The total costs currently recoverable as service charges from the Second Respondent (Flat 4) for the years 2011/12 – 2015/16 is **£937.99**.
3. The costs currently reasonably recoverable as on account service charges for the year 2016/17 from each Respondent is **£255.00**.
4. The above sums may be subject to re-determination should the Applicant make a successful application for dispensation from the consultation requirements of Section 20 Landlord and Tenant Act 1985 (as amended).

APPLICATION

5. The tribunal received an application from Blue Property Management UK Limited on 30 October 2016 for the determination of the payability and reasonableness of service charges for the years 2011/12, 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17. The application was made on behalf of the Freeholder; G & O Real Estate Limited.
6. Directions were issued on 2 December 2016 and both parties have substantially complied with those directions.
7. A hearing was held on 30 March 2017. The Applicant was represented by Mr Beaumont of counsel accompanied by Mr Garvey of Blue Property Management UK Limited. The Respondents were represented by Mr Waseem Afzal of Steel & Switalskis Solicitors and Mr Waiting of counsel. Mr Coleman also attended in person as the Second Respondent.
8. Prior to the hearing, the tribunal carried out an inspection of the common parts of 232 Harehills Avenue.

THE ISSUES

9. The Applicant requested a determination of service charges payable by the First Respondent for the period 1 August 2010 to 31 July 2017 and by the Second Respondent from 1 August 2011 to 31 July 2017. The Applicant provided statements of account for each Respondent detailing the sums demanded, paid and outstanding.
10. These showed outstanding sums of £12,010.27 purported to be due from the First Respondent and £12,866.38 from the Second Respondent.

11. Analysis of the statements of account identified that the sums included interest charges and administration charges.
12. The Tribunal, therefore, initially clarified whether the Applicant was also seeking a determination under Schedule 11 Commonhold and Leasehold Reform Act 2002. On behalf of the Applicant Mr Beaumont requested a determination in respect of all sums included within the statements of account. On behalf of the 2nd Respondent, Mr Waiting asserted that the application only related to service charges and they had not prepared a case relating to interest and administration charges. The Tribunal, therefore, determined that the issue to be determined was limited to the recoverability of service charges.
13. During the hearing, it became clear that the service charge statements of account did not fully represent the amount claimed from each Respondent as service charges. Insurance costs were recovered separately by the freeholder and not detailed within the Income and Expenditure Accounts. The Tribunal, therefore, make no determination relating to the recovery of insurance costs as service charges (or any other costs not included within the statements of account) for which no evidence was submitted.

THE LAW

14. The full text of s18, s19 and s27A of Landlord and Tenant Act 1985 is appended at appendix 1.

THE LEASE

15. The lease to flat 4 is for a term of 999 years commencing 1 January 2002 and made between Ernest Noel Lee Grierson and Ernest George Williams.
16. The lease to flat 2 is for a term of 125 years commencing 1 January 2002 and made between Noel Lee Grierson ('the Owner'), 232 Harehills Avenue (Management Company) Limited ('the Landlord') and Amanda Georgia Brown ('the Tenant'). The landlord company was dissolved in 2005. The Landlord is defined at (at 1(c)) to: *include the reversioner for the time being immediately expectant on the determination of the Term.*
17. The Freehold Reversion is registered to G & O Real Estate Limited who is, therefore, the Landlord under both leases and the Applicant in this case.

18. Both leases are in essentially the same form with respect to service charges. The Tenant covenants at 2.3 to: *pay to the Landlord the Service Charge in accordance with the Fourth Schedule hereto.* The fourth Schedule defines:

'the Expenditure' as: the expenditure of the Landlord in complying with the Landlords obligations under Clause 5 of this Lease including any interest paid on any money borrowed for that purpose and reasonable provision for future expenditure on such items as call for intermittent expenditure.

'the Tenants Proportion' as: one fourth of the Expenditure or such other proportion of the Expenditure as may be fair and reasonable ...

