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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/AP/LSC/2014/0097**
Property	:	**284B Archway Road Highgate London N6 5AU**
Applicant	:	**Richard Cannell**
Representatives	:	**Mr K Kelly (Retired Surveyor)**
Respondents	:	**Paul Richards and Julie Angelique Hannon**
Representative	:	**In person - (non-attendance)**
Type of Application	:	**Application for the dispensation of consultation requirements pursuant to S. 20ZA of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Prof. Robert M Abbey (Solicitor)** **Mrs J Davies FRICS** **Mrs L Hart (Lay Member)**
Date and venue of Hearing	:	**11th December 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**08th January 2015**

DECISION

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Decisions of the Tribunal

(1) The Tribunal grants the application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and tenant Act 1985 (Section 20ZA of the same Act).

(2) The Tribunal also make an order for costs under Rule 13 (1) (b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 limited to a refund of the application fee incurred by the Applicant in the sum of £190.

(3) The reasons for our decisions are set out below.

The background to the application

1. The Applicant seeks dispensation under section 20 ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") from all the consultation requirements imposed on the landlord by section 20 of the 1985 Act, (see the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987), Schedule 4.) The request for dispensation concerns major works ("the major works") carried out to 284 Archway Road Highgate London N6 5AU ("the property.").

2. Section 20ZA relates to consultation requirements and provides as follows:

"(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.
....
(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—
(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b)to obtain estimates for proposed works or agreements,

(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

3. Rule 13 relates to orders for costs and provides:-

(1) The Tribunal may make an order in respect of costs only—
(a)....
(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i)....
(ii)a residential property case, or
(iii)a leasehold case
(c)....
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.

4. The property contains three flats. The Respondents are the tenants of flat B. The Applicant is the tenant of Flat A and he also holds two shares in 284 Archway Road Property Co Ltd, a company that was formed to buy the freehold of the property. The remaining third share is held by Dorrington Residential Ltd who are also the tenants of Flat C. This flat is occupied by the mother of the Applicant.

5. On 21st August 2014 a case management hearing for directions was conducted by Judge Vance. Within the directions issued on that day Judge Vance set out the full details of the parties, the particulars of the leases in the property and gave details of the major works. He also confirmed that the background to this dispute and the complicated evolutions of the legal relationship between the parties was set out in previous directions dated 12th November 2013 and made by Judge Jack in case LON/OOAP/LSC/2013/0715; a section 27 Application that preceded this application.

6. In essence the major works mentioned above included but were not limited to the installation of separate gas and water meter services, replacing existing doors with fire doors, upgrading the electrical wiring and installation and the upgrade of the communal entrance door and various redecoration works.

The hearing

7. The Applicant was represented at the hearing by Mr. Kelly but neither Respondent appeared. Pursuant to Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal decided to proceed in the absence of the Respondents as the Tribunal was satisfied that they had been notified of the hearing and the Tribunal considered that it was in the interests of justice to proceed with the hearing bearing in mind the Applicant was in attendance with his representative Mr Kelly.

8. The Tribunal had before it a bundle of documents prepared by the applicant in the form of two lever arch files containing copies of documentation.

9. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

10. The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether or not service charges will be reasonable or payable.

11. Having heard evidence and submissions from the Applicant, the Respondents being absent from the hearing and having considered all of the documents provided, the Tribunal determines the issue as follows.

12. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

13. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

14. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 by a majority decision (3-2), the Supreme Court considered the dispensation provisions and set out guidelines as to how they should be applied.

15. The court came to the following conclusions:

a. The correct legal test on an application to the Tribunal for dispensation is:

"Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

b. The purpose of the consultation procedure is to ensure leaseholders are protected from paying for inappropriate works or paying more than would be appropriate.

c. In considering applications for dispensation the Tribunal should focus on whether the leaseholders were prejudiced in either respect by the landlord's failure to comply.

d. The Tribunal has the power to grant dispensation on appropriate terms and can impose conditions.

e. The factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

f. The onus is on the leaseholders to establish:

i. what steps they would have taken had the breach not happened and

ii. in what way their rights under (b) above have been prejudiced as a consequence.

16. Accordingly the Tribunal had to consider whether there was any prejudice that may have arisen out of the conduct of the lessor and whether it was reasonable for the Tribunal to grant dispensation following the guidance set out above.

