

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case Number CHI/29UN/LDC/2008/0016

Re: Royal York Mansions, 16 The Parade, Margate, Kent CT9 1EZ (“the property”)

BETWEEN:

Royal York Mansions (Margate) Limited Applicant

and

Mr D S Mossman, Mr J Short, Baxten Limited, R Knight and D Hazel and Mrs M Jackson
Respondents

Decision of the Tribunal with reasons

Issued 22nd July 2008

Hearings: 19th June 2008 and 21st July 2008

Appearances: Mr K Munro of Counsel for the Applicant

Ms N Matthews of Counsel for Mr Mossman, Miss Green and Mr Knight

Mr Scarfe, Mr MacRae with him, on behalf of Mr Short

Tribunal:

Mr R P Long LLB (Chairman)

Mr R Athow FRICS MIRPM

Application

1. This is an application made by Royal York Mansions (Margate) Limited to the tribunal for dispensation from the consultation provisions contained in section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act").The application is made pursuant to section 20 ZA (1) of the Act.

Decision

2. The tribunal has determined that it may properly grant, and accordingly it grants, the dispensation in respect of all the consultation requirements associated with the carrying out of the works of replacement of the roof at the property that is sought.

Reasons

The Law

3. Section 20 of the Act, when read with the Service Charge (Consultation Requirements) (England) Regulations 2003 (SI 2003/1978) ("the Regulations"), provides that the relevant contributions of tenants to service charges in respect of qualifying works are, for the purposes of the present application, limited to £250 unless the consultation requirements for which that section of the Act and the Regulations provide have been:
 - a. complied with, or alternatively
 - b. dispensed with by (or on appeal from) a leasehold valuation tribunal.

Section 20 ZA (1) of the Act permits the tribunal to determine that such dispensation may be granted if it is satisfied that it is reasonable to dispense with the requirements.

4. In the present case the Applicant seeks dispensation from the consultation requirements in respect of works that are required to be carried out to the roof at the property ("the dispensation"). The precise nature of the consultation requirements in the instant case is set out in Part 2 of Schedule 4 to the Regulations.

Inspection

5. Mr Athow, the chartered surveyor member of the tribunal was able to inspect the property before the initial hearing on 19th June, a problem on the rail network having delayed the writer. He was able to establish that the work of repairing the roof was in progress. The tribunal was of the view, echoed by Mr Munro at the second hearing, that it was not necessary for the writer also to inspect. The issues in the case do not turn upon the present physical condition of the property.

Hearings

6. An initial hearing was held on 19th June 2008. It was then established first that Ms Farrier, who was to have sat as a member of the tribunal, was acquainted with one of the parties, so that she withdrew from the matter. Secondly it was established that the short notice of the hearing given by the Tribunal was defective, and the matter was adjourned to a hearing on 21st July 2008 in respect of which proper notice in

accordance with the provisions of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2098) was given.

7. At that hearing, all of the Respondents, except Mrs Jackson of Flat 6 who was neither present nor represented, withdrew their opposition to the application. They withdrew from the hearing, and did not pursue a previously stated intention to make an application under section 20C of the Act.
8. Mr Barker was able to give evidence that he had met Mrs Jackson on the Friday preceding the hearing. She had been in hospital for a few days, and she had told him that she did not propose to attend the hearing although she was aware of it.
9. The Tribunal is satisfied that Mrs Jackson has received proper notice of the hearing. She has not indicated that she wished to attend the hearing or to make representations, and indeed Mr Barker's evidence is that she did not intend to attend.

Representations

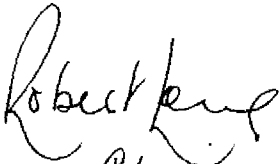
10. Mr Munro proceeded to make application for the dispensation in respect of all the Respondents. He outlined the application, and submitted that the tribunal had an unfettered discretion in the matter. The question was whether or not the Respondents had been prejudiced by the failure of the Applicants properly to comply with the consultation requirements of section 20 of the Act. He had to persuade us, now that the other Respondents had dropped opposition to the application, that Mrs Jackson had not been prejudiced. There might even be cases where even if a particular tenant had been prejudiced the tribunal could still grant dispensation because the prejudice to that tenant may be outweighed by a greater prejudice to the landlord or to other tenants. The fact that the tenants might be deprived of a windfall was not a matter for the Tribunal to take into account. Authority for the first and third of those propositions was to be found in *Eltham Estates Ltd v Kenny* (LRX/161/2006). He offered no authority for the second proposition, and did not seek to rely on it here. As matters of fact, Mr Munro added that the work to the roof was unlikely to be completed for some weeks, and the funders had not yet agreed to extend the time when the intended grant for the works would be available, although the matter remained under discussion.
11. Mr Munro added that although the specification under tab 10 of the bundle included provision for scaffolding the scaffolding had been separately provided by another firm, All Access Scaffolding, as a revision to the arrangements originally intended. This arrangement had been made in response to representations by a tenant that he could secure a better price for the scaffolding through a contact of his. The references in the specification to scaffolding were thus omitted, and the contractor was not to provide the scaffolding. He went on to take the tribunal through the steps that the Applicant had taken to comply with the requirements of section 20 of the Act by reference to the letters to Mrs Jackson dated 18th December 2007 at pages 88-92 of the Applicant's bundle. The process had ended with the letter of 16th January 2008 on page 93 and its accompanying demand on page 94. The fact that the tenants were each fully aware of the work to be done was borne out by Mr Barker's evidence at paragraph 10 of this statement on page 96.