There is provision for payments in advance at Clause 3 of the fourth schedule: *If the Landlord shall require the Tenant shall in respect of any Account Year pay such provisional sum in respect of the Tenants Proportion for the relevant Account Year as the Landlord ... shall reasonably determine by equal quarterly payments on dates specified by the Landlord.*

Clause 5 includes the following Landlord Covenants in relation to the 'Upkeep of common parts':

5.1 *To rebuild renew repair maintain decorate paint cleanse landscape and keep tidy the Common Parts and each and every part thereof and to paint or otherwise appropriately decorate the external parts of the Premises and any other premises on the Property let or intended to be let to tenants of the Apartments in each case as reasonably required and appropriate to the interests of good estate and property management*

5.5 *To employ or retain the services of any employee agent consultant gardener contractor engineer or professional adviser that the Landlord may reasonably require to perform the Landlord's obligations hereunder and / or the proper management of the Property.*

SECTION 20 LANDLORD AND TENANT ACT 1985 (AS AMENDED)

19. A preliminary issue arose at the hearing relating to Section 20. The property is managed by Blue Property Management UK Ltd. Cleaning and caretaking services are provided by Blue Property Maintenance UK Ltd. Risk assessments are undertaken by Blue Risk Management Ltd and the service charge accounts are produced by Blue Accounting UK Ltd. A controlling interest in all of these companies is held by Blue Property (Group) Ltd.
20. The Respondents (in their statement of case) asserted that services were being provided by Blue Property Maintenance UK Ltd under a Qualifying Long Term Agreement ('QLTA'). In its response, the Applicant denied that any such QLTA existed and that Blue Property Maintenance Ltd is instructed as and when services are required, by Blue Property Management UK Ltd.

21. At the hearing, Mr Waiting asserted that management services were provided by Blue Property Management UK Ltd under a QLTA. Mr Beaumont asserted that no such agreement existed. He also asserted that the issue had not been raised in the statement of case and hence no counter evidence had been provided and he had no client instructions on the matter.
22. The Tribunal was mindful of the possible confusion between Blue Property Maintenance UK Ltd and Blue Property Management UK Ltd, both being companies which are ultimately controlled by Blue Property Group Ltd, and had some sympathy with both parties.
23. Despite any initial confusion about which 'Blue contracts' the Respondents asserted were QLTA's, the Tribunal was able to take some initial evidence from both parties.

EVIDENCE ON BEHALF OF THE APPLICANT

24. Mr Garvey advised that no written agreement existed between the Applicant and any companies within the Blue Property Group. He asserted that Blue Property Management UK Ltd was verbally instructed each year and that he, on behalf of the Applicant, instructed Blue Property Maintenance UK Ltd to provide services and undertake works, on an ad hoc basis, as and when required.
25. When asked by the Tribunal, Mr Garvey confirmed that he was aware of the requirements within the RICS Service Charge Residential Management Code for management agreements to be in writing. He could not offer any reason why no such written agreement existed.
26. Mr Beaumont asserted that any agreement was terminable by the Applicant at any time and hence was not an agreement for more than a year. He cited the Central London County Court determination in *Paddington Walk Management Ltd v Governors of Peabody Trust* [2010] L&TR6, in support of this argument.
27. The Tribunal referred the parties to the case of *Poynders Court Ltd v GLS Property Management Ltd* [2012] and invited Mr Beaumont to comment but he was not aware of the case. It was agreed that Mr Beaumont would seek confirmation about the nature of any agreement with Blue Property Management UK Ltd from the Applicant's office and consider the implications of the *Poynders Court* decision during the lunchtime recess.

EVIDENCE ON BEHALF OF THE RESPONDENT

28. Mr Waiting asserted that there clearly appeared to be 'an agreement' between the Applicant and Blue Property Management UK Ltd. He referred to the 'Management Duties' document produced by the Applicant which commenced: "*Diligently to manage the Estate Development under the terms of the Agreement*"

FURTHER EVIDENCE ON BEHALF OF THE APPLICANT

29. After lunch, Mr Beaumont produced an email from Mr O'Dell of G & O Real Estate stating that Blue Property Management UK Ltd had been orally appointed to manage the property from 1 August 2010 and that agreement was confirmed by a telephone conversation on an annual basis. Mr Beaumont therefore, asserted that *Poynders Court* had no relevance as there had been a number of annual agreements since 1 August 2010 rather than one continuous agreement.

THE TRIBUNAL'S INITIAL ASSESSMENT

30. As this point, the Tribunal determined that the matter of one or more QLTAs would be stayed to enable both parties to submit further evidence and written statements on the issue. The Tribunal continued to hear evidence relating to the payability and reasonableness of all the service charge costs in dispute.
31. After the conclusion of the hearing, counsel for both parties agreed a form of Directions which were subsequently issued by the Tribunal on 13 April 2017. A copy of those Directions is attached to this decision at Appendix 2.