17. The Applicant supplied a great deal of evidence and paperwork in an effort to show that two estimates were obtained where required and submitted to the parties regarding the major works and that steps were taken to show the estimates to the Respondent and to eventually select the lowest estimate. It is the Applicant's case that the Respondents were not prejudiced by the way the major works were procured as they knew about them and were living in the flat for much of the time mentioned in the following paragraph.

18. He produced to us a copy of an email dated 20 July 2011 and addressed to the Respondents in which he says he clearly set out the details of the major works. He did this as the Respondents were proposing at that

time to sell their flat and so the Applicant thought he should summarize the details for any incoming purchaser. The email is a lengthy four page document containing details of works and proposed works and costings. The email also refers to estimates and clearly shows that the likelihood was that figures might go down i.e. if a lower estimate is agreed. This would seem to support the idea that quotes would be obtained and the lowest estimate agreed for the works to be carried out to the property. Finally at the end of the email the Applicant made the point to the Respondents that they should seek independent advice regarding the information required by a purchaser.

19. The Applicant also asserts that because Mr Richards was a director of a Right to Manage company set up to manage the works required at the property he was kept fully informed of the major works, the estimates and the progress of the major works. The Applicant also asserts that at no time did the Respondents raise any dispute regarding the procurement of the major works either as a tenant or as a director. The period in question relating to the major works starts in 2008 and continues to the present. During a part of that time the Right to Manage company was formed and dissolved but that during the period of the existence of the company Mr Richards was a director of it.

20. The only recent submission in the bundle from the Respondents was a letter dated 2 November 2014. Prior to that the Respondents did write to the Tribunal regarding the Case Management hearing mentioned above when they indicated that they did not feel their attendance was necessary at that preliminary hearing. In that previous letter they set out their proposed directions. In the second letter dated 2 November, the Respondents went over the background to the hearing, they considered the documents supplied by the Applicant and then outlined their case. (They also outlined a proposed settlement but at the hearing before the Tribunal the Applicant made it clear he had no interest in the terms of the proposed settlement). Unfortunately the letter mentions enclosures but none were with the copy documents supplied in the bundle and the Applicant says he was not sent copies of the enclosures/exhibits referred to by the Respondents.

21. The Respondents' case is that the Applicant did not give them an opportunity to agree what works needed doing and that the costs of these works would be competitive. They also assert that contrary to what the Applicant says he in fact failed to supply any competitive pricing quotes on which the Respondent could form a view as to what was necessary or priced competitively. The Respondents also say that just because Mr Richards was a director does not mean that the Respondents were not prejudiced. In essence their position is that "simply demonstrating some knowledge that works were being done, by two young and inexperienced leaseholders is highly unsatisfactory in asking for dispensation under section 20ZA."

22. The Tribunal had before them the November letter forming five pages of evidence from the Respondents and two lever arch files of evidence from the Applicant. The Tribunal preferred the evidence of the Applicant as it appeared to show to the Tribunal that there was no prejudice caused to the Respondents. This was because the Tribunal was shown estimates for the major works and was also shown correspondence that appeared to confirm that these details were given to the Respondents. Furthermore there was no evidence before the Tribunal that the Respondents objected to any of the major works when the estimates were issued and circulated. Indeed there was no evidence that as a director of the Right to Manage company that Mr Richards had raised any objection to the major works or to the process by which they were being processed and progressed. In summary the Tribunal could not find any evidence of prejudice and therefore considered that it was reasonable to grant dispensation in this case. The factual burden of identifying some relevant prejudice is on the Respondents. It is the view of the Tribunal that they have not shown a credible case for prejudice. The Respondents have not been able to establish what steps they would have taken had the breach not happened and in what way their rights have been prejudiced as a consequence. In these circumstances the Application must succeed.

Application under Rule 13 and refund of fees

23. The applicant made an application for a refund of the fees that had been paid in respect of the applications/hearing.

24. The Tribunal noted that neither Respondent appeared before them at the hearing and that there was only a very limited amount of paperwork in the bundle that had been submitted by the Respondents who did not attend the oral case management hearing that took place on 21st August 2014. They did write in with suggested directions. In all the circumstances the Tribunal gained the impression that the Respondents were reluctant to engage with the process. As a consequence the Tribunal was of the view that the Respondents had not acted reasonably in connection with the proceedings. Moreover, The Respondents were unsuccessful on the issue in dispute, therefore the Tribunal decided to make an order under Rule 13, limited to a refund of the application fee incurred by the Applicant in the sum of £190.

Name: Prof. Robert M. Abbey **Date:** 08.01.15