FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LRA/2013/0008**
Property	:	**Upper Apartments One West India Quay, 26 Hertsmere Road, London E14 4EF and 4EG.**
Applicant	:	**One West India Quay Residents Association**
Representative	:	**Ms. J. Hewland (Secretary)**
Respondent	:	**One West India Quay Development Company (Eastern) Limited (1) and No. 1 West India Quay (Residential) Limited.**
Representative	:	**Lorrells LLP – Mr. S. Hughes**
Type of Application	:	**Determination under S.29 Landlord & Tenant Act 1985 in respect of a Certificate of Recognition of a Residents' Association**
Tribunal Members	:	**Aileen Hamilton-Farey** **Mr. T. Powell**
Date of Decision	:	**14 May 2014.**
Appearances:	:	**Ms. J. Hewland** **Mr. M. Boyd**
Observers	:	**Mr. E. Johnson of Counsel instructed by Mr. S. Hughes of Lorreslls LLP.** **Mr. B. Maunder-Taylor, FRICS** **Mr. R. Paul – Marathon Estates** **Ms. L. Whittle** **D. Sampson; S. Glanvill; S.O'Kelly; J. Ezard; J. Bryce-Brand; R. Kopman; X. Tan; K. Basaran; C.**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants a Certificate of Recognition in respect of the premises named above. The Certificate is appended to this decision.

(2) The Certificate is granted on the following terms:-

a. That the Applicants shall not have access to the management agreement between the Respondents and the Marriott Hotel in relation to either the Hotel or the Apartments.

b. Any application the Applicants may make under S. 84 and Schedule 4 of the Housing Act 1996 shall be restricted to those service charges payable by the Applicants for either the Upper Apartments, or the common areas. Any surveyor appointed by the Applicants shall confine any inspection and/or enquiries to the residential service charges only.

Title Structure:

1. No 1 West India Quay (Residential) Limited (the First Respondent) is the head lessee of a lease between themselves and West India Quay Development Company (Eastern) Limited (the Second Respondent) for a term of 999 years from 5 August 2004 and in relation to 'the residential elements of the building and the basement car park as more particularly described in Clause 1.6' of that lease.

2. The Applicants hold their properties by virtue of under leases between themselves and the Second Respondent granted for a term of 999 years less 3 days from 24 June 2004. We were told that some of the leases include a parking space in the underground car park.

3. The demised premises are identified in the head lease as:

The 158 individual residential apartments and the corridors and facilities situated on the thirteenth to the thirty second (inclusive) floors of the Building shown (for the purposes of identification only) edged red on Plans 15 – 25 inclusive or any part of them;

4. The demised premises within the under lease are defined as:

> *The Demised Elements of the residential apartment situated on the - floor of the Building shown (for the purposes of identification only) edged in red on Plans 2 and 3 or any part of them and the Parking Space.*

5. The building common parts are further defined within the under lease as follows:

> *Shall have the meaning given to the expression "Common Parts" in the head lease and excludes (for the avoidance of doubt) the Residential Common Parts'.*

6. Residential Premises has the definition:-

> *The apartments within the thirteenth to thirty second floors (inclusive) of the Building (including the Demised Premises) and ancillary premises including roof terraces corridors and accessways and dedicated lifts from time to time let or intended for letting for residential purposes as the same are defined in the Headlease as "Demised Premises".*

7. The Residential Common Parts are defined as:-

> *The passages landings lifts lobbies staircases entrances and accessways and all other parts of the interior of the Building intended to be enjoyed or used by the Lessee in common with (and only with) other tenants and occupiers of the Residential Premises and excludes (for the avoidance of doubt) the Building Common Parts.*

8. Schedule 4 Part A of the under lease contains the Residential Common Parts Service Charge provisions, and includes the relevant apportionment percentage of charge.

9. Schedule 4 Part B contains the provisions as to payment of that service charge

10. Schedule 4 Part C contains the definitions of the various services, the majority of which are qualified by the term 'Residential Premises'

11. Schedule 4 Part D contains the provisions for other costs in relation to the Residential Premises.

12. It is evident to the Tribunal that the leases were structured separately in relation to the residential premises and although the leaseholders of those premises contribute towards the overall communal areas shared with the

remainder of the building, the under lease provides that the residential lessees pay 100% of the service charge for their own part of the building.

13. The Tribunal was informed that the residential leaseholders pay 100% of the dedicated costs of floors 13 to 32 and 53% of the shared costs in relation to, for example, buildings insurance, window cleaning etc. This was not challenged by the respondents.

The Inspection:

14. On the morning of the hearing, the Tribunal inspected the building in the company of Mr.Samson of Premview, Mr. Bruce Maunder-Taylor, Mr. Stephen Hughes of Lorrells and others.

