FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference		**LON/00BK/LSC/2020/0336 [PAPERREMOTE]**
Property	**:**	**Flat 7, St Augustine's Mansions, Bloomburg Street, London, SW1V 2RG**
Applicant	**:**	**Mr Yuri Babin**
Representatives	**:**	**-**
Respondent	**:**	**St Augustine's Mansions Limited**
Representative	**:**	**-**
Type of Application	**:**	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Mr Kevin Ridgeway MRICS**
Date and venue of Hearing	**:**	**9 February 2021 by a paper-based decision**
Date of Decision	**:**	**10 February 2021**

DECISION

Decisions of the tribunal

(1) The tribunal determines that: -

(2) The disputed service charges for management fees are reasonable and the applicant is liable under the terms of the lease of the property to pay the service charges as demanded for the years in dispute. The agreements with the managing agents are not qualifying long term agreements, (QLTA).

(3) The administration charge of £102 is disallowed in full.

(4) The tribunal further determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant. No such order will therefore be made.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable to the respondent in respect of service charges payable for services provided for **Flat 7, St Augustine's Mansions, Bloomburg Street, London, SW1V 2RG**, (the property) and the liability to pay such service charge.

2. The applicant is the lessee of the property pursuant to a long lease. The Disputed Charges are as set out in the schedule provided by the Tribunal and utilised by the parties for the service charge years from 2014-15 through to 2020-2021. They concentrated upon management fee charges with regard to these service charges years.

3. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

4. The tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.

5. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote

hearing was classified as P (PaperRemote). A face-to-face hearing was not held because it was not practicable given the Covid-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in the electronic bundle described above and supplied by both parties to this dispute.

6. In the context of the COVID-19 pandemic and the social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

The background and the issues

7. The property is a four-bedroom two-bathroom one reception room flat in a purpose-built block of flats. The lessees of the flats at the property hold long leases which require the lessor to provide services and the lessees to contribute towards their cost by way of a service charge. The lessees must pay a percentage described in his lease for the services provided.

8. Accordingly, the issues arise for determination are with regard to the charges and issues listed in the schedule mentioned above and will be considered item by item by the Tribunal following the same list. The Tribunal will consider whether the sums claimed for the service charge year are reasonable within section 19 of the Landlord and Tenant Act 1985, (were the services reasonably incurred and were they of a reasonable standard). The Tribunal will first consider if there is a QLTA so far as the management fees are concerned.

Decision

9. The tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard but first need to consider if there is a QLTA. (A QLTA is any contract or agreement relating to service charge matters entered into by a landlord for a period of more than 12 months. If such a contract arises then there are specific statutory provisions that regulate them. If a freeholder enters into any contract or agreement relating to service charge matters for a period of "more than 12 months", they must consult with the leaseholders.)

10. In his application the applicant asserts that the management charges arise out of management agreements with the managing agents

that are agreements entered into by the respondent for a period of more than 12 months and thus are QLTAs.

11. The applicant further asserts that: -

The 2020 Management Agreement manifests these intentions in the direct language of Section 1F of the Agreement which states as follows:

'The Term': (from and to dates) 12 months, after this period, the agreement shall continue on the terms set out subject to termination under the clause 14."

It is my view that it clearly reads that the minimum term of the agreement is 12 months plus the time it continues after until the date of termination.

If the intention of the parties was indeed to give the right to terminate on or upon the expiration of 9 months from the beginning of the agreement, then the clause would have read differently, more like below:

'The Term': (from and to dates) 12 months, during this period, the agreement shall continue on the terms set out subject to termination under clause 14."

Or

'The Term': (from and to dates) 9 months, after this period, the agreement shall continue on the terms set out subject to termination under clause 14."

As it would reflect the allegedly intended minimum mandatory term of 9 months + 3 months for the termination notice. But the parties used a different language extending legally binding obligations beyond the 12 months period making the agreement a QLTA.

12. The respondent asserts that there are two relevant contracts, the first is in relation to management from the start of the claim until 2019 and the second is between the agents and the respondents for subsequent management years. The first agreement stated-

The term of this agreement shall be annually from the 25 March 1996 with automatic renewal on the anniversary subject to 6 months' written notice to terminate being given by either

party to the other expiring on the 25 March 1997 or thereafter on any anniversary.

