

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOHN/LDC/2008/0008

REASONS

Application : Section 20ZA of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Landlord : Eurocoast Limited

Respondent/Leaseholders : all the leaseholders in the Building, as named in the list attached to the application

Building : Jacey House, 284 to 292 Old Christchurch Road, Bournemouth, Dorset, BH 1 1PH

Flats : The residential Flats in the Building

Date of Application : 22 February 2008

Date of Directions : 29 February 2008

Date of Hearing : 19 March 2008

Venue : Council Chamber, Christchurch Town Hall, Christchurch, Dorset

Attendances on behalf of the Applicant/Landlord : Mr Patrick Banting BSc PGDip MRICS and Mr Kevin Nunn, both of CBRE

Attendances by Respondent/Leaseholders : Mr Simon Dadak (Flats 2, 5, 7, and 10) and Mr G T Howard (Flat 14)

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), and Mr A Mellery-Pratt FRICS

Date of Tribunal’s Reasons : 19 March 2008

Introduction

1. This Application by the Applicant/Leaseholders is under section 20ZA of the 1985 Act, namely 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 set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)
2. On the 29 February 2008 the Tribunal gave directions
3. The hearing of the application took place on the 19 March 2008

The 1985 Act and the 2003 Regulations

4. 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 subsection (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) a leasehold valuation 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.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations 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 subsection (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 subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

5. The material parts of the 2003 Regulations are contained in Regulation 6 and in Schedule 4

Documents

6. The documents before the Tribunal are :
 - a. the Applicant/Landlord's bundle numbered 1 to 172
 - b. a supplementary bundle submitted by the Applicant/Landlord
 - c. a letter dated the 13 March 2008 from Mr Howard

Inspection

7. The Tribunal inspected the outside of the Building and the interior of Flats 5, 10, and 14 on the morning of the hearing. Also present were Mr Banting, Mr Nunn, Mr Dadak, and Mr Howard
8. There are helpful photographs in the Applicant/Landlord's supplementary bundle
9. The parties told the Tribunal that the proposed works so far as the present application was concerned were in relation to Flats 5, 10, and 14
10. There was evidence of damp stains to the walls and coving in Flat 14, and of considerable damage to the walls and ceilings of Flats 10 and 5, all as shown in the photographs
11. The parties told the Tribunal that the water ingress was from 2 sources, namely the roof and a gulley

The Leases

12. There are before the Tribunal copies of :
 - a. a lease between the Applicant/Landlord (1) Ask Restaurants (2) Ask Central Plc (3) 22 May 1998 of part ground floor and part basement of the Building
 - b. a lease between the Applicant/Landlord (1) The Slug and Lettuce Group plc (2) 24 June 1998 of part ground floor and part basement of the Building
 - c. a lease between the Applicant/Landlord (1) Arlington Limited (2) 31 March 1998 of part ground floor, first, second and third floors of the Building
 - d. a licence to assign between the Applicant/Landlord (1) Delta Properties (2) Torren Properties (3) 1 March 2005 of part ground floor, first, second and third floors of the

Building

Application

13. The Applicant/Landlord stated that there had been severe and continued water damage to a number of Flats. Repair works were now urgently required to the interior and exterior of the Building
14. The works principally comprised repairs to a turret roof and associated brickwork. 3 Flats were continually and severely affected by water penetration and considerable damage had been caused
15. Notices of intention had been served by recorded delivery on the 26 February 2008

Letters from CBRE 26 February 2008

16. In a first letter, to which notes about section 20 of the 1985 Act were attached, Mr Banting on behalf of CBRE stated that it was intended to carry out repairs to the turreted roof area and associated brickwork, coping stones and flashings to prevent water penetration to a number of flats
17. In a second letter, CBRE gave notice of the present application to dispense with the requirements in section 20 of the 1985 Act. A schedule of the proposed works was attached

Letter from Mrs Jila Austin (Flat 15) 1 March 2008

17. Mrs Austin stated, in response to the notice dated the 26 February 2008, that she nominated a local builder to have a chance to give an estimate for the repair of the roof, namely Mr John Dresman

Documents in the Applicant/Landlord's supplementary bundle

18. Written submissions by Mr Banting set out the Applicant/Landlord's case. The Applicant/Landlord was the freeholder. There were long leases granted to the 2 commercial lessees of the basement and ground floor. The residential element was held on a head lease. The current head-lessee was Torren Properties Limited. 15 long sub-leases had been granted in respect of the individual flats. Mr Banting summarised the relevant terms of the residential head-lease, including the Applicant/Landlord's repairing covenants, and the tenant's service charge

payment obligations. Flats 5, 10, and 14 were currently being severely damaged by water penetration from the turreted roof area. Continued water penetration would render the premises unlettable and would be a serious health and safety risk. It was intended to carry out remedial works as soon as possible. A schedule of works was attached

19. A Kandahar Group Limited “executive summary building surveyor report” was dated May 2006
20. An estimate from Henley’s Building & Maintenance Ltd dated the 20 February 2008 was for £5,087 plus VAT

Letter from Mr Howard 13 March 2008

21. Mr Howard stated that he understood the need for emergency repair works to be carried out as soon as possible as his Flat was continuing to be water-damaged. However, he had not yet seen an estimate of the cost. Like Mrs Austin, he also nominated Mr John Dresman to provide an estimate. Mr Dresman had inspected the roof on the 10 March 2008. He had checked the schedule of works and had estimated the sum of £6,650 including VAT. He would be attending the hearing before the Tribunal acting on behalf of the lessees of the Building

The hearing on the 19 March 2008

22. Mr Dadak had seen the Applicant/Landlord’s supplementary bundle. Mr Howard had not. The Tribunal adjourned the hearing for 10 minutes to enable Mr Howard to consider it
23. Having done so, Mr Howard and Mr Dadak both confirmed to the Tribunal that they agreed that the consultation requirements in section 20 of the 1985 Act should be dispensed with, and that they were content for Henley’s to be the contractor
24. The Tribunal adjourned the hearing for a further 10 minutes to enable the Tribunal to consider the matter
25. The Tribunal then indicated to the parties that, subject to any submissions to the contrary, the Tribunal was proposing to make an order that :
 - a. the Applicant/Landlord should serve all leaseholders in the Building with appropriate notices under the 2003 Regulations, but that
 - b. the consultation requirements in section 20 of the 1985 Act should otherwise be dispensed with

26. All parties stated that they were content with the proposed order, and that they had no contrary submissions

The Tribunal's findings

27. Having considered all the evidence in the round, the Tribunal accepts the evidence given on behalf of the Applicant/Landlord, and accepted by Mr Dadak and Mr Howard, that it is necessary for the Applicant/Landlord to carry out the proposed works as an emergency, and the Tribunal finds, in relation to the proposed works referred to in the application, that, subject to the Applicant/Landlord giving the appropriate notices to the leaseholders in the Building under the 2003 Regulations it is reasonable to dispense with the consultation requirements in section 20 of the 1985 Act

28. The Tribunal accordingly makes the following order in relation to the proposed works :

- a. the Applicant/Landlord shall serve on the leaseholders in the Building the appropriate notices under the 2003 Regulations
- b. the consultation requirements in section 20 of the 1985 Act are otherwise dispensed with

Dated the 19 March 2008



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P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor