LON/00B/LSC/2006/2038

DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL UNDER SECTIONS 27A and 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Re:	**Flat 3, 220 Merton Road, London SW19 1EQ**
Applicants:	**Ms Stella McGaugh**
Respondent:	**Lakeside Developments Limited**
Inspection:	**Monday 15th January 2007**
Hearing date:	**Monday 15th January 2007**
Appearances:	**Mr Mark McGaugh as attorney/agent for his daughter Ms McGaugh** **Ms Scott, employee of Basicland Registrars Limited, Respondent's agent**
Members of Tribunal:	**Mr N.M. Gerald** **Mr. F. Coffey** **M. O. Miller**

INTRODUCTION

1. The Tribunal was dealing with an application under sections 27A and 20C of the Landlord and Tenant Act 1985 as amended ("the 1985 Act") for determination whether a service charge is payable and, if it is, the amount which is payable.

2. The Application was made on 6th July 2006 ("the Application") and, following an order for directions made on 4th August 2006, the Applicant filed a Detailed Statement of Case dated 29th August 2006 and the Respondent filed a detailed Response dated 15th December 2006.

3. 220 Merton Road, London SW19 ("the Property") is a three storey terraced house sub-divided into three residential units. The Applicant is the tenant of flat 3 ("the Flat") holding under a lease dated 31st December 1974 ("the Lease"). The principal service charge provisions are contained in clause 2(9) of and Part VI of the Schedule to the Lease. The Applicant is responsible for 32% of the expenditure the

subject of this Application. "Tenants" refers to the three tenants of the Property, including the Applicant.

HEARING

4. The hearing took place on Monday 15th January 2006, immediately after the Tribunal had inspected the front exterior of the Property and also, to the extent possible, the rear exterior of the Property from the confines of the Flat, access to the rear garden not being available.

5. The Applicant was represented by her attorney, and father, Mr Mark McGaugh ("Mr McGaugh"). The Respondent was represented by Ms L. Scott ("Ms Scott"), legal officer at the managing agents Basicland Registrars Limited ("BLR"). Mr McGraugh was present at the inspection, but Ms Scott was not.

6. At the outset of the hearing, Mr McGaugh confirmed that the only outstanding issue upon which the Applicant sought the determination of the Tribunal was whether or not the Respondent was entitled to claim more than the lowest tender and other sums for redecoration and repairs to the exterior of the Property stated in the 11th April 2001 Section 20 Notice referred to in paragraph 8 below. All other matters raised in the Application Form had been resolved or would not be pursued.

FACTS

7. In March 2001, the Respondent's chartered surveyors Simmonds & Partners ("Simmonds"), produced a Specification of Works ("the Specification") for the external redecoration and repair of the Property (the "Works"): there is no dispute as to its contents or the necessity for the Works to be carried out. Whilst paragraph A.1 of the Specification refers to external and internal works, it is agreed by the Applicant and the Respondent that it only relates to external works.

8. On 11th April 2001, the Respondent, by its then agents DGA Residential Managing Agents & Surveyors, a division of Hercules Property Services plc ("DGA"), served a notice under section 20 of the 1985 Act ("the Section 20 Notice") notifying the Tenants that the Respondent proposed to accept the lowest of three tenders obtained to carry out the Works which was from PMI Construction Limited ("PMI") in the amount of £5,209.00 plus VAT (the "PMI Tender") to which would be added £651.12 chartered surveyors' fees of Simmonds (being 12.5% of PMI Tender price) plus supervising surveyors disbursements and VAT. The Applicant would be responsible for £2,203.40 being 32% of the £6,885.64 total.

