

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/LDC/2008/0027

Decision of the Leasehold Valuation Tribunal on application under Section 20ZA of the Landlord and Tenant Act 1985 as amended

Applicant Holding & Management (Solitaire) Limited

Respondents

Mr K Sheldrake	Flat 2
Mr Ventris	Flat 5
Mr A C Parker	Flat 17
Mr R Chittenden	Flat 19
Ms Jane Kelly	Flat 22
Mr Blake	Flat 25
Mr R Lau	Flat 27

Re: **Sanderling Court, 10A Boscombe Spa Road, Boscombe, Bournemouth**

Date of Application 6th October 2008
Date of Inspection 10th December 2008
Date of Hearing 10th December 2008

Venue The Royal Bath Hotel, Bournemouth

Appearances for Applicant Ms C Ford, Solitaire Property Management

Appearances for Respondents In person: Mr Parker, Mr Chittenden, Mr Sheldrake, Ms Kelly & Mr Ventris

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
J McAllister FRICS	Valuer Member
K Lyons FRICS	Valuer Member

Date of Tribunal's Decision: 7th January 2009

Decision

- 1) The Applicant is not granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from compliance with the consultation requirements of Section 20 of the Act

Reasons

Introduction

- 2) This was an application made on behalf of the Applicant, Holding & Management (Solitaire) Limited (the Applicant), the landlord of the premises. The Applicant applied for dispensation from compliance with the consultation requirements of Section 20 of the Act in respect of roofing problems at Sanderling Court, 10A Boscombe Spa Road, Boscombe, Bournemouth (the Property)

Inspection.

- 3) The Tribunal inspected the premises on 10th December 2008 in the presence of Ms Ford of the landlord's managing agents Solitaire Property Management (SPM) and, at various stages, Mr Parker, Mr Chittenden, Mr Sheldrake, Ms Kelly and Mr Blake
- 4) The premises comprise a five storey purpose built block of 28 flats built in about 2002. It is constructed of brick and cast stone walls under a (largely) slate tiled roof and turrets but also with metal coverings which were "mock" lead where examined. The plastic gutters and downpipes are also in need of attention. Otherwise the property appears to be in generally good condition for its age and character save as mentioned below.
- 5) The Tribunal inspected externally and also the interiors of Flats 19,22 and 25.
- 6) Flat 19 showed evidence of ingress of water around the window in one bedroom. Flat 22 showed evidence of water ingress in the living room and dome ceilings. Flat 25 showed evidence in the bedroom of water ingress and fallen plaster; in the kitchen/living room; water ingress and damp. In particular there was a hole in the ceiling which, Mr Blake told the Tribunal, resulted from repeated water ingress. As a result that flat was not occupied.
- 7) The exterior showed evidence of water staining particularly around the turrets.

Hearing

- 8) Notice of the application had been served on the Applicant and all the Respondents to the application; those attending are shown above
- 9) in addition to the papers in the case, including those submitted that day by the Applicant, the Tribunal heard submissions and evidence from those attending.
- 10) The history of the matter was not particularly disputed and, so far as material to the issues to be determined, may be summarised as follows.
 - a) The block had been constructed by David Wilson Homes (DWH) in about 2002. Leases of the 28 units were granted for 125 years from 1st February 2002 and NHBC warranties granted.
 - b) By 2003 leaks had started to appear. DWH were involved and appear to have carried out remedial work which had not been successful.
 - c) In June 2005 DWH erected scaffolding to inspect the domed section of the roof with a view to carrying out work.
 - d) The damage to Mr Blake's flat began at least 12 months prior to the hearing.
 - e) In September 2007 SPM obtained a report from Clarke Roofing as to the condition of the roof who recommended action to be taken, including referral to NHBC.
 - f) NHBC were contacted in about November 2007 and the eventual outcome, on 21st August 2008, was that NHBC declined liability on the basis that the apparent remedial cost of the work was less than the minimum claim value.
 - g) (In the meantime, Mr Colinson, Chartered Building Consultant had reported on the outcome of a meeting on site (NHBC were represented) on 17th June 2008. He recorded the defects found and recommended the NHBC be asked to investigate and report back).
 - h) In September 2008 SPM obtained a quotation from Botley Roofing for remedial works totalling £14,350 plus VAT.
 - i) Now, in November 2008, DWH say they cannot assist further.
 - j) The present application was made by SPM on 6th October 2008. A hearing date had been fixed for 11th November, but adjourned at the request of SPM until 10th December.