15. The Tribunal is grateful to all parties for providing such free access to the building to assist us in our reaching of the decision in this matter.

The Building:

16. The building is 33-storey block situated adjacent to West India Quay Docklands Light Railway Station. The lower 12 floors of the building comprise a Marriott Hotel ("the Marriott Hotel") and 47 apartments ("the Marriott Apartments"). Floors 13 – 33 extending to approximately 53% of the building floor area comprises the 158 residential apartments ("the Upper Apartments"). The basement extends into a car park area, some spaces of which have been demised to the Upper Apartment leaseholders.

17. The Upper Apartments are accessed via their own entrance, giving access to their individual post boxes and lifts serving the residential element only. This area is staffed by a concierge team, paid for through the Upper Apartment service charges.

18. The Hotel/Hotel Apartments are accessed via an entrance on the other side of the building from the Upper Apartment entrance and contains all of the usual service desks that one would expect in an hotel.

19. The Tribunal was given access to an apartment owned by a lessee, one owned by East Tower Apartments Limited, an hotel bedroom and an hotel apartment. We were also given access to the roof, service equipment at various levels, including those relating to fire, water sprinklers, waste removal/disposal, incoming mains, drainage and the vast array of electrical intake and control equipment necessary for the smooth running of the building. We noted during our inspection that in some areas the services were combined to serve both the hotel and the apartments and in others separate identical facilities for servicing the separate elements of the building.

The Guidelines:

20. The Secretaries of State Guidelines are appended to this decision. Whilst Regulations are referred to, none have been made.

Relevant Law:

21. S.18 of the Landlord and Tenant Act 1985 defines a service charge as:

(a) Service Charge means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(b) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(c) the whole or part of which varies or may vary according to the relevant costs.

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

S.29 Landlord and Tenant Act 1985.

23. Provides the meaning of a 'recognised tenants' association' and refers to the regulations under which a certificate may be given or revoked.

S.30b Landlord and Tenant Act 1985.

24. Provides that a recognised association is to be consulted about managing agents and on matters relating to the appointment or employment by the landlord of managing agents for any relevant premises.

25. S.30(B)(8) refers to relevant premises as: -

if any of the tenants represented by the association may be required under the terms of their leases to contribute by the payment of service charges to costs relating to those premises.'

S.84 Housing Act 1996.

26. S.84 provides the right for a recognised association to appoint a surveyor for the purposes of ... 'advising on any matters relating to, or which may give rise to, service charges payable to a landlord by one or more members of the association'.

27. S.84 (5) further clarifies service charges as a charge within S.18 (1) of the 1985 Act as defined above.

The Hearing:

28. Both parties made representations at the Hearing, and the Tribunal is grateful to them for the clear and concise manner in which their evidence and submissions were given.

29. It is not our intention to rehearse all of the evidence adduced at the hearing in this decision, but we have taken account of all documents provided to us when making this decision.

Background and Reasons for the Decision:

30. On 21 August 2013 the Tribunal received an application under S.29 of the Landlord and Tenant Act 1985 in relation to a Certificate of Recognition ("the Certificate") for the residents' association. ("The Association/RA").

31. The Applicants stated in their application that, of the 158 units in the block, 121 were members of the Association. Accompanying that application were the list of those members, the proposed constitution of the Association and copies of correspondence with the second respondent in relation to previous applications.

32. The Tribunal considered that the constitution met the Guidelines and forwarded a copy of the application and supporting documents to the Respondent for comment in the usual way.

33. On 26 September the Tribunal received a response from the second Respondent setting out their comments on the papers. This included by way of background details of the building and the fact that they considered some of the information provided to be inaccurate in terms of named members. The letter also informed the Tribunal that the second Respondent was surveying residents of the building and had identified that a number were not members of the Association, and that they were endeavouring to contact the service charge payers to ascertain the current membership.

34. One of the major concerns raised in that letter was the fact that 42 of the units within the RA application were owned by East Tower Apartments Limited ("ETAL") a British Virgin Islands Registered Company and whose units were managed by Premview Properties Limited, on what were believed to be short-term let and serviced apartment bases.

35. The letter continued to say that if East Tower were given one vote per property owned by them, that it would hold a disproportionate number of

votes and thus be able to control the running of the Residents' Association. In addition, the Respondent wished to satisfy itself that East Tower had actually jointed the RA and were in support of the application. The Tribunal was also provided with copies of correspondence from the second Respondent in which it made enquiries of ETAL in the BVI.

36. The letter ended with a statement to the effect that the Respondent would consider the request for recognition further once the information and clarification had been obtained.

