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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAF/LDC/2013/0069**
Property	:	**Florida Court, 76 Westmoreland Road, Bromley BR2 OTR**
Applicant	:	**Florida Court Ltd.**
Representative	:	**Mr Rex Smith**
Respondents	:	**Certain Lessees of Florida Court**
Representative	:	**Miss Claire De Vos**
Type of Application	:	**For the determination of an application under S.20ZA of the Landlord & Tenant Act 1985.**
Tribunal Members	:	**Judge Goulden** **Mr. H Geddes JP RIBA MRTPI**
Date and venue of Hearing	:	**28 August 2013 and 6 September 2013** **10 Alfred Place, London WC1E 7LR**
Appearances	:	**Mr. R. Smith (Flat 46)** **Mr E Bielli (Flat 6)** **Mr J Simpson (Flat 32)** **Mr and Mrs P Copper (Flat 18)** **Mr D Carpenter (Flat 12)** **Miss C De Vos** **Mrs V De Vos (Flat 23)** **Mrs P Gardner (Flat 34)** **Mrs S Pavey (Flat 14)** **Miss N Pavey (Flat 1)** **Miss T Bartlett**
Date of Decision	:	**3 October 2013.**

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DECISION

Decision of the Tribunal

(1) The Tribunal declines to grant dispensation under S.20ZA of the Landlord & Tenant Act 1985, as amended, from all or part of the consultation requirements in respect of the major works proposed to be undertaken in relation to Florida Court, 76 Westmoreland Road, Bromley, BR2 OTR ("the property").

The application

1. The Applicant seeks dispensation from the requirements to consult leaseholders under S.20 of the Landlord & Tenant Act 1985, as amended, ("the Act"), in relation to works described below. The property was described in the application as *"purpose built flats comprising 48 flats over 3 blocks"*. It is understood that the estate was constructed in the 1970s and the freehold interest was purchased in 1996. In the Applicant's statement it was contended that regular maintenance had been carried out up to 2010. In a further statement it was stated *"there has never been a systematic approach to maintenance other than the regular decorating of the 3 blocks in accordance with the lease but not always to a satisfactory standard"*

2. From the documentation the Applicant seeks dispensation for three distinct pieces of work.

    - Replacement of unsafe balcony balustrades as necessary.
    - Replacement/repair of mono pitched roofs.
    - Removal of dangerous rendering from balcony soffits and fascia.

The issues

3. The only issue to be determined by the Tribunal is whether or not it should agree to the dispensation sought. The Tribunal makes no determination as to whether the costs are reasonable or that works undertaken or to be undertaken have been carried out to a reasonable standard.

4. The application stated *"a section 20 notice was served on 13 February 2013 for a similar scheme of works and a consultation package in relation to this scheme was sent to all residents on 2 May 2013. Notice has not been served for the current scheme of works".*

The hearing

5. The hearing took place on 28 August 2013 and 6 September 2013 and was attended by those persons noted on the front of the decision. The Applicant company was represented by Mr Rex Smith, Chairman and a Director of the Applicant company. Those Respondents who did appear confirmed that Miss Claire De Vos (who initially appeared on behalf of her mother, Mrs Valerie De Vos, the lessee of Flat 23 alone) was representing them all.

6. Further documentation was handed to the Tribunal by both sides on both hearing dates.

7. Oral evidence was given by Mr Smith on behalf of the Applicant company and Miss De Vos on behalf of the dissenting Respondents.

