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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/11UF/LDC/2013/0027

Properties : Southbourne & Desborough House,
Amersham Hill,
High Wycombe,
HP13 6HJ

Applicant : D & N Management Ltd.

Respondents : The long lessees in the list attached
to the application

Date of Application : 19th December 2013

Type of Application : for permission to dispense with
consultation requirements in respect
of a qualifying long term agreement
(Section 20ZA Landlord and Tenant
Act 1985 (“the 1985 Act”))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Application is refused. The agreement or agreements in question are not qualifying long term agreement(s).

Reasons

Introduction

2. This application has been made for dispensation from the consultation requirements in respect of qualifying long term agreements for gardening at the property. It appears to be common ground that in 2007, Salisbury Gardening and Maintenance (“Salisbury”) were given the contract for gardening works at the property and they have continued to provide such services at increasing cost over the years.
3. The application is made by the appointed managing agents for the property. There is no copy of any lease in the bundle provided for the Tribunal but it seems that the landlord is a Mr. B. Gomm and there is a management company called Southbourne and Desborough Management Ltd. The 57 long lessees are, or at least should be, shareholders.

4. It seems clear that this application was prompted by one of the long leaseholders, namely a Rebecca Hickman. Regrettably the bundle provided for the Tribunal does not have fully numbered pages, as ordered, and rather than short submissions and statements, the bundle largely consists of copy letters and e-mail exchanges which are difficult to follow and somewhat confusing. What is clear is that Ms. Hickman wants to change the gardening contractor and points out that there should have been consultation with regard to the original agreement with Salisbury.
5. There is no copy of any contract in the papers. There is a copy of what is described as a 'free estimate' dated 29th January 2014 from Thompsons Garden Services which is for one year at a price of £8,400.00. The only other description of the existing contractual relationship with Salisbury is a description given by Ms. Hickman on at least 2 occasions in correspondence when she refers to a "*rolling contract for approaching 7 years*".
6. Ms. Hickman is also able to provide evidence that the person in charge of Salisbury is called Steve. She says "*under his contract, Steve was paid £560/month (£6,720/year), rising to £585/month (£7020/year) within 6 months (January 2008). In 2009, just a year later, Steve increased his fees by 20% to £8400/year*". From this scant evidence of what was actually in the contract, the Tribunal can only conclude that such contract must have been a short term renewable contact at prices to be negotiated. If it had been a long term agreement with a provision that Salisbury could increase its prices at will, then the contract would have been void or at least voidable for uncertainty.
7. A procedural chair issued a directions order on the 13th January 2014 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 22nd February 2014 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 31st January 2014. Several have been received most of which are (a) in favour of retaining Salisbury and (b) saying that this application is a waste of money and time.
8. Ms. Hickman has been abroad and her statement came in after the 31st January. The Tribunal took full note of a statement in an e-mail of 21st February 2014 and has taken it into account in making this decision. She says:-

"In summary, the residents of Southbourne House and Desborough House have been paying over the odds for gardening services of an inferior standard for a number of years, and have therefore suffered relevant prejudice. The situation has been exacerbated by the conflict of interests that has existed throughout

between the Chair of SDHM and the garden contractor. It is my belief that this is the main reason why D & N and SDHM have failed to take the proper steps to ensure that we are getting value for money by re-letting the contract and undertaking the proper consultation.

In these circumstances, a) I do not believe that the Applicant's request for retrospective dispensation of the consultation requirements should be granted, and b) I hope the Tribunal will consider appropriate compensation for all leaseholders"

The Law

9. Section 20 of the 1985 Act limits the amount which lessees can be charged for both major works and under qualifying long term agreements unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements for qualifying agreements are set out in Schedule 1 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
10. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable. Otherwise, the amount which can be recovered as a service charge is limited to £100 per accounting period. A "qualifying long term agreement" is, subject to certain exceptions, an agreement entered into, by or on behalf of the landlord for a term of more than 12 months. In other words, it must be for a fixed term in excess of 12 months.

Conclusions

11. The first thing which has to be established is that the agreement or agreements in question are qualifying long term agreement(s). In this case, the Tribunal concludes that neither the original contract nor any subsequent contracts with Salisbury were long term agreements i.e. for a fixed term of more than 12 months. Based on the limited information available, the Tribunal further concludes that this was a typical renewable gardening contract for one year at a time, or from year to year, as it is often phrased.

12. It is also worth mentioning that these applications should usually be made by the person or body to whom service charges should be payable. Giving dispensation to a managing agent who has no contractual relationship with the lessees is rather pointless. In this case, it appears to be the management company which would have needed the dispensation. Furthermore, one would have expected the landlord to have been named as a respondent because most 3 party leases make a provision for the landlord to stand in the shoes of the management company in the event of such company going into liquidation. In other words the landlord would have an interest in the decision. However, in view of the decision in this case, the Tribunal decided not to adjourn for these matters to be rectified.
13. Finally, for the benefit of all parties, Ms. Hickman's insistence on accounts being audited by an accountant may be relevant if that is a requirement of a lease. However, the provisions of Section 21 of the 1985 Act, to which she is referring, to have not yet been brought into effect.
14. The Tribunal is conscious of the fact that a fee of £440 has been paid for this application. Ms. Hickman has also asked for compensation. Although the Tribunal has found that this application was not necessary and there would be a case for ordering Ms. Hickman to pay the fee, the Tribunal makes no order in respect of either of these matters. Both participants should have checked the law before making their assertions.

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Bruce Edgington
Regional Judge
25th February 2014