RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Y TRIBIWYNLYS EIDDO PRESWYL

IN THE MATTER OF: **FLAT 8, RAGLAN HOUSE, CASTLE COURT, WESTGATE STREET, CARDIFF CF10 1DN**

BY TRANSFER FROM THE CARDIFF COUNTY COURT

CLAIM NUMBER 2QT 82139

TRIBUNAL REFERENCE: LVT/0041/04/12
1048380/Raglan House

CLAIMANT: **CASTLE COURT FREEHOLD LIMITED**

DEFENDANT: **MRS. SUSAN RICHARDSON**

Hearing: 6TH March 2013

Tribunal: Mr. E.W. Paton (Chair), Mr. R. Baynham MRICS (surveyor), Mrs. J. Playfair

Appearances: Mr. R. Phillips (solicitor, Eversheds LLP) for the Claimant. The Defendant did not appear and was not represented.

DECISION

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1. This claim was referred to the Tribunal by Cardiff County Court, by order of District Judge TM Phillips dated 20th November 2012. The Claimant is the freehold owner and management company of a large complex of flats at the above address. The Defendant is the leasehold proprietor of one of those flats, flat number 8 in Raglan House. She holds it as assignee of a lease dated 14th November 1977 for a term of 99 years from 29th September 1975. The lease contains service charge covenants on the part of the lessee at clause 2. The lessee of this flat covenants "to pay and contribute to the Lessor a service charge equal to 0.8811 per cent of the expenses of...." a variety of matters then listed in the following clauses. These include, at 2(a)(iii)(a):

   "The cost of maintaining repairing redecorating and renewing....the structure of the said Buildings including (but without prejudice to the generality of the foregoing) the main drains foundations roofs fire escapes balconies ironwork chimney stacks and flues (if any) external doors and windows (including frames) gutters and rainwater pipes..".

The lease also contains a covenant at 2(b)(vi) to pay "..such other sum as the Lessor or its managing agents may from time to time determine in advance and on account of the service charge".

2. The Claimant carried out, via contractors, extensive works to the exterior and structure of the building between June and December 2012. These were summarised at items 2.1(a) to (j) in a letter dated 1st August 2011 sent to all lessees (on which see further below). We will not set them out in full but they included substantial redecoration of external windows, railings, rainwater goods, external walkways and walls, and required the erection of substantial scaffolding. It is not in dispute that such works fall in principle within the scope of the landlord's repair and maintenance covenants and the lessee's service charge covenant set out above.

3. The agreed cost of those works, with a contractor R&M Williams Limited, was £317,943, including sums for contingencies and all VAT. On 25th February 2012 the Claimant invoiced the Defendant in advance for a sum amounting to 0.8811% of that cost, pursuant to the service charge covenant, which rounded down was a sum of £2794. That was not immediately paid, and the Claimant issued County Court proceedings claiming that sum (plus the court fee) on 23rd July 2012. The Defendant paid one quarter of that sum on 24th July 2012 (£698.50). A further amount of £698.50 was paid on 29th September 2012. That left £1397 to be paid.

4. Despite these payments, the Defendant filed and served an Amended Defence in the County Court proceedings, dated 23rd September 2012 (the reference to "February" is clearly a slip). This Defence raised one issue, and did so for the purpose of denying that the Claimant was entitled to recover more than £250 in respect of these works. The argument was that these were "qualifying works" within the meaning of section 20 Landlord and Tenant Act 1985 (which is not in dispute), that the Claimant was required to follow the detailed statutory consultation procedure [not expressly referred to in the Amended Defence, but clearly a reference to the statutory requirements of the Service Charges (Consultation Requirements)(Wales) Regulations 2004 SI 2004 No. 684 (W.72) – hereafter "the Regulations"] before commencing those works, and that it had not adequately done so, so that only the statutory limit of £250 was recoverable via service charge in relation to such works.