The second stated -

Term-12 months. After this period the agreement shall continue on the terms set out subject to termination under clause 14.

Clause 14 provides on termination-

Either party may terminate this agreement on or after the last day of the 9th month of the term by serving on the other not less than 3 months' notice in writing.

13. The respondent's case is that on a proper construction of these clauses the commitment made by the parties would be not more than 12 months and therefore would not be a QLTA. Both parties provided authorities to seek to support their views of the possible existence or not of a QLTA. The respondent cited *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102. In this case the relevant clause stated that "*The contract period will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party*". This clearly is distinguishable from the clauses in front of the Tribunal because it must run for a complete year before notice can be served whereas the clauses in front of the tribunal both allow for the period of the agreement to be extinguished at the end of one year.

14. The applicant *cites Bracken Hill Court at Ackworth Management Company Limited v Dobson & Ors* [2018] UKUT 333 (LC) where On Appeal to the Upper Tribunal, HHJ Huskinson reiterated the decision of the Court of Appeal in *Corvan*, in which it was held that in determining whether an agreement is a QLTA it is necessary to consider the proper construction of the management agreement and decide whether the agreement is for a term exceeding 12 months. This involves considering whether the term must exceed 12 months rather than whether in substance the parties intended or expected that the agreement would last longer than 12 months. The deciding factor is the minimum length of the commitment under the contract.

15. In the light of the above the Tribunal was of the firm view that there was no QLTA as in neither agreement did the terms of the contracts make the term more than 12 months. The cases made it clear that the provisions in the management agreements did not create a QLTA. As was said in paragraph17 of Bracken "…. *the correct approach in a case such as this is to consider the proper construction of the contract between the landlord and the provider of the management*

services and to decide whether the agreement is for a term exceeding 12 months. This involves considering whether the term must exceed 12 months, rather than analysing the substance of the management agreement and its various obligations and considering whether there can be detected an intention or expectation that the services may be provided for a period extending beyond 12 months". The Tribunal determines that the agreements under consideration in this decision have minimum terms that means that they are not QLTAs.

16. This being so the Tribunal was required in the alternative to consider if the management fee charges were unreasonable. The applicant relies upon an alternative quote for these fees from a company called Moretons. It seems that this quote was provided without an inspection. The applicant nevertheless considers the quote to be competitive while the respondent considers it tentative and a very rough estimate. The Tribunal noted that it is only £33 cheaper (without VAT).

17. The Tribunal considered the annual charges in the light of its own knowledge of similar fees for this kind of work and felt it fell within the range of reasonable charges for properties of this type in London albeit perhaps at the top end. Nevertheless, the charges were still reasonable and were thus payable by the applicant.

18. There is one administration fee in dispute being a late notice fee by the management company in the sum of £102. The applicant says this should be nil as the respondent had been notified about the dispute and the fee is unreasonably high for just sending an email. The respondent says the sum is £85 plus VAT and relates to a final reminder. The Tribunal felt that this charge was not reasonable bearing in mind the nature and timing of the dispute and therefore disallows the charge in full.

19. For all the reasons set out above the tribunal is of the view that apart from the administration fee mentioned above the service charges for the management fees for all the disputed years are reasonable and are payable by the applicant.

Application for a S.20C order

20. It is the tribunal's view that it is not just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

21. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should have to pay them.

22. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all written submissions before it at the time of the hearing.

23. The applicant needs to be aware of the decision in *Plantation Wharf Management Limited V Blain Alden Fairman And Others* [2019] UKUT 236 (LC). In this case the Upper Tribunal made it clear that whilst it was possible for this Tribunal to make an order in favour of a class of leaseholders, it could only do so if each member of the class had applied for such an order or authorised another party to apply on their behalf. Accordingly, this s.20 order will only apply to the leaseholders who are named as the applicant. It is open to other leaseholders to consider their own applications should the need arise. Useful guidance on the exercise of the section 20C discretion is also given in *Conway al v Jam Factory Freehold Ltd* [2013] UKUT 0592, where Martin Rodger QC observed that it is important to consider the overall financial consequences of any order, and in particular that an order made under the section will only affect those persons specified. He said "*In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.*" Bearing in mind the terms of this decision the Tribunal felt that no Order was the right outcome.

Name: Judge Professor Robert Abbey **Date:** 10 February 2021

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to 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.

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.