

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00ms/cdc/2008/0005

BETWEEN:

KEYSTONE PROPERTY CO LTD APPLICANT

AND

MR P CAMPBELL JAMES
MR L BATCHELOR and MR J FRETTINGHAM
DR S W P AND MRS L ESPIG
MR M COLLIER RESPONDENTS
MR N P MEHTA
MISS M L SUMMERS
MR D INNES and MISS R COLLINS
GUESSENS CO LTD

PREMISES: FLATS 1-9 CANUTE CASTLE CANUTE ROAD
SOUTHAMPTON ("the Property")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR D LINTOTT FRICS

HEARING: 29 February 2008

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines to dispense with the requirement for the Landlord to undergo the consultation procedure set out in Section 20 of the Landlord and Tenant Act 1985 for the following works at the property, namely:-

- 1) To carry out repairs to the roof above Flat 6 to eradicate water ingress causing damage to the hall ceiling. This could include renewal of the surface

to the flat roof over Flat 6 and strengthening of joists as necessary to take loads imposed by the patio to Flat 8.

- 2) to replace broken and slipped slates to the front pitched roof
- 3) to stabilise temporarily the dangerous chimney by erecting scaffolding around the same
- 4) to erect scaffolding to access the above works where necessary.

REASONS

1. The Application

- 1.1 This was an application by the Landlord's managing agents, DMA Chartered Surveyors, under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for the consultation requirements in respect of certain works they intended to carry out at the property to be dispensed with. The application had been received at the Tribunal office on 31 January 2008 and was supported by a witness statement by Mr Tom Hillsdon, Property Manager for DMA.
- 1.2 Following representations made by several lessees in response to the application, DMA modified their application to reduce the scope of the works for which they sought dispensation from the Section 20 requirements.
- 1.3 The scope of the works that the Tribunal was therefore being asked to consider was as follows:-
 - a) To repair leaks to the flat roof over Flat 6 and to renew the surface to the flat roof [over Flat 6] and strengthen joists as necessary
 - b) To replace broken and slipped slates to the front pitched roof
 - c) To repair a chimney at the rear of the property
 - d) To erect scaffolding in order to carry out the above works.

1.4 The Tribunal received letters from the following lessees:-

Mr Batchelor and Mr Frettingham (Flat 2)

Dr Espig (Flat 3)

Mr Collier (Flat 4)

Miss Summers (Flat 7)

Mr Innes (Flat 8)

2. The Tribunal inspected the Property immediately prior to the hearing on 29 February 2008. They were able to gain access to flats 6 and 8 and to the flat roof over flat 6 from which they could also see the front pitched roof and the chimney the subject of the application.

3. The Law

3.1 Section 20ZA of the Act states:-

“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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

4. The Hearing

4.1 This took place at Committee Room 2, Civic Centre, Southampton on 29 February 2008

4.2 Those who attended the hearing were as follows:-

For the landlord, Mr T Hillsdon and Mr J Nouch both from DMA Chartered Surveyors, the Managing Agents and Mr Philip Seeley FRICS FBEng MCIOB the surveyor who had been instructed by DMA to report on the building and the necessary repairs and to put the repairs in hand

And for the lessees, Mr Innes, Mr Batchelor and Mr Campbell James.

5. The Evidence

5.1 Mr Nouch gave a summary of the situation as set out in Mr Hillsdon's witness statement which referred to Mr Seeley's report and recommendations. In the light of the lessees' representations to the Tribunal he was prepared to limit the scope of his application to the most urgent works. These were the stabilisation of the chimney, the resurfacing of the flat roof above Flat 6 to prevent the serious ingress of water into that Flat and the replacement of slates to the front pitched roof.

5.2 Mr Seeley's evidence was as follows:-

5.2.1 He considered that the chimney was in a dangerous condition and could collapse at any moment causing damage or injury to anything or anyone in the street below. Last year when he was able to inspect the chimney at close quarters he thought that it was not in danger of imminent collapse. This view was at variance to that of the builder. He thought however that with the frost and winds of last winter this structure could well now be in a dangerous state. It required stabilisation either by being dismantled and rebuilt or, as a temporary measure, by the erection of scaffolding which would be wrapped around the chimney. The actual cost of this work would only be in the region of £500 but there would be ongoing costs of having the scaffolding in place of about £450 per month. This temporary solution could be put in place whilst the Section 20 procedure is followed through if the Tribunal did not dispense with the Section 20 requirements for the rebuilding of the chimney.

