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Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1985 – Sections 20ZA and 27A

LON/00BG/LDC/2010/0050

Property : London Wharf, Wharf Place, Hackney
London E2 9BD

Applicant : London Wharf E2 RTM Company Limited

Represented by : None

Respondents : The 36 Long Lessees of the Property as
Listed on the Schedule appended to the
Applications

Represented by : None

Date of Applications: 7 May 2010

Date of Hearing : 3 September 2010

Date of Decision : 3 September 2010

Tribunal : Mr John Hewitt Chairman
Mr Michael Mathews FRICS
Mr David Wills ACIB

Decision

1. The decision of the Tribunal is that:
 - 1.1 It is not necessary to dispense with any of the consultation requirements imposed by s20 of the Act because we are satisfied that those requirements have been complied with with regard to proposed works to carry out external redecorations to the Property as set out in the quotation provided by Extreme Access Limited reference number 20/721 EA in the sum of £32,000 + VAT and the proposed works of re-pointing to the gable end of the Property as set out in the quotation provided by Extreme Access Limited reference number 20/722 EA in the sum of £4,700 + VAT subject to the proviso that the consultation notices dated 8 February and 22 April 2010 were given to each of the Respondents in conformity with the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations), about which there was no evidence put before us; and
 - 1.2 The scope of works mentioned above is a reasonable scope of works;
 - 1.3 It is reasonable for the Applicant to incur the cost of carrying out those works;
 - 1.4 If those works are carried out to a reasonable standard at the costs stated in the estimates above referred to then such costs will have been reasonably incurred and, in due course, will be payable by the Respondents to the Applicant in conformity with the provisions of paragraph 11 of the Fourth Schedule to the long leases.

Background

2. On 7 May 2010 the Applicant made two applications to the Tribunal:
 - 2.1 Pursuant to s20ZA of the Act seeking a dispensation from all or any of the consultation requirements imposed by s20 of the Act and the regulations made thereunder. The application form did not set out the particular requirements to be dispensed with. It

appears that the Applicant has in fact complied with the requirements and we infer from the application what the Applicant was in fact seeking a declaration that it had complied with requirements.

- 2.2 Pursuant to s27A(3) of the Act seeking a determination that:
*“Repair and re-painting of window frames £37,600 inc VAT.
Is this amount considered reasonable? The section 20 process is complete [sic] on the 27 May 2010 and we have not yet received any objections. We would like to make sure however the LVT consider this appropriate.”*

3. A pre-trial review was held on 16 July 2010 and directions were given.
4. A hearing was scheduled for 10:00 Friday 3 September 2010. Neither party was present or represented. A call was made to the Applicant’s managing agents, Chainbow, and the Tribunal was informed that Chainbow did not propose to send a representative to the hearing and that the Applicant was content for the applications to be determined on the basis of the papers submitted to the Tribunal.

The papers before the Tribunal

5. The papers before the Tribunal comprised:
- 5.1 The application forms;
 - 5.2 A blank pro forma draft lease – which we take to be a sample of the long leases of the flats within the Property;
 - 5.3 A sample letter dated 8 February 2010 from Chainbow to lessees notifying an intention to carry out qualifying works;
 - 5.4 A sample letter dated 22 April 2020 from Chainbow to lessees reporting on three estimates received in respect of the proposed works and explaining that it was recommended that Extreme Access be awarded the contract;
 - 5.5 Estimates/quotations as follows:
Professional Painters & Decorators Ltd -
Redecorations £60,000 + VAT;

The Schedule
The Relevant Law
Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

Section 19(1) of the Act provides that 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 provision of services or the carrying out of works, only if the services are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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 of subsequent charges or otherwise.

Section 20ZA(1) of the Act provides that 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.

- (2) In section 20 and this section "qualifying works" means works on a building or any other premises.

(3) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(4-7) ...

NB In *Daejan Investments Limited v Benson & others* [2009] UKUT 233 (LC) the Upper Tribunal (Lands Chamber) reviewed the approach that a leasehold valuation tribunal should adopt when considering an application to dispense with the consultation requirements. The question to determine is whether the failure to comply with the Regulations has caused substantial prejudice to the tenants. In the case of a serious breach the tribunal was entitled to start from the position that it was not for the tenant’s to prove specific lack of prejudice. It was enough that there was a realistic possibility that representations would have influenced the decision arrived at by the landlord.

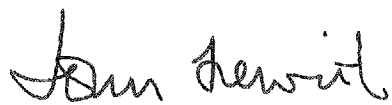
Section 27A of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable.
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for the costs and, if it would, as to

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable.
- (d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

A handwritten signature in cursive script that reads "John Hewitt". The signature is written in black ink on a white background. Below the signature is a horizontal dotted line.

John Hewitt

Chairman

3 September 2010