12. The factual matters in Mr Munro's opening were attested to either in their written statements or in oral evidence by Mr Barker and by Mr Wilson.
13. Mr Barker gave oral evidence of his discussion with Mrs Jackson. She had told him that there were matters about which she may wish to consult lawyers, but they did not relate to these proceedings. He said that he or members of the managing company had had discussions with each of the tenants in the period between October and December 2007 and had the documents including the specification with them on those occasions so that they could show them to the tenants who wished to see them.
14. Mr Wilson said that the work was not now expected to be completed until the end of August. He confirmed that the earlier estimates under tabs 6-8 of the Applicant's bundle had been obtained against an earlier specification. Those under tabs 11-13 were obtained against the specification under tab 10 that he had prepared in June 2007. He wished to make it clear that redecorations that had been referred to were not part of this application. They had been dealt with separately. A reason that he had wished to see the matter proceed quickly had been that in January the cost of lead had been expected to rise fast. It had then been at £2600 a tonne, and was expected to rise to £3000 shortly. 40 tonnes were required for the work in question. In fact the rise had not happened because of the fall in demand for building work, but it had been a very real risk at the time.
15. Mr Munro said that because it was accepted that paragraphs 2 and 3 of the initial consultation letter sent to lessees on 18th December 2007 might be criticised as to their form, he sought a dispensation from compliance with all of the consultation requirements.

Determination

16. The Tribunal accepted Mr Munro's submission that the question for it was whether or not the Respondents had been prejudiced by the failure of the Applicants properly to comply with the consultation requirements of section 20 of the Act. The jurisdiction conferred upon the tribunal enables it to grant a dispensation from all or any of the consultation requirements in section 20 of the Act.
17. From the evidence before it, the tribunal was able to make a number of findings of fact, namely:
 - a. That the present works are those set out in the specification prepared by Mr Wilson in June 2007 under tab 10 in the bundle, and that the three estimates obtained in November and December 2007 were obtained against that specification.
 - b. That the scaffolding element in the estimate that was accepted was not pursued because the landlord accepted the offer of a lessee to make what were anticipated to be better arrangements.
 - c. That representatives of the management company spoke to each of the lessees between October and December 2007 and made them aware of the nature and extent of the work to be done, and that one of them made representations about the cost of scaffolding that the landlord adopted.

- d. That a letter intended to constitute the first step in the consultation process was sent to each of the lessees on 18th December 2006.
 - e. That the lessees were advised of the amount of the chosen estimate with the letter sent to each of them on 16th January 2008.
 - f. That there was pressure at the time of that letter in that it was known that there was a time limit on the availability of a grant of some £157,450 towards the cost of the work that would represent some 30% of the ultimate anticipated cost of the works and associated fees amounting to a little over £425,000, and in connection with the possible future cost of the lead.
18. It is plain that the landlord did not properly carry out the requirements of the consultation procedure at the end of the initial consultation period mentioned in the initial notice. The further notice required by paragraph 5(b) in Part 2 of Schedule 4 of the Act was not given. All that was provided by way of information about the estimates was the amount of the lowest estimate, and even then the figure mentioned did not allow for the savings that were then expected to accrue from the revised arrangements over the scaffolding.
19. It is arguable that the information provided in the letter of 18th December was deficient. It certainly described the work to be done in brief, and possibly inaccurate, terms; its description of the reasons why that work was required was directed to the landlord's position in the matter rather than to the physical defects that were to be addressed. However, it is equally plain that the lessees were kept fully aware of what was happening by means of the discussions that Mr Barker described. They were able, if they wished, to have an input into the exercise. The tribunal further accepts Mr Munro's contention that the fact that the lessees may not be able to benefit from a windfall if dispensation is not granted is not a proper matter for it to take into account.
20. Especially in view of Mr Barker's confirmation at the hearing that between October and December 2007 the Applicant's representatives discussed the requisite works with each of the lessees, which expanded his statement at paragraph 10 of his witness statement that the lessees were each aware of the position, and because it is apparent that an opportunity for input was given and none of the lessees has opposed the grant of the dispensations sought, the tribunal is satisfied upon consideration of all the circumstances of the matter that none of the lessees has been materially prejudiced by the defects in the consultation process and that as a result the tribunal may properly grant the dispensation in respect of all the consultation requirements associated with the carrying out of the works of replacement of the roof at the property that is sought. That dispensation is accordingly hereby granted. For the avoidance of doubt, it covers the work carried out by the principal contractor and the scaffolding work separately arranged.
21. The decision in this matter relates simply to the dispensation granted. In particular it does not constitute a decision upon any of the matters within the tribunal's jurisdiction constituted under section 27A of the Act.


Chairman

22.7.08