5.2.2 Mr Seeley could not be certain as to what was causing the water ingress into Flat 6. Such problems are notoriously difficult to diagnose without opening up the roof to see what is going on. He considered it necessary to dismantle the

balustrade, remove the slabs and plastic membrane beneath and open up the decking to examine the roof timbers. They may have been damaged due to the water penetration. He was also concerned that these timbers may not be strong enough to support the weight of the roof. If this is the case then work will have to be done to strengthen the roof timbers or alternatively a lighter roof covering would need to be used. Until this investigation had been carried out it was not possible to say what would be needed to be done. He considered that his estimate of £6000 was on the generous side and he thought it should be ample to cover the necessary work. He said that insulation would have to be inserted to comply with current regulations. Under questions from the lessees and the Tribunal he said that he considered that it would be necessary for scaffolding to be erected in order to comply with health and safety regulations and to deal with the transportation of materials. He said, however, that he was more than willing to consult with any contractor suggested by the lessees to see whether they could satisfy him that an alternative method could properly be used which would be cheaper. He was also prepared to accept a contractor other than the one he had lined up to carry out the work provided he could be satisfied as to their competence, that they had the requisite insurance cover and otherwise would comply with legal requirements. He would be able to check this out quickly.

5.2.3 Mr Seeley thought it necessary to replace the slate tiles on the front pitched roof otherwise there was a danger that water would come into the building and track along to affect the Flats below even if the flat roof above Flat 6 had been resurfaced.

5.3 The evidence from the lessees who wrote to the Tribunal and/or attended the hearing, in summary was as follows:-

- a) All of them expressed the view that the problems at Canute Castle had been known about for some time and that a lot of money had been spent thus far but this had not solved the problems.
- b) They all considered that the managing agents had not been effective in dealing with the problem and they were looking to apply for the right to manage the Property through an application to the Tribunal.
- c) They did not consider any of the works the subject of the application to be “emergency works” save for Dr Espig and Miss Summers who considered that the works to the flat roof above Flat 6 were urgent and should be treated as a priority to cure the serious leak into that Flat. Mr Innes said that the current occupiers of Flat 6, who were short-term tenants, could leave on giving one month’s notice but had told him that they were intending to stay for a much longer period, so they obviously did not consider the leak to be so serious as to want to move out.
- d) Alternative contractors had been brought in to look at the roof and had quoted much lower prices to do the work than those suggested by the managing agents. These contractors did not consider scaffolding was necessary to deal with the resurfacing of the flat roof. They would access the roof and transport materials through the building and there was also a dispute as to exactly what needed to be done to carry out the resurfacing work.
- e) None of the leaseholders thought the repairs to the chimney were urgent. If they were not considered to be an “emergency” last summer then they could not see what had changed to make it urgent to do that work now that the better weather was here.

f) Mr Innes agreed that it was necessary to replace the tiles to the pitched roof at the front of the building to ensure that no water penetrated the building at this point.

6. The Determination

6.1 The Tribunal decided that it would be prudent to dispense with the Section 20 consultation requirements in respect of temporary stabilisation work to the chimney. In the light of the surveyor's evidence that he considered that the chimney could now be in a state of imminent collapse and could cause damage to property or injury to persons below it was reasonable to dispense with the Section 20 requirements for the erection of scaffolding to envelope the chimney. It would still be necessary, however, for the Section 20 procedure to be followed for the more permanent work of rebuilding the chimney.

6.2 The Tribunal considered that the water ingress into the hall area of Flat 6 was serious. The hole in the ceiling where the water was coming through into the flat was fairly extensive. Further there was evidence that things were getting worse in that a second area of damp was beginning to show. The Tribunal's view was that it was unreasonable and possibly dangerous for the occupants of Flat 6 to have to put up with this situation for any longer than necessary.

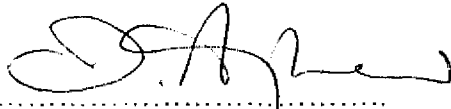
6.3 The Tribunal noted with approval that if a determination were to be made under Section 20ZA Mr Seeley said that he would be prepared to discuss proposals from the lessees' contractors as to how they would carry out the work and whether scaffolding would be necessary. If he was satisfied that the work could be done by any of them cheaper than the contractor he has intended to use whilst complying the health and safety and other regulations then he was prepared to proceed with one of those contractors. If this does not happen then

the lessees' remedy would be to challenge the reasonableness of the costs of the work through an application to the Tribunal under Section 27A of the Act once the work has been carried out and the price known.