PMI Tender price	5,209.00
Simmonds' fee (excl disbursements)	651.12
Sub-total	5,860.12
VAT	1,025.52
TOTAL:	**6,885.64**

9. The Works were not started until July 2003 principally because the Tenants had requested a delay to enable them to come up with sufficient funds. By that stage, the Respondent had appointed new managing agents, BLR Property Management, the trading name of BLR, who were unable to contact PMI or obtain a copy of the PMI Tender. On 27th February 2003, BLR notified the Tenants that it had contacted new contractors asking them to match the PMI Tender price:

> "which will avoid the need to serve a further Section 20 Notice but, more importantly, avoid any uplift in price. We will let you know immediately we have some news. Meanwhile, the timetable is to start on site in this coming summer".

10. Ms Scott has told the Tribunal, which the Tribunal accepted, that BLR obtained and accepted an oral tender from Clipper Maintenance Limited ("Clipper") to carry out the Works set out in the Specification for the same price as the PMI Tender, namely, £5,209.00 excluding VAT which BLR accepted on behalf of the Respondent ("the Clipper Contract") and that they started work on 28th July 2003. However, Clipper was not provided with a copy of the detailed PMI Tender because it had been mislaid, and is still unavailable and was not produced to the Tribunal

11. On 29th August 2003, Clipper invoiced BLR for £9,556.28 inclusive of VAT for completion of the Clipper Contract of which, according to the invoice, £7,823 (excl VAT) was in respect of the Works itemised in the Specification and a further £310 (excl VAT) relates to "additional pointing and brick replacement works".

12. That was considerably more than the Clipper Contract price. BLR, the Tribunal was told by Ms Scott, asked for a breakdown, and was provided by Clipper with a breakdown of prices for External Decorations and Repairs totalling £7,523 ("the Breakdown") to which must be added £300 for the usual prelims bringing the total to £7,823, to which must be added £1,369.03 VAT making a total of £9,192.03 as against the £6,120.57 PMI Tender price (£5,209.00 plus £911.57 VAT).

13. It is accepted by all parties to this Application that Clipper did a poor and incomplete job. It was the Applicant, by her letter dated 24th September 2003, who alerted BLR to defective and incomplete workmanship by Clipper. BLR therefore commissioned chartered surveyors Messrs RD&D Associates ("RDD") to report on the performance of the Clipper Contract, which they did by their report dated 26th November 2004 ("the RDD Report").

14. BLR contracted M&K Services Limited ("MK") to complete the Works and make good any defects ("the MK Contract") in accordance with the Specification and the RDD Report. This MK did in summer 2005. It is accepted by all parties to this

Application that the Works are now completed to a satisfactory standard and in accordance with the Specification.

15. The Respondent does not seek payment for the Clipper Contract because it accepts that the Works were not carried out to a reasonable standard and were not completed by Clipper. The Respondent seeks £9,984.65 in respect of the Works, as follows (all sums inclusive of VAT):

MK Contract/invoiced amount	8,646.01
RDD costs	470.00
BLR administration fee	440.28
Simmonds' invoiced fee	428.36
TOTAL:	**9,984.65**

16. It is agreed by all parties that the Respondent served no Section 20 Notice in respect of the Clipper Contract or in respect of the MK Contract and, further, that neither the RDD costs nor the BLR administration fee were the subject of any Section 20 Notice.

THE DISPUTE

17. The Applicant does not challenge the validity of the Section 20 Notice but says that it restricts the amount recoverable to £6,885.64, which includes the £5,209.00 (excl. VAT) for carrying out the Works plus surveyors' fees to 12.5% of that contract price plus any proper surveyors' disbursements, as set out in the Section 20 Notice summarised in paragraph 8 above.

18. The Respondent relies upon the validity of the Section 20 Notice but says that it is also entitled to recover the additional £3,099.01 (£9,984.65 minus £6,885.64) claimed in respect of the MK Contract and other sums summarised in paragraph 15 above.

