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LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AT/LDC/2010/0093

Landlord & Tenant Act 1985 (as amended) Section 20 ZA

Property: **The Firs, Alexandra Road, Hounslow, Middlesex TW3
4HR**

Applicants: **The Firs (Hounslow) Residents Company 1993
Limited
(Freeholders)**

Represented by: **Mr James Pinto; Company Secretary of Applicant**

Respondents: **The Lessees of all 25 Flats in the Development
(Leaseholders)**

Represented by: **Mr David Cahill; Lessee of Flats 54, 74, 82, and 98**

Hearing: **17th November 2010**

Members of the Tribunal:

Mr L. W. G. Robson LLB(Hons) (Chairman)

Mr T. Sennett

Ms J. Clark JP

Preliminary

1. The Applicant Freeholders seek an order to dispense with the strict consultation provisions in respect of qualifying works required by Section 20 under Section 20 ZA of the Landlord & Tenant Act 1985 (as amended) (the Act), on the grounds that there should be no further consultation relating to the works to replace the floor coverings in the internal common parts, in order to quickly dispose of expensive litigation with the chosen supplier for breach of the contract to do the works. The lease relating to Flat 23 dated 15th September 1971 (the Lease) was offered as a specimen.
2. Pursuant to Pre Trial Directions given on 15th September 2010 the case was originally listed as a paper case, but at the request of Mr Cahill an oral hearing was offered on 17th November 2010.

Hearing

3. Pursuant to the Directions, the Applicants had made written submissions and supplied a bundle of documents before the hearing. The Directions provided for service of a copy of the Application on all the Respondents. Mr Cahill (hereafter the Respondent) objected upon receipt of a copy of the Application and requested a hearing. He did not, however, serve any statement of case or documents prior to the start of the hearing.
4. The Tribunal decided as a preliminary issue whether it would accept the Respondent's statement of case offered at the start of the hearing. The Respondent by letter dated 17th November stated that he had assumed that since he had asked for an oral hearing, the requirement of Direction 6 for him to supply a bundle of documents by 1st November did not apply, and that he would be able to put his case at the hearing. He had no documents to file, but wished to comment on the documents supplied by the Applicants. He offered a two page statement of reasons for opposing the Application. He had not intended to flout the Directions. The Tribunal and Mr Pinto read the statement. Mr Pinto said that he was prepared to proceed with the case immediately. The Tribunal retired to consider its decision, and then informed the parties that as the statement did not raise any substantial new issues it was prepared to allow the statement to be put in evidence.

Applicants' Case

5. Mr Pinto submitted that the freehold of the property was owned and managed by the lessees collectively. In response to questions he agreed that one lessee (not the Respondent) was not a member of the Applicants. There was also doubt about the lease terms of another lease, where the owner did not use the internal common parts. In 2008 the Directors of the Applicants had decided to renew the internal floor coverings which were very old, chipped, and dirty. Things at the property were normally done on a gentlemen's agreement. One of the Directors had apparently then instructed County Carpets to do the work. Shortly afterwards the Directors discovered that to comply with legal requirements it should undertake a Section 20 consultation as the works were qualifying works.
6. County Carpets was contacted, and agreed to take part in the necessary tendering process (providing a lower quotation). Two estimates were received from Nova Floor Ltd (one for sheet flooring, and the other for vinyl tiles). The other estimate was received from County Carpets. The estimates were:

Nova Floor (Vinyl Tiles)	£7,973.55
Nova Floor (Sheet Flooring)	£8,678.55
County Carpets	£11,136.65
7. Notices of Intention were served on the lessees on 29th May 2008. Notices of Estimates were served on 1st August 2008. Notices of Reasons for Awarding a Contract were served on 16th February 2009. The Applicants decided to accept the highest (County Carpets) quotation, on the grounds that the quotation did not require a 50% deposit to be paid prior to work commencing. The Directors were concerned that in the then economic climate, tenderers might become insolvent before completing the work. At about this time, Mr Tolley, the proprietor of County Carpets, died. His wife took over the business. Mrs Tolley informed the Directors that she considered that there was a binding contract between County Carpets and the Applicants for a higher