37. On 10 October 2013 the Tribunal received a copy of a letter to Ms. Hewland from Premview Properties Limited wherein they confirmed that they were instructed in all aspects of property management on behalf of ETAL, and that ETAL had been a member of the Residents Association since its inception.

38. Mr. Darrell Samson of Premview also confirmed in writing that the 42 ETAL flats were let on assured shorthold tenancy agreements, company and common law agreements and were typically for 12 months, with a six month break clause. They confirmed that copies of the tenancy agreements were sent to the freeholders in accordance with their obligations under the leases. We were also told that when Premview were unable to assist tenants with accommodation, due to the short-term nature of the tenancy, these people were referred to the Hotel as being a more appropriate provider.

39. It appears to this Tribunal that the major opposition to the grant of a Certificate by the landlord falls into the following areas and which now are to be determined by us, and that if these are determined in favour of the Applicants, then a Certificate of Recognition should be given.

The Matters to be Determined by the Tribunal:

a. What would be the extent of the Association's right of inspection?

b. Should the ETAL have a vote for each unit/have only one vote/have no votes?

c. Should we take into consideration the levels of service charge payable by the members?

d. How should the Marriott Hotel/Hotel Apartments be treated?

e. Is it possible for the residential units to have an association that excludes the commercial premises? Given the complexities of the building?

46. In addition to this the Guidelines fail to make reference to the number of votes per member, irrespective of the extent of their ownership. As the parties will appreciate many apartments are sold to individuals, buy-to-let investors and companies in the current market. In our view therefore there is nothing in the Guidelines to prevent a company such as ETAL from acquiring units and becoming members of an Association. We consider that, although not a particularly common phenomenon when these Guidelines were drafted, they took into consideration that a long leaseholder may own multiple units and not occupy all or any of them.

47. If we consider that any party owning more than one property should only have one vote for the Association's purposes, we consider that the number of units owned by that party should also be reduced to one in determining the percentage to be taken into account. The Respondents consider that, as a maximum ETAL should only have one vote, we disagree, but if we are wrong on that, then their ownership should also be notionally reduced to 1, so that we are comparing like with like. We do not accept that we should calculate the percentages based on the total ownership of ETAL, but only give them one vote. If we did accept this basis, we would then have to reduce the ownership of all other members also to one. We do not find this a satisfactory way of calculating the relevant membership numbers and do not believe that this is what the Guidelines envisaged.

48. In this instance, by removing the ETAL units, and using the applicants' schedule of Association members, we arrive at a figure of 68.96% membership. If ETAL has a notional one unit and therefore one vote, then this increases to 69.23%, both above the recommended 60%.

49. If were to include the ET units in total, then the percentage membership rises to above 77%.

50. We were informed in the submissions of the Applicants that this figure had since risen to over 80%.

51. We do not consider that the number of Hotel Rooms/Apartments should be taken into consideration for the reason that they are not dwellings.

52. We are therefore satisfied that the membership of the Association meets the minimum recommendation of 60%.

Should we take into consideration the levels of service charge payable by the Applicants?

53. Although not pleaded, for completeness we have considered whether an application should take into consideration the levels of service charge payable by members of the Association.

54. We have not been provided with a service charge schedule, but it has not been denied by the respondents that the Upper Apartments pay 100% of the service charge in relation to the services provided to their part of the block, and also 53% of communal service charges.

55. We do not find the respondent's argument that we should take floor areas into consideration to be compelling. It is not denied that the Apartments extend to 53% of the floor space and although this is less than 60%, the guidelines do not refer to floor areas, and in any event, the Apartments are liable for service charges of 100% of their own floor area and 53% of shared space. Compared with the Marriott, which is liable for 100% of their space and 47% of shared space, the commercial interest remains in the minority.

56. We therefore find that floor area apportionment should not be a relevant consideration when making our decision. Given that the floor areas would in all probability lead to a similar apportionment of liability for service charge, we consider that the Upper Apartment residents and members of the association are in all probability liable for a larger percentage of service charge than non-members.

How should the Marriott Hotel/Apartments be treated?

57. It is common ground that the Marriott Hotel/Apartments do not pay a service charge as defined in S.18. We were told that the Second Respondent is liable for the 47% service charge in relation to the shared areas, and therefore in our view these Apartments and Hotel Rooms are part of the landlord's retained areas, and are specifically excluded from membership of the Association under the Guidelines.

58. It is our view therefore that these retained parts should not be taken into consideration when determining whether a Certificate should be granted.

Is it possible for an Association to exist in a mixed use, complex building such as this?

59. It is our view that the Guidelines do not take account of the complexity of buildings, and indeed complexities such as this would not have existed when the Guidelines were written.

