



Case Number: CHI/18UB/LDC/2010/0029

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

PROPERTY: 41 North Street, Exmouth, Devon, EX8 1JZ

Applicant: C A Church

and

Respondents: Mr and Mrs Rawle (flat 1)
Ms R Legge (flat 2)
Mr McDonald (flat 3)

In The Matter Of

Section 20ZA of the Landlord and Tenant Act 1985

**Landlord's application for the dispensation of all or any of the
consultation requirements contained in Section 20 Landlord and
Tenant Act 1985**

Tribunal

Mr A Cresswell (Chairman)
Mr T E Dickinson BSc FRICS

Date of Hearing: 22 October 2010

Appearances: The Applicant was represented by Mr David Matika. There was no appearance by the Respondents.

DETERMINATION

The Application

1. On 6 September 2010, Mr Matika of Remus Management Limited, acting on behalf of C A Church, made an application to the Leasehold Valuation Tribunal for the determination of an application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to the exterior wall of the property.

Inspection and Description of Property

2. The Tribunal inspected the property on 22 October 2010 at 0930. Present at that time were Mr Matika and Mr Paul Keegan, a surveyor acting on behalf of the Applicant. The property in question consists of a semi-detached 3-storey period listed building arranged as 3 flats. The Tribunal noted that the property was in a state of partial repair and noted scaffolding in place and that a scat coat of render had been applied to the surface of the exterior walls. It was clear that bracing had been applied to various parts of the structure.

Summary Decision

3. This case arises out of the Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985 in respect of works to the exterior wall of the property. Under Section 20ZA of the Landlord and Tenant Act 1985 (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements "if satisfied that it is reasonable to dispense with the requirements." The Tribunal has determined that the landlord has demonstrated that it is reasonable to dispense with most requirements, and for that reason makes a determination dispensing with all of the consultation requirements, save for the requirement to give written notice to each tenant describing, in general terms, the works proposed to be carried out and setting out the amount specified in the estimate as the estimated cost of the proposed works.

Directions

4. Directions were issued on 23 September 2010.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Respondents wishing to contest this application were advised to attend the hearing when they would be given an opportunity to be heard.
6. This determination is made in the light of the documentation submitted in response to those directions and the oral representations received at the hearing. Very sparse documentation accompanied the application and Mr Matika submitted further documentation at the hearing.

The Law

7. The relevant law is set out in sections 18, 19, 20 and 20ZA of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The relevant law we took account of in reaching our decision is set out below:
Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
Section 18 deals with the meaning of "service charge" and "relevant costs"
Section 19 details the limitation of service charges and reasonableness.
Section 20 deals with the limitation of service charges and consultation requirements
20ZA. Consultation requirements: supplementary

(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.

- (5) Regulations 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.

Ownership and Management

9. C A Church is the freeholder. The property is managed for it by Remus Management Ltd (RML).

The Lease

10. The lease before the tribunal is a lease dated 8 November 1975, which was made between Andrew John Dyer, trading as Howard Properties as lessor and William Edward Connett and Frances Ada Connett as lessees. Clause 2 of the lease provides:

The Lessee hereby covenants with the Lessor as follows:

(xviii) To pay to the Lessor a one third share of the expenses from time to time incurred by the Lessor in performing his covenant contained in Clause 3(iii) hereof the said payment to be made on the quarter day following the expenditure thereof by the Lessor

Clause 3. The Lessor hereby covenants with the Lessee as follows:

(iii) Subject to the payment of the sums specified in Clause 2 (xviii) hereof at all times during the said term to keep in tenantable repair structurally and decoratively the roof chimney and outside walls of the Building including the exterior painting of the windows of the demised premises (except such repairs for which the Lessee is liable hereunder) and the main structural timbers of the Building and also all gutters down pipes drains and water pipes and sanitary and water apparatus and electric and gas installations and other

services and common areas which serve both the demised premises and the Reserved parts and not one such Flat only