The Evidence:

8. Mr Smith gave evidence for the Applicant.In the Applicant's statement of case prepared by Mr Smith, it was stated, inter alia, *"due to water ingress from balconies into residents' flats below, between 2010 and 2013, three surveys were carried out to address this issue together with more serious work which was needed. Unfortunately, none of the recommendations were actioned, nor was any external redecoration/maintenance undertaken. A further survey was conducted which resulted in a proposal dated 2 May 2013 this included a major redesign of the balcony enclosure and this was considered by a majority of residents to be aesthetically unappealing and unaffordable. The full scope of these proposed works were not due to commence until the Spring of 2014. However, there was an intention to undertake some immediate temporary measures to minimise the known safety and water ingress issues".*

9. Following an Extraordinary General Meeting held on 24 June 2013, a vote of no confidence in the then board had been passed and the entire board resigned. Five shareholders volunteered to become Directors ad were elected. *"The Extraordinary General Meeting also agreed to the pursuance of an alternative proposal put forward by a group of shareholders which reflected a repair and maintenance programme which would reduce the costs by at least 50% compared with the proposal dated 2 May 2013".*

10. Mr. Smith, in the Applicant's statement, said that there were serious health and safety issues to be addressed. The Applicant had issued a notice requesting the residents not to use their balconies until the same could be inspected and repairs implemented, for which a cherry picker would be required. With regard to the mono pitch roofs, again inspection would be required including scaffolding, and an accurate price quotation would not be known until such time as an examination had taken place and the extent of the repair. It was stated "*taking into account these two quotations* (not set out in the statement of case) *and a realistic contingency fund, we require a sanction for a budget of £46,000 to cover this work. ....we have more than sufficient money in our "sinking fund" to cover this expense.....to put into place a full section 20 would mean a long wait, warning notices, barricades and safety fencing, extra expense and preventing residents from making full use of their homes. In addition, when we were advised of these Health and Safety issues, urgency of action was underlined; we are therefore requesting this quicker route*". The application under S20ZA of the Act was lodged on 17 July 2013.

11. In a letter to the lessees dated 18 July 2013 Mr Smith on behalf of the new board stated, inter alia, *"in order to urgently address critical Health and Safety issues....identified but not actioned by the previous Board we have taken the following action. Having received estimates from several professional companies there isn't any doubt that the costs of the required work will exceed £12,000 thereby necessitating a Section 20 process which as you are aware, will take months to be completed. We have therefore requested our management company apply for a dispensation of a Section 20 on the grounds of the critical Health and Safety issues"* which were listed as removal of asbestos from roof and asbestos encapsulation and signage (both of which had been attended to), repairs to dangerous mono pitched roofs; repairs to rotting balcony balustrades and removal, where necessary, of dangerous rendering.

12. In a letter to the lessees dated 29 July 2013 (a draft of which was provided to the Tribunal), it was stated inter alia *"as per our Notice placed on the Notice Boards during the morning of 18 July 2013, we have requested a dispensation to a Section 20 in order to be able to urgently instigate repair work to items which have been highlighted as Health & Safety hazards. Some H & S issues go back as far as the first week of February this year and up until 24 June had not been actioned. We believe that the majority of residents would agree that over 4 months should be sufficient time in which to address these urgent issues...your stated intention to challenge the requested dispensation to a Section 20, if successful, could have the following consequences: semi permanent barriers may have to be erected to some balconies. Safety barriers and signage may have to be erected around the estate in order to ensure that residents and visitors are not in any danger from falling debris from mono pitched roofs etc. Our initial enquiries indicate that the hire of such equipment and notices*

will easily exceed over £1000 (and very possibly much more dependent upon how long the equipment has to remain in place). Bearing in mind the forthcoming winter, it may have to remain for quite a considerable time and we do not believe shareholders will tolerate such a situation".

13. Mr Smith conceded during questioning from the Tribunal that no specification or tender documentation had been professionally prepared and there had been no formal tendering process. He said that the specifications prepared had been based on conversations with builders and his own inspections.

14. Miss De Vos BSc MSc MRICS gave evidence on behalf of the dissenting Respondents. She referred to the Response to the application which she had prepared dated 22 August 2013, and which she amplified in oral evidence.

15. By way of background, Miss De Vos had carried out an inspection of the balconies on the estate, in respect of which no charge had been made. The residents had been notified of the problematic balconies and Miss De Vos' involvement by a letter from the board dated 18 October 2012.