FURTHER WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

32. In response to Directions 1 to 4, the Applicant submitted a letter from Christopher O'Dell, Director of G & O Real Estate Ltd and witness statements of Peter Evans, David Garvey and Gytis Lazinskas; all of Blue Property Management UK Ltd.
33. The letter of Mr O'Dell confirms that Blue Property Management UK Ltd were appointed as managing agents and states that: "the agreement is renewed on a yearly basis on 30th October each year". It does not state how and when it is agreed, nor give any details of the terms of the agreement nor does it include a statement of truth.

34. The witness statement of Peter Evans asserts that a telephone conversation takes place between himself and Mr O'Dell before 30 October each year, confirming the property will be managed for a further 12 months.

35. The witness statement of David Garvey asserts that:

Fire and Health & Safety risk assessments are instructed orally by him approximately every 12 months.

Caretaking, cleaning and gardening works are instructed orally, on a monthly basis; usually in a telephone conversation confirming the number of visits and duration of each visit.

General repairs and maintenance are all instructed on an ad-hoc basis; usually orally via telephone conversation confirming the scope of works, likely number of hours and approximate cost.

36. The witness statement of Gytis Lazinskas (Paralegal at Blue Property Management UK Ltd) asserts that he orally instructs Blue Accounting UK Limited when he sees that all the accounts supporting documents have been sent and received by Blue Property Management UK Ltd and approximately two to three months after the financial year end. Mr Lazinskas says that when he sees that Blue Accounting UK Limited have completed the accounts he instructs the independent accountants to certify the accounts which is usually done approximately within 7 days.

37. The Tribunal received a further submission from the Applicant in response to Direction 6 asserting that there were no Qualifying Long Term Agreements in place, that the works carried out relating to invoice 13693 and invoice 17891 should be determined as two separate sets of works and that the Tribunal should allow the Applicant to charge legal costs in respect of the Application.

38. The Tribunal notes that the further submission by the Applicant is provided by Mr Lazinskas of G&O Real Estate Limited (the Applicant), c/o Blue Property Management UK Limited, although the position Mr Lazinskas holds with G&O Real Estate Limited is not made clear.

FURTHER WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENTS

39. Mr Waiting made submissions on behalf of the Respondents in response to the documents filed by the Applicant, asserting that:

40. The Applicant has failed to comply with paragraph 5 of the Directions; having failed to provide any certified disclosure statement nor a list of documents, nor a witness statement with a statement of truth from its Director.

41. Neither the letter from Christopher O'Dell nor the witness statement of Peter Evans set out any details of the initial agreement, details of any term or termination clause, the contractual words used, when, or where they were spoken. He invites the Tribunal, having regard to *Poynders Court*, to determine that the agreement between the Applicant and Blue Property Management UK Ltd is a QLTA; the Applicant having failed to set out the terms of agreement, there being no evidence to the contrary and having failed to provide any disclosure from which the Respondents can challenge the scant assertions.
42. With regards to the caretaking, cleaning and gardening, no detail is provided about the nature of the monthly agreement. Mr Garvey's assertion that "*Blue Property Management UK Ltd reserve the right to amend or cease instruction to this contractor should the requirement of the development change*" is akin to the situation in *Poynders Court* where the agreement is open ended but can be terminated. He submits the agreements are QLTAs.

THE DELIBERATIONS AND DETERMINATIONS

43. The Tribunal identified the preliminary issues to be determined as:
1. Is the agreement between the Applicant and Blue Property Management UK Ltd a QLTA?
 2. Is the agreement between the Applicant and Blue Property Maintenance UK Ltd a QLTA?
 3. Alternatively, is there an agreement between the Applicant and Blue Property Group Ltd and is that a QLTA?
44. The Tribunal initially considered the agreement between the Applicant and Blue Property Management UK Ltd. There is no written agreement and hence the terms of the agreement are very unclear. The Applicant has stated, in the email from Mr O'Dell received during the hearing, that the agreement was entered into on 1 August 2010 and is orally extended 12 months at a time on or before 30 October each year. Despite agreed Directions seeking disclosure, no documentary evidence has been provided to support or contradict those statements, nor have the terms of Direction 4 been complied with.
45. The Tribunal had regard to the *Poynders Court* determination where the Upper Tribunal found that there is a distinction between 'duration' of a contract and 'termination' provisions. If an agreement fails to specify its duration it is a matter of fact for the Tribunal to determine if it is an agreement for more than a year or not.

