



10671

**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/42UD/LDC/2015/0002

Property : Coytes Gardens,
6-12 Friars Street,
Ipswich,
IP1 1PS

Applicant : D.G. Rose Ltd.

Respondents : Mr. T. Harris & Ms. M.T.M. Manjohn (9)
Christine Poultney (11)
Ms. M.J. Jeavons & Mr. J.G. Obern (15)
Daniel Masters (17)
Andrew Debnam (19)
Mr. S. Wiltsher (21)
Miss. Diana Powley (23)
Christopher Marksberry & Julie Phillips
(25)
Mr. and Mrs. R. Sevier (27)

Date of Application : 10th February 2015

Type of Application : for permission to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA Landlord
and Tenant Act 1985 (“the 1985 Act”))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to repair the lift serving the properties.

Reasons

Introduction

2. On 11th February 2015, this application was received for dispensation from the consultation requirements in respect of ‘qualifying works’ to the lift serving the building in which the properties are situated which had broken down and could not be used.

3. Coytes Gardens is a purpose built block of 9 flats with one shop on the ground floor and the Respondents are long leaseholders of the flats. The application refers to the lift usually being in high demand with a heavily pregnant lady living on the top floor and many families with young children living in the block. The application said that a new door motor and PCB door card needed to be 'retrofitted' by specialist engineers and original parts were no longer available for this lift. Presumably this meant to refer to readily available new parts.
4. A repair was said to have been completed at a cost of £697.50 including VAT which was for the replacement of the door card which had failed. However, on installation, the engineer established that the reason for the card failure was a faulty door operator motor unit. A replacement was said to have been identified to be obtained from the manufacturer, Curti, at a cost of £4,607.40 including VAT but, it is said, no information could be obtained as to when this would be available.
5. However, Eastern Lift Services of Colchester were able to source a bespoke unit immediately at the slightly higher cost of £5,160.32 including VAT. This was ordered and fitted.
6. A procedural chair issued a directions order on the 17th February 2015 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 12th March 2015 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 6th March. None were received by the Tribunal itself but the Applicant's managing agents report that they have spoken with many of the Respondents on the telephone and those they spoke to were all supportive of the required works.

The Law

7. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.
8. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

The Lease terms

9. A copy of a blank form of the lease was attached the application which the Tribunal members assume is a sample of the lease applying to all 9 subject flats. The landlord's covenants are in the 7th Schedule and include maintaining and repairing the lift.

Conclusions

10. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.
11. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the lift had ceased working and there were occupants who were said to rely heavily on the lift.
12. It is self-evident that repair works were required. The delay which would have been caused by undertaking the full consultation exercise would clearly appear to have been extremely inconvenient to the Respondents. There is no evidence that the full consultation process would have resulted in different works or a lower cost. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted.
13. If there is any subsequent application by a Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of the necessary parts at the time of the repairs.

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Bruce Edgington
Regional Judge
19th March 2015