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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Case Number LON/00AF/LSC/2007/0062

Landlord and Tenant Act 1985 (as amended) sections 27A and 20C ("the Act")

In the matter of Eaton Court, Kemnal Road, Chislehurst, Kent BR7 6NB

Parties: Ms L Johnson
Mrs J Bennet-Kaltak
Ms A Turner
Ms S Newman
Mr H Dyson
Mr Y Morat
Mr S Malone-Jansens

Applicants

Eaton Court (Chislehurst) Management Ltd

Respondent

Representatives:

For the Applicants:

Ms S Newman and Mr S Malone-Jansens

Accompanied by the other applicants save for Mr Morat

For the Respondents:

Mr J Guillen solicitor

Mr S Dothie from Northleach Propety Management Ltd

Application date: 22nd January 2007

Hearing date: 4th July 2007

Tribunal members:

Mr A A Dutton Lawyer Chair

Mr J Power FRICS

Ms T M Downie MSc

Decision date: 19th July 2007

REASONS AND DECISION

A. BACKGROUND

1. This application was made by seven lessees at the premises Eaton Court, Kemnal Road, Chislehurst, Kent for a determination as to the liability to pay services charges for three matters set out below. The application, dated 22nd January 2007 related to service charge years 2005 to 2007 inclusive. The complaints centred around works to a bin area, double glazing to the communal parts and the construction of a boundary wall and electronic gates.
2. It was alleged on the part of the lessees that the Respondent management company had failed in each case to follow the procedures laid out at section 20 of the Act and that as a consequence the maximum sum that could be recovered from them was £250 in respect of each item of work
3. It was conceded by Mr Guillen, the solicitor instructed to act on behalf of the Respondent that in respect of the works to the bin store and to the boundary wall and gates that the appropriate procedures had not been followed.
4. It is perhaps worth, at this time recounting some background to this dispute. It would appear from the lease and indeed was confirmed at the hearing that the Respondent company's membership consists of the lessees of the property. The lease provides for each new lessee to take a share in the management company and directors are appointed from their number. Here appears to lie the basis of the problems which has seen the matter come before us on 4th July 2007. There appears to have been friction between certain residents and this has impacted on the manner in which the property has been managed. A number of managing agents have come and gone, the latest being Northleach Management, represented by Mr Dothie. There are allegations of fraud and false accounting and the police have been approached but it would seem declined to act. An attempt to change the directors by way of EGM last year was unsuccessful for reasons that we do not need to investigate. Suffice to say, it appears that the directors who are named in a number of documents have now disposed of their interests in the property and resigned their posts and the present director appears to be a non resident lessee, Mr Liasi and the company secretary is the firm of accountants retained to produce the annual accounts for the Respondent.
5. This case therefore presents the unusual situation of the members of the company bringing proceedings against their own company.

6. At a directions hearing held on 28th March 2007 it is recorded that the following issues are to be determined

"Liability to pay service charges relating to major works in the service charge years ending 25/3/06 and 25/3/07.

The issue is whether or not the correct section 20 procedure was followed in respect of:-

a works to the bin area amounting to £8,000

b double glazing the common parts at a cost of £15,000

c reconstruction of boundary wall and erection of electronic gates at a cost of £7,500"

B EVIDENCE

7. We had before us what appeared to be an agreed bundle of documents containing amongst a number of papers the application, a statement dated 20th April 2007 on behalf of the Applicants, the Respondents reply dated 22nd May 2007, some invoices for the works and copies of the section 20 notices served in respect of the double glazing works.

8. At the commencement of the hearing we endeavoured to establish the exact costs for the three items in dispute. Somewhat regrettably the Respondents had not bought all the invoices for the works with them, Mr Dothie explaining that they were still with the accountants. In the papers there were copies of some invoices and doing the best we could we recorded that the costs of the works were as follows:

A	bin store	£6,186.86
B	windows	£10,600
C	gates and wall	£11506.28

Whilst not agreeing these figures Mr Guillen on behalf of the Respondent did not challenge them. It was accepted that on the basis of these figures section 20 notices should have been served in respect of all items of work.

9. Although somewhat surprisingly the Respondent had not lodged any applications for dispensation under section 20ZA we agreed with the parties that it would be appropriate to consider any requests for dispensation at this hearing to avoid unnecessary costs.