19. It should be recorded that it is not necessary for the Tribunal to determine what the Applicant has in fact paid in respect of the Works as that is agreed by the parties. Equally, whilst the service charge years in question are probably 2001-2002 and also 2005-2006, it is not necessary for the Tribunal to determine precisely which year the service charge relates to because (a) the dispute relates to the external Works as set out above; (b) those Works, and demands for payment, straddled the service charge years from and including 2001-2002; (c) the Tribunal has not been provided with any service charge accounts (although it has been provided with the Applicant's statement of account); and (d) the practical consequences of this Decision will be clear and easy to work out.

FINDINGS and DECISION

20. It is not necessary for the Tribunal to make any finding that Clipper neither completed the Works nor carried them out to a reasonable standard because that is conceded by the Respondent. Neither is it necessary for the Tribunal to make any finding that the Works have now been completed to a reasonable standard by MK because that is conceded by the Applicant. The sole questions for the Tribunal to determine are whether or not the Respondent is entitled to recover anything more than allowed for in the Section 20 Notice.

21. Having considered all of the evidence put before us and taken into account all of the representations and submissions made on behalf of the Applicant and the Respondent, the Tribunal finds and determines that the Respondent is not permitted to recover anything more than allowed for in the Section 20 Notice. The reasons are as follows.

22. First, only £5,209.00 plus VAT is recoverable for completion of the Works for the following reasons.

    (a) The Clipper Contract was either a fixed price contract or based on measured quantities: this is unclear as the Clipper Contract was oral and the only term in evidence was that Clipper would match the PMI Tender price. If a fixed price contract, Clipper was not entitled to any more than the fixed price. If based on measured quantities, there is no evidence that Clipper did anything more than stated in the Specification: that is clear from the Breakdown in which Clipper puts its price against the relevant Specification Works without any indication that additional or more extensive works were carried out by them.

    (b) The Applicant agreed to Clipper being contracted on the basis that their price matched the PMI Tender price stated in the Section 20 Notice. At no stage, and this was accepted by Ms Scott, were the Tenants notified that the Clipper price would be different. Indeed, Ms Scott frankly stated that BLR was surprised to receive the invoice at a higher price and is still unable to explain the difference between that which was orally agreed and that which was invoiced, partly because the Landlord does not have available the original PMI Tender so can not compare its itemised tender against the Breakdown provided by Clipper.

    (c) The Clipper Contract was carried out to a poor standard and the Works were not completed. This was not the fault of the Applicant, but of the Respondent who failed to supervise the Works being effected by Clipper. That was not contested, and is evident from the fact that it was not until the Applicant's said letter of 24th September 2003 that the Respondent took steps to assess the nature and quality of Clipper's workmanship, only to discover that it was defective and incomplete as set out in the RDD Report.

(d) The MK Contract was to complete and make good the Works listed in the Specification which was the subject of the Section 20 Notice and the RDD Report. There is no evidence, and Ms Scott has accepted, that MK has done any more than was required to complete the Specification Works to a reasonable standard. In reality, MK was engaged to complete and rectify Clipper's failure to complete the Works at all and to a satisfactory standard. It therefore follows in our judgment that it is not possible for the Respondent to recover more than was stated in the Section 20 Notice or fix the Applicant with responsibility for Clipper's poor workmanship, which the Respondent should have been supervising and, indeed, which the Respondent intended to engage Simmonds to supervise but did not. Any costs over and above the Clipper Contract price are unreasonable.

23. The Respondent, by BLR, has advanced three reasons as to why it should be entitled to recover the higher sum charged by MK, each of which we reject for the following reasons.

(a) First, the Respondent says that the higher MK costs should be permitted to reflect that "fact" that building works carried out in 2005 were bound to be more than those quoted for in 2001 by dint of building-cost inflation. The Tribunal rejects this because the MK Contract was to make good the defectively performed Clipper Contract which was supposed to be for the same price as the PMI Tender; the Applicant did not agree to pay MK more to rectify the defective performance of the Clipper Contract which should have been for the same price as the PMI Tender; if more was sought for the MK Work, a new section 20 notice should have been served; there is in any event no evidence of building-cost inflation before the Tribunal.

