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**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/00HN/LDC/2014/0013**

Property : **7 Westbourne Arcade Westbourne
Bournemouth Dorset BH4 9AY**

Applicant : **Topleader Ltd**

Representative : **Fox's Property Management Ltd**

Respondent : **Ms D Y Sholanke Ms I Hennessy and Mr J R
Martin**

Type of Application : **Section 20ZA Landlord & Tenant Act 1985**

Tribunal Members : **Judge N Jutton and Mr P Turner-Powell
FRICS**

Date of Decision : **9 May 2014**

DECISION

1 INTRODUCTION

2 This is an application by the Applicant/Landlord under Section 20ZA of the
Landlord & Tenant Act 1985 (the 1985 Act) for the Tribunal to determine whether
it is reasonable to dispense with the consultation requirements referred to in
Section 20 of the 1985 Act and which are set out in the Service Charges
(Consultation Requirements) (England) Regulations 2003 (the 2003
Regulations).

3 The application is dated 21 March 2014. It is for dispensation in respect of the
balance of the consultation requirements in relation to certain works of which are
set out in a notice served by the Applicant under section 20 of the 1985 Act dated
17 March 2014. Those are works primarily relating to the external decoration of
the Property.

4 Directions were made by the Tribunal on 27 March 2014. The Directions provided
that the application would be determined on paper without a hearing in
accordance with rule 31 of the Tribunal Procedural Rules 2013 unless a party
objected in writing to the Tribunal within 28 days of the date of receipt of the
Directions. Neither party has objected, or requested that the matter be dealt with
by way of a formal hearing.

5 The Directions provided that the Respondents no later than 3 April 2014 complete
and return to the Tribunal a form indicating whether or not the Respondents
consented to the application or opposed the application (in whole or in part). The
Directions also provided for the Applicant to produce a bundle of documents to
include a statement of case and provided for the Respondents, unless they
consented to the application, to produce a statement in reply.

6 The Applicant has produced a bundle of documents containing the Applicant's
statement of case and supporting documents (the Bundle). References to page
numbers in this Decision are references to page numbers in the Bundle.

7 Notwithstanding the Directions made by the Tribunal, the Respondents have not
filed a form indicating whether or not they consent to or oppose the application,
nor have they filed a statement of case in response to the Applicant's statement of
case.

8 The Law

9 Section 20 of the 1985 Act provides as follows:

"20 Limitation of service charges: consultation requirements

*(1) Where this section applies to any qualifying works or qualifying
long term agreement, the relevant contributions of tenants are
limited in accordance with either sub-section (6) or (7) (or both)
unless the consultation requirements have been either –*

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount

(5) an appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount –

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of sub-section (5) the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that sub-section, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contributions would otherwise exceed the amount prescribed by, or determined in accordance with the regulations, is limited to the amount so prescribed or determined.

10 The relevant provisions of the Service Charge (Consultation Requirements) (England) Regulations 2003 are set out in Schedule 4 part 2 of those Regulations.

11 It is not proposed to set out those provisions in detail here. In summary the requirements may be divided into 3 stages.

12 Stage 1 provides for the Landlord to serve a notice of intention to carry out qualifying works on each Leaseholder. The notice must describe in general terms the proposed works or specify a place and hours where the description of the works may be inspected. The notice must state the reason for the works and invite written observations specifying where they should be sent, over what period (30 days from the notice) and the end date. The notice must contain an invitation for nominations of persons from whom the Landlord should obtain

estimates. The Landlord must have regard to written observations that he receives during the consultation period.

- 13 Stage 2 provides for the Landlord to seek estimates. Thereafter the Landlord must issue a statement setting out the estimated cost from at least two of the estimates, and a summary of the observations received during the Stage 1 consultation period and his responses to them. If any estimates have been received from the Leaseholder's nominees, they must be included in the statement.
- 14 With the said statement, the Landlord should issue a notice detailing where and when all the estimates may be inspected and inviting each Leaseholder to make written observations on any of the estimates, specifying an address where they should be sent, the consultation period (30 days from the notice) and the end date. The Landlord must then have regard to written observations received within this second 30 day consultation period.
- 15 Stage 3 provides that unless the chosen contractor is the Leaseholder's nominee or the lowest estimate, then the Landlord must give notice within 21 days of entering into the contract to each Leaseholder stating his reasons for the selection or specifying a place and hours for inspection of such a statement.
- 16 Section 20ZA of the 1985 Act provides:

“(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”.

17 **The Applicant's Case**

- 18 The Applicant describes the Property as a mid-terrace 4 storey building comprising a shop and storage area on the ground floor and a basement level and 2 residential flats on the first and second floors. The first floor flat is known as Flat 7A The Arcade, and the second floor flat 7B The Arcade. Copies of the leases of Flats 7A and 7B are in the Bundle.
- 19 The Applicant seeks to carry out certain works of external redecoration and repair to the exterior of the Property (the Works). Under the terms of the leases of Flats 7A and 7B, the Applicant will seek to recover by way of service charge payments 33.3% of the cost of the Works from each lessee. The contribution which the Applicant will seek to recover from each lessee will exceed £250.
- 20 On 17 March 2014 the Applicant's agents Fox's Property Management Ltd served on each of the Respondents a notice in respect of the Works pursuant to section 20 of the 1985 Act and the provisions of the 2003 Regulations. Prior to serving the said notice, the Applicant's agents had obtained a quotation for the Works from a company called BPS Builders Ltd dated 11 September 2012 (page 20). The quotation was for the total sum including VAT of £4692. It included the sum of £1200 for the cost of supplying scaffold.