16. At a board meeting on 2 March 2013 and following her 23 February 2013 submission of a competitive fee tender for building consultancy and project management services in respect of remedial fabric repairs to Florida Court, Miss De Vos had been appointed building surveyor/project manager for the major works programme. Formal confirmation of her appointment was sent to her on 7 March 2013.

17. On 11 March 2013, the tenants were sent a letter from the then managing agents confirming Miss De Vos' appointment and that she was due to visit the estate with a structural engineer and asbestos specialist, after which consultation would take place in respect of the proposed balcony works after which application for planning permission and building control consents could be obtained and specifications prepared and put out to tender. This letter stated *"it is our intention and that of the board, that all lessees be properly consulted in accordance with Landlord and Tenant legislation and that in addition regular updates on progress will be provided to you all".*

18. In the Respondents' statement it was contended that full surveys having been undertaken, a full programme of works was planned to start in the spring of 2014 under the management of Vos Consultancy, but that temporary repairs were due to begin following a residents' consultation meeting on 8 June 2013, which in the event did not take place. After a consultation pack, which included rough costings, had been sent to the residents on 2 May 2013, there was a vote of no confidence in the previous board.

19. In the Respondents' statement it was stated *"the major works programme was stopped largely on the basis of cost. This is not the first time that a programme has been stopped on that basis and each time the costs go up. Unfortunately due to the nature of the work required it will be expensive and will require a substantial levy from residents but it is due to the fact that the estate has been neglected for a considerable amount of time and has now fallen into a state of disrepair.....what we fail to understand is why the original programme was stopped when there was no plan B forthcoming. To then apply for dispensation when the problems were already known should not be allowed as if the original programme had continued the temporary repairs would have already been done avoiding the need for this costly and time consuming process."* It was argued that the proposed new plan was not comprehensive and did not take into account ongoing costs for project management, waste disposal, CDM, asbestos removal, planning/building control and contingencies, and would not decrease costs since the costs for the original plan had not been finalised and were expected to decrease as the plan progressed and tenders were obtained.

The Tribunal's Decision

20. The Tribunal accepts that both sides have sincere and understandable concerns about the state of the property, which is clearly deteriorating, and has been doing so for several years.

21. There is nothing to prevent the Applicant company from carrying out work considered necessary without statutory consultation, but must accept that this runs the risk of some lessee or lessees refusing to contribute on the basis that consultation has not been entered into. There is also nothing to prevent the Applicant company from carrying out full consultation as it must do under statute. These options were explained on several occasions to Mr Smith and his supporters, and adjournments were provided in order that they could discuss and consider their position, but without success.

22. However, what the Applicant cannot do, in the view of this Tribunal, is to make an application for emergency dispensation of consultation requirements on the basis of some or all of the opinions of Directors of the company and some lessees and without any expert evidence whatsoever, particularly where their views and the scope of the works proposed have been soundly resisted by Miss De Vos, who is professionally qualified. There was clearly no meeting of minds, despite several adjournments for the opposing sides to discuss. The hearing was acrimonious.

23. The Applicant has the burden of presenting its case to persuade a Tribunal that the application should be granted. It has not done so in this case. Mr Smith said that he had the support of approximately 70%

of the lessees. This may well be correct, but it means that approximately 30% had not given the Applicant support. As was explained to Mr Smith, it only took one lessee to object to the application for it potentially to be subject to a determination by a Tribunal.

24. The Tribunal has had sight of a letter dated 16 July 2013 to the board *"representing 33.3% of the total shareholders"* which stated, inter alia, *"it has been noted that there have been a large number of workmen on site looking at various aspects of the estate but to date there has been no issue of a Section 20 notice to cover the change in the plan of works. This would give the residents the opportunity to make observations and to put contractors forward for consideration as was the case with the previous plan. We have been informed that you do not intend to issue such a notice and that you intend to seek dispensation from the LVT. We the undersigned request that you do not waste any money in pursuing this as we intend to challenge this route of action. To seek dispensation this needs to be an urgent problem that has occurred without notice. As we know this problem has been going on for a significant amount of time and has not changed over the past year other than wear and tear through lack of maintenance"*. A full response was sent in a letter from Mr Smith on behalf of the board on 29 July 2013, from which it appeared that several previous lessees who dissented had requested that their names be removed. It also set out the possible consequences of a challenge to the application for dispensation.