(b) Secondly, the Respondent says that the higher MK costs should be permitted to reflect the "fact" that there must have been deterioration of the Building fabric between 2003 and 2005 so that MK must have had to do more work. The Tribunal rejects this argument because the central thrust of Ms Scott's submissions was that MK merely made good or completed Works which should have been done by Clipper. It is implicit in that argument that no additional works were done, and there is no evidence or quantification or valuation of what additional works (if any) MK did. The Applicant did not accept that MK had carried out work over and above the Works. Furthermore, if MK did indeed do any additional works, over and above that required to make good or complete Works which should have been done by Clipper, a fresh section 20 notice should have been served but was not.

(c) Thirdly, the Respondent says that the higher MK costs should be recovered because the works have been done in 2005 so that the Applicant (and other tenants) have the benefit of missing a repairing cycle and thereby saving money. The Tribunal rejects this argument because it is not the function of the 1985 Act or the Lease to enable a landlord to recover more than permitted

under their respective provisions and, furthermore, the alleged benefit is wholly un-quantified.

24. The only indication that works additional to those set out in the Specification have been carried out is the one line in the Clipper referring to additional pointing and brick replacement valued at £310: see paragraph 11 above. It is, however, not necessary for the Tribunal to determine whether such additional work was done or, if it had any value, what that value was because the Respondent made clear to the Tribunal that it did not seek recovery of any sums invoiced by Clipper: see paragraph 15 above. It should, nonetheless, be recorded that the Applicant does not accept that any such additional works were effected and the Respondent did not seek to substantiate this sum.

25. Secondly, the £470.00 RDD costs are not recoverable because they were required in order to make good the defective performance of the Clipper Contract which, in turn, was necessitated by a total absence of any supervision of that Contract by the Respondent even though surveyors fees of 12.5% of the contract price plus disbursements were allowed for in the Section 20 Notice. In short, the Applicant should not be liable for the Respondent's failure to exercise reasonable skill and care and generally manage the Clipper Contract and are not reasonable. It would be wholly unreasonable for the Applicant to be fixed with these costs.

26. Thirdly, the £440.28 BLR administration fees are not recoverable because, to the extent (which was limited) that any explanation was given by the Respondent as to what these fees related to, they were required to sort out the defective performance of the Clipper Contract. It is therefore not recoverable for the same reasons as set out in paragraph 25 above.

27. Fourthly, the £428.36 Simmonds fee is recoverable. It was invoiced on 26th March 2001 and comprises £326.56, being one-half of the £651.13 fee paid "on account", and £39.00 disbursement (associated with preparation of the Specification) plus £63.80 VAT.

28. In addition, the Tribunal determines that the Respondent is entitled to recover a full 12.5% fee for engaging surveyors to supervise the Works because that is a reasonable sum, would be reasonable incurred and was accepted by the Applicant during the course of the hearing, even though (as appears to be the case) the supervision was not in fact carried out by Simmonds. Thus, in addition to the £39 disbursements, £651.13 is recoverable plus VAT on those sums of £120.77 making a total of £810.90 recoverable for surveyors' fees and disbursements.

SUMMARY OF DETERMINATION

29. The Tribunal determines that the Respondent is entitled to recover a total of £6,931.47 inclusive of VAT, being the £6,885.64 stated in the Section 20 Notice

plus the disbursements of £45.83 (£39.00 plus £6.83 VAT) stated in the Simmonds invoice dated 26th March 2001.

30. To the extent that the service charges for the years 2001-2002 onwards seek to recover from the Applicant any monies in respect of the Works additional to the sums set out in paragraph 29 above, such is unreasonable and impermissible.

COSTS

31. The Applicant sought orders that:

    (a) She be reimbursed the £170 issuance and £70 hearing fee, totalling £220, under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003; and that

    (b) The costs of the Respondent in connection with the Application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant pursuant to section 20C of the 1985 Act.

