



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

Case Reference : CHI/29UL/LSC/2020/0053

Property : Flat 15 Quain Court, Sandgate Road,
Folkestone, Kent CT20 2HH

Applicant : Mrs M Atkins

Representative : Ashe Property Management Ltd

Respondent : Quain Court (Folkestone) Management
Company Ltd

Representative : Smith Woolley

Type of Application : Determination of service charge

Tribunal Member(s) : Judge D. R. Whitney
Ms C Barton MRICS

Date of Hearing : 20th November 2020 by FVH

Date of Determination : 22ND December 2020

DETERMINATION

Background

1. The Respondent is management company with responsibility for managing Quain Court. The Applicant is the owner of 6 flats in total but the application was made only in her capacity as leaseholder of the Property being Flat 15.
2. The issue in dispute was determined at a telephone CMH to be whether or not the fee charged by Mr Woods for overseeing major works was reasonable and whether the Respondents had undertaken appropriate steps to determine that this was a reasonable fee prior to his instruction.
3. Directions were issued at the telephone CMH including for provision of a bundle. References in [] are to pages within that bundle.
4. The hearing was attended by Mr John Ashe (assisted by Mr Nicholas Ashe) for the Applicant, Mr Paul Struby of Smith Woolley and Mr Keith Davies and Mr Chris Beddoe directors of the Respondent.

Hearing

5. The hearing took place as a remote hearing by FVH. All parties were content to take part using the FVH technology and all participants confirmed at the conclusion of the hearing that the Tribunal had afforded them every opportunity to make any statements they wished to make.
6. This represents a summary only of the matters discussed and evidence given at the Tribunal.
7. A preliminary issue had arisen as to whether or not part of the Applicants case should be excluded. Mr Struby on behalf of the Respondent suggested that any argument as to whether or not a surveyor should have been appointed distinct from whether or not the cost was reasonable should be excluded as raising a new issue.
8. The Tribunal refused the application. The issue of the amount of the Tribunal fee and whether or not such a fee should have been incurred was the nub of this dispute and the Tribunal was satisfied that this was, if the Applicant so wished, an argument they could properly raise.
9. Mr Ashe explained that Quain Court is a block of 20 flats constructed in 1936. The flats were spread over 6 floors. The subject flat is on the fourth floor. The flats are served by a communal heating and hot water system.

10. Mr Ashe suggested that a surveyor was not required to over see the major works undertaken to replace the communal hot water and heating system. He suggested when in 2012 works were undertaken to replace a hot water boiler at a cost of approximately £32,500 no surveyor had been employed. He suggested on behalf of his client that the current works which cost approximately £70,000 plus vat and professional fees likewise did not need a surveyor to specify the works or oversee the same. He confirmed his client was happy with the cost of the works and had paid her share.
11. Mr Ashe suggested that the type of contractor who undertook work of this type were specialists. He was of the opinion that they would be able to specify what works were required and did not require supervision.
12. He relied upon a timeline of events [91]. He stated that at no time had it been made clear when the contract with Mr Wood had been entered into.
13. Mr Struby cross examined Mr Ashe.
14. Mr Ashe explained that he had tried to ask questions at an AGM which was before the observation period allowed for in the Section 20 consultation process. The directors had suggested there was not time and he assumed there would be a further meeting.
15. Mr Ashe was referred to a letter from Mr Struby dated 4th November 2019 [107 & 108]. Mr Ashe felt a meeting may have been of use given his clients expertise. Mr Ashe stated that it was his clients position that a fee of not more than 10% of the contract price plus vat was reasonable rather than the fee charged which amounted to 21%.
16. There was then a short adjournment before Mr Struby put the case for the Respondent.
17. Mr Struby explained he was a property manager and not a surveyor. His firm did not have the necessary in-house expertise to oversee and specify the works required to the hot water and heating system. In his view a professional was required to oversee the same to act as a check and balance.
18. He believed Mr Woods was very qualified to undertake the supervision and specification of these works. His role was to specify, manage and certify the contractor's costs. In so doing he would check all works were properly undertaken and appropriately charged.
19. He explained that no written observations were received from the Applicant.

