10278

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UN/LDC/2014/0018**
Properties	:	**Flats 1-19 Arcade Chambers, 26-28 High Street, Brentwood, Essex CO14 4AB**
Applicant	:	**Mascolo Family Trust**
Respondents	:	**The long sub-leaseholders for the 19 flats set out in the schedule to the application**
Date of Application	:	**22nd August 2014 (received 27th)**
Type of Application	:	**for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to replace the roof to the front section of the property on condition that the Respondents are not charged with any of the professional and other costs incurred in the making of and incidental to this application.

Reasons

Introduction

2. On 27th August 2014, this application was received for dispensation from the consultation requirements in respect of 'qualifying works' to "*a flat roof and works commencing in March 2014*" for the building in which the properties are situated.

tenants, and the amount of the estimated expenditure, then have to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposals, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.

16. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

The Lease terms

17. The papers include what appear to be copies of the sub-lease of flat 4, the head lease to Flush Properties Ltd., the lease to Vision Express and a copy of a transfer of title from Flush Properties Ltd. to MDB Properties Ltd. dated 21st February 2014. There is no copy of the Land Registry entries which means that the Tribunal does not know whether this application is being made by the correct Applicant. The Applicant's own evidence from Ms. Dougall says that the long leasehold interest in the flats was transferred to MDB Properties Ltd, not the Applicant. It is at least arguable that the advantage of any dispensation will only accrue to the company, individual or body to whom service charges are payable.

18. From these documents, the Tribunal can see that if the sub-lease is typical, there is an obligation on the Respondents to pay "*such percentage as represents a fair and reasonable proportion to be determined from time to time by the Landlord*" of any repairs needed to the structure of the building including the roof.

Conclusions

19. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

20. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances?

21. The Tribunal is far from satisfied about the behaviour of the Applicant and its representatives. Some obvious points are:-

- There was clearly time to undertake a full consultation after the initial section 20 letter of the 24th October 2013 as the works did not start until the following year.
- Ms. Brown refers to an e-mail she received after the 24th October

notice which attached 2 estimates for the repair of the roof for £7,331.00 and £7,960.00 respectively plus VAT in each case. It is presumed that these works were not undertaken in view of the replacement of the roof. If they were, then the cost was probably unreasonable on the face of the evidence produced.

- There is no indication of the nature and extent of the objection from Vision Express of the original section 20 proposals and how they were changed.
- There is clear evidence that the work was finished before the second section 20 initial notice was received by the Respondents.
- The statement in the section 20 notices that a description of the works could be inspected at premises in Birmingham is clearly unreasonable and would have rendered the consultation process invalid in any event.
- To suggest, as they do in their evidence, that no representations were received from the Respondents is disingenuous when things were obviously changing between October 2013 and April 2014.
- The application requests dispensation in respect of works commencing in March 2014 whereas the Tribunal is satisfied that the works were started much earlier than that.

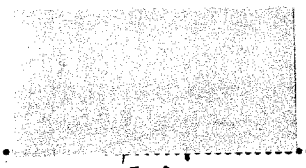
22. On the other hand, this is not an application for the Tribunal to approve the reasonableness of the works or the reasonableness or payability of the service charge demand. If there is any subsequent application for the Tribunal to assess the reasonableness of the charges for these works, it is likely that the members of that Tribunal will want to know whether any works were carried out to this roof in 2010-11 and, if so, what action was taken against the previous contractors for not effecting proper repairs, why only repairs were being suggested in October, why those repairs were subsequently not thought to be enough and what were Vision Express's representations. The landlord would have to provide evidence about any works undertaken to the roof in question in 2010/2011, the survey carried out by Michael Clayton and what analysis was undertaken of the costs/benefits of repairs as opposed to replacement.

23. Ms Brown has referred to prejudice arising from the fact that a cheaper quote might have been obtained if she had been consulted, but three competitive quotations were obtained and the contract was awarded to the lowest. She also says that she would have investigated what other options were available but that point goes to the question of reasonableness of the works rather than dispensation.

24. As far as this application is concerned, the **Daejan** case referred to above now places the responsibility on the shoulders of the long leaseholders to establish a particular prejudice arising from a lack of consultation. Bearing in mind (a) that this application does not include an application to determine the reasonableness of the works or

the cost thereof (b) it seems clear that repairs to the roof had been undertaken unsuccessfully since September 2012, (c) that 3 estimates or quotations were obtained and (d) that the October section 20 notice did actually say that the roof was going to be replaced, the long leaseholders have not established a sufficient prejudice.

25. Bearing in mind all of the above mentioned facts and the way in which the Applicant has behaved, the Tribunal makes it a condition of this dispensation that none of the Respondent long leaseholders pay for any costs of or incidental to this application. It should, of course, be emphasised that if the Mascolo Family Trust is not the receiving landlord in respect of the service charges, then no such costs would be payable by the Respondents in any event.



Bruce Edgington
Regional Judge
15th October 2014