

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Application under Section 20ZA of the Landlord and Tenant Act 1985 for dispensation
with all or any of the consultation requirements**

DECISION AND REASONS

Case Number: CHI/19UH/LDC/2010/0026

Property: 1 – 14 Buckfields, West Hill Road Lyme Regis Dorset
DT7 3LL

Applicant : Labyrinth Management Limited

Respondents : The Lessees

Date of Application: 5th August 2010

Date of Hearing: 25th August 2010

Appearances: Karen Gray – Regional Manager and Emily Holman
Property Manager (for the Applicant)
David McClean (Flat 10) Richard Bowskill (Flat 5) and
Pamela Stanley (Flat 11) (for the Respondent)

Tribunal Members: Cindy A. Rai LLB Solicitor (Chairman)
Edmund Harrison FRICS Chartered Surveyor
(Valuer Member)

Date of Decision: 1st September 2010

Summary of Decision

1. The Tribunal grants the application for dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 (the Act") in relation to the works necessary to repair the broken lift. The reasons for its decision are set out below.

Background

2. The Property the subject of this application is a recently constructed development of 14 flats first occupied at the end of 2006. The flats comprise two blocks one containing 9 flats on three floors and the other containing 5 flats. Each block is served by an independent lift. The flats are located within gated grounds containing a drive, marked parking spaces and landscaped areas.
3. The application was made by Labyrinth Management Limited on the 5th August 2010. The Applicant is the Manager of the Property. The Tribunal inspected the Property prior to the hearing accompanied by Emily Holman and Karen Gray. Only the larger block comprising 9 of the flats was inspected. The lift serving this part of the Property was not working. It was apparent from inspection that the lift would be primarily of use to the three flats located at the lower ground floor level and the three flats located on the first floor level although the flats at the middle level might make occasional use of it to gain access to the lower garden areas.

Applicant's case

4. The application has been made because the one of the lifts within the Property does not work. The Tribunal were told that the lift has not been functional since the middle of July 2010.
5. Dispensation by the Landlord from having to comply with the statutory consultation requirements has been sought in this case because:-
 - a. The repair is urgent as at least two of the residents are seriously disadvantaged by the lift not working, and
 - b. Emily Longman believes that it may be impossible for the Applicant to obtain another quotation from a different company. This would be necessary for it to comply with the consultation requirements of the Act.
6. A copy of the lease of Flat 1 dated 19th February 2007 made between David McLean Homes Limited (1) Labyrinth Management Limited (2) and W. R. Gullock and T. M. Gullock (3) ("the Lease") was provided with the Application which confirms that the costs of the repair to the lift including the replacement of the broken part is an expense which is recoverable from the lessees as part of the service charge. The Manager is obliged (under clause 3 of the Sixth Schedule of the Lease) to (inter alia) "keep the internal common parts of the Building comprised in the "Maintained Property" in good substantial repair order and condition and renewing and replacing all worn or damaged parts thereof". The "Maintained Property" is defined in the Second Schedule and that definition includes the lift. The lease contains an obligation for the lessee to pay the specified proportion of the

Maintenance Expenses which are (inter alia) the money expended by the Manager in carrying out its obligations specified in the Sixth Schedule. The Applicant is the Manager named in the Lease.

