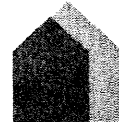




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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND
TENANT ACT 1985 (as amended)**

Case Reference: LON/00AW/LDC/2013/0001

Premises: 28 Hans Place London SW1X 0JY

Applicant: Hephaiston Holding Limited

Representative: Sloane & Cadogan Property Services Ltd

Respondents/leaseholders: Dithyramvos Ltd – A/28HP
Mr Kolakis – Flat 1
Mr Kolakis – Flat 2
Mr Kolakis – Flat 3
Mr Kolakis – Flat 4
Plateaes Property Ltd – Flat 5
Salamis Land Ltd – Flat 6
Palagian Holding (Sepia) – Flat 7
Mrs I Dennis – Flat 8
Hephaiston Holdings Ltd -29HP

Representative: None

Date of hearing: 21st January 2013

**Appearance for
Applicant(s):** None

**Appearance for
Respondent(s):** None

**Leasehold Valuation
Tribunal:** Mrs N Dhanani LLB(Hons)
Mrs J Davies FRICS

Date of decision: 21st January 2013

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the emergency asbestos removal and lift repair works to the Premises.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of emergency roof works to the Premises.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. A hearing was scheduled to take place at 1:30 on the 21 January 2013. The parties did not attend the hearing. The tribunal clerk telephoned the Applicant's representative and was informed that the parties did not intend to attend and so the application was decided by the Tribunal on the papers alone.

Background:

4. The Premises is purpose built block of 11 flats.
5. The Applicant is the landlord. The Applicant's representative claims the lift at the Premises has broken down and is urgent need of repair.

Directions:

6. The Application was received by the Tribunal on the 24 December 2012 and issued Directions in the matter on the same day and the matter was set down for a hearing on the 21 January 2013.

Inspection:

7. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party

The Applicant's Case:

8. The Applicant's representative claims the lift has been out of service since the 5 December 2012 following a burn out of the main motor. They state

that the works are urgent as one of the residents in the building has limited mobility

9. The Applicant's representative states that an initial repair of the lift was scheduled for 10 December 2012 when asbestos was discovered in the insulation board to the lift motor room. The Applicant has arranged for three companies to survey and quote for the asbestos removal, and they state that once the asbestos has been removed they should be able to progress with the lift repair.
10. The Applicant's representative has produced a copy of a letter dated 12 December 2012 which it claims was sent to all the leaseholders. The letter informs the leaseholders that urgent asbestos removal and lift repair works are necessary and they expect the total cost of the works to be in the region of £5000.
11. The Applicant's representative has also produced a copy of the letter of the 20 December 2012 sent to the leaseholders enclosing a copy of the accounts for the year ending 2011 and 2012 and informing them of the three quotes received for the removal of the boards. The letter further informs the leaseholders that all quotations being similar, they have decided to award the contract to Asbestos Survey as they are available sooner and they will remove the boards on the 3 and 4 January 2013. The letter states that once the boards are removed they will arrange for a full survey of the lift to be undertaken by the lift maintenance company, The Elevator Group, and consider the possible options.
12. The Applicant has produced a copy of a sample lease.

The Law:

13. **s. 20** of the 1985 Act provides that:
*"(1) Where this section applies to any qualifying works....., the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal."*
14. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

15. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

16. **s. 20ZA** of the 1985 Act provides:

"(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."

17. Under Section 20ZA(1) of the 1985 Act, "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". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

18. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
19. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The landlord has not complied with the consultation requirements set out in the 2003 Regulations. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both landlord and leaseholders and the health safety or welfare of the occupiers of the Premises. The leaseholders have not made any representations.
20. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works are urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information.
21. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In

the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the proposed asbestos removal and lift repair works. In doing so, it is important to note that the Tribunal does not make any findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN: N Dhanani LLB(Hons)

DATE: 21 January 2013