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**HM COURTS & TRIBUNALS SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S. 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/21UD/LDC/2012/0027
Property:	12 Brittany Road St Leonards on Sea East Sussex TN38 ORD
Applicant:	The Personal Representatives of J.C Wright decd
Respondents:	The 12 lessees of the Property
Dates of Hearing:	28th August 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Surveyor Member)
Date of the Tribunal's Decision:	7th September 2012

BACKGROUND

1. This is an application made by the Applicant pursuant to S.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in S.20 of the Act.
2. The work covered by this application is to carry out roof repairs to the front elevation of the property as more particularly described in the Schedule of Works hereto. ("The Works").
3. By an order dated the 19th January 2012 [sic] the Tribunal gave directions for the Applicant to serve on the Respondents a statement of case with copies of documents in support of their application and if any of the Respondents objected to the application then they should attend the hearing.
4. The Applicant filed a written statement of case and attended the hearing to develop their case.
5. A small number of lessees attended the hearing and made representations.

INSPECTION

6. The property is a four storey block standing in its own grounds forming 12 self contained flats, three on each floor. The property has solid external walls with a part pitched and tiled and part flat roof. The Tribunal was shown the top of the communal staircase on the second floor landing where substantial damage was noted to the ceiling. It was clear that the structural elements of the roof in this area have suffered from water ingress over a prolonged period of time. Evidence of rot and decay were noted and acro props were in situ to support the ceiling in this area. The Tribunal was unable to gain access to flat 10 where it had been told that similar defects exist.

THE LAW

7. S.20 of the Act limits the service charge contribution that lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
8. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with S. 20 of the Act before those works are commenced, or obtain an order from the Tribunal dispensing with the consultation requirements.
9. The consultation requirements are set out in the Regulations and it is not proposed to set these out here. However, they include the need for the landlord to state why they consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.

10. Under S. 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This Section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any 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 those requirements.

11. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order which has to be reasonable taking into account all the circumstances of the case. The Tribunal should also have regard to any prejudice that a lessee might suffer in the event of dispensation being granted.

THE EVIDENCE

12. The relevant evidence submitted to the Tribunal on behalf of the Applicant consisted of the following documents:

- i. The application and statement
- ii. Specimen lease
- iii. Report from BDR surveyors dated 25.05.2012
- iv. Built Environment Surveying Consultants report dated 24.07.2012
- v. Estimate from John Farrington & Co Limited
- vi. Estimate from Packham Construction Limited
- vii. Estimate from Broadwater Building services.
- viii. Copy correspondence and acceptance documentation from BDR.

HEARING

13. Mr Eamonn Moynihan of Remus Management presented the case for the Applicant and he began his evidence by summarising the background to the application. He told the Tribunal that his firm had been commissioned by the freeholders to organise a planned programme of external works to the building. Recently it had been discovered that substantial major repairs were required to certain parts of the roof and the valleys. The ceiling internally over the communal stairwell and the ceiling in Flat 10 had been partially removed exposing serious damage to the roof structure and in particular the beams. It was his view (which was supported by a structural surveyor) that this area required immediate attention to prevent the situation from escalating into an even more serious problem.

14. Mr Moynihan told the Tribunal that representatives from the Environmental Health Department and Building Control of the Hastings District Council had inspected the site together with a structural engineer and as a result of that inspection temporary acro props had been commissioned to provide extra support to the damaged roof area.

15. The Applicant had retained the services of a structural engineer Messrs MacConvilles and their report dated the 24th July 2012 was contained in the hearing bundle. This report confirmed the existence of rot to the area that the Tribunal had inspected with a recommendation that remedial works be carried out.
16. The Tribunal was told that the Applicant had approached three building companies to tender for the works necessary to repair the damage and the Applicant proposed to instruct John Farrington & Co Limited to carry out the Works as they had submitted the lowest estimate.
17. Mr Moynihan contended that in view of the serious nature of the repair work it was necessary to proceed as a matter of urgency and to complete the repairs to this section of the roof before the onset of winter, even though statutory consultation had not taken place. In these circumstances he invited the Tribunal to make an order dispensing with the consultation requirements in relation to the remedial works so that the chosen contractor could start work using the scaffolding, which remained in situ.
18. Mr Quinn of Flat 8, Mr & Mrs Daly of Flat 11 and Mr Watts of Flat 12 attended the hearing and voiced their concerns about the application. Whilst all accepted that external work needed to be carried out urgently, they were concerned that if the application were granted then they would lose their rights to be fully consulted on the major program of works that the Applicant had said would be commissioned imminently. They were also concerned that by supporting the application they would be taken to have accepted the costings, which they felt to be too high.
19. Mr Watts had a number of observations to make on why the work was necessary. It was his feeling that the decay to the timbers had come about because of a prolonged and negligent failure of the Applicant's predecessor to comply with the landlords repairing obligations under his lease. It was his feeling that the historic neglect meant that the cost of the remedial work would now be higher than it would have been had the Applicant's predecessor dealt with his obligations on a timely basis. It was his view that the leaseholders should not be expected to pay any part of the increase in cost.
20. The Tribunal then explained the scope of the application in some detail and emphasised that the granting of the application would not preclude the lessees from challenging the resultant service charges.
21. The Tribunal also clarified with Mr Moynihan that the scope of the Work in the application was limited to the urgent repairs necessary to the roof and valley areas on the second floor communal staircase together with any similar work found necessary to the roof area above Flat 10. Mr Moynihan confirmed that the application did not and would not relate to the major program of works to be carried out to the building at a later date. Full consultation would be carried out in respect of this work.
22. After further discussions between Mr Moynihan and the attending lessees the Tribunal received confirmation from all lessees attending that with a degree of reluctance their objections to the application were withdrawn. In effect they consented to an order being made to dispense with the consultation requirements relating to the urgent works to the roof above the communal staircase on the second floor.