7. The Applicant has obtained an estimate for the cost of the lift repair from Schindler who were apparently the original supplier and manufacturer of the lift. The Tribunal were told that the first estimate which the Applicant was given was apparently for £5,689.42. However when Emily Longman queried the amount on account of the fact that the lift is only four years old, a second estimate, a copy of which she produced at the hearing, (but which the Tribunal had not previously seen), which is for £5138.58 was provided.
8. The Tribunal has been given details of the provisional division of the estimated cost of the lift repair between the fourteen leaseholders which would result in contributions ranging between £273.17 and £574.86. Every leaseholder's contribution is therefore above the limit of £250 which is the maximum amount in respect of specified works which a landlord can recover from any tenant without being obliged to comply with the consultation requirements contained in section 20 of the Act and The Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") unless it has obtained dispensation from those requirements.
9. The Applicant told the Tribunal that there is a current service contract between the Applicant and Schindler which obliges the company to service the lift and attend on break down. When the lift broke down in July, an engineer from Schindler inspected the lift and apparently carried out a diagnostic assessment of the fault. David McClean (one of the resident lessees) was present when the engineer carried out this assessment. He explained that there is an electronic panel which shows an electronic diagnostic code and that had indicated to the engineer that the fault was a broken lift motor. He therefore notified his company who provided the estimate for the cost of the replacement motor and the repair to the Applicant.
10. The Applicant was concerned about the amount of the estimated repair costs since the lift was barely four years old. Evidence from those lessees at the hearing suggested that in fact the lift was used regularly by very few residents. Only five of the fourteen flats are occupied permanently. Three are used as holiday lets and the remainder are "second homes" and thus occupied from time to time. However two elderly residents who are reliant on the lift are seriously disadvantaged by it not being in working order.
11. Emily Holman explained to the Tribunal that she had already challenged Schindler about the cost of the replacement motor and her challenge had led to the second lower estimate being produced. She said that although the lift had initially been guaranteed the guarantee had been valid for only two years. Thereafter the Applicant had entered into a basic service contract with Schindler. That was only for "call out" and regular servicing and was on the basis that all other repairs were separately charged. However she was concerned that if she tried to get the lift repaired or even could get the lift repaired by another company that would or might invalidate even the existing service contract. Neither "Coney" or "Otis" (two other

well known lift companies), are prepared to carry out works to a Schindler lift. If the repair is carried out by Schindler the new lift motor would be guaranteed for a year.

12. One of the leaseholders expressed disbelief that it should be the case that the lift motor could not be repaired. He said that the fact that the electronic diagnosis had indicated to the lift engineer that the motor needed replacement, may not be an actual indication that it was defective. The fault could be on account of the failure of a fuse or some other electronic part. He would therefore be supportive of an attempt being made to investigate the actual fault after the repair was carried out. He would like a comprehensive report obtained on the apparently defective motor. However in the interests of the two residents at the Property who needed the lift he and all other leaseholders present supported this Application and wanted the lift repaired quickly.

Law

13. Section 20ZA (1) of the Act states:-

"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

In section 20ZA (4) of the Act the consultation requirements are defined as being: "Requirements prescribed by regulations made by the Secretary of State". These are the Regulations referred to in paragraph 9 above.

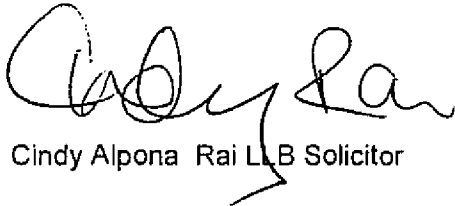
In section 20(3) of the Act "qualifying works" are defined as being "works" ... "to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge". If the costs of any tenant's contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. Additionally in order to make a determination to dispense with some or all of the consultation requirements the Tribunal must be satisfied it is reasonable to do so.

Determination

14. The leaseholders who were present at the hearing agree that the lift must be repaired urgently and that this is in the interest of all the Respondents. The Applicant has obtained an estimate of the cost of the repair and tried to reduce the amount of the estimated cost.
15. Furthermore although it would be preferable to obtain more than one estimate, it has been suggested that it may be impossible to obtain another estimate for the repair. The Tribunal accept that this may well be the case having had previous experience of the difficulties that can be encountered with regard to lift repairs.
16. On the basis of all of these facts the Tribunal determined that it is reasonable in all the circumstances to grant dispensation to the Applicant from having to comply with the consultation requirements set out in section 20 of the Act. The parties were told

of the decision at the hearing to enable the Applicant to make immediate arrangements for the repair of the broken lift.

17. Although this is not relevant to the decision made by the Tribunal the Applicant agreed with the Respondents that it would do all that it could, to obtain a full report from Schindler as to the reason for the failure of the lift motor and to ascertain if an economic repair of the failed motor might be carried out so that at least that repaired part could be retained "as a spare", in case the problem should occur again or the other lift within the Property should fail.

A handwritten signature in black ink, appearing to read 'Cindy Alpona Rai'. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Cindy Alpona Rai LLB Solicitor

Chairman