5. That was the only pleaded issue in the case, and it was therefore this issue which was the subject of the proceedings transferred to this Tribunal. Recent decisions of the Upper Tribunal and courts have emphasised that this Tribunal should generally confine itself only to the issues stated in the application before it or (in a case transferred from court) pleaded in the statements of case: see e.g. *Birmingham City Council v. Keddie* [2012] UKUT 323 (LC). There was not a challenge in those statements of case to the reasonableness of the decision to undertake the works, or their cost, under sections 19 or 27A of the 1985 Act. The sole issue between these parties is whether the Claimant

complied with the statutory consultation requirements prior to carrying out the works and seeking to recover their cost via service charge. If it did, then the sum claimed is recoverable from the Defendant.

6. There has been a quantity of correspondence between the parties and to the Tribunal prior to this hearing. We shall not set it out in full but the key points we draw from it are as follows:-

   i) the Defendant, frequently corresponding jointly with or via her husband Mr. N. Richardson, was very much aware of the date and time set for the hearing of the matter; having confirmed by email response the day before it that they were aware of the revised starting time of 10.00 a.m. (and the acceptance of their own suggestion that a site view would not be necessary, made in a letter of 4th March 2013)

   ii) the case had not settled, nor had the Defendant filed a notice of admission of the whole of the claim in the County Court. In open correspondence shown to us, it was apparent that the Defendant had tendered a further sum in full and final settlement of the claim, but that the Claimant had not accepted it and returned it, since it was dissatisfied with the basis upon which the payment was made and also its failure to provide for additional costs which it intended to claim

   iii) another claim, or other claims by lessees in the same complex might be made which touched on the same or similar issues. This was put forward in the above letter as a reason why the Tribunal might adjourn this hearing, but in the event:
   - no application to adjourn was properly made to us
   - a claim by another lessee (a Mr. O'Sullivan) was purportedly issued on 27th February 2013, but without (by the date of the hearing) lodging of the appropriate fee and thereby being formally issued. This intended application also dealt with a far wider range of matters, including disputed service charges covering a period of several years
   - no application by any other party was formally made to us to be treated as an Applicant in the matter before us.

7. To the extent that any of these letters could be treated as applications to adjourn, to join applications together or to join parties as Applicants or co-Defendants, we would reject them. This is a claim between two named parties which has been on foot for some 7 months, and was referred to us by the County Court. The hearing date has been fixed since 25th January 2013. It is far too late for parties, or non-parties, to seek to adjourn the hearing to bring in other claims and parties. If any other person wishes to bring their own application they should do so in the normal way and it will be heard in due course. If they had wanted their applications to be consolidated and heard with this matter they should have made their applications to do so at a much earlier stage.

Non-attendance of Defendant

8. The Defendant did not attend the hearing on 6th March 2013, despite (as stated above) having been in correspondence with the Tribunal right up to the day before that hearing. Partly at her request, the initially proposed site view was cancelled and substituted by an earlier 10.00 a.m. start to the hearing. No written or oral communication to the Tribunal was made, giving any explanation or apology for her non-attendance. None has been received since.

9. The Claimant attended the hearing, represented by its solicitor Mr. Phillips, and with Ms. Liz Mahoney, its Chair, in attendance to give evidence where required. Once it became apparent that the Defendant was not going to attend, we had to decide whether to proceed, and if so on what basis. On one view, which we initially considered, the Defendant had failed to attend to argue her positive case as advanced in her Amended Defence, so that the matter might be disposed of summarily, with a reference back to the County Court simply directing that a money judgment be entered for the sum claimed.

10. On further reflection, and on hearing the submissions for the Claimant, we were persuaded that this would not be the best course. The Defendant had raised the issue in her Amended Defence of non-compliance with the Regulations prior to the execution of the "qualifying works". She had not formally abandoned or withdrawn that Defence, or filed an admission of the whole claim in the County Court pursuant to CPR Part 14.4. She had simply failed to attend to argue it orally, leaving it 'hanging' as an allegation. The position was, it seemed to us, that the issue having been raised, it would be proper to make the Claimant formally prove its case to entitlement to the service charge claimed, which would therefore include dealing with this issue and proving that it had complied with the Regulations. That was also what the Claimant itself wished to do, and had come prepared to do.