10. The Respondent did not seek dispensation for the works to the bin area. The sum involved, being only £186.86, was not disputed as being irrecoverable from the applicants

11. In so far as the windows were concerned Mr Guillen submitted that the correct procedures had been followed and we had before us copies of the notices which he said appeared to comply with the requirements of the Service Charges (Consultation Requirements)(England) Regulations 2003. Although the applicants were invited to make any comments about the notices and service of same no complaint was made.

12. In respect of the boundary wall and gates we heard from Mr Dothie. He told us that he had been informed in July 2006 by the then directors of the Respondent company, that the lessees had been consulted about the works through the newsletter and at an AGM. He was instructed to proceed and had not checked to see if any notices under section 20 had been served. He accepted that they had not. We were told that the gates had been installed notwithstanding a letter, sent a month or so before the installation, from solicitors for a neighbour, warning Mr Dothie that the gates blocked a right of way and that injunctive relief would be sought. This letter and a subsequent telephone call were ignored and injunction proceedings followed which has exposed the Respondent to a claim for damages, albeit limited, but substantial costs.

13. We heard from the parties on the question of costs and an application was made under section 20C. Mr Guillen argued that the costs should be recoverable. There was he said no option for the Respondent but to attend given the nature of the complaints made and he did not think that it was right that other lessees, not party to the proceedings should have to pay the costs. Mr Malone-Jansens told us of the problems of the EGM and the advice given by Mr Dothie that the meeting was not effective.

C. THE LAW

14. The law relating to the liability to pay a service charge is contained at section 27A of the Act, introduced by the Commonhold and Leasehold Reform Act 2002. That Act also changed the procedures for notifying the lessees of major works costing more than £250 per flat. The requirements are set out in the statutory instrument recited at paragraph 11 above. Previously, dispensation had to be sought from the County Court but the introduction of section 20ZA gave the tribunal the power to dispense with the requirements *"if satisfied that it is reasonable to dispense with the requirements"*. Section 20C gives the tribunal power if it considers it just and equitable to prevent a

landlord from recovering the costs of proceedings before the tribunal as a service charge.

D. DECISION

15. We accept that there is considerable "history" to this case. However, our jurisdiction does not extend to considering such matters which may involve allegations of breaches of Company Law, negligence, fraud and false accounting. This case involves the procedures under section 20 of the Act and the recoverability of monies due in those circumstances.

16. We find that the correct procedures were followed in relation to the installation of the double glazing to the common parts. The notices in the bundle before us comply with the requirements of the Act and the Regulations. They were not challenged and as a consequence the sum of £10,600 is properly due and owing and the appropriate proportion, 1/24th should be paid by each lessee.

17. The Respondent conceded that no notices had been served in respect of the works to the bin store or the boundary wall and gates. It did not pursue an application for dispensation in respect of the bin store which we consider is appropriate as the shortfall is only £186.86. Accordingly the lessees' liability is limited to £250 each, making a total payable of £6,000.

18. We turn now to the boundary wall and gates. No attempt was made by the Respondent to follow the procedures. The then directors appear to have given instructions to Mr Dothie to proceed based on suggestions that the details had been circulated in a newsletter, although no such copy was produced to us, and in a vote at an AGM, which based on comments made to us by the applicants who attended same is at best tainted. He failed to make any investigation into whether the procedures had been put in place and appears to have compounded the issue by ignoring, for whatever reason, threats, which turned out to be wholly justified, of injunctions proceedings. We find therefore that it is not reasonable to dispense with the requirements and limit the sums recoverable from the lessees to £250 per flat.

19. On the question of costs we decline to make an order under section 20C. We were told by Mr Guillen that he had money on account to pay his fees for the proceedings and accordingly the "horse appears to have bolted". There is, of course, nothing to stop the lessees challenging any costs appearing as a service charge under section 27A. We do not propose to order a refund of the application and hearing fee as it appears to us to be the equivalent of

robbing Peter to pay Paul and we think that a line should, if possible be drawn under this matter.

20. As a matter of comment and no more, we hope that the residents can obtain sound legal advice as to their rights to appoint directors with the best interests of the lessees at heart to run their company. They will then be "free" to appoint whosoever they wish, subject to any contractual constraints, to manage the property in the manner they chose ensuring of course that the terms of the leases are complied with and the law observed.

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Chairman

19th July 2007

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Date