The Applicant's Case

11. Mr Matika and Mr Keegan explained that RML had originally consulted with the Respondents on 5 July 2008 in relation to a series of works on the property, when the Respondents were unhappy with the likely cost of the works then proposed. Further consultation took place by letter of 14 January 2010, when the Respondent leaseholders chose the cheapest estimate from the contractor AR Developments, but chose to exclude internal decorations.
12. The Tribunal was told that work commenced on 12 April 2010 to the flat roof of Mr Rawle's flat. After work on the main roof, substantial problems came to light when work started on the exterior walls on or about 15 June 2010. It was apparent that there were issues relating to bracing requirements and the state of the render was very poor indeed. The contractor found some render was detached from the substrate and that the brickwork in places was in a poor state and was porous. It became evident that the costs associated with the work required to the external walls would be considerably more than had been estimated. Accordingly, the work was halted with a view to establishing the likely extra costs in rendering and making weather-safe the external walls of this listed building using like-for-like replacements. A scot coat was applied to the walls as a safety measure pending the outcome of these proceedings.
13. The contractor has estimated the extra costs at £4510 plus VAT, being the cheaper of two options, both options involving the application of 3 coats of render, but the cheaper option involving the application of the final 2 coats of finish in a single application.
14. We were told that the leaseholders had been kept fully abreast of the developments which we have detailed. In that respect, we rely upon the oral evidence given to us, as we could not see any written evidence of communication with Ms Legge.

15. We were told that the Respondents agreed with the current application because they share the Applicant's wish to make the property weather-safe before the onset of winter.

The Respondents' Case

16. The Tribunal received no written objections to the application and there was no attendance by the Respondents. A telephone communication was received to the effect that Mr and Mrs Rawle raised no objection to the application.

Consideration and Determination

17. The Tribunal finds it clear from its examination of the property that there is an urgent requirement to complete the external works at the property so as to make it weather-safe. It notes that there has been consultation in relation to the initial works in written form and that the Respondents were fully involved in that earlier consultation, including the choice of contractor and extent of work. It notes also that the Applicant has sought to involve the Respondents orally and (some) by email correspondence in the circumstances of the discovery of the requirement of extra works.
18. Although we were told that problems were evident in mid June 2010 and certainly by 16 August 2010 when Mr Keegan had a discussion with Mr Rawle, we were rather surprised to see that the current application was not received by the Tribunal until 15 September 2010.
19. Mr Matika accepted that, with hindsight, when the likely costs are as high as £4510 plus VAT, some consideration should have been given to obtaining alternative estimates. Whether such a course would have proved prudent is open to some doubt, however, because there remained the unfinished contract of AR Developments. He also accepted that a survey conducted for RML in 2006 was dated by the time of the 2010 works. It also transpired that the estimate for the extra work was simply an oral estimate given by AR Developments. We noted that some render work was included within the

original specification of the works, the subject of the original and subsequent consultations, and would expect clarity as to the nature of the extra works required by the provision of a written estimate so that the Respondent leaseholders could see that they were not paying twice for the same work.

20. The Tribunal could see good reason why the normal consultation requirements should not be undertaken in this case, as there is urgency as to the completion of the works. The Tribunal's own assessment of the works required would suggest that the cost proposed is not unreasonable, but we find that before reaching a definitive view as to whether the cost was reasonable, there would need to be a proper assessment of what was actually proposed and an assurance that there was no element of double charging for works in the original specification. The very purpose of the consultation requirements is to inform and involve residents in the decision-making process which relates to major and continuing expenditure. As a minimum, in the circumstances of this case, we would expect the Applicant to provide the Respondents with details of what work was proposed so that the Respondents are able to correlate new work with works originally planned.
21. The Tribunal determined that the dispensation requested by the applicant be allowed, save for the requirement to give written notice to each tenant describing, in general terms, the works proposed to be carried out and setting out the amount specified in the estimate as the estimated cost of the proposed works.

Andrew Cresswell (Chairman)
A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Date 25 October 2010