11. We therefore decided to proceed with the hearing on that basis, and in the absence of the Defendant pursuant to rule 14(8) of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, being entirely satisfied that she had been properly notified and was aware of the time and place of the hearing.

12. At the hearing, we therefore required the Claimant to prove with appropriate documentary and (where necessary) oral evidence that it had complied with the relevant Regulations. We therefore took the Claimant, via its solicitor, to each of the relevant provisions in turn. We shall set out below, in sequence, the evidence and our findings on each of those Regulations. The relevant provisions were contained in Schedule 4 Part 2 of the Regulations, these being "qualifying works", not being part of a "qualifying long term agreement", for which public notice was not required.

Schedule 4 Part 2 paragraph 1: notice of intention

13. We find that the Claimant's letter of 1st August 2011 addressed to all lessees, including the Defendant, complied fully with this regulation. It "describe[d] in general terms the works proposed to be carried out.." [r.1(2)(a)] under heading 2 "General description of works". It "state[d] the landlord's reasons for considering it necessary to carry out the proposed works" [r.1(2)(b)] under heading 3 of that same letter: quite simply "..in order to keep the exterior of Castle Court in a good state of repair and redecoration in accordance with the lease obligations at Castle Court..", while also referring to the need to include work on the aluminium nosings. It "invited the making, in writing, of observations in relation to the proposed works", specified an address to which they should be sent, stated that they must be delivered within the relevant period, and gave the date on which that "relevant period" ended [r.1(2)(c) and (d)].

14. "Relevant period" is defined in the Regulations as "..the period of 30 days beginning with the date of the notice". The notice here was dated 1st August 2011, and the last time and date for submission of observations was given as 5 pm on 31st August 2011, so this exceeded (by one day) the minimum period required to be given and was therefore compliant. The notice also invited each tenant (and certainly the Defendant, the letter to whom we have seen) to propose within the relevant period a person from whom the landlord should try to obtain an estimate [r.1(3)] – see heading 6. The date and time specified was again in excess of the minimum relevant period required and so was adequate. We are also satisfied, on the oral evidence of Ms. Mahoney but also by virtue of the responses it generated, that this letter was duly served on and received by all lessees (including the Defendant) via ordinary first class post.

Paragraph 3: "hav[ing] regard" to tenants' observations

15. Paragraph 2 did not arise in this case, as the notice itself had contained a sufficient description of the proposed works, rather than specifying a place where such a description could be inspected. As for paragraph 3, the Claimant did receive "observations" from tenants within the relevant period specified in the 1st August 2011 notice. We are wholly satisfied that it "had regard" to these. Not only did Ms. Mahoney confirm in oral evidence that the directors of the Claimant discussed the responses received, the five specific responses received were later set out in the Claimant's next letter of 21st November 2011 (see below), followed by a specific and reasoned response from the Claimant to the points raised in each case.

Paragraph 4: estimates and responses to observations

16. One tenant nominated a particular contractor, A&N Lewis, as a person from whom the Claimant should try to obtain an estimate. The Claimant did obtain an estimate for the works from this contractor [r.4(2)]. It also obtained two other estimates for the carrying

out of the proposed works [r.4(5)(a)]. The estimates were obtained by submitting to the prospective contractors a detailed pro forma tender document requiring very specific costings of the various components of the proposed works. The three contractors who submitted a detailed estimate on this basis (and their respective estimates) were as follows (inclusive of VAT):-

R&M Williams £229,442
A&N Lewis £348,060
Seddons £355,922

None of these contractors was a "person connected" with the Claimant for the purposes of rr. 4(6) and (7)

17. The Claimant then, in a detailed letter of 21st November 2011, set out these estimates and enclosed copies of them with the letters sent to all lessees (including the Defendant). The Claimant included in the letter its own analysis and observations on these estimates, under the heading "Analysis of Contractors' Estimates". This was a detailed and careful consideration of the merits of three estimates put forward. The concern expressed was that the lowest estimate, from R&M Williams, had significantly under-estimated the cost of all the work to the large number of front and rear timber windows. In addition, A&N Lewis were recognised as having carried out work of high quality and durability in the past. "On the basis that you get what you pay for", the Claimant's directors were minded to appoint A&N Lewis, as the "best value option" in the long term and marginally cheaper than Seddons.

