

LON/21UF/LDC/2007/0015/01

APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985
(AS AMENDED)



Premises: Bay House, Pelham Road, Seaford BN25 1EP

Applicant: Bay House, Seaford RTM Company Limited

Represented by: Farrington Webb, Solicitors

Appearances:: Mr D Ongley - from Farrington Webb
Mr D Wheeler - from Austin Rees
(Managing Agents)

Respondents: The Lessees of Flats 1 to 11 in the premises

Appearances: Ms V Ely and Mr Fish (Flat 6)

Application date: 21 February 2007

Hearing Date: 26 March 2007

Members of the Leasehold Valuation Tribunal:

Mr J Sharma JP FRICS (Chairman)
Mrs E Flint DMS FRICS IRRV

DECISION (Given orally at end of hearing)

1. This Tribunal decided that it is reasonable to dispense with all of the statutory consultation requirements of Section 20 of the Landlord and Tenant Act 1985 (the Act) in connection with the Applicant's proposal to replace the main lower pitched roofs and vertical slating in between at the premises, including sundry repairs to adjacent elements, in accordance with a quotation from Smart Construction (Sussex) Limited dated 5 December 2006.

BACKGROUND

2. The Tribunal received an application dated 21 February 2007 from Bay House Seaford RTM Company, the Applicant, under section 20ZA of the Act to dispense with all of the consultation requirements in connection with their proposal to replace the mains/lower pitched roofs at the premises at a total cost of £52,436.73 inclusive of supervision fees and VAT.
3. The premises is a 4 storey block of 11 flats. Formerly a hotel, it was converted into flats in 1960 with substantial additions.
4. Directions for the hearing of the application was issued by a Tribunal on 2 March 2007. The Applicant was directed to copy the Directions, the application and all supporting documents to each of the Respondents by no later than 9 March 2007. The Applicant confirmed at the Hearing on 26 March 2007 that they had acted as directed. They provided the Tribunal with a copy of a standard letter dated 8 March 2007 sent to each tenant in that respect.
5. The Tribunal did not receive any representations from the Respondents opposing the application either in writing or orally at the hearing. At least 8 of the Respondents are members of the Applicant company.

THE LAW

6. Section 20 of the Act limits the contributions of tenants to service charges resulting from qualifying works if the consultation requirements are not complied with by their landlord or dispensed with by a leasehold valuation tribunal. The detailed consultation requirements applicable in this case are set out in Part 2 to Schedule 4 of the Service Charges (consultation Requirements) (England) Regulations 2003 (the Consultation Regulation). These require a landlord to send notice of intention, make provisions for tenants to inspect the description of the proposed works, have regard to tenants' observations, obtain estimates, one of which at least must be from someone wholly unconnected. There is also provisions for tenants to nominate a contractor. The landlord then has to have regard to observations from tenants on the estimates and he has a duty to give reasons if he does

not accept an estimate from a tenant nominated contractor, or from a contractor who has submitted the lowest estimate. These procedures can take between three and six months.

7. "Qualifying works" means work on a building or any other premises. Section 20 of the Act applies if costs incurred in carrying out the works results in the relevant contribution of any tenant being more than £250.
8. Section 20ZA of the Act allows a leasehold valuation tribunal to make a determination to dispense with all or any of the consultation requirements, if it is satisfied that it is reasonable to do so.

THE HEARING

9. Mr Ongley said that the Applicant acquired the right to manage the premises in February 2006 following poor management by the then landlord, Dorelward Limited, and its agent, Seaford Property Management Company Limited. For several years the premises has been in need of substantial works of repairs and redecoration; the roof in particular is in a parlous state. Dorelward consulted under the Act for these works in early 2004 and collected approximately £80,000 from the tenants towards the total cost of £123,001.24. Scaffolding to facilitate the works was erected in October 2004 but nothing else was done. The works have become more urgent. The freehold has been transferred recently to a new company called Bay House Seaford Limited owned by the leaseholders.
10. Because of limited financial resources, the Applicant has decided to carry out the most urgent roof works now. They have recovered £24,000 (of the £80,000 collected) from the previous landlords. They have a new managing agents, Messrs Austin Rees, Chartered Surveyors. The agents in turn have recommended Smart Construction (Sussex) Ltd Building & Decorating Contractors to do the roof works.
11. Mr Wheeler, Austin Rees, confirmed that the works was not put out to tender. Smart Construction is recommended by them based on previous good work experience with the contractors. Each lessee was sent a copy of Smart Construction's quotation on 6 February 2007. The total cost of the roof replacement works is £52,436.73, inclusive of VAT and 10% supervision fees. The eleven lessees were asked to contribute £2396.97 each towards the cost of the works after the £24,000 recovered from the previous freeholder was taken into account. No one had objected to this.
12. The Applicant has made the application to dispense with the consultation requirements because the works has become urgent. The roof is leaking. There is water penetration through to the top floor flats. They also wish to benefit financial from the scaffolding still in situ. The local authority is likely to want the scaffolding removed if the works do not start soon. The delay in taking action since the right to manage

was acquired by them in February 2006 is due to difficulties in getting back money already collected by the previous freeholder.

13. Ms Ely, as a Respondent, supported the application. She was not aware of any lessee who wishes to oppose the application.

REASONS FOR THE DECISION

14. The Tribunal did not inspect the premises because the facts were not in dispute.
15. The Tribunal noted that the Applicant had carried out some consultation with the Respondents. The parties are essentially the same persons and no one has objected to the application.
16. The Tribunal considers that the arguments put forward by the Applicant as to the adverse consequences of delaying the necessary works, both with regard to the continuing damage to the premises and to increased costs if the existing scaffolding is not used, to be persuasive.
17. In making its decision to dispense on this application under section 20ZA of the Act, the Tribunal is not making a determination as to the liability of individual lessees to pay for the works. Nor is the Tribunal making any determination as to the reasonableness of the service charge costs that will be incurred, or that the works will or will not be carried out to a reasonable standard. Such a determination could only properly be made on an application under section 27A of the Act.
18. In the particular circumstances of this case, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements contained in section 20 of the Act and in Part 2 of the Schedule 4 of the Consultation Regulations.

CHAIRMAN 

DATE 4/4/07