



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/21UF/LDC/2015/0053**

Property : **Montpelier House
146 South Coast Road
PEACEHAVEN
East Sussex BN10 8ER**

Applicant : **Mrs N Dobber**

Representative : **Parsons Son & Basley (Managing Agent)**

Respondents : **Robert Andrew Cheeseman
Christian D Colvin
Brenda Edwina Holden
Nicola Jane Markow-Austwick
Jennifer McManus
Ernest W and Sandra L Page
Pei Ying Wu**

Type of Application : **Dispensation from S.20 Consultation
requirements, Section 20ZA Landlord and
Tenant Act 1985**

Tribunal Member : **Mr BHR Simms FRICS (Chairman)
Judge R Norman
Judge D Agnew BA LLB LLM**

Date of Hearing : **15 December 2015**

Date of Decision : **15 December 2015**

Date of These Reasons : **21 December 2015**

REASONS FOR DECISION Announced 15 December 2015

DECISION OF THE TRIBUNAL

1. The Tribunal grants the Applicant dispensation from the consultation requirements, without terms, in respect of the proposed works to investigate and carry out urgent repairs to the lift at the Property. This decision was announced at the conclusion of the hearing.

THE APPLICATION

2. An application dated 04 December 2015 on behalf of the head lessee for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 ("the Act") in respect of proposed lift repairs at the Property.
3. In view of the urgent nature of the application the Tribunal abridged the time required for the notice of a hearing and directed on 08 December 2015 that the application was to be heard on 15 December 2015.
4. The Applicant's representative was directed to serve a copy of the Application Form and The Directions on each Respondent and to affix a copy in a prominent communal part of the Property. By letter dated 10 December 2015 the agents confirmed that this had been done and provided to the Tribunal copies of the letter sent and the other documents included being the estimates obtained from contractors.
5. The Respondents were invited to attend the hearing if they opposed the application.
6. The Tribunal received a bundle of documents prepared by the Applicant's representative.

THE LEASES

7. The Applicant supplied a copy of a lease dated 05 February 2015 (the Head Lease) between Brian Leslie Dobber and Nanette Dobber in respect of the 7 apartments and parking spaces at Montpelier House. At the hearing it was explained that Mrs Nanette Dobber is the Head Lessee and Landlord in respect of the Application. Also supplied was an occupational lease dated 04 June 2013 and the Tribunal was advised that all the occupational leases were in a common and similar form.
8. Under the lease the lessees are required to pay a contribution to the costs incurred by the landlord in carrying out his obligations under the lease for the maintenance of the Retained Parts of the Building including the lift as set out in the particulars and the relevant Schedules in the leases.

THE INSPECTION

9. The Tribunal members inspected the property prior to the hearing in company with Mr Barretto and Mr Greaves of Parsons Son & Basley, the Lessees were not represented.

10. The Building is purpose built with retail premises on the ground floor and a self-contained residential upper part on three floors with separate access from the rear, where there also are parking spaces. The common ways comprise a staircase and lift. The lift was out of service and the Tribunal was able to inspect the control gear which had been disabled. The Notice of the Application to the Tribunal and the accompanying papers were prominently displayed in the entrance area.

THE HEARING

11. The Applicant was represented at the hearing by Mr Mark Barretto AssocRICS (Head of Residential Property Management) and Mr Greaves both of the managing agent, Parsons Son & Basley. The Respondents did not attend and were not represented.
12. Mr Barretto explained that the lift had had to be taken out of service as the lift pit had flooded and the water contaminated with oil. Specialist contractors had identified repairs required to the hydraulic tank and rupture valve and supplied budget estimates for the work. An Initial Notice had been issued during the week ended 11 December 2015 but there had not been sufficient time for the consultation period to elapse.
13. There were three less able and elderly residents in the building and the lift was the only means of access for these residents. It was essential that urgent repairs were undertaken without the delay that would be occasioned by full consultation under S.20. One of the less able residents had already missed hospital appointments because of the impossible egress from the Building.
14. Mr Barretto understood his client's responsibility to undertake the repairs regardless of funding and had also approached the freeholder for support without success. There was no large reserve in place to cover the costs.
15. The Respondents made no representations or objections.

THE LAW

16. The 1985 Act provides the Respondents with safeguards in respect of the recovery of the Applicants' costs in connection with the works to the property through the service charge. Section 19 ensures that the Applicants can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 gives the Respondents an additional safeguard when the works carried out on the property are qualifying works which are defined as works on a building or any other premises, and the costs of those works would require the Respondents to contribute under the service charge more than £250 in any 12 month accounting period.
17. When these circumstances exist, the additional safeguard is that the Applicants are required to consult in a prescribed manner with the Respondents about the works. If the Applicants fail to do this, the Respondents' contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

18. This application is concerned with the additional safeguard of section 20. The question for the Tribunal is whether the requirement to consult with the lessees should be dispensed with in view of the urgency of the repair. The questions of whether the costs of those works will have been reasonably incurred and whether those works are to reasonable standard are not a matter for this particular Tribunal. The Respondents are entitled to put in another application challenging the reasonableness of the costs incurred and the standard of those works if they wish.
19. Section 20ZA of the Act is the authority which enables the Tribunal to dispense with the requirement for the Applicants to consult with the Respondents on the costs and nature of the proposed works. The dispensation may be given either prospectively or retrospectively. In this case the Applicants are asking for a prospective dispensation.
20. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, it would appear that the Tribunal has a broad discretion. That discretion, however, has to be exercised in the context of the legal safeguards given to the Respondents under sections 19 and 20 of the Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* which decided that the Tribunal should focus on the issue of prejudice to the tenants in respect of their statutory safeguards.
21. Thus the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the Respondents would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the Respondents to identify any relevant prejudice which they claim they might have suffered.

THE FINDINGS

22. Under section 20 the Applicant is required to go through a two stage process of consultation¹. The first stage involved the giving of a notice of intention to carry out the works and this has been done although there has been insufficient time for a response. The Tribunal is not satisfied that the Applicant's notice meets the requirements as it was not available for inspection.
23. The second stage requires the Applicants to supply a statement of estimates and a response to any of the Respondents' comments arising from the Notice of Intention. The Tribunal formed the view that the tendering process was at-arms-length and as thorough as it could have been in the circumstances however it did not comply with the consultation process.

¹ See Part 2 of Schedule 4 to the Service Charges (Consultation Requirements (England) Regulations 2003.

24. In view of the Applicant's admission that it was unable to adhere to the statutory consultation process, and as a result were seeking dispensation from those requirements, the Tribunal is obliged to consider whether the Respondents will have suffered relevant prejudice from the Applicants' non-compliance. None of the Respondents has expressed prejudice.
25. The Tribunal finds that the Respondents have not and will not suffer any prejudice and to further delay the commencement of the works would in itself cause prejudice in that the lift would remain out of action.
26. The Tribunal was concerned that the shortage of funds might delay the start of the work and considered whether to impose terms with the dispensation to enforce this. Having received reassurance from the Applicant's agents regarding the urgent implementation of the work and as it might further delay matters to impose terms the Tribunal decided not to impose terms.

B H R Simms (Chairman)

21 December 2015

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]