SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No: **CHI/43UL/NSI/2003/0046**

Premises: **Brockton, Filmer Grove, Godalming, Surrey GU7 3AB**

Between:

Brockton Management Limited **Applicant**

and

Mr C Robinson **Respondent**

Re: **Determination of Reasonableness of Service Charge**

STATEMENT OF REASONS

Tribunal: **Mr B J C Mire BSc (Est Man) FRICS**
Mr P Boardman MA LLB
Mr D Wills

Preliminary and Jurisdiction

1 This application arises by way of a referral to the Leasehold Valuation Tribunal from the Guildford County Court by District Judge Raeside dated 7th August 2003 pursuant to Section 31C of the Landlord and Tenant Act 1985.

2 The effect of this referral was an application for the determination of the reasonableness of service charges under Section 19(2A) of the Landlord and Tenant Act 1985. This application is subject to the provisions of the 1985 Act as they stood prior to amendments made by the Commonhold and Leasehold Reform Act 2002, brought in to force on the 30th September 2003. Therefore no application had been made under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges.

3 No application had been made under Section 20(C) of the Landlord and Tenant Act 1985 for an order that all or any of the costs incurred in this action should not be regarded as relevant costs.

4 The Hearing of the Application took place in Shalford on the 22nd January 2004. The Applicant, Brockton Management Limited, was represented by two Directors, Mrs C Ross (flat 10) and Mr A Karn (flat 8) who presented the case in person. The Respondent, Mr C Robinson (flat 7) presented his case in person although he was assisted by Mr R Norris (flat 3). Ms A Wilson (flat 2) was in attendance.

Inspection

5 The Inspection took place on the morning of Thursday 22nd January 2004.

6 The Tribunal, in the presence of Mrs Ross, Mr Karn and Mr Robinson proceeded to inspect the balcony area of flat 10 and were shown the walls which had been re-pointed and the wall which had been re-rendered. We were advised that the same works were undertaken to the balcony area of flat 9 and that the total costs for the two balconies were £1,410 for the re-pointing and £600 for the rendering.

7 We were also asked to inspect the balcony railings to flat 10 in order that we could determine whether they were part of the flat or part of the structure but we declined to do this as no application had been made with regard to this item.

8 Brockton comprises a brick built, roughly square shape, block of 10 flats on lower ground, ground and three upper stories. There are garages and store rooms at ground floor with additional garages and a bin store in the forecourt. There are two flats on each of the lower ground and ground floors, four flats on the first floor and two flats on the second floor, the latter of which have internal staircases giving access to a third floor and a large rear balcony area over looking the rear gardens.

9 The side and rear walls of Brockton form the side and rear retaining walls of the balcony with the side and rear walls of flats 9 and 10 at third floor level forming the side and rear walls of the third floor structure on top of which is the roof covering. It was this first mentioned area of wall which was re-rendered and the second mentioned area of wall which was re-pointed.

10 Mrs Ross advised us that she had, at her own expense, recently had the balcony surface relaid on top of which she had placed removable paving slabs. The balcony surface was effectively the roof covering over the flats beneath (nos 7 and 8). This work was not in dispute but we mention it here to complete our description of the elements forming the external leaf of the structure.

Hearing and Evidence

11 At the Hearing of the Application which took place at Shalford Village Hall in Shalford on morning of the 22nd January 2004 Mrs C Ross and Mr A Karn, Directors of the Applicant presented the case which was that a leak had been ongoing in to Mr Robinson's flat for some time.

12 The Tribunal was advised that in the past Brockton had been managed by the flat owners each of whom was a Director of the Applicant and agreement for works required were suggested by a building committee and then voted on and reached on a majority verdict. However, the Respondent seemed unwilling to go along on this basis, particularly so far as the subject works were concerned.

13 As the Directors were lay people they had consulted a Chartered Surveyor who advised that the external walls of the building be re-pointed in places but particularly around the exterior of flats 9 and 10. Estimates had been obtained and the cheapest was £1,410. A Solicitor was consulted as to liability for the cost of the works and his advice had been that it fell to be added to the service charge, ie to all the residents of Brockton rather than the owners of flats 9 and 10. During the course of the works, the surveyor advised that further works be undertaken, ie the re-rendering, at a cost of £600.

14 They said the residents were all advised of the re-pointing works by way of discussions at meetings but particularly in writing by way of a memorandum dated 19th August 2001 (pages 112 and 113 of the bundle) and updated by memorandum of the 1st October 2001 (page 114 of the bundle) which also covered the re-rendering works.

15 It is the Applicant's case that the external walls of flats 9 and 10 at third floor level and the side and rear retaining wall of their balconies are part of the structure of Brockton and therefore fall to all the residents to contribute towards their repair.