18. This letter constituted more than adequate compliance with paragraphs 4(5) to (11). It was a full and reasoned "paragraph (b) statement" for the purposes of paragraph 4(5), and it avoided any issues over inspection of the estimates by enclosing them with the letter in each case. It then expressly invited "observations" on the estimates within the "relevant period", this time by 5pm on 21st December 2011, again more than 30 days from the date of the notice, stating an address to which such observations were to be sent [paragraphs 4(10)(b) and (c)].

Paragraph 5: Observations and "hav[ing] regard" to them

19. Some tenants did make observations on the estimates. These came in the form of "We the undersigned" petitions with numerous names and signatures appended to them. One, which had a total of 29 signatories, objected "..to the irrational choice of the second most expensive contractor to undertake the external works, at extensive cost to each leaseholder". It noted the "huge discrepancy" between the quotations, and the "£100,000 difference" between the preferred and cheapest contractors, and suggested that "If the Directors are unhappy with the cheapest quotation, they should seek further quotations to avoid unnecessary costs to leaseholders". Another petition, which had a total of 26 signatories, simply stated:

"We the undersigned object both to the proposed external works and the proposed works to the common areas. We do not think it is reasonable or necessary to undertake these works and we do not want them to go ahead."

The Defendant and her husband were included amongst the signatories to that statement. We should add that a number of lessees were signatories to both petitions.

20. The Claimant's duty under paragraph 5 was then to "have regard" to those observations. We are more than satisfied that they did "have regard" to them. Not only that, they listened to the concerns being expressed, acted upon them and saved the lessees a considerable amount of money. Their course of action was fully summarised in a later letter of 25th February 2012, whose contents we accept as an accurate description of the actions of the Claimant's directors in response to the concerns and observations expressed. Without setting it out in full, what happened was as follows:-

    i) they went back to all three contractors who had submitted estimates and asked them to revisit their figures

    ii) in particular, they raised with R&M Williams the specific point mentioned to lessees in the 21st November 2011 letter: that their estimate appeared to have miscalculated or underestimated the cost of repairing all the windows

    iii) R&M Williams then acknowledged that error and revised their estimate, raising their figure for the windows from £19,486 to £42,418, a figure comparable with that estimated for that item by the other contractors. That made their total estimate £214,136 plus VAT, an increase of 12%

    iv) the other contractors revised their estimates (A&N Lewis £280,530 and Seddons £276,062) but this still meant that even the revised R&M Williams estimate was the cheapest

    v) the Claimant also obtained two further estimates (Stokes Decorators Limited £327,442 and Ian Williams £344,576) but these were so much higher than the existing and revised estimates of the original three, they could be discounted.

    vi) as a result of this exercise, and therefore as a direct result of their having regard to the concerns raised on consultation, the Claimant decided to appoint R&M Williams at their revised estimate figure. This represented a saving of over £75,000 plus VAT on their original preference to award the contract to A&N Lewis.

21. By this process, the Claimant therefore clearly "had regard" to observations made. It first wrote to lessees on 9th February 2012 to inform them briefly of the decision to appoint R&M Williams at the revised figure. The 25th February 2012 letter was longer and more detailed, and was as stated a summary of the whole process of having regard to the lessees' observations and altering their decision on the basis of the revised estimates. The letter then gave notice that the works would commence in the summer of 2012, declined to adopt the suggestion of holding a meeting to discuss the matter, and concluded by summarising the total budgeted cost of the R&M Williams works, including project management costs, contingencies and VAT. That was the figure of £317,143 stated at the beginning of this decision, and from which the service charge demand of £2794 to the Defendant was calculated.

