

S.20ZA Landlord & Tenant Act 1985

**DECISION & REASONS**

<b>Case Number:</b>	CHI/00HP/LDC/2010/0035
<b>Property:</b>	Santoy, 57 Banks Road, Poole, Dorset BH13 7PP
<b>Applicant:</b>	Flowers Properties Limited (Foxes Property Management Limited)
<b>Respondent:</b>	The lessees of the property as per schedule
<b>Date of Application:</b>	29 October 2010
<b>Date of Consideration:</b>	13 December 2010
<b>Date of This Determination</b>	15 December 2010
<b>Tribunal Members:</b>	Mr. R. A. Wilkey FRICS (Valuer/Chairman) Ms. Jan Morris (Lay Member)

**DECISION**

1. The Tribunal determines to dispense with all of the consultation requirements in relation to the qualifying works the subject of this application described as repairs to the exterior of the building.

## **NOTICE**

2. Following formal notice given in Directions dated 9 November 2010 the Tribunal proceeded to determine the case on the basis of only written representations without a formal oral hearing.

## **REASONS**

### **INTRODUCTION**

3. This is an application by the freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

### **THE LAW**

4. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
5. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
6. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
7. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things

a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.

9. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

#### **THE LEASE**

10. The Tribunal was provided with a copy of lease for Flat 3 Santoy dated 5 October 1964 between Flower Properties Limited (the Lessor) and May Eleanor Ethel King (the Lessee).
11. There are provisions for the landlord to *“(a) maintain in good and substantial repair and condition the external walls foundations concrete floor slabs and roof slabs and all other roofing materials of the building (except insofar as the same may be the liability of any of the tenants or occupiers of the flats comprised therein...) (b) once in every three years of the said term paint polish brush down or otherwise treat as the case may require all the external surfaces and common parts of the Building and the said garage usually painted polished brushed down cleansed or otherwise treated with suitable materials of good quality and in this covenant with the expression “external surfaces” shall in relation to the Buildings be deemed to include the Balconies and the external parts of the door of frames doors and window frames situate at the sides and rear of the said Balconies”*
12. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
13. There were no matters raised by either of the parties in respect of the interpretation of the lease.

#### **BACKGROUND & REPRESENTATIONS**

14. On 9 November 2010 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the paper track.

15. Arrangements had been made earlier in the year for the exterior of the building to be redecorated in accordance with the terms of the lease. The appropriate quotations were obtained and full consultation took place in accordance with S20 of the Landlord and Tenant Act 1985 (as amended). In due course, a contractor was chosen and work commenced in mid September 2010. There is no dispute regarding this work.
16. The application before the Tribunal relates to repairs to the exterior of the building that were found to be necessary during the course of external redecoration in the sum of £6,276.85 (including VAT)
17. The additional work is identified in several letters in the bundle that has been supplied to the Tribunal. It may be summarised that the work mainly comprises replacement of rotten wood and broken panes of glass.
18. The lessees were advised of the extent and cost of these additional works by various letters. None of the lessees have raised any objection
19. The Applicant submitted with the application photographs of the various parts of the Building where repairs are required.

#### **INSPECTION**

20. Santoy is a purpose built block of 10 self-contained flats built in 1964
21. The Tribunal attended at the property and viewed the outside from ground level front.
22. Unfortunately, it was not possible to gain access to inspect the rear of the building.
23. No representative of the Freeholder was present at the inspection.

#### **CONSIDERATION**

24. It was clear from the inspection and supplied documents and photographs that the work had to be done. The additional work only became apparent when a proper inspection could be made during the course of external redecoration.
25. The Applicant considers that *"it would not have been possible to obtain quotations for the additional works due to the fact that a main contractor was already on site and it would also have meant that it would not have been possible to complete the*

*works before the onset of the winter weather. Had it been necessary to stop the works, there was a further risk that additional deterioration would be caused to the sound timber and the preparation works would also have required to be carried out a second time."*

26. None of the lessees had responded to the Tribunal's Directions nor had made any representations in respect of the works.

### **THE DECISION**

27. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of Section 20(1) of the Act in respect of all the works.

28. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with Section 20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under Section 27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the recoverable service charges that Section 20 would otherwise have placed upon them

Dated 15 December 2010

Signed

Roger A. Wilkey FRICS

Valuer/Chairman