46. The invoices for 'management fees' for the months of August 11 – May 13 were all invoiced on 2 May 13. The Tribunal consider this would not be a usual way of recovering costs for a contract expiring on 30 September 11 and again on 30 September 12. The agreement commenced on 1 August 10 and it is asserted that it is agreed anew on 30 October each year. If it was for a fixed term, no evidence has been provided as to when that initial fixed term came to an end e.g. 30 September 10, 31 July 11 or 30 September 11.
47. The schedule of management duties lists some 32 duties. A number of those duties imply a continuous period of management but specifically they include: "to prepare subsequent annual Service Charge budgets and matrices" and "to provide general advice concerning the preparation of annual budgets ...". These duties are specifically of a recurring nature.
48. In evidence, Mr Garvey confirmed that he was aware of the requirements within the RICS Residential Management Code for management agreements to be in writing. Written agreements serve one very useful purpose; their terms are clear and obvious. Having provided no evidence to the contrary, it would be perverse to give the Applicant the benefit of doubt created through non-compliance with a code of practice that has statutory approval.
49. On the balance of the evidence, the Tribunal determine as a matter of fact, that the services being provided by Blue Property Management UK Ltd are being provided under a QLTA for a term of more than a year.
50. The Tribunal then turned to consider the services provided by Blue Property Maintenance UK Ltd. Invoices for cleaning and grounds maintenance during the period August 14 – July 15 all state "2.5 (or 1.5) hours per week at £20 per hour, invoiced monthly. Cleaning and grounds maintenance invoices for the periods 1 August 11 – 31 July 12 were both dated 1 May 13. Those for the period 1 August 12 – 31 July 13 were dated 31 July 13. All state "2.5 (or 1.5) hours per week at £20 per hour – invoiced yearly". These invoices all imply that they are in respect of ongoing commitments each week, in contradiction of the evidence of Mr Garvey that the services are instructed only on a monthly basis, in accordance with the needs of the property. The Tribunal note that if services are contracted purely on an ad hoc basis, there is remarkable consistency of 20 hours per week for both 'contracts' for all of the years in dispute. The invoices, in stating, invoiced yearly, imply that the services will continue beyond a one year term.
51. On the balance of the evidence, the Tribunal determine as a matter of fact that the services provided by Blue Property Maintenance UK Ltd are being provided under a QLTA for a term of more than a year.
52. The Tribunal then considered whether there were two separate QLTAs or whether all the management and maintenance services were in fact being provided under one QLTA.

53. Blue Property (Group) Ltd has a controlling interest in all of the relevant 'Blue' companies. Mr Peter Evans has a controlling interest in Blue Property (Group) Ltd. The Tribunal were informed that the agreement to manage the property was made orally between the Applicant and Mr Peter Evans. The Applicant has failed to comply with paragraph 4 of the supplementary directions. No evidence has been provided as to the terms of this agreement nor as to the capacity in which Mr Peter Evans was acting at the time.
54. Although the list of 'Management Duties' includes '*to tender, negotiate and sign contracts for agreed service contracts*' (and a similar provision for contracts for repairs), no evidence has been provided that any such tendering has ever taken place nor have any purchase orders or contracts been provided. There is no evidence that Blue Property Management UK Ltd has been tendering, negotiating or signing contracts for services or repairs.
55. No evidence has been provided to substantiate the assertion that all the 'Blue' companies were instructed on an ad hoc, monthly or annual basis, as and when required. No purchase orders, confirmation of instructions or contracts were provided. The Tribunal notes that the invoice from David Harrison, the Chartered Accountant who accredited the accounts for years ending 2011-2014, is addressed to Blue Property Group. On the balance of the evidence, the Tribunal determine as a matter of fact, that:
- a. Mr Peter Evans had capacity to act for all Blue Group companies during the oral conversation on 1 August 2010.
 - b. all the Blue Group Companies providing services to the property are parties to the oral agreement entered into on 1 August 2010.
 - c. all the services provided by the Blue Group of companies are provided under the one oral contract entered into on 1 August 2010.
 - d. the Applicant has one QLTA with Blue Property Group Ltd and all the individual Blue Group companies.
56. It is not disputed by the Applicant that no consultation has ever taken place on any QLTAs. The maximum costs recoverable from any one leaseholder, in respect of all costs incurred under the agreement with all of the 'Blue' companies is, therefore, limited to £100 in each and every financial year.
57. Much evidence and discussion related to the reasonableness of costs. The Tribunal determine that costs of £100 payable by each Respondent in respect of the costs incurred by the Applicant for services provided by the 'Blue' companies, were reasonably incurred during each of the relevant financial years. It is not necessary for the Tribunal to consider the reasonableness of any costs incurred, under the Blue contract, above the Section 20 'triviality threshold' of £100 in any one year, unless and until the Applicant makes a successful application for dispensation from the consultation requirements of Section 20.

