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Midland Leasehold Valuation Tribunal **BIR/37UG/LSC/2010/0004**

In the matter of 5 Markeden Court and 3 Markeden Court, Rufford Avenue, Ollerton, Nottingham NG22 9BQ

Sections 20 and 20ZA Landlord and Tenant Act 1985

(1) Mr Chris & Mrs Carole Jordan

(2) Mr P. Christoforou

Applicants

and

PAS Property Services

Respondent

And in the matter of the Applicants' applications to the Leasehold Valuation Tribunal for a determination of liability to pay an interim service charge of £1,500

DECISION

Tribunal: Mr J.H.L. de Waal

Date of Application: 27th January 2010

Date of Decision: 28th July 2010

1. On 27th January 2010 Mr and Mrs Jordan applied to the Leasehold Valuation Tribunal for the determination of their liability to pay an interim service charge of £1,500 in respect of the premises at 5 Markeden Court, Rufford Avenue, Ollerton, Nottingham NG22 9BQ,

2. On 9th March 2010 Mr P. Christoforou of 3 Markeden Court was joined as Applicant at his request.

3. Directions were given on 23rd March 2010 and the parties agreed to a determination of the Application on paper. There has therefore been no hearing.

4. Nos. 3 and 5 Markeden Court are premises forming part of a two storey block of flats which is managed for the Respondent freeholder by the McDonald Partnership. The premises are let to the Applicants for a term of 125 years from 1st January 2005. The lease includes provision for the payment of service charges.

5. In issue is the question of whether the sum of £1,500 demanded by the Respondent on 23rd May 2008 as an interim service charge and paid, I understand, by all of the tenants except for Mr and Mrs Jordan is in fact payable.

6. The reason that the tenants may not be obliged to pay the sum of £1,500 is that by section 20 of the Landlord and Tenant Act 1985 ("the Act") the 'relevant contribution' payable by any tenant in respect of 'qualifying works' is £250 unless the landlord has either complied with the relevant consultation requirements or these requirements have been dispensed with by the Tribunal.

7. It is common ground that the landlord did not comply with the relevant consultation requirements. Therefore what I have to consider is whether it is reasonable to dispense with these requirements under section 20ZA of the Act.

8. The landlord's letter of 23rd May 2008 said this:
"As you will no doubt be aware there has been significant damage to the roof areas following the extensive storms in January 2007. Bearing in mind that the insurers rejected the claim, as a result of poor workmanship. Solicitors have been appointed to act on behalf of residents on issuing a claim against the original Architects and Builders.
Unfortunately, as with any legal case these matters do result in protracted proceedings and as such we have been left somewhat in hiatus as to moving forward with repairs.

A number of the owners are now experiencing difficulty marketing their properties due to the extensive damage caused to the building due to the deterioration of the temporary protective coverings which were put in place originally.

We currently have on file a quotation which amounts to some £5500 plus VAT for installing a mineral felt roof covering which our clients believe should be installed as a semi-permanent finish in order to progress repairs to the communal areas and individual apartments whilst the claim against the Developers and Architects progresses.

Under the circumstances and to ensure that finances are available to cover these costs we will require on account from all owners the sum of £1500 in order to implement the contract and to ensure that some finances are available to undertake the internal remedial repairs necessary."

The letter then goes on to demand prompt payment of this sum.

9. On 14th May 2010 the Respondent submitted a witness statement by Mr David McDonald in which he explained that in January 2007 high winds had lifted part of the roof to one of the two blocks on the development. Works were carried out to make the building safe and after negotiations the insurers agreed to pay £7,000 towards the cost of temporary repairs. He goes on to explain that in May 2008 McDonalds became aware of a leak to the apartment above no. 5 and discovered that the temporary roof repairs carried out earlier had failed. Further works were necessary and cost £5,500 plus Vat. All owners were written to asking to contribute the sum of £1,500 to this cost.

10. The Respondent thus applies for dispensation from the consultation requirements under section 20ZA of the Act.

11. In response to this statement the Applicants (letter 26th May 2010) have not put in any other statement of their own; however Mr and Mrs Jordan dispute Mr McDonald's evidence. They observe that £1,500 x 6 = £9,000 which does not equate to £5,500 (in fact £6,462.50 inc VAT). They enclose correspondence from McDonalds (18th November 2009) confirming that "*The request for £1500 was to cover the initial temporary works which included the scaffolding erected to the building and the felting of the roof surface together with decorative repairs to the communal areas.*"

12. It is always difficult to resolve disputes of fact without hearing oral evidence but in this case the Tribunal has the benefit of the Respondent's original letter of 23rd May 2008, or rather that sent by McDonalds on their behalf. This makes it clear that the sum of £1,500 is demanded for temporary works necessary some 15 months after the storm damage was caused.

13. In my view whilst it is clear that the works were important they were not so urgent or critical as to justify the Respondent's failure to consult properly as they should have done under section 20 of the Act. In the circumstances I do not think it is reasonable for the consultation requirements to be dispensed with and I do not do so.

14. The effect of this decision is that Mr and Mrs Jordan are not liable to pay the sum of £1,500 and that if Mr Christoforou has paid the sum it should be repaid to him.

30 JUL 2010

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John de Waal, Chairman
Midlands Leasehold Valuation
Tribunal