22. As we read the Amended Defence (and the letter of 4th March 2013), the argument made by the Defendant is this. The process described above resulted in *varied* estimates being provided by the three original contractors, plus two additional ones (although these were significantly higher). This means, she says, that the Claimant had to go back to paragraph 4(5) of the Regulations, serve a fresh "paragraph (b) statement", and thereby begin a fresh period of consultation, provision of estimates or facilities for their inspection, invitation of observations from lessees, then a further "having regard" to any observations before taking a final decision on the awarding of the contract.

23. This is the gist of the argument at paragraph 5 of the Amended Defence, which refers to the 9th February 2012 letter and says:

   "..the Claimant advised the Defendant and all other lessees that the terms of one of the estimates contained within the statement dated the 21st November 2011 had been increased by 12.5% and it was this amended estimate that was arbitrarily being accepted by the Claimant without further reference or inviting written observations contrary to the provisions and spirit of the section 20 procedure as amended."

   Paragraph 6 then argues:

   "The Claimant is thereby deemed not to have carried out a full and sufficient consultation as required under the statutory procedure....by not seeking the written observations of the Defendant and other interested Lessees on the increased financial proposals upon the Lessees of Castle Court thereby limiting recovery of the Project Service Charge above the statutory minimum of £250..for the Service Charge works referred to in the Particulars of Claim."

24. We reject this argument on the facts of this case. In our view it cannot be right that a landlord is required to recommence the paragraph 4(5) procedure and serve fresh "paragraph (b) statements" at any and every stage of the contract process if there is any change, of any degree, to any of the original figures provided. Contractors might revise their prices or terms for a large number of reasons. If the landlord has approached particular contractors and is in discussions with them about the tender of the proposed works, and the lessees have had the benefit of seeing and making observations on those estimates within a particular range of figures, the landlord must surely be entitled to deal and negotiate with those contractors to arrive at a final figure for the works, at least within that range. Parliament cannot have intended that landlords would have to go through the expensive and time-consuming notice and observations procedure successively in relation to every change or 'tweak' of the original estimates.

25. One can see a case where this might be necessary – for example, if the landlord decided that all of the original estimates were unsatisfactory for one reason or another, having listened to lessees' concerns following the initial observations process. Then, a landlord might decide that it ought to go 'back to the drawing board' and start again with a fresh set of estimates from entirely different contractors. In that situation, one could perhaps see the force of the argument that such a fresh start required a fresh process.

26. That is very far from the present case. Here, the initial paragraph (b) statement had itself raised the specific issue in relation to the R&M Williams estimate which was later resolved and resulted in their revised figure being accepted. Having initially chosen the second most expensive contractor, the Claimant then decided, in response to the strength of feeling in the observations received, to pursue that issue with R&M Williams and obtain clarification, which it then did. As stated, it also asked the others to revisit their own estimates. This process resulted in the revised figures summarised above at paragraph 19(iv). By this process the range of figures from those contractors was narrowed from the original £191,202 to £296,602 plus VAT, to £214,136 to £280,530 plus VAT. The Claimant then placed the contract at the lowest end of that range: a saving to lessees, as stated, of over £75,000 on its original decision.

27. It seems to us that this process, of asking original estimating contractors to revisit their figures in an effort to lower the figures and narrow their range, all for the ultimate benefit of the lessees who will be paying for it via service charge, is both an implicit and necessary part of the final decision over the awarding of the contract. We do not consider that this was affected in this case by the obtaining of two other estimates at the same time. As is apparent from the figures, these were obtained but immediately rejected, and no rational lessee could have insisted that these estimates be taken any further. It might have been otherwise had a wholly new estimate been obtained from a new contractor, and that contractor then selected without opportunity for observations, but that did not happen here. These two other estimates were effectively mentioned only for information purposes, to reaffirm the Claimant's decision to award the contract to one of the original

three after discussion with them and revision of estimates. They were not put forward as serious candidates for the contract themselves.