Decision

11. The Tribunal considered the evidence and submissions. The Tribunal decided that Section 20 gives lessees a statutory right to the consultation procedure, which should not be taken away lightly. Section 20ZA applications should only be granted when reasonable grounds for dispensation exist. Such grounds are likely to exist in cases of urgency on the grounds of safety or reduced cost, or where sufficient consultation has been undertaken but does not comply with the strict terms of Section 20.
12. In answer to questions, Mr Pinto agreed that the general body of lessees had not been informed in writing of the reasons behind the proposal at the A.G. M in July 2010 to instruct County Carpets without undertaking the Section 20 Notice procedure. There was some doubt as to what had been mentioned on the Agenda, and no copy was produced to us. Those at the meeting had been informed orally of the issues, and some others had been informed on the phone, but Mr Pinto also agreed that an indeterminate number of up to 10 lessees had not been informed. He submitted that all would have known of the issues upon receipt of a copy of the Application.
13. Mr Pinto also confirmed in answer to questions that no complaints had been received from lessees that the Applicants were in breach of the Lease relating to the flooring, nor had any notices been received from the local council or insurers relating to safety issues with the flooring. He also agreed that no attempt had been made to obtain further quotes for the work after the original consultation.
14. The Tribunal decided that no great urgency had been shown as at the date of the hearing. On the date of the application, finding a speedy solution to deal with the litigation was an important factor in the decision to make the application. Rather fortuitously, the case had been stood over by the court for longer than was intended by the parties. No documentary evidence relating to the court proceedings had been supplied to the Tribunal at all. While Mr Pinto seemed to be doing his best, he was lay person, and the Tribunal was not entirely satisfied that his understanding of the progress of the court case was accurate. While the County Carpets litigation is entirely a matter for the County Court, no documentary evidence was produced to us relating to the strength or otherwise of the case brought by County Carpets, although the Tribunal noted from such evidence as it had that it did not appear to be a clear case. No discovery of documents had apparently yet occurred.
15. The Tribunal also decided that the information provided to lessees about the works was patchy. The original Section 20 procedure had defects, notably it did not make clear that an additional charge for administering the contracts of 8% would be made. Also some lessees might well have voted, or voted differently at the A.G. M. if they had been fully informed of the issues. Even at the date of this hearing there appeared insufficient evidence to decide if the

proposal to agree with County Carpets would be the cheaper option. Quotations for this type of work could be obtained quite speedily, but none existed.

16. **The Tribunal concluded on the balance of the evidence that it was not satisfied in this case that it should exercise its discretion to dispense with all or any of the requirements of Section 20 relating to the works.** Insufficient evidence had been produced to us on the question of urgency relating to safety, and the urgency of the situation relating to the County Carpets litigation had changed prior to the hearing. The Tribunal accepted the Respondent's submission that the interests of the shareholders were not identical to those of the lessees. Depriving a lessee who was not a member of the company of statutory rights to consultation for the financial benefit of those who were members of the company appeared inequitable, particularly when it appeared that a cheaper quotation for the works might well be found. It was not even clear from the evidence that the shareholders would benefit from the proposed agreement with County Carpets, as no recent alternative quotations existed. The work had not been done, and so that claim could only relate to losses on any purchase of materials, and loss of profit. No evidence of these items was available to the Tribunal.
17. For the avoidance of doubt, this determination does not decide if any service charge costs are reasonable or payable under Section 27A of the Act, and merely deals with the consultation requirements of Section 20.
18. An extract from Section 20 ZA is set out in the Appendix to this decision, for ease of reference.

Signed: Lancelot Robson
Chairman



Date: 8th December 2010

Appendix

Landlord & Tenant Act 1985 Section 20 ZA

"(1) 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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."