9051

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00JA/LSC/2013/0021**
Property	:	**The Apex, 2 Oundle Road, Peterborough, PE2 8AT**
Applicant	:	**PC Beneviste** **H A Pusey** **(both represented by Martin Paine of Circle Residential Management Ltd)**
Respondent	:	**Leaseholders of Flats 1-34** **Appearing in person:** **Donnell Ricorda (flat 1)** **Nedz Isenovic (flat 3)** **T. H. Tran (flat 14)** **R. Wahiwala-Patel (flat 16)**
Date of Application	:	**11 February 2013**
Type of Application	:	**Determination of payability of service charges (s27A Landlord and Tenant Act 1985)** **Dispensation from consultation requirements (s20ZA Landlord and Tenant act 1985)**
Tribunal	:	**Francis Davey (chair)** **Neil Martindale FRICS (valuer)** **David Reeve MVO (lay)**
Date and venue of Hearing	:	**17 May 2013** **Peterborough Magistrates' Court**

DECISION

1. Dispensation is given under section 20ZA.

2. If the sum of £1,066.00, exclusive of value added tax, were to be incurred for the repair works to fire doors described in the Application, that sum would be payable.

REASONS

Unless otherwise stated, all references to section numbers are to the Landlord and Tenant Act 1985

The Property

3. The Apex is a 9-storey residential building consisting of 33 individual flats. The Applicants are the freeholders of the Apex and the Respondents the 33 leaseholders.

The Application

4. The Application, made on 11 February 2013, concerns repairs to fire doors and fire safety signage.

5. According to the Applicants' statement of case, on 5 February 2013, Bull & Company, a contractor often used by the Applicants reported that urgent fire safety work was needed.

6. On the same day Bull & Company submitted a documented headed "quotation", listing work that needed to be done. This consisted of:

   a) the removal of two doors for fitting new hardwood lipping and fitting new fire and smoke seals;

   b) supply and fitting a hardwood bead to another fire door;

   c) rehanging a fourth fire door;

   d) supply and fitting of various fire exit and photo luminescent signs;

   e) other more minor work including the adjustment of door closers.

7. The work was completed on 8 February 2013 on which day also the Application was sent to the Tribunal.

8. The Applicants did send a notice of intention, dated 5 February 2013, but took no other steps to comply with section 20. Accordingly, the Applicants invite us to dispense with the requirements of section 20 under section 20ZA.

9. Bull & Company submitted an invoiced, dated 28 February 2013, in the sum of £1,066.00 plus VAT (giving a total of £1,279.20) for the works. A handwritten note on the invoice suggests that it was paid on 20 March 2013. Given our conclusions on jurisdiction there is no need for us to make any findings of fact as to the invoice or payment.

Inspection

10. We inspected the Apex, looking specifically at the work in Bull & Company's quotation. We found that all the work appeared to have been done and to a reasonable standard.

Hearing

11. At the hearing, Mr Paine told us that none of the items in Bull & Company's report had been discovered on the annual fire survey of the building. He told us that Bull & Company had reported the problems with the fire doors on 5 February and then been instructed to prepare a quotation for the work on the same day by someone in Circle Residential Management Limited's ("Circle") offices in Cheltenham.

12. There was an unfortunate but understandable confusion by the Respondents with an earlier application by the Applicants in respect of Flats 1 and 3 (CAM/00JA/LSC/2012/0142), which we heard on 20 February 2013 and with case management orders in that application.

13. The result was that the Respondents attending the hearing had not understood that we would be considering only the relatively narrow question of the fire doors and raised other matters. We explained that they were beyond the scope of the Application before us at the hearing and encouraged the Respondents to take advice on what courses of action were open to them.

14. The Respondents did not dispute the Applicants' chronology of events up to 11 February 2013. None of the Respondents suggested that they would suffer any prejudice as a result of the failure of the Applicants to carry out a section 20 consultation. In accordance with the Supreme Court's guidance in *Daejan v Benson* [2013] UKSC 14, we therefore grant the Applicants the dispensation they seek.

15. Mr Paine explained that the s27A application was made in the hope that we would decide that the cost of the work was "reasonable" and done to a "reasonable standard".

16. Section 27A states that:

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable

17. The relevance of "reasonableness" is to be found in section 19:

19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

18. The difficulty, for Mr Paine, is that there is no free-standing jurisdiction to consider reasonableness. In determining the question of payability, under section 27A, a leasehold valuation tribunal may have to consider whether costs are reasonable or works have been carried out to a reasonable standard, but that would form a part of the section 27A determination.

19. Mr Paine's objective was plainly that, having brought the question of dispensation before us, he might as well ask us to consider the reasonableness of the works at the same time. It seems to us that would be a sensible use of the parties' and the Tribunal's time if there were a jurisdiction to do it.

20. Mr Paine accepted that section 27A(1) was not appropriate. Although there was evidence before us, in the form of Bull & Company's invoice,

that costs had been incurred and paid, no service charges would be payable unless and until a demand, properly made, had been given to the Respondents.

21. The cost of the works may, in the event, form a part of the advance service charges already paid by the Respondents. Alternatively it may be payable by (or due to) the Respondents under a balancing payment – for example under section 19(2). The Applicants may not be in a position to know until the year end.

22. For that reason we conclude that section 27A(1) may not be used in a situation such as this.

23. Mr Paine suggested, in the alternative, that section 27A(3) might be appropriate.

24. Section 27A(3) deals with a possibility ("if costs were incurred"). It might be objected that section 27A(3) may not be invoked where costs have already been incurred. But that would leave a gap in the jurisdiction of the tribunal where costs have been incurred but are not (yet) payable.

25. It seems to us that section 27A is intended to be a comprehensive jurisdiction to enable the leasehold valuation tribunal to consider all questions of payability of service charges. For that reason we read, "if costs were incurred" to include a situation, like the one before us, where the work has already been done.

26. We therefore address the following question: "if the cost of £1,279.20 were to be incurred for the works described in the application, carried out by Bull & Company and inspected by us, would that amount be payable?".

27. In our view, as an expert tribunal, that sum would be reasonable for the work described. Our inspection satisfied us that the works appeared to have been done to a reasonable standard. For that reason we consider the answer to the question before us is, yes.

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Francis Davey
[Date]