32. The Tribunal acceded to both applications because in all material respects the Applicant has succeeded in her Application, and it was unreasonable for the Respondent to defend the Application: the Respondent (a) is to reimburse the Applicant the said £210 fees and (b) is not to seek to recover its or its agents costs in connection with this Application from the Applicant *via* the service charge or otherwise. It would be neither just nor equitable for the Applicant to bear the said fees or for the Respondent to recover its costs from the Applicant *via* the service charge.

Nils Arold

CHAIRMAN

18/1/07

LON/00B/LSC/2006/2038

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Members of Tribunal:	**Mr N.M. Gerald** **Mr. F. Coffey** **M. O. Miller**

INTRODUCTION

1. The Tribunal was dealing with an application under sections 27A and 20C of the Landlord and Tenant Act 1985 as amended ("the 1985 Act") for determination whether a service charge is payable and, if it is, the amount which is payable.

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subject of this Application. "Tenants" refers to the three tenants of the Property, including the Applicant.

HEARING

4. The hearing took place on Monday 15th January 2006, immediately after the Tribunal had inspected the front exterior of the Property and also, to the extent possible, the rear exterior of the Property from the confines of the Flat, access to the rear garden not being available.

5. The Applicant was represented by her attorney, and father, Mr Mark McGaugh ("Mr McGaugh"). The Respondent was represented by Ms L. Scott ("Ms Scott"), legal officer at the managing agents Basicland Registrars Limited ("BLR"). Mr McGraugh was present at the inspection, but Ms Scott was not.

6. At the outset of the hearing, Mr McGaugh confirmed that the only outstanding issue upon which the Applicant sought the determination of the Tribunal was whether or not the Respondent was entitled to claim more than the lowest tender and other sums for redecoration and repairs to the exterior of the Property stated in the 11th April 2001 Section 20 Notice referred to in paragraph 8 below. All other matters raised in the Application Form had been resolved or would not be pursued.

FACTS

7. In March 2001, the Respondent's chartered surveyors Simmonds & Partners ("Simmonds"), produced a Specification of Works ("the Specification") for the external redecoration and repair of the Property (the "Works"): there is no dispute as to its contents or the necessity for the Works to be carried out. Whilst paragraph A.1 of the Specification refers to external and internal works, it is agreed by the Applicant and the Respondent that it only relates to external works.

8. On 11th April 2001, the Respondent, by its then agents DGA Residential Managing Agents & Surveyors, a division of Hercules Property Services plc ("DGA"), served a notice under section 20 of the 1985 Act ("the Section 20 Notice") notifying the Tenants that the Respondent proposed to accept the lowest of three tenders obtained to carry out the Works which was from PMI Construction Limited ("PMI") in the amount of £5,209.00 plus VAT (the "PMI Tender") to which would be added £651.12 chartered surveyors' fees of Simmonds (being 12.5% of PMI Tender price) plus supervising surveyors disbursements and VAT. The Applicant would be responsible for £2,203.40 being 32% of the £6,885.64 total.

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Simmonds' fee (excl disbursements)	651.12
Sub-total	5,860.12
VAT	1,025.52
TOTAL:	**6,885.64**

9. The Works were not started until July 2003 principally because the Tenants had requested a delay to enable them to come up with sufficient funds. By that stage, the Respondent had appointed new managing agents, BLR Property Management, the trading name of BLR, who were unable to contact PMI or obtain a copy of the PMI Tender. On 27th February 2003, BLR notified the Tenants that it had contacted new contractors asking them to match the PMI Tender price:

> "which will avoid the need to serve a further Section 20 Notice but, more importantly, avoid any uplift in price. We will let you know immediately we have some news. Meanwhile, the timetable is to start on site in this coming summer".

