



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

Case Reference : LON/00AY/LDC/2015/0130

Property : Old Palace Court, 144 Old South
Lambeth Road, London SW8 1XX

Applicants : Southern Land Securities Limited

Representative : Laura Cody of
Hamilton King Management Limited

Respondents : Mr & Mrs Shamsher Goraya
Mr & Mrs Neil Bannister
Edwina House Properties Limited
Mr Gerard Ward
Mr Veikko Lahtinen
Sania Stojanovic
Mr Nikolaos Angelopoulos
Mr Philip Brett & Mr Andrew Peake
Mr Yuk Tung Man
Dr Manyazeid Nezami
Dr Adrian Mohseni
Dr Aryazaid Nezami & Dr R Samei
Mr Michael and Mrs Ashrafa Sutton

Type of Application : Application under section 20ZA to
dispense with consultation
requirements

Tribunal Members : Judge T Cowen
Mr M Mathews FRICS

Date of Decision : 14 January 2016

DECISION

Decision of the tribunal

The tribunal grants unconditional dispensation in respect of the Applicant's proposed works.

The application

1. The Applicant seeks retrospective dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the "1985 Act") from all of the consultation requirements imposed on a landlord by section 20 of the 1985 Act.
2. The application is in respect of qualifying works which have now been completed. The Applicant's case is that emergency works were required to the lift of the Property.
3. The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs are recoverable or payable.
4. The application to the tribunal was received on 6 November 2015 and directions were given this matter on 12 November 2015.

The Facts

5. The Property is a 5 storey purpose built block containing 13 self-contained flats. There are 3 flats on each floor except for flat 13, which is the only flat on the top floor and has access to a flat parapet roof.
6. We have seen a sample lease for flat 1. Paragraph 2 of the Fourth Schedule to the lease requires the tenant to pay the Service Charge, which is defined as the tenant's proportion of the Service Charge Expenses calculated and payable as provided in the Seventh Schedule. The Service Charge Expenses are defined as the moneys expended by or on behalf of the Landlord in providing services and incurring expenses specified in the Sixth Schedule. Paragraph 2 of the Sixth Schedule specifies the repair and renewal (where necessary) of the service installations forming part of the Building including (amongst other things) lifts. The cost of repair of the lift therefore falls within the service charge covenant.
7. According to the Applicant, on 10 August 2015, a fault in the lift was traced by their contract maintenance engineers, KONE, to the main drive unit which required replacement.

8. Before carrying out the work, the Applicant obtained two quotations: one from KONE which was received on 15 August 2015 and one from Stannah which was received on 24 September 2015, because Stannah needed access to one of the flats to inspect before quoting. The quotations were in the same amount of £4,375.00 plus VAT. The Applicant chose KONE because they have an existing maintenance contract for the lift and so they would know the system already.
9. The Applicant says that if the consultation requirements had been fulfilled before executing the necessary works, then the lift would have remained out of commission until the works were completed. The Applicant submits that it would have been unacceptable for a 5 storey residential building to be without a lift for any significant period of time, so the works were carried out as soon as possible without regard to any of the statutory consultation requirements.
10. As soon as they received the necessary parts, KONE completed the work on 5 October 2015 and their invoice in the sum of £4,375.00 plus VAT is dated 23 October 2015.
11. The directions dated 12 November 2015 provided for the matter to be determined on paper without a hearing, unless any party requested a hearing. No party has requested a hearing, so we have decided this matter on the papers and without a hearing.
12. The directions further provided for the application to be sent by the Applicant to all the leaseholders by 8 December 2015 and for any leaseholders who wish to oppose the application to complete and return the reply slip with reasons by 21 December 2015.
13. We have seen a copy of a letter dated 18 November 2015, which the Applicant sent to all leaseholders informing them of these proceedings and enclosing relevant documents. There has been no response or any other communication from any of the leaseholders.
14. We accept all the evidence of the Applicant as there is no evidence to the contrary and there is no other reason not to believe the truth of what they say.

The Tribunal's Decision

15. The Tribunal has decided to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the proposed works. We have considered the possibility of imposing conditions on the dispensation, and we have decided against doing so.

Reasons for the decision

16. We have considered whether it would be reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: "*Where an application is made to a leasehold valuation 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 it is reasonable to dispense with the requirements*".
17. In the light of the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14, we must consider whether dispensation would cause prejudice to the leaseholders. The burden of identifying relevant prejudice falls on the leaseholders who are seeking to resist the application. In this case, the leaseholders are not seeking to resist the application. *Daejan* also made it clear that the purpose of the statutory consultation requirements was to ensure that the leaseholders were protected from paying for inappropriate works or paying more than was appropriate.
18. There is no evidence of any such risk in this case. Nor is there any evidence of prejudice. The works seem on their face to have been appropriate. It is not entirely clear what the original fault with the lift was, on the evidence we have seen, nor is it clear why the lift requires a new motor already when the Property was relatively recently built. But we have no reason to doubt that the works were appropriate and necessary at the time, from the material in front of us, and there is no-one who challenges the Applicant's application. It is also clear that the works needed to be carried out as soon as possible in the circumstances.
19. We have also taken into account the amounts involved. The final invoice for the work was in the sum of £5,250 (including VAT). For the sake of argument, if the bill were to be notionally split equally between the 13 flats (which is not necessarily the method of apportionment under the leases), an amount of about £400 would be payable by each of the leaseholders. Since that is only £150 per leaseholder more than the amount which they would be liable to pay in the event of no dispensation, we take the view that any prejudice to the leaseholders in this case is smaller than in many other cases.
20. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the works to be unreasonable they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.

21. For all of the above reasons we conclude that it is appropriate to exercise the discretion conferred by section 20ZA of the 1985 Act by dispensing with the consultation requirements in relation to the proposed works.
22. There were no applications for costs before the tribunal.

Chair Judge T Cowen **Date** 14 January 2016