25. It is noted from the extract from the letter to the lessees of 29 July 2013 that some health and safety issues went back as far as the first week of February 2013 and *"over 4 months should be sufficient time in which to address these urgent issues"*. The Tribunal agrees. If statutory consultation had taken place in February 2013, the consultation period would have been completed well before the hearing before the Tribunal, and the Applicant would not have found itself in such a difficult position.

26. Miss De Vos had also written to the then Chairman of the board of Directors, following the suspension of her consultancy firm from working on the project, in a letter dated 15 May 2013 reiterating her *"serious"* concerns as to the various health and safety issues at Florida Court *"to which I, and other professionally qualified and competent members of the project team have drawn your attention"*.

27. In addition, in the Applicant's statement of case it was contended *"within a few days of assuming responsibility we were made aware by our Managing Agents that very serious health and safety issues were still unaddressed"*. It appears that the new board assumed responsibility at the Extraordinary General Meeting on 24 June 2013 when the previous board had resigned, having lost a vote of no confidence. An email within the bundle from Ms T Bartlett Chief

Executive Officer of the then Managing Agents, Beckenham and Bromley Property Management Ltd. to Mr Smith and other Directors set out the health and safety concerns relating to Florida Court. That email was sent on 27 June 2013. If statutory consultation had been started then, the relevant consultation period would have been completed by the second hearing date before the Tribunal. Despite the apparent urgency no statutory consultation has been entered into.

28. It is also noted that Mr Smith has been in correspondence with Environmental Services of London Borough of Bromley. The correspondence provided was dated 31 July and 1 and 12 August 2013. As at the date of the hearing, the Tribunal has not received any indication that enforcement action has been started by the local authority.

29. Miss Vos had accepted that certain works were urgent and was willing to discuss these with the Applicant's representatives, in order to come to some sort of accommodation. However, it did appear to this Tribunal that those representing the Applicant company were not willing to agree anything less than the works which they required to be carried out and for which dispensation from the consultation requirements had been sought, and this was despite none of the Applicant's representatives having any appropriate professional qualifications in order reasonably to have come to that conclusion. At one point during the hearing, Mr Smith advised that the specifications had been made up *"from talking to three builders and what out own eyes tell us. I have a set of eyes and can tell if something is rotten"*. Mr Smith had only obtained one quotation on the basis that the works were urgent, although the Applicant's statement of case stated *"further, non urgent work will be carried out as necessary"*.

30. The Tribunal has taken into consideration the clearly poor state of the property, which can only deteriorate further, to the detriment of all the lessees. Cost has clearly been a major contributing factor. Indeed Mr Smith said he had gone through the report dated 2 May 2013 and was surprised at the price and his opinion at that time was *"you haven't got a prayer of getting that money"* . The Tribunal is of the view that, with nothing done over such a long period, the cost may well escalate.

31. It is hoped that the parties can put aside their obvious difficulties in reaching a sensible solution to their undoubted problems. In the view of this Tribunal this type of extensive work should only be embarked on after responsible cost estimates have been professionally prepared in relation to a sound building specification. If the parties fail to overcome such difficulties, then this might well have an impact on the capital values of each individual flat, to the detriment of all.

32. On the basis of the paucity of persuasive evidence on behalf of the Applicant, the Tribunal declines to grant dispensation of all or any of

the consultation requirements under S.20ZA of the Act in respect of the works as set out in the application.

Name: J Goulden **Date:** 3 October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) 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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

(2) 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 or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, 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) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).