16 The Respondent, Mr Robinson, felt this was not the case. He too had taken professional advice. It was his view that the demise of the said flats (9 and 10) was clearly set out at Clause 1(4) of the Tenants lease (page 38 of the bundle) as *"...lying between a horizontal plane following the line of the lower edge of the floor structures forming the floor of the said flat and another plane following the line of the lower edge of the floor structure of the flat...immediately above..."* which was fully set out on a plan attached to the said lease and which included the walls which were re-pointed and re-rendered as these were within the demise of the flat and therefore fell to the individual tenants of those flats to repair.

17 He went on to say that Clause 5(3) of the lease (page 42 of the bundle) set out the repairing position for dividing walls and structures between the demise and other parts of the building *"That every internal wall separating the demised premises...from any...part of the Entire Property shall be a party wall severed medially"*.

18 He said that in Clause 5(1) of the Third Schedule of the same lease (page 48 of the bundle) set out the tenant's repairing obligation to *"...repair...the demised premises..."*.

19 He referred us to paragraph 6 of the Second Schedule of the Management Lease (page 104 of the bundle) which he said limited the Management Company's repairing liability to internal walls not contained within an individual flat's lease and which made it a lease of the "common parts".

20 He said that this conflicted with the Management Company's obligations in the Tenant's Lease at Clause 6(2) (page 42 of the bundle) where it states that they, the Management Company, were liable for the structure of the "amenity premises" of the whole premises, ie "the Entire property" which he said was defined at Clause 1(8) (page 39 of the bundle) as meaning the property of the Landlord which he said did not include the structure of the building specifically demised to the Tenant as stated in his opening remarks (paragraph 16 above).

21 After questioning by the Tribunal he stated that did not however dispute the works were required and were carried out at reasonable cost and to a satisfactory standard.

22 The Applicant responded to Mr Robinson's statements that the leases were ambiguous and were able to be interpreted in many ways and hence they wanted to renew them in clearer terms. They believe that if something is open to the elements it is structural and external and should be treated in that way.

23 Mr Robinson wondered if the Applicant would take the same view if there was a roof over the "structural" walls which made them no longer open to the elements.

24 Mr Norris then commented that he, on Mr Robinson's behalf, saw there were two issues for the Tribunal to consider. First, were the works properly commissioned and second, were the works to be paid for by Brockton Management Limited or the individual tenant. He explained to the Tribunal the procedure whereby works were recommended and approved by a Building Committee which he said had not happened on this occasion and asked the Tribunal to consider

the outside walls as analogous to walls in a courtyard, ie open to the elements but the responsibility of the individual flats.

Terms of Leases

25 Though informal arrangements and agreements on works required had in the past been reached by majority agreement, as the party's liabilities were set out by Lease the Tribunal first examined those documents as in their view they set out the legal repairing obligations of the Applicant and liability for payment by the Respondent.

26 The Applicant's liabilities are set out in the Management Lease which is dated the 14th November 1975 and is between Lantern (Real Estate) Limited and Filmer Grove Management Limited and is at pages 98-111 of the bundle.

27 At Clause 1(2) (page 99 of the bundle) the demised premises are set out as *"...the flats garages and outbuildings known as Brockton... "*.

28 In Clause 3 the Management Company covenants *"..at all times...perform...the provisions...set out in the Second Schedule... "*.

29 In Clause 4 of the Second Schedule (page 103 of the bundle) the repairing liability is set out as *"...well and substantially to clean repair support and when necessary to rebuild...all present and future buildings forming...the demised premises... "*.

30 The Tenant's Lease of flat 8 which the Tribunal were advised was typical of all the leases is dated 28th February 1975 and is between Lantern (Real Estate) Limited, Filmer Grove Management Limited and the Tenant is at pages 36-55 of the bundle. The Tribunal does not have a copy of the other leases apart from the lease of flat 8, but at page 90 of the bundle there is an uncoloured plan, apparently from the lease of flat 9, showing thick edging round the whole of flat 9, including the balcony.

31 At Clause 1(4) (on pages 38 and 39 of the bundle) the demise of each flat is defined as set out in paragraph 16 above but is stated to be *"...for the purposes of identification shown on the plan annexed... "*.

32 At Clause 1(8) (on page 39 of the bundle) *"the entire Property"* is defined as meaning *"...the property of the Landlord... "*.

33 At Clause 6(1) (on page 42 of the bundle) the Management Company covenants *"...to perform and observe the covenants...in the lease to the Management Company of the amenity premises"*.

34 In Clause 6(2) (on pages 42 and 43 of the bundle) the obligations continue and include *"...repair and maintain...both as respects structure and decoration...all parts of the amenity premises including the said courtyard access ways and gardens of the Entire Property and the foundations attic and outer roof. "*.