20. Mr Struby stated that he considered the price was a “premium” but all works were completed to a good standard. Mr Ashe had visited and he was satisfied the works had been undertaken to a good standard.
21. He explained that Smith Woolley had been the managing agents since June 2019. Mr Wood already had a working knowledge of the building and the system. He had tried to see if he could find anyone else who could oversee the works but most surveyors on the Kent coast were general surveyors without the specialist knowledge of this type of project. He had been unable to source alternative quotes. He accepted for more normal major works such as redecorations he would typically expect to pay a fee in the region of 10% plus vat of the contract price.
22. Mr Struby was cross examined by Mr Ashe.
23. He accepted that with hindsight he could have contacted the various governing bodies of which Mr Wood was a member to try and see if they could recommend someone else to quote by way of comparison.
24. Mr Struby explained he would not have been happy simply having a contractor specifying and undertaking the works. He accepted some contractors might do that but there would be no checks or balances.
25. Mr Struby was adamant he had been open and transparent throughout the process. He explained that John Wood had said he would undertake the supervision for a fixed fee. Mr Struby checked Mr Wood’s credentials and was satisfied he had specialist expertise in this type of project.
26. On questioning by the Tribunal Mr Struby explained that when he mentioned a “premium” he meant the fee was more than normal major works. A colleague had attempted to get alternative quotes but those asked required a fee to inspect the works and quote. Given this was after the event they had not proceeded with the same.
27. Mr Ashe was satisfied that it was “a neat and tidy job.” He did feel a lighter touch of management could have been undertaken which would have been cheaper.

Determination

28. The Tribunal thanks Mr Struby and Mr Ashe for their measured and helpful submissions and evidence. The Tribunal considered carefully everything said at the hearing and contained within the bundle.
29. The Applicant was no longer seeking to assert that any form of additional Section 20 consultation was required to appoint a professional to oversee major works. Further the Applicant accepted that under the terms of the lease such costs are recoverable as a service charge.

30. As the hearing progressed whilst suggesting within the documents that no fee was payable Mr Ashe accepted some fee would be reasonable and proposed a fee not exceeding 10% plus vat of the contract price. Essentially his view was that this was the going rate for supervision of major works and alternative contractors could have been found. Quite rightly, in this Tribunal's opinion, no criticism was levelled at Mr Wood and the work he undertook.
31. Mr Struby explained how Mr Wood came to be appointed. Candidly he accepted perhaps with hindsight more could have been done to obtain other quotes. He was adamant no other local surveyor had the particular expertise which Mr Wood brought to bear. Mr Struby accepted there were other experts existing in this field but these would have needed to travel and in his opinion were unlikely to have been more cost effective.
32. The Tribunal was satisfied that it was appropriate for a professional to be appointed to oversee these works. Whilst plainly some firms could have specified the works and undertaken the same as suggested by Mr Struby there would be no check or balance. The successful tender prepared by HOB Mechanical Services Limited [316 & 317] totalled some £70,195 plus VAT. This was a not inconsiderable sum of money.
33. The works undertaken in respect of replacement of communal hot water and heating systems are in this Tribunal's opinion specialist works. It was reasonable to find a specialist to oversee and specify such works. As suggested by Mr Struby this provided a suitable check and balance for the Respondent and the agent.
34. We must now look at the cost. We as a Tribunal must be satisfied the cost is reasonable. In so doing the price is one factor but not the only factor for us to consider.
35. Mr Struby referred to the price paid to Mr Wood as being a "premium". This was due to his specific expertise and qualifications in this specialist field. The Tribunal was satisfied with the evidence given by Mr Struby that he struggled to source alternative contractors. Mr Ashe had not provided any alternative quotes.
36. Mr Wood listed the works covered by his fee [153-158]. This was a comprehensive list of what was included within his fee. There was no challenge by Mr Ashe that Mr Wood had not undertaken such works and all parties seemed satisfied that the works were completed within a reasonable period of time, on budget and to a good standard. In this Tribunal's opinion this must be a testament to Mr Wood's supervision and specification of the same.
37. As to the fee itself this was £14,941 plus vat (see [135]). This equates to 21% of the cost of the works. Whilst it may be said this is high we are conscious that this is a fixed fee and includes all the considerable work undertaken by Mr Wood without any preliminary fees and the like. The

overall cost of the project appears to be cheaper than a quotation received from British Gas for the works.

38. We are conscious that this was a fixed price quote and not based upon a percentage of a contract sum. It gave the Respondents certainty. Further it is plain that a high standard was achieved by Mr Wood who delivered services worthy of the level of fee charged. No one produced any alternative quotes.
39. We are satisfied that the price charged by Mr Wood being £14,941 plus VAT is reasonable in all of the circumstances of this case.
40. The Applicants also sought orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These are discretionary orders which the Tribunal can make. We note that this is an owner managed freehold wholly reliant on service charge income.
41. Essentially we have upheld the approach adopted by the Respondent. We decline to make any such orders and decline to order the reimbursement of the Tribunal fees paid by the Applicant.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking