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HM Courts
& Tribunals
Service

LEASEHOLD VALUATION TRIBUNAL

Property : Charters, Charters Road, Sunninghill, SL5 9QZ

Applicant : West Register (Property Investments) Ltd

Respondents : The Leaseholders of Flats 1-34 at the Property as listed in the Application

Case Number : CAM/00ME/LDC/2012/0004

Date of Application : 23 March 2012

Type of Application : Section 20ZA Landlord and Tenant Act 1985 ("the Act")
- application to dispense with the consultation requirements set out in section 20 of the Act

Date of Decision : 23 May 2012

Tribunal members : D S Brown FRICS MCI Arb (Chair)
B M Edgington

DECISION

The Tribunal grants dispensation from all of the consultation requirements set out in section 20 of the Act, in respect of the proposed three year Service and Maintenance Agreement with Smartcomm from 1st August 2011.

[NOTE This decision allows the Applicant to dispense with the section 20 consultation procedure. The Tribunal has not considered and makes no finding about the reasonableness of the works or the cost.]

The Application

1. The Application for dispensation from the section 20 consultation requirements was made on 23 March 2012. Directions were issued on 05 April, in which the Tribunal indicated that it considered the application suitable for determination without a hearing and giving notice that the determination would be made on or

after 3rd May unless a party requested an oral hearing. No such request has been received.

The Law

2. Section 20 of the Act prescribes a detailed consultation process which a landlord is required to undertake before carrying out works in respect of which the contribution to the cost by any tenant exceeds the prescribed limit. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

S20ZA Consultation requirements: supplementary

- (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.
- (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations,
or
in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
to obtain estimates for proposed works or agreements,
to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) and (7)... not relevant to this application.

The Applicant's Case

3. In its signed application, with a Statement of Truth, the Applicant states that there is an agreement with Smartcomm to provide IT support for Charters for a total price of £92,100 plus VAT from 1st August 2011. At the end of this period, Smartcomm will pass to the Applicant ownership of the source codes for the Estate IT system. An interim agreement has been put in place for the first year of the agreement term.

4. The Applicant states that Smartcomm owns the source codes and is therefore the only potential supplier of the service and so tenders cannot be submitted under the section 20 procedures.
5. It further states that the proposal has been explained to the apartment owners' steering group and is supported by that group.

The Respondents' Case

6. The directions provided for any Respondent who wishes to make representations to submit a statement of reply to the application by 19 April. No such statements have been submitted.

Decision

7. The Tribunal accepts that if the system source codes are owned by Smartcomm and will not be passed to the Applicant until the end of the three year service agreement, there is no other contractor who could tender for the work and so there cannot be compliance with the consultation requirements of section 20. No objections have been received from any of the Respondents. There is no evidence that, under the circumstances, dispensation would cause material prejudice to the tenants.
8. The Tribunal therefore finds that it is reasonable to dispense with the consultation requirements set out in section 20 of the Act in this case.

Signed:

D S Brown FRICS (Chair)

Date: 28th May 2012