28. We therefore conclude that the Claimant's decision to award the contract to R&M Williams at their revised price was wholly justified, entirely reasonable and fully compliant with the procedure in the Regulations. It is in our view precisely the kind of reasoned consideration and "having regard" to lessees' observations which section 20 and the Regulations are designed to encourage. It is quite possible, although it is not necessary to decide the point, that had the Claimant stuck with its original preference for A&N Lewis at their original price of £290,050 plus VAT, for the detailed reasons given in the letter of 21st November 2011, and despite the observations of some lessees complaining that this was the second most expensive (or second cheapest) estimate, such a decision could not successfully have been challenged as a failure properly to "have regard" to observations. In the event, the Claimant listened to some of those observations (it should nevertheless be remembered that these were only 29 out of some 148 affected lessees) and ended up having the works done at a substantially lower price.

29. No further issues on compliance with the Regulations arises. The paragraph 6 "duty on entering the contract" did not apply in this case, because paragraph 6(2) applied: "the person with whom the contract is made is a nominated person or submitted the lowest estimate." The Claimant nevertheless set out in its letter of 25th February 2012 its final summary of the consultation and contract process. The contract was made in about May 2012 and, as stated, the works were carried out after that.

30. We are therefore satisfied, for the reasons set out above, that the service charge sum of £2794 claimed by the Claimant from the Defendant was properly due and recoverable from her. The proceedings may therefore be transferred back to the County Court for the entering of judgment for the balance of that sum which remains due (if that is necessary), although the Defendant may voluntarily pay all sums due if she wishes.

Award of costs in the Tribunal's discretion

31. The Tribunal has a limited power to award costs to and against parties, under Schedule 12 paragraph 10 Commonhold and Leasehold Reform Act 2002, up to a current prescribed maximum of £500. The Claimant indicated that if it was successful, it would seek an award of such costs against the Defendant in this case. To avoid the costs of convening a further hearing just for that issue, we indicated that we would hear the Claimant's submissions on that point (and on that hypothesis) at the hearing, without in any way prejudging the substantive issue.

32. The Claimant made clear that the application would be made on the basis that the Defendant had "..acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings" [Schedule 12 paragraph 10(2)(b) CLRA 2002]. It complained of procedural defaults by the Defendant. In a letter of 17th January 2013 it stated:

"..the matter was transferred to the LVT. The LVT duly wrote to the Defendant on Tuesday 4 December 2012 asking for substantiation of the Amended Defence by 17 December 2012.

The LVT subsequently agreed to a request from the Defendant for an extension of this deadline, but the Defendant failed to meet the 3 January 2013 extended deadline. The LVT duly wrote to the Defendant on 8 January 2013 requesting a response to their 4 December 2012 letter by 22 January 2013."

33. The Defendant did respond to some of these letters, but rather than filing any substantive documentation or response, sought to pursue the argument that the case had been settled by payment of the sums demanded (e.g. letter of 17th January 2013 to the Tribunal, enclosing 11th January 2013 letter to the Court). As stated above, the case has not been settled because the Claimant had rejected the most recent payments and the terms on which they were offered. Nor had the Defendant filed a full admission form in the County Court. The Tribunal wrote to the Defendant on 22nd January 2013, enclosing its previous letter and noting that:

"..the deadline given for a response has passed. The determination of this matter has been referred to this Tribunal by the Court at your request. It is for this Tribunal to deal with the issues and it will proceed to do so with or without such representations as you wish to make".

The matter was then set down for hearing of which notice was given by a letter of 25th January 2013.

34. The Claimant sought to characterise this conduct as an unreasonable or vexatious failure to comply with Tribunal directions. By itself, we do not think this conduct would have sufficed to justify an award of costs on the statutory basis set out above. The Defendant was communicating with the Tribunal and the Claimant, albeit focussing on the argument that the hearing should not take place because the case had settled. Although as we have stated that was not the position, we understand to some extent why the Defendant pursued that issue. Further, while it would have been courteous and proper to file some sort of updated substantive response in the Tribunal proceedings, to comply with the Tribunal's directions, the Defendant still had her Amended Defence which (as we have summarised above) set out her key argument reasonably clearly. Had she attended the hearing we would not have had difficulty in understanding what her substantive case was.