- 6.4 Several of the lessees had made the point that the roof repairs could not be considered an "emergency" because they had been known about for some time. The Act does not talk in terms of an "emergency" as being necessary before a determination under Section 20ZA can be made. Such a determination can be made under this section of the Act where it is "reasonable" to do so. The question the Tribunal had to ask itself was whether it was reasonable for these roof repairs to be delayed for five months or so whilst the consultation procedure was gone through whether or not it had been known for months that there was water ingress into Flat 6. The Tribunal decided that it was not reasonable.
- 6.5 The Tribunal did not consider the fact that the lessees were hoping to secure the right to manage through the Tribunal was a determining factor. It was understood that such an application was being opposed by the Landlord on the ground that the commercial element of the building exceeded 25% of the Property. Whether or not that is the case, there was at the date of the hearing of the application under Section 20ZA, no certainty that the lessees would be successful in the application for the right to manage and even if they are this might not occur for some time. The Tribunal therefore decided that this was not a factor that should influence their decision as to whether or not to make a determination on this application under Section 20ZA of the Act.
- 6.6 In all the circumstances therefore the Tribunal considered it reasonable to dispense with the Section 20 consultation procedures under Section 20ZA of the

Act for the works set out under the heading "Determination" above and makes a determination accordingly.

Dated this 4th day of March 2008



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D Agnew LLB LLM
Chairman

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MS/LDC/2008/0005

BETWEEN:

Keystone Property Co Ltd

Applicant

- and -

**Mr P Campbell James
and other Lessees of
Canute Castle, Canute Road, Southampton**

Respondents

The Tribunal refuses permission to appeal its determination of 4th March 2008 for the following reasons:-

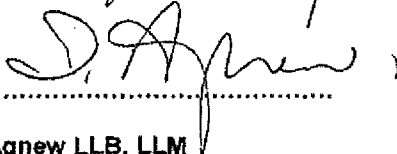
1. On 4th March 2008 the Tribunal office forwarded to the parties the Tribunal's determination of the Applicants' application to dispense with the Section 20 Landlord and Tenant Act 1985 ("the Act") requirements for consultation in respect of certain works proposed to be carried out by the Landlord at Canute Castle, Castle Road, Southampton SO14 3FX. The said application was made under Section 20ZA of the Act.
2. On 25th March 2008 Mr Innes, the lessee of Flat 8 at Canute Castle emailed and wrote to the Tribunal seeking permission to appeal the Tribunal's determination.
3. In short the three grounds upon which Mr Innes sought to appeal paraphrased were:-
 - a) that the Tribunal should not have accepted the landlord's surveyor's assumption that the chimney at the property "could well now be in a dangerous state" when a surveyor could easily have inspected it, access being gained through a window in his flat and across a gulley to the roof area above another flat.
 - b) that the Tribunal should not have accepted that the chimney, if it collapsed, could cause "damage or injury to anything or anyone in the street below" when there is

no public street below but an "unused corner of the block's car park" which could be cordoned off.

and

- c) that the Tribunal was wrong to accept Landlord's surveyor's evidence that in order to repair the roof it was necessary to remove the balustrade to Flat 8's patio. If it was not necessary to remove the balustrade the requirement for scaffolding would be negated.
4. The Tribunal rejects all the above grounds of appeal for the reason that it was entitled to reach the conclusion it did on the evidence before it. There was a risk that the chimney was now in a dangerous condition. There had been a divergence of view between the Landlord's surveyor and builder as to whether the chimney was already dangerous when inspected the previous year and the surveyor, who considered it was not dangerous then believed that with the intervening frosts and other adverse weather conditions of the winter it could well have deteriorated to a dangerous state now. The Tribunal considered that it was unreasonable for that risk to persist any longer than was necessary. There was still a risk of damage or injury whether it was a public roadway below or a private car parking area. With regard to the ground of appeal at 3c above the Tribunal dealt with the possibility that scaffolding might not be necessary in paragraph 6.3 of its determination of 4th March 2008.
 5. Should Mr Innes wish to renew his application for permission to appeal to the Lands Tribunal he must under the Lands Tribunal Rules 1996 (SI 1996/1011) lodge his application with the Lands Tribunal within 28 days of this refusal of permission.

Dated this 7th day of April 2008


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D. Agnew LLB, LLM
Chairman