- 11) Ms Ford told the Tribunal that until 9th December, the matter had been dealt with by Ms Green at SPM. She had that day been dismissed and Ms Ford had then taken over the matter. She accepted the case had been mismanaged until now. They intended to continue pursuing the developer but in any event wanted to get the work done urgently. She said that on the basis of present estimates the work would cost £23,641.34 including VAT and after calling on all present reserve funds there would be an additional £345.42 payable per flat. However, she was not satisfied that the specifications to date encompassed all the work, so intended to appoint a litigation surveyor recommended by Mr Parker to obtain a full specification with a view to having all facts available by the end of January 2009 so that work could commence by mid February. In her experience (she manages 70 blocks totalling about 1,800 units) she felt that was a realistic timescale.
- 12) To do so, however, she finally asked for dispensation from all the consultation requirements. Her application was largely based on the length of time that had elapsed since Flat 25 suffered severe damage but also that the requirements would delay her timescale for starting the work in mid-February. She said that she would nevertheless have informal consultations with the lessees who would be provided with all paperwork. She initially said that nothing would proceed without the agreement of all lessees but finally that it would need a majority of lessees to agree the work and the cost.
- 13) The lessees present were broadly of the same view as each other:
- a) That the problem lay with the original building work so that the cost should be borne by DWH and/or NHBC who should be pursued accordingly. Mr Parker considered the case against DWH was a matter of fact. They accepted that chasing the developer could take a long time.
 - b) They wanted to speed up the work if possible.
 - c) That if they did anyway initially have to contribute under service charge, they should be entitled to the full legal consultation requirements because of the uncertainty as to the extent of the works needed but also the cost.
 - d) Mr Sheldrake thought Solitaire was incompetent and he did not trust the company.

e) Mr Ventris said that the first notice they had about what was happening was hearing from the Tribunal – they had not heard from Solitaire about the application.

14) In reply to the Tribunal Ms Ford said that:

- a) their legal department had not advised on any aspect of the matter;
- b) they had not followed up on DWH's refusal to assist further;
- c) the professional fees of the surveyor would be paid out of reserve funds, but she did not think SPM's legal department would charge. although on further consideration Ms Ford agreed that legal costs incurred would be charged to the service charge account

Consideration

15) Section 20ZA of the Act provides that the Tribunal may dispense with all or any of the consultation requirements of Section 20 of the Act "if satisfied that it is reasonable to dispense with the requirements".

16) It is for the Applicant to satisfy the Tribunal on that point.

17) In coming to its decision on whether it would be reasonable to dispense the Tribunal particularly took into account:

a) There had been a delay of at least 12 months in SPM taking any steps towards doing the work under the service charge provisions of the leases. They had focused solely on pursuing the developer and NHBC. The lessees wanted the matter to be resolved by that means but SPM ought to have considered all options to progress the work and had failed to do so.

b) There are considerable uncertainties as to the extent of the work actually to be done and therefore its cost. The Tribunal was sure that it is important to be as certain as possible that all remedial work required is done to close the matter once and for all, but SPM were not yet in a position to identify the works or their cost. To dispense with any requirements would leave the lessees open to complete uncertainty as to the extent of the works and their cost and it was important that they should be sure of being consulted at all stages provided for by the Act.

c) The Tribunal accepted that Ms Ford was anxious to move the matter forward as quickly as possible. While all would welcome the work being started in mid-February, the Tribunal considered that that was an unrealistic timescale bearing in mind that there was not yet a definitive specification on which to obtain tenders.

d) The Tribunal considered that complying with the statutory requirements was unlikely to materially affect the actual timescale for commencing work.

18) Accordingly the Tribunal decided that it was not reasonable to dispense with any of the requirements provided for in Section 20 of the Act and subordinate legislation.

A handwritten signature in black ink, appearing to read 'M J Greenleaves', with a horizontal line underneath it.

M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor