LON/00AC/LSC/2005/0069

Residential Property
TRIBUNAL SERVICE

# DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE ON APPLICATION UNDER SECTION 27A & S20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

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| Applicants: | Ms Anne Chauveau, (Flat 21) and the Lessees of Flats 1, 2, 3, 5, 7, 8, 9, 10, 14, 14A, 23, 24, 25, 28, 30 and 37 |
| Respondent: | Mountview Estates plc |
| Re: | 21 Queensborough Court<br>Henly's Corner<br>Finchley<br>London<br>N3 3JP |
| Application date: | 21st March 2005 |
| Hearing date: | 2nd November 2005 |
| Appearances: | Mr G Summer and Ms A Goodman — For the applicant<br>Mr C Maunder-Taylor FRICS — For the Respondent |

Members of the Residential Property Tribunal Service:

Mr A J Andrew LLB
Mr J M Power MSC, FRICS, FCIArb

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A AND S20C OF THE LANDLORD AND TENANT ACT 1985**

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| **Reference number:** | LON/00AC/LSC/2005/0069 |
| **Property:** | 21 Queensborough Court, Henly's Corner, Finchley, London N3 3JP |
| **First Applicant:** | Ms A Chauveau (Flat 21) |
| **Other Applicants:** | The Lessees of flats 1, 2, 3, 5, 7, 8, 9,10,14, 14A, 23, 24, 25, 28, 30 and 37 as listed in the Directions dated 6 June 2005 |
| **Respondent:** | Mountview Estates Plc |
| **Appearances:** | For the first Applicant<br>Mr G Summers and Ms A Goodman of the College of Law's Legal Advice Centre<br><br>For the Respondent<br>Mr C Maunder-Taylor FRICS, a Director of the Respondent company |
| **The Tribunal Members:** | Mr A J Andrew LLB<br>Mr J M Power MSC, FRICS FCIArb |
| **Application dated:** | 21 March 2005 |
| **Directions:** | 25 May 2005 |
| **Hearing:** | 2 November 2005 |
| **Decision:** | 28 November 2005 |

## DECISION

1. We determined that major works deficits demanded by the Respondent on or about 26 March 2003 were not payable by the Applicants.

2. We ordered that the Respondent repay to the Applicants the sum of £220 being their fees incurred in making their application.

## BACKGROUND

3. The Applicants applied under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of the service charges payable by them in respect of a major works contract completed in 2001. Initially they also applied section 20C of the Act for an Order limiting the recovery, through the service charge, of the Respondent's costs incurred in these proceedings but withdrew that application upon the Respondent conceding that, having sold the freehold reversionary interest in the Property, it could no longer recover those costs. The Directions authorised us to consider the reimbursement, by the Respondent of the Applicants' fees incurred in making their application.

4. At the hearing Mr Summers and Ms Goodman represented only the First Applicant and to that extent the Other Applicants were not represented although they clearly relied upon the submissions made by Mr Summers and Ms Goodman.

5. Queensborough Court is a block of flats fronting the North Circular Road. The First Applicant holds Flat 21 Queensborough Court under a lease dated 30 May 1979 and made between Burn-Anderson (Southern) Ltd and Mr and Mrs M A Silver ("the Lease"). We understood that all the other flats in Queensborough Court were held under leases in substantially the same form. The terms of the Lease were not put in issue by either party and it is therefore unnecessary to consider them.

## THE FACTS

6. The following relevant facts were agreed by the parties:

   a. The Respondent has since at least 30 June 2000 demanded standard quarterly on account payments from the Applicants on 1 January, 1 April, 1 July and 1 October in each year. In the case of the First Applicant they amounted to £189 per quarter.

   b. With each such demand the Respondent also demanded a general reserve contribution. In the case of the First Applicant it amounted to £55.

   c. The Respondent has not produced any annual budgets or estimates to substantiate either the on account payments or the reserve fund contributions. In particular the reserve fund contributions have not been allocated to specific projects agreed with the tenants in advance.

   d. On 22 May 2000 the Respondent through its agents gave notice to the Applicants of a proposed major works contract. The notice complied with Section 20 of the Act. The notice estimated the total cost of the works £53,320.19. The First Applicant's share was 2.75% or £1,466.33.

   e. The supervising surveyor's final certificate was issued on 24 July 2001 and the final retention monies were released on 7 August 2001.

   f. The total costs of the major works amounted to £49,398.18. On 26 March 2003 the sums standing to the credit of the Applicants in the reserve fund were transferred to meet their share of that cost and demands were issued for the balances. The First

Applicant's share of the costs was £1,358.45 of which sum £551.89 was transferred from the reserve fund and a demand was sent to her for the balance of £805.56.

g. The Applicants were not notified of the cost of the works after the issue of the section 20 notices on 22 May 2000 and before the issue of the demand for payment on 26 March 2003.

7. At the hearing we were provided with a full list of the balances demanded from the lessees on 26 March 2003: they were not disputed and are a matter of record and we do not consider it necessary to recite them in this decision.

8. Although not an agreed fact it was nevertheless apparent that the Property had been managed on behalf of the Respondent by Willmotts but that, after the completion of the major works but before the preparation of the final accounts, that firm was dissinstructed and the management of the Property was taken in-house.