35 In Clause 3 of the Third Schedule (page 48 of the bundle) the Tenant agrees to pay the service charge levied by the Management Company.

36 In Clause 5(1) of the Third Schedule (page 48 of the bundle) - set out in paragraph 18 above - the Tenant's repairing liability is stated to *"repair...the demised premises...except the condition and decorations of the surface of the external parts thereof"*.

37 In clause 5(2) of the Third Schedule (page 49 of the bundle) the Tenant is liable "to redecorate all the inside of the demised premises" once every 9 years.

DECISION

38 The Tribunal determines that the Management Company, not the individual Tenant, is liable for the two items of expenditure of £1,410 and £600 which are the subject of this reference.

39 Although the Tribunal has no copy of the leases of flats 9 or 10, the evidence before the Tribunal is that the wording of those leases is the same as for flat 8, the definition of "the flat" including a reference to the extent of the demise being shown for the purpose of identification only edged pink on the lease plan. The copy plan at page 90 of the bundle indicates that the balcony is included in the demise of flat 9, and the Tribunal therefore infers that the balcony of flat 10 is included in the demise of flat 10 as well.

40 The Management Company is liable to the Tenant of each flat to repair the building (see Clause 6(1) of the Tenant's lease and Clause 4 of the Second Schedule to the Management Lease) and the walls referred to in paragraph 6 of this determination are part of the building and as such are part of the Management Company's repairing liability.

41 In clause 6(2) of each of the Tenant's Lease the Management Company covenants to repair the structure of the "amenity premises". The Tribunal notes that that expression is not defined in the flat leases or the Management Lease, but that, at the end of clause 6(2), it is stated to include the foundations, attic, and outer roof. The Tribunal determines there is nothing in the wording of clause 6(2) to limit the Management Company's liability to each Tenant to repair the walls referred to in paragraph 6 of this determination.

42 In clause 5(1) of the Third Schedule to each flat lease the Tenant covenants to repair the demised premises except for the condition and decoration of the surfaces of the "external parts thereof". The Tribunal notes that the word "external" is not defined in the Tenant's Leases or in the Management Lease. The Tribunal determines that it should be given its ordinary meaning, namely "outside"and therefore the walls referred to in paragraph 6 of this determination (including those which had posts and railings fitted to them) are parts of the demised premises that are outside. Therefore the liability for their repair does not fall on the Tenants.

43 In clause 5(2) of the Third Schedule to each flat lease the Tenant covenants to redecorate the "inside" of the demised premises every 9 years. The Tribunal notes that the word "inside" is not defined in the flat leases or in the Management Lease. The Tribunal determines that it should be given its ordinary meaning, namely "not outside" and therefore the Tenant is not liable for the repair of the walls referred tom in paragraph 6 of this Determination.

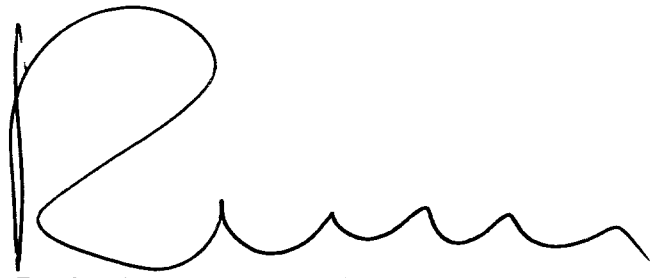
44 The Tribunal accordingly determines that the costs the Management Company incurred in the repointing and rendering of the walls properly form part of the service charge payable by each Tenant in the building, to the extent that those costs have been reasonably incurred.

45 The Tribunal has considered the standard of works carried out, and the amount of costs incurred, and, having taken account of Mr Robinson's comments recorded at paragraph 21 of this determination, the Tribunal determines that the two items of expenditure (£1,410 and £600) were indeed reasonably incurred.

46 Mention was made at the hearing of whether notices under section 20 of the 1985 Act were served before the two items of work was carried out, but as this is an application subject to the provisions of the Landlord and Tenant Act 1985 as they stood before the amendments made by

the Commonhold and Leasehold Reform Act 2002, any questions under section 20 are matters for the County Court. The Tribunal did note that the cost of the re-pointing was such that a Section 20 Notice was required but the re-rendering was not as its cost was less than the statutory limits set down by that Section in the Landlord and Tenant Act 1985.

47 **THE TRIBUNAL THEREFORE DETERMINES THAT THE TWO ITEMS OF EXPENDITURE OF £1,410 AND £600 WERE REASONABLY INCURRED.**



Benjamin JC Mire BSc (Est Man) FRICS
CHAIRMAN
11th February 2004