10. Ms Scott has told the Tribunal, which the Tribunal accepted, that BLR obtained and accepted an oral tender from Clipper Maintenance Limited ("Clipper") to carry out the Works set out in the Specification for the same price as the PMI Tender, namely, £5,209.00 excluding VAT which BLR accepted on behalf of the Respondent ("the Clipper Contract") and that they started work on 28th July 2003. However, Clipper was not provided with a copy of the detailed PMI Tender because it had been mislaid, and is still unavailable and was not produced to the Tribunal

11. On 29th August 2003, Clipper invoiced BLR for £9,556.28 inclusive of VAT for completion of the Clipper Contract of which, according to the invoice, £7,823 (excl VAT) was in respect of the Works itemised in the Specification and a further £310 (excl VAT) relates to "additional pointing and brick replacement works".

12. That was considerably more than the Clipper Contract price. BLR, the Tribunal was told by Ms Scott, asked for a breakdown, and was provided by Clipper with a breakdown of prices for External Decorations and Repairs totalling £7,523 ("the Breakdown") to which must be added £300 for the usual prelims bringing the total to £7,823, to which must be added £1,369.03 VAT making a total of £9,192.03 as against the £6,120.57 PMI Tender price (£5,209.00 plus £911.57 VAT).

13. It is accepted by all parties to this Application that Clipper did a poor and incomplete job. It was the Applicant, by her letter dated 24th September 2003, who alerted BLR to defective and incomplete workmanship by Clipper. BLR therefore commissioned chartered surveyors Messrs RD&D Associates ("RDD") to report on the performance of the Clipper Contract, which they did by their report dated 26th November 2004 ("the RDD Report").

14. BLR contracted M&K Services Limited ("MK") to complete the Works and make good any defects ("the MK Contract") in accordance with the Specification and the RDD Report. This MK did in summer 2005. It is accepted by all parties to this

Application that the Works are now completed to a satisfactory standard and in accordance with the Specification.

15. The Respondent does not seek payment for the Clipper Contract because it accepts that the Works were not carried out to a reasonable standard and were not completed by Clipper. The Respondent seeks £9,984.65 in respect of the Works, as follows (all sums inclusive of VAT):

MK Contract/invoiced amount	8,646.01
RDD costs	470.00
BLR administration fee	440.28
Simmonds' invoiced fee	428.36
TOTAL:	**9,984.65**

16. It is agreed by all parties that the Respondent served no Section 20 Notice in respect of the Clipper Contract or in respect of the MK Contract and, further, that neither the RDD costs nor the BLR administration fee were the subject of any Section 20 Notice.

THE DISPUTE

17. The Applicant does not challenge the validity of the Section 20 Notice but says that it restricts the amount recoverable to £6,885.64, which includes the £5,209.00 (excl. VAT) for carrying out the Works plus surveyors' fees to 12.5% of that contract price plus any proper surveyors' disbursements, as set out in the Section 20 Notice summarised in paragraph 8 above.

18. The Respondent relies upon the validity of the Section 20 Notice but says that it is also entitled to recover the additional £3,099.01 (£9,984.65 minus £6,885.64) claimed in respect of the MK Contract and other sums summarised in paragraph 15 above.

19. It should be recorded that it is not necessary for the Tribunal to determine what the Applicant has in fact paid in respect of the Works as that is agreed by the parties. Equally, whilst the service charge years in question are probably 2001-2002 and also 2005-2006, it is not necessary for the Tribunal to determine precisely which year the service charge relates to because (a) the dispute relates to the external Works as set out above; (b) those Works, and demands for payment, straddled the service charge years from and including 2001-2002; (c) the Tribunal has not been provided with any service charge accounts (although it has been provided with the Applicant's statement of account); and (d) the practical consequences of this Decision will be clear and easy to work out.

FINDINGS and DECISION

20. It is not necessary for the Tribunal to make any finding that Clipper neither completed the Works nor carried them out to a reasonable standard because that is conceded by the Respondent. Neither is it necessary for the Tribunal to make any finding that the Works have now been completed to a reasonable standard by MK because that is conceded by the Applicant. The sole questions for the Tribunal to determine are whether or not the Respondent is entitled to recover anything more than allowed for in the Section 20 Notice.