## ISSUES IN DISPUTE

9. The Applicants had initially disputed the whole of the major works contributions but at the pre-trial review their attention was drawn to Gilje and Others v Charlegrove Securities Ltd (2) [2003] vol.3 EGLR9. They subsequently restated their case and took no issue on the payability of the sums standing to their credit in the reserve fund which had been transferred in part payment of the major works costs. Thus, repayment of fees apart, the only issue was the payability of the major works balances demanded from the Applicants on 26 March 2003. In the case of the First Applicant that was £805.56. The Applicants did not suggest that the cost of the major works had been unreasonably incurred or that the works had had not been carried out to a reasonable standard. They disputed the payability of the balances, which were

demanded on the 26 March 2003, on the grounds only that they were caught by Subsection 20B(1) of the Act.

**REASONS**

10. Section 20B of the Act which is headed *"Limitation of service charges: time limit on making demands"* reads as follows:

> *(1) if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
>
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge.*

11. At the very latest the major works costs had been incurred when the final retention monies were released on 7 August 2001. The Applicants case was straightforward: demands for the balances were not issued until 26 March 2003: that is some 19 months and 19 days after the costs were incurred. Thus the demands were caught by Subsection 20B(1) and the balances were not payable.

12. If, as was suggested in Gilje, the purpose of section 20B was to ensure that a tenant should not be faced with a bill for expenditure of which he or she was not sufficiently warned to set aside provision then that Section did not sit easily with Section 20 of the Act which required a landlord to give advance notification of the estimated cost of major

works projects. That was particularly so in a case such as this where the actual cost of the major works was less and than that originally estimated. However, Mr Maunder Taylor specifically chose not to take this point and we considered that he was right not to do so. Although the Applicants had been informed of the estimated cost of the major works contract it was clear that none of them had been informed of the balances standing to their credit in the reserve fund account and thus they had no knowledge of the balancing payments would be due from them even if, as proved to be the case, the major works contract was completed within the estimated cost. Furthermore many of the Applicants were elderly and we agreed with Mr Summer that it was unrealistic to expect them to ascertain, from the total estimated cost of the major works, the sums that might ultimately be due from them.

13. Mr Maunder Taylor conceded that the Section 20 notices issued on 22 May 2000 could not be regarded as demands for payment but he suggested that they amounted to a notification in writing, for the purposes of Subsection 20B(2) and that consequently Subsection (1) did not apply. In making this submission Mr Maunder Taylor relied in part on a previous LVT decision relating to another major works contract: Averberg v Mountview Estate Plc, LON/00AC/LIS/2004/0020. In that case the tribunal had concluded that an apparently late demand was not caught by Subsection 20B(1) of the Act. We did not consider it appropriate to have regard to a decision of another Tribunal when the evidence, upon which that decision was based, was not before us. In any event it was clear from reading that decision that the tenant had specifically conceded that she had received a notification in accordance with Subsection 20B(2) and that accordingly the 18 month rule did not apply. Thus the decision did not, in any event, assist Mr Maunder Taylor.

14. The thrust of Mr Maunder Taylor's remaining argument relied on the proposition that the Section 20 notices amounted to a notification in writing for the purpose of Subsection 20B(2). When the Section 20

notices were issued on 22 May 2000 the Respondent had incurred a liability for a proportion of the professional fees specifically referred to in the notices. Thus he considered that, part of the costs having been incurred, the Section 20 notices absolved the Respondent from complying with the provisions of sub section 20B(1) of the Act. Mr Maunder Taylor drew our attention to a specific provision in the section 20 notice which warned the recipients that they would *"be responsible for a proportion of the total costs indicated above, for which in due course you will receive an official demand for payment of your proportion"*. He concluded that these words complied with Subsection 20B(2) in that they amounted to written notifications to the Applicants that they would, in due course, be required under the terms of their leases to contribute to the major works costs by the payment of a service charge.

15. We were not without sympathy for the situation in which the Respondent found itself. The delay in submitting the demands has resulted from its decision to take the management of the Property in-house and the apparent reluctance on the part of their supervising surveyors to provide timely information. Nevertheless the remedy was within the Respondent's hands: it could have issued specific notices under Subsection 20B(2) to all the tenants warning them that demands would be issued in due course, but they had failed to do so.

16. We did not accept that the Section 20 notices could be construed as written notification for the purpose of subsection 20B(2). Although it may have been the case that a proportion of the professional fees had been incurred when the Section 20 notices were issued those fees accounted for only a small proportion of the total costs and had not been quantified. It appeared to us that, on any common sense interpretation of subsection 20B(2), a written notification, complying with that Subsection, could only be sent after all the costs, that would ultimately form the basis of the delayed demands, had been incurred. To put it another way *"those costs"*, in Subsection 20B(2), *were* the

total major works' costs and not just a small unquantified element of them.

17. We concluded that the section 20 notices did not amount to written notifications to the Applicants, for the purpose of sub section 20B(2) of the Act. Consequently and for each and all of the above reasons we concluded that the balances demanded from the Applicants on 26 March 2003 were not payable by them.

18. As far as the Applicants fees were concerned we had found wholly in their favour. In such circumstances we considered it appropriate to order the Respondent to reimburse those fees of £220.

CHAIRMAN: A J ANDREW

DATED: 28 November 2005

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**REASONS**

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works projects. That was particularly so in a case such as this where the actual cost of the major works was less and than that originally estimated. However, Mr Maunder Taylor specifically chose not to take this point and we considered that he was right not to do so. Although the Applicants had been informed of the estimated cost of the major works contract it was clear that none of them had been informed of the balances standing to their credit in the reserve fund account and thus they had no knowledge of the balancing payments would be due from them even if, as proved to be the case, the major works contract was completed within the estimated cost. Furthermore many of the Applicants were elderly and we agreed with Mr Summer that it was unrealistic to expect them to ascertain, from the total estimated cost of the major works, the sums that might ultimately be due from them.

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CHAIRMAN: A J ANDREW

DATED: 28 November 2005