35. She did not, however, attend the hearing. As stated, no explanation or apology was given for this. The non-attendance was all the more surprising given that the Defendant had been in communication with the Tribunal and the Claimant's solicitors right up until the date of the hearing. She even made the specific request, to which we acceded, that we dispense with a 9.30 a.m. site view.

36. This was deeply unsatisfactory. The Claimant had spent £317,943 on these works. The claim against the Defendant was only for £2794, but as the Defendant well knew when submitting her Amended Defence, to challenge the recoverability of service charge for "qualifying works" on the ground of non-compliance with the statutory consultation requirement potentially puts the recovery of a much larger sum in doubt, if a decision adverse to the landlord is made and other lessees then bring similar claims; even if the immediate decision is binding only on the parties to it. Indeed, the Defendant's own letter of 4th March 2013 raised the issue of the relevance of the case to other lessees, albeit in a half-hearted effort (not pursued by any proper application) to have the hearing "put on hold" so that "all pertinent facts" could be put before the Tribunal.

37. The Defendant had not of course put any "pertinent facts" of her own before the Tribunal by filing a witness statement. Elsewhere in the same letter the Defendant appeared to be restating her substantive point and urging the Tribunal to consider it ("..It is indeed hoped that the Tribunal takes full note and looks into the variation of the Tenders in this matter as well as meetings that took place with some Contractors, not all, to re-negotiate initial contract prices and subsequently varied without allowing Lessees the opportunity to comment...."). As set out in the decision above, we have determined that issue, and done so in the absence of the Defendant.

38. What the Defendant did, in effect, was raise the issue in her Amended Defence, leaving it hanging over the Claimant and never withdrawing it (and indeed repeating it in the 4th March 2013 letter). She then, for reasons which remain known only to herself and perhaps her husband, chose not to attend the hearing and argue that point. The purpose of this may have been to generate a state of uncertainty, either by way of the hearing being adjourned or no substantive decision being made on the point she had raised. If that was the purpose, it has failed and we have ruled on the point for the reasons set out above.

39. We consider that it is frivolous, vexatious, disruptive and unreasonable for a party to conduct proceedings in this manner. It showed disrespect for the process, the Tribunal and for the Claimant landlord. Parties should not raise such serious points in proceedings, putting their opponent to considerable expense and time, and potentially putting the recoverability of several thousands of pounds of service charge in issue, then make an unexplained last minute retreat by not attending the hearing.

40. We are satisfied that the Claimant has incurred substantially in excess of £500 in legal costs in these proceedings. In the circumstances, and for the above reasons, we consider it an appropriate case to make an award of costs under Schedule 12 paragraph 10 CLRA 2002 in the maximum amount of £500.

41. We therefore make an order in the terms attached to this decision.

E. W. Paton

Chairman

19th March 2013

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: Cardiff County Court Claim No.2QT 8139

Tribunal reference: LVT/0041/04/12
1048380/Raglan House

In the Matter of **Flat 8, Raglan House, Castle Court, Westgate Street, Cardiff CF10 1DN**

In the matter of section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements)(Wales) Regulations 2004

TRIBUNAL Mr. E.W. Paton (Chair)
Mr. R.W. Baynham MRICS (Surveyor)
Mrs. J. Playfair

Hearing date: 6th March 2013

APPLICANT (Claimant) **Castle Court Freehold Limited**

RESPONDENT (Defendant) **Mrs. Susan Richardson**

ORDER

1. It is determined that the sum of £2794 claimed by the Claimant from the Defendant by way of advance service charge for qualifying works at the above property in 2012 was due and payable in full (of which £1397 has been paid and accepted by the Claimant, and of which a further £1397 remains due).

2. It is ordered that, pursuant to Schedule 12 paragraph 10 Commonhold and Leasehold Reform Act 2002, the Defendant do pay the Claimant the sum of £500 as a contribution to its costs of the proceedings.

3. The proceedings are transferred back to Cardiff County Court for the entering of judgment and enforcement if required.

DATED: 19th March 2013

E. W. Paton
Chairman