- 21 In or about the end of 2013, the Applicant says that due to severe storm conditions, damage was occasioned to the slate roof covering of the Property allowing water to penetrate in considerable amounts into Flay 7B. Photographs showing the interior of the roof structure and the interior of Flat 7B are at pages 23-25. These appear to show the ingress of water to Flat 7B and the Applicant says that the sub-tenant of Flat 7B has complained to the lessee of that flat, Mr J R Martin.
- 22 The Applicant says that in order for works of repair to the roof to be carried out, which it says need to be carried out as soon as possible before further water damage is occasioned, the Applicant will need to erect scaffolding at a cost of £1200 plus VAT.
- 23 The Applicant says that it would be entirely impracticable and extremely costly to pay for the cost of erecting scaffolding solely to carry out the works required to repair the roof. That delay would be occasioned whilst notices were served under section 20 of the 1985 Act (and the 2003 Regulations) or otherwise (and no doubt more particularly given the apparent urgency) an application were made to the Tribunal to dispense with the consultation requirements. That the scaffolding would thereafter (following completion of the consultation process in respect of the Works) have to be re-erected at a further cost of £1200 plus VAT to carry out the Works.
- 24 The Applicant says that the practical solution would be to carry out all the works to the Property at the same time using the same scaffolding thus saving an additional scaffolding cost of £1200 plus VAT.
- 25 Over and above the cost of the scaffolding, the Applicant says it does not know what the costs of the repair works to the roof will be until it has obtained access to the roof but does not anticipate that the costs will exceed £500 plus VAT.
- 26 At page 26 is a letter produced by the Applicant which is from the lessee of Flat 7B Mr John Martin and is dated 18 March 2014. The letter is addressed to the Applicant's agent and states "*Could you please confirm that you submitted a dispensation form for section 20, so that the work can begin as soon as possible? Also confirm when the work to repair the leaking roof will begin*".
- 27 The Applicant says that its agent has spoken to Mr Martin and that Mr Martin has confirmed his approval to the works (presumably a reference to both the repair works to the roof and the Works) being put in hand "*as quickly as possible*".
- 28 The Applicant says that its agent has also discussed the matter with the mother of one of the lessees, Miss D Y Sholanke of Flat 7A who the Applicant says is also in agreement that the Works should be proceeded with as soon as possible.
- 29 The Applicant says that it is awaiting a second quotation (presumably the quotation from BPS Builders Ltd at page 20 is the first quotation) for the costs of carrying out the Works but there has been a delay in obtaining that second quotation. That it hopes nonetheless to receive the second quotation in the near future and the Applicant confirms that it will accept the lower of the two quotations.

30 In the circumstances, the Applicant applies for dispensation to comply with the balance of the consultation requirements in respect of the Works.

31 **The Respondents' Case**

32 Notwithstanding the Directions made by the Tribunal, the Respondents have not filed the form attached to the Directions indicating whether or not they consent to the application or oppose it (in whole or in part). Nor have the Respondents filed a statement of case.

33 As stated there is however a letter at page 26 from Mr Martin of Flat 7B to the Applicant's agent dated 18 March 2014 in which it appears that Mr Martin consents to dispensation being granted.

34 **The Tribunal's Decision**

35 The approach to be adopted by the Tribunal was set out by the Supreme Court in the case of **Daejan Investment Ltd v Benson & Others** (2013) UKSC 14.

36 The question which the Tribunal must ask itself is whether the Respondents would suffer any relevant prejudice, and, if so, what relevant prejudice if dispensation is granted.

37 The factual burden of identifying some relevant prejudice rests with the Respondents. The Respondents have not argued that they will suffer a prejudice if the consultation requirements are dispensed with.

38 There is no evidence before the Tribunal that the Respondents will suffer prejudice if dispensation is granted. Indeed if dispensation were not granted, it appears to the Tribunal upon the basis of the representations made by the Applicant that the combined costs of carrying out the repair works to the roof and the Works on separate occasions (involving as it would seem a duplication of the costs of scaffolding) would ultimately have the effect of making the total service charge contributions to be paid by the Respondents significantly higher.

39 In all the circumstances and upon the basis of the written representations before it, the Tribunal grants the Applicant's application to dispense with the balance of the consultation requirements as set out in the 2003 Regulations.

40 Accordingly the Tribunal determines pursuant to section 20ZA of the 1985 Act that the Applicant may dispense with the balance of the consultation requirements provided for by section 20 of the 1985 Act in respect of the Works (as are more particularly set out in the notice served under section 20 of the 1985 Act by the Applicant on the Respondents dated 17 March 2014 which is at pages 18 and 19).

Dated this 9th day of May 2014

Judge N Jutton (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.