60. It is clear that the lessees in this block are excluded from both the Right to Manage and Enfranchisement due to the levels of commercial floor space. However, it is not, in our opinion, a barrier to the grant of a Certificate of Recognition.#

61. We were satisfied from Ms. Hewland's evidence, that the Upper Apartment residents are not concerned with the relationship between the Hotel/Apartments and the freeholder. Their desire is to ensure that they

are able to exercise their rights in relation to service charges and nothing further.

62. It is our view that a collective voice to the managing agents over such matters would be more easily accommodated and more cost effective for the manager, than the potential of 158 different requests for information.

63. Mr. Maunder-Taylor, an experienced property manager, gave evidence that, in his opinion, the delivery of services in a building such as this would be 'outside the reasonable competency of most managing agents'. He was concerned that any interruption to the management services might have a dramatic effect on both the Hotel/Hotel Apartments as well as the Upper Apartments.

64. There was no suggestion at the hearing that the Association wished to change managers, indeed if they had wished to do so, they could have made an application under S.24 of the Landlord and Tenant Act 1987. We considered that the Association's members were seeking more involvement with the management of their own part of the building, and not to 'overthrow' the current arrangements.

65. We consider that the management of a building of this complexity is different, and that it is in each parties' interest to ensure that this is carried out by the most suitable person. Given the lessees statutory rights under S.24 we do not consider that complexity should be a barrier to the grant of a certificate.

Issues of Confidentiality:

66. The issue of the contractual agreement between the freeholders and Marriott Hotel/Apartments is, in our view, of no concern to the long leaseholders.

67. In an effort to allay the fears of the freeholder and head-lessee, our Certificate is granted 'on terms' that the Association are not entitled to see any of this documentation, or in any way interfere with the management of the Hotel/Apartments. In reality we could see no reason why the long leaseholders would wish to see any such documents or to interfere in the running of the Hotel/Apartments. It appears to us that they only wish to ensure that they pay their due service charges for the services they receive in accordance with their leases and the formation of an Association would, in our and their opinion, facilitate this.

Conclusion:

68. It is our view that this building, whilst unusual, should be treated in the same way as any other applying for a Certificate of Recognition.

69. The Association is properly constituted and has the requisite number of members and therefore should be granted a Certificate.

70. It emerged during the hearing that there were some issues regarding service charges on the block, however this is not something that we have taken into consideration and the parties have appropriate remedies in relation to those issues, if they choose to exercise them.

71. However, we would like to remind the parties that this is an unusual block with competing interests, any managing agent involved in such a building will have a difficult task and a degree of common sense and co-operation between the parties will make this task easier to the benefit of all occupiers.

Costs & S.20C Application:

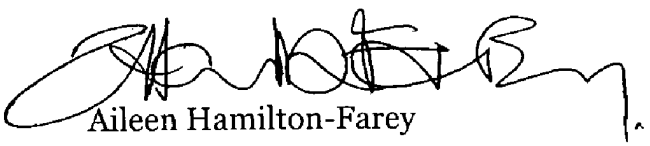
72. The Applicants have made an application under S.20C of the Landlord and Tenant Act 1985 that non of the costs incurred by the Respondents should be classified as service charges.

73. Submissions on this matter and the matter of Costs under Rule 13 of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013, were received from the parties in writing after the hearing.

74. The Tribunal considers that the Applicants were entitled to bring this application and the Respondents similarly to defend it, especially given the complexities of the building.

75. The Tribunal is predominantly a 'no costs' jurisdiction and while it is arguable in any given case, costs would follow the event, however, we have found in favour of the Applicants in this matter and therefore make an order that none of the costs incurred by the Respondents are considered to be service charges and are therefore not chargeable to the Applicants.

76. With respect to Rule 13 costs, although the Applicants consider that the Respondents may have acted unreasonably in defending this action, we disagree. The Respondent, given the confidentiality issues were entitled to defend the matter and were entitled to use professionals to do so. We find that each party should therefore bear its own costs in this matter.



Aileen Hamilton-Farey

FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
RESIDENTIAL PROPERTY
LONDON REGION

CERTIFICATE OF RECOGNITION OF A TENANTS' ASSOCIATION
UNDER SECTION 29 OF THE LANDLORD AND TENANT ACT 1985,
AS AMENDED BY PARAGRAPH 10 OF SCHEDULE 2
TO THE LANDLORD AND TENANT ACT 1987

I hereby certify that the One West India Quay Residents Association is recognised as an association of tenants of the properties in One West India Quay, 26 Hertsmere Road, London, E14 4EG for the purposes of Sections 18-30 of the Landlord and Tenant Act 1985. This certificate is granted for a period of four years ending on 14 May 2018 unless previously cancelled.

Signed .....

(one of the persons appointed by the Lord Chancellor as a member of the First-tier Tribunal)

Dated 14/5/14