CONSIDERATION

23. In the opinion of the Tribunal the Works do constitute "qualifying works" within the meaning of the Act. As the contribution required from the Respondents pursuant to the service charge provisions in the leases will exceed the threshold of £250, there is an

obligation on the Applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.

24. The evidence put before us establishes: -

- (i) There is structural damage and rot to the roof joists by the Velux roof light on the second floor landing of the building. There is substantial damage to the adjacent plastered ceiling and it is clear that the structural roof members have suffered from water ingress over a prolonged period. This conclusion is confirmed by a very recently obtained structural engineers report. Similar damage may affect the roof timbers above flat 10.
- (ii) Urgent and extensive repair work is necessary to avoid further damage to the building.

25. The Tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the Applicant to maintain the exterior of the property subject to receiving contributions from the Respondents. The Tribunal was thus satisfied that the Applicant is obliged to carry out the Works and the Respondents are obliged to contribute towards the cost of the Works.

26. In the Applicant's statement of case it is contended that the Works are of an urgent nature and the delay that will result if the statutory consultation procedure takes place will result in further damage to the building.

27. The Applicant seeks dispensation on the grounds that further delay is not in the interests of the Respondents and that dispensation is reasonable in all the circumstances of the case.

28. The Tribunal is satisfied that the section of roof of the building shown to them at the inspection is in urgent need of extensive repair work and that further delay is likely to be detrimental to the building and involve additional costs.

29. The Tribunal is disappointed that the Applicant was not able to say if the rot in the timbers is wet rot or dry rot. In the experience of the Tribunal, wet rot can very easily transform into dry rot if the 'right' conditions are present. Dry rot has the ability to spread very quickly if left unchecked and it can be very expensive to treat. Therefore there is no doubt that the Applicant has a duty to the leaseholders to act quickly in this situation and deal with the problem before it gets any worse.

30. The ability of the Applicant to act quickly will be hampered if they are required to go through the full consultation procedure. The Tribunal understands that the first stage of consultation has been implemented with a closing date of the 31st August 2012. The second stage of the exercise, which has not yet begun, will require at least another two months, which means that the closing date for the second stage of the consultation process is likely to be the middle of November 2012 at the earliest. In the opinion of the Tribunal it is not in the best interests of the lessees for the Works to be delayed for this period of time. They should start earlier.

31. During the course of the hearing the Respondents who had initially opposed the application moved to a position of supporting it. They did so because of the assurance that they received from Mr Moynihan that work covered by the application was specifically the urgent repairs to the roof and that there would be no duplication or double counting in respect of this work and the work to be carried out as part of the cyclical maintenance. The lessees also took comfort from the assurance given to them by the Tribunal that the application did not preclude or adversely affect their rights to challenge the cost or quality of the Works.

32. The Tribunal has come to the conclusion that none of the Respondents will suffer prejudice as a result of the failure to complete the consultation process in respect of the emergency roof works and indeed that it is in their interests that the Works are carried out without delay.
33. Accordingly taking all the circumstances into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable for it to grant dispensation from all the requirements of S. 20 (1) of the Act in respect of the Works and it so determines.
34. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with S. 20 of the Act. It does not prevent an application being made by the Respondents under S.27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.
- 35 The Tribunal further makes it clear that the dispensation granted relates solely to the works set out in the schedule hereto together with any similar works that are found necessary in the roof structure above flat 10. The dispensation does not extend to the major program of works which the Tribunal understands are to be carried out by the Applicant at a latter date and for which there is a pending application to the Tribunal under S.27(3) of the Act

Signed _____
Mr. RTA Wilson LLB

Dated 7th September 2012

SCHEDULE OF WORKS

12 Brittany Road - Roof Repairs Specification

Roof area over valley gutter

- Strip the existing roof covering stacking the sound tiles for re-use, cart away all debris
- Lay 5U eaves sheet to eaves
- Felt and batten the roof using rubbershield vapour permeable underlay and 25 x 50 tantalized battens fixed with galvanized boarding.
- Lay code 5 lead to valleys on existing boarding
- Tile the roof using the existing tiles where possible, replace with new where necessary with tiles that match as near as possible. Each tile in eaves and every third course to be fixed with alloy nails.

Gables

- Take down four gables, stacking the sound tiles for re-use. Cart away all debris.
- Re-runt he gable on a slightly coloured sand and cement bed

Roof Valleys

- Take out existing roof valleys, stack the sound tiles for re-use where possible.
- Lay new code 5 lead to valleys and re-tile using any salvaged tiles, replace with new where necessary.

Lead Valley Gutters

- Remove tiles to access valley gutters
- Take the existing lead and clear from site
- Lay new code 6 lead to valley gutters redressing existing flashings making good roof tiling.

Please Note - the falls to all three valleys gutter decks are incorrect and need to be increased to comply with LSA. Also the valley gutter and support timbers to one valley gutters appear to be defective, we therefore recommend a provisional sum of £1,150.00 plus vat for timber repairs and modification

Flat Roof

- Strip the existing flat roof covering and cart away
- Lay a bonded two layer high performance felt roof system with a green cap sheet on all existing decking
- Lay 120mm insulation board to flat roof under the new felt roof
- Re-new existing fascias with new timber fascias to the flat roof area, paint in white, re-fixing existing gutter as required

Please Note - We were unable to hammer test the render from the existing scaffolding and suggest a provisional cost of £1,150.00 plus vat for render repairs subject to hammer test and agreement on site

Scaffolding - The existing scaffolding will need to be extended for the above works to comply with Health and Safety regulations.