21. Having considered all of the evidence put before us and taken into account all of the representations and submissions made on behalf of the Applicant and the Respondent, the Tribunal finds and determines that the Respondent is not permitted to recover anything more than allowed for in the Section 20 Notice. The reasons are as follows.

22. First, only £5,209.00 plus VAT is recoverable for completion of the Works for the following reasons.

(a) The Clipper Contract was either a fixed price contract or based on measured quantities: this is unclear as the Clipper Contract was oral and the only term in evidence was that Clipper would match the PMI Tender price. If a fixed price contract, Clipper was not entitled to any more than the fixed price. If based on measured quantities, there is no evidence that Clipper did anything more than stated in the Specification: that is clear from the Breakdown in which Clipper puts its price against the relevant Specification Works without any indication that additional or more extensive works were carried out by them.

(b) The Applicant agreed to Clipper being contracted on the basis that their price matched the PMI Tender price stated in the Section 20 Notice. At no stage, and this was accepted by Ms Scott, were the Tenants notified that the Clipper price would be different. Indeed, Ms Scott frankly stated that BLR was surprised to receive the invoice at a higher price and is still unable to explain the difference between that which was orally agreed and that which was invoiced, partly because the Landlord does not have available the original PMI Tender so can not compare its itemised tender against the Breakdown provided by Clipper.

(c) The Clipper Contract was carried out to a poor standard and the Works were not completed. This was not the fault of the Applicant, but of the Respondent who failed to supervise the Works being effected by Clipper. That was not contested, and is evident from the fact that it was not until the Applicant's said letter of 24th September 2003 that the Respondent took steps to assess the nature and quality of Clipper's workmanship, only to discover that it was defective and incomplete as set out in the RDD Report.

(d) The MK Contract was to complete and make good the Works listed in the Specification which was the subject of the Section 20 Notice and the RDD Report. There is no evidence, and Ms Scott has accepted, that MK has done any more than was required to complete the Specification Works to a reasonable standard. In reality, MK was engaged to complete and rectify Clipper's failure to complete the Works at all and to a satisfactory standard. It therefore follows in our judgment that it is not possible for the Respondent to recover more than was stated in the Section 20 Notice or fix the Applicant with responsibility for Clipper's poor workmanship, which the Respondent should have been supervising and, indeed, which the Respondent intended to engage Simmonds to supervise but did not. Any costs over and above the Clipper Contract price are unreasonable.

23. The Respondent, by BLR, has advanced three reasons as to why it should be entitled to recover the higher sum charged by MK, each of which we reject for the following reasons.

(a) First, the Respondent says that the higher MK costs should be permitted to reflect that "fact" that building works carried out in 2005 were bound to be more than those quoted for in 2001 by dint of building-cost inflation. The Tribunal rejects this because the MK Contract was to make good the defectively performed Clipper Contract which was supposed to be for the same price as the PMI Tender; the Applicant did not agree to pay MK more to rectify the defective performance of the Clipper Contract which should have been for the same price as the PMI Tender; if more was sought for the MK Work, a new section 20 notice should have been served; there is in any event no evidence of building-cost inflation before the Tribunal.

(b) Secondly, the Respondent says that the higher MK costs should be permitted to reflect the "fact" that there must have been deterioration of the Building fabric between 2003 and 2005 so that MK must have had to do more work. The Tribunal rejects this argument because the central thrust of Ms Scott's submissions was that MK merely made good or completed Works which should have been done by Clipper. It is implicit in that argument that no additional works were done, and there is no evidence or quantification or valuation of what additional works (if any) MK did. The Applicant did not accept that MK had carried out work over and above the Works. Furthermore, if MK did indeed do any additional works, over and above that required to make good or complete Works which should have been done by Clipper, a fresh section 20 notice should have been served but was not.