58. A number of costs were incurred through alternative service providers and the Tribunal considered the reasonableness of those costs. They were primarily: Accountant's fees, bank charges, asbestos survey, tree removal and pest control services. The Respondents took no issues with the payability or reasonableness of those costs, which the Tribunal determine were reasonably incurred.
59. The service charge accounts for 2015/16 include the sum of £420 for a structural survey. The Tribunal understands that no such survey has yet been undertaken. The Tribunal, therefore, find that this cost has not been incurred as relevant expenditure. The Tribunal did, however, hear evidence as to why a structural survey is required and consider the sum to be a reasonable 'on account' provision within the budget for 2016/17. The Tribunal make no determination as to the reasonableness of the actual sum incurred, as and when it has been incurred.

Section 27A Determination

60. The Application requested the determination of the amount of service charges payable by each of the Respondents for the financial years 2010/11 and 2011/12 (respectively) – 2016/17 (on account). It became clear at the hearing that not all costs being recovered by the Applicant as service charges were included in the application or the evidence i.e. costs of insurance. The Tribunal make no determination regarding those costs. The determination is limited to the service charge costs included within the Income and Expenditure Accounts provided for each of the relevant financial years.
61. A breakdown of the relevant costs which have been reasonably incurred and are recoverable as service charges from the Respondents, for each of the financial years 2010/11 – 2015/16, is included at Appendix 1.
62. The total costs recoverable as service charges for the years 2010/11 – 2015/16 is £4,281.96. The First Respondent (Flat 2) is liable for 25% of the total service charge expenditure for the period which equates to £1,070.49.
63. The total costs recoverable as service charges for the years 2011/12 – 2015/16 is £3,751.96. The Second Respondent (Flat 4) is liable for 25% of the total service charge expenditure for the period which equates to £937.99.

64. Having had regard to the service charge budget for 2016/17, the Tribunal also determine the following sums are reasonably recoverable as 'on account' service charges:

2016-17	Budget	
Accountants Fee	150	
Bank Charges	50	
Structural Survey	420	
Blue Group	400	QLTA
TOTAL		1020

65. The costs reasonably recoverable as on account service charges for the year 2016/17 from each Respondent, at 25%, is £255.00.

66. For the avoidance of doubt, the Tribunal orders that the Applicant must give due credit to each Respondent for all sums already paid in any of the relevant financial years.

Appendix 1: Service charges recoverable for each financial year

<u>2010-11</u>			
Accountants Fee	75		
Bank Charges	55		
Blue Group	400		QLTA
TOTAL		530	
<u>2011-12</u>			
Accountants Fee	75		
Bank Charges	66.01		
Alpha Surveys LTd	420		Asbestos Survey
Beechfield Tree Services	504		Tree Removal
Pestek	40		Pest Control
Blue Group	400		QLTA
TOTAL		1505.01	
<u>2012-13</u>			
Accountants Fee	75		
Bank Charges	59.36		
Blue Group	400		QLTA
TOTAL		534.36	
<u>2013-14</u>			
Accountants Fee	75		
Bank Charges	61.12		
Blue Group	400		QLTA
TOTAL		536.12	
<u>2014-15</u>			
Accountants Fee	126		
Bank Charges	49		
Blue Group	400		QLTA
TOTAL		575	
<u>2015-16</u>			
Accountants Fee	126		
Bank Charges	75.47		
Blue Group	400		QLTA
TOTAL		601.47	

Appendix 2 – The Law

Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:

- (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 – which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and 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 provides that

relevant costs shall be taken into account in determining the amount of a service charge payable for a period – only to the extent that they are reasonably incurred, and where they are incurred on the provision 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.

Section 27A provides that

- (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 -
 - the person by whom it is payable
 - the person to whom it is payable
 - the amount which is payable
 - the date at or by which it is payable, and
 - the manner in which it is payable.

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

....

No application under subsection (1)...may be made in respect of a matter which – has been agreed by the tenant.....

(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 Consultation:

Section 20 of the 1985 Act (inserted by section 151 of the Commonhold and Leasehold Reform Act 2002) provides that service charges are to be limited under sub sections (6) and (7) unless certain consultations requirements are met. These requirements are set out in The Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations") which came into force on 31 October 2003.

Section 20 and the regulations apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

Appendix 3 – Agreed Directions



FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference : MAN/00DA/LSC/2016/0089

Property : Flats 2 & 4, 232 Harehills Avenue, Leeds LS8 4HX

Applicant : G & O Real Estate Limited

Representative : Blue Property Management UK Limited

First Respondent : Flat 2 - Mr Ira Mandela Siobhan

Second Respondent : Flat 4 - Mr T A Coleman and Ms I J O'Neil

Representative : Steel & Switalskis Solicitors

Type of Application : Landlord and Tenant Act 1985 – s 27A

Tribunal : J. Platt - Judge
J. Jacobs

Date of Directions : 13 April 2017

DIRECTIONS

Upon it being recorded that the Tribunal considers that it requires further evidence in relation to relevant contracts (as set out below)

THE TRIBUNAL hereby gives the following further directions:

For the purpose of this Order the "relevant contracts" means any agreements which govern the provision of services at 232 Harehills Avenue, Leeds, LS8 4HX between

- (a) The Applicant and any of the Blue Property Management UK Limited group companies; and
- (b) The Blue Property Management UK Limited group companies, which govern the provision of services at 232 Harehills Avenue, Leeds, LS8 4HX

but so that the various one-off instructions to Blue Property Maintenance UK Limited shall not be relevant contracts, whereas any over-arching agreement with Blue Property Maintenance UK Limited governing for example, rates and charges, shall be a relevant contract.

The Applicant is to undertake a reasonable search for and give disclosure in relation to the relevant contracts by filing with the Tribunal and serving copies on the Respondents of all documents which:

- (a) adversely affect its own case
- (b) adversely affect the Respondents' case or
- (c) support the Respondents' case.

The Applicant shall file and serve with the documents a disclosure statement signed by an appropriate person to make the disclosure statement setting out:

- (a) A list of the documents.
- (b) Any documents which the Applicant claim a right to withhold inspection.

- (c) Any documents which are no longer in the Applicant's control and what has happened to those documents.
- (d) The extent of the search that has been made to locate documents that they are required to disclose.
- (e) Certifying that they understand the duty to disclose documents.
- (f) Certifying that to the best of their knowledge they have carried out that duty.
- (g) Why they are an appropriate person to make the Disclosure Statement.

The Applicant shall file witness evidence supported by a Statement of Truth in relation to the relevant contracts. Where there is alleged to have been an oral agreement, the witness statement should set out in so far as the makers of the statements are able to do so, (and where they are not able to do so they should explain why):

- (a) the contractual words used;
- (b) by whom to whom;
- (c) when; and
- (d) where they were spoken.

The Applicant is to comply with paragraphs 1-4 above by 4pm on 27 April 2017.

The Parties are to file and serve written submissions in relation to the following issues by 4pm on 18 May 2017:

- (a) Whether any agreements are Qualifying Long Term Agreements for the purposes of Section 20 of the Landlord and Tenant Act 1985, and the effect of any such finding.
- (b) Whether the repairs to the Roof and Guttering invoiced at pages 131/139 and 386-388 performed in November 2012, constitute one set or two sets of works, for the purpose of deciding whether the works are Qualifying Works under Section 20 of the Landlord and Tenant Act 1985, and the effect of any such finding.

- (c) Whether any order should be made in relation to Section 20C of the Landlord and Tenant 1985.

Thereafter the Tribunal will promulgate its decision in principle. The decision will not include a decision in relation to whether any sums are time time-barred by S.20B of the Landlord and Tenant Act 1985. In relation to that issue the Tribunal will invite the parties to seek to agree calculations and if they are unable to agree, to submit representations on that point.

FAILURE TO COMPLY WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN DETRIMENT TO A PARTY'S CASE. FOR EXAMPLE, IT MAY LEAD TO THE TRIBUNAL REFUSING TO HEAR LATE EVIDENCE; TO A PARTY'S CASE BEING STRUCK OUT; AND/OR TO AN ORDER FOR COSTS BEING MADE.