(c) Thirdly, the Respondent says that the higher MK costs should be recovered because the works have been done in 2005 so that the Applicant (and other tenants) have the benefit of missing a repairing cycle and thereby saving money. The Tribunal rejects this argument because it is not the function of the 1985 Act or the Lease to enable a landlord to recover more than permitted

under their respective provisions and, furthermore, the alleged benefit is wholly un-quantified.

24. The only indication that works additional to those set out in the Specification have been carried out is the one line in the Clipper referring to additional pointing and brick replacement valued at £310: see paragraph 11 above. It is, however, not necessary for the Tribunal to determine whether such additional work was done or, if it had any value, what that value was because the Respondent made clear to the Tribunal that it did not seek recovery of any sums invoiced by Clipper: see paragraph 15 above. It should, nonetheless, be recorded that the Applicant does not accept that any such additional works were effected and the Respondent did not seek to substantiate this sum.

25. Secondly, the £470.00 RDD costs are not recoverable because they were required in order to make good the defective performance of the Clipper Contract which, in turn, was necessitated by a total absence of any supervision of that Contract by the Respondent even though surveyors fees of 12.5% of the contract price plus disbursements were allowed for in the Section 20 Notice. In short, the Applicant should not be liable for the Respondent's failure to exercise reasonable skill and care and generally manage the Clipper Contract and are not reasonable. It would be wholly unreasonable for the Applicant to be fixed with these costs.

26. Thirdly, the £440.28 BLR administration fees are not recoverable because, to the extent (which was limited) that any explanation was given by the Respondent as to what these fees related to, they were required to sort out the defective performance of the Clipper Contract. It is therefore not recoverable for the same reasons as set out in paragraph 25 above.

27. Fourthly, the £428.36 Simmonds fee is recoverable. It was invoiced on 26th March 2001 and comprises £326.56, being one-half of the £651.13 fee paid "on account", and £39.00 disbursement (associated with preparation of the Specification) plus £63.80 VAT.

28. In addition, the Tribunal determines that the Respondent is entitled to recover a full 12.5% fee for engaging surveyors to supervise the Works because that is a reasonable sum, would be reasonable incurred and was accepted by the Applicant during the course of the hearing, even though (as appears to be the case) the supervision was not in fact carried out by Simmonds. Thus, in addition to the £39 disbursements, £651.13 is recoverable plus VAT on those sums of £120.77 making a total of £810.90 recoverable for surveyors' fees and disbursements.

SUMMARY OF DETERMINATION

29. The Tribunal determines that the Respondent is entitled to recover a total of £6,931.47 inclusive of VAT, being the £6,885.64 stated in the Section 20 Notice

plus the disbursements of £45.83 (£39.00 plus £6.83 VAT) stated in the Simmonds invoice dated 26th March 2001.

30. To the extent that the service charges for the years 2001-2002 onwards seek to recover from the Applicant any monies in respect of the Works additional to the sums set out in paragraph 29 above, such is unreasonable and impermissible.

COSTS

31. The Applicant sought orders that:

    (a) She be reimbursed the ~~£170~~ £150 issuance and £70 hearing fee, totalling ~~£240~~ £220, under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003; and that

    (b) The costs of the Respondent in connection with the Application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant pursuant to section 20C of the 1985 Act.

32. The Tribunal acceded to both applications because in all material respects the Applicant has succeeded in her Application, and it was unreasonable for the Respondent to defend the Application: the Respondent (a) is to reimburse the Applicant the said £210 fees and (b) is not to seek to recover its or its agents costs in connection with this Application from the Applicant *via* the service charge or otherwise. It would be neither just nor equitable for the Applicant to bear the said fees or for the Respondent to recover its costs from the Applicant *via* the service charge.

N Wilcock

CHAIRMAN

18/11/07