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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**CHI/45UB/LDC/2013/0069**
Property	**2-6 Bridge Road** **East Molesey** **Surrey KT8 9HA**
Applicant	**Palace View (Hampton Court)** **Management Limited**
Respondents	**The Lessees of the Property**
Type of Application	**S20ZA of the Landlord and Tenant Act 1985 as amended ("the Act")**
Tribunal Members	**Judge R.T.A. Wilson (Chair)** **Mr B Simms FRICS (Surveyor Member)**
Date and Venue of Hearing	**Tuesday 7th January 2014** **Holiday Inn Kingston -upon -Thames**
Date of Decision	**7th January 2014**

REASONS FOR DECISION

Background & Procedural Matters

1. The Tribunal had before it an application made by the Applicant management company 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 in relation to the replacement of the drive unit of the lift serving the property.

2. By an order dated the 24th December 2013 the Tribunal gave directions for the application to proceed by way of a hearing. The directions provided that if any of the lessees wished to contest the application they were to write to the Tribunal prior to the hearing date, setting out their grounds for objecting and identifying any prejudice that they might suffer in the event of the application being granted.

3. No written representations were received from any of the Respondents. However Mr Richard Evans a representative of a company owning six out of the eleven flats attended the hearing and confirmed that his company supported the application and wished the work to be carried out as soon as possible.

Inspection

4. The Tribunal inspected the exterior and common parts of the property immediately before the Hearing in the company of representatives from the managing agents and the freeholder. It comprises a purpose built building constructed approximately eight years ago consisting a restaurant on the ground floor, a separate entrance to 11 flats arranged over the first, second and third floors and secure parking in the basement area.

5. The Tribunal's attention was drawn to the lift, which serves the residential accommodation, operating between the basement and third floors. The Tribunal noted sticky plaster tape over the lift controls at each floor containing a warning that the lift was not working.

The Law

6. By Section 20 of the Act and regulations made thereunder, where there are qualifying works or the lessor enters into a qualifying long term agreement, there are limits on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation the limit on recovery is £250 per lessee in respect of qualifying works, and £100 per lessee in each accounting period in respect of long term agreements.

7. As regards qualifying works, the recent High Court decision of *Phillips v Francis* [2012] EWHC 3650 (Ch) has interpreted the financial limit as applying not to each set of works, as had been the previous practice, but as applying to all qualifying works carried out in each service charge contribution period.

However it should be noted that this decision is the subject of an appeal, which has yet to be decided.

8. A lessor may ask a Tribunal for a determination to dispense with all or any of the consultation requirements and the Tribunal may make the determination if it satisfied that it is reasonable to dispense with the requirements (Section 20ZA). The Supreme Court has recently given guidance on how the Tribunal should approach the exercise of this discretion: *Daejan Investments Limited v Benson et al* [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the lessor to rebut it.

The Hearing

12. Mr Danby of Messrs Snellers the managing agents led the case for the Applicant by summarising the background to the application in the following way:

13. On the 5th December 2013 the managing agents had been notified that the lift had broken down. Although the doors opened and closed, the lift would not operate. The managing agents arranged for a lift contractor to investigate the fault. The contractor had attended the property to investigate and on the 9th December diagnosed that the drive unit in the lift had failed and required complete replacement. They had advised that a repair was not possible as the drive unit was a sealed unit containing no serviceable parts. The cost of replacement was estimated at just over £4,500. This meant that the cost per lessee would exceed the threshold for consultation. However consultation would take approximately three months to complete and this time delay would cause considerable inconvenience to the occupiers of the property, which included the elderly and young families.

15. Mr Danby suggested that it simply was not open for the Applicant to delay the fixing of the lift for three months in these circumstances. He told the Tribunal that his firm had contacted a second contractor to quote for the necessary work and their estimate had been for a figure in excess of £8,000. In these circumstances he was satisfied that the first contractor had offered a competitive price and upon negotiation the price had fallen to the figure of just under £4,000 excluding VAT. He had telephoned the contractor who had confirmed that the necessary part was in stock and that the work could be carried out within two weeks of an order being placed.

16. Mr Danby suggested that as none of the lessees contested the application and because no prejudice would come about because of the Applicant's failure to consult, the Tribunal was in a position to grant the application to dispense with consultation in respect of the lift repair.

17. Mr Evans told the Tribunal that his company owned flats 6, 7, 8, 9, 10 & 11 and that he supported the application as it was important to his tenants that the lift be brought back into service as soon as possible.

Discussion

18. The Tribunal first considered the terms of the specimen lease contained in the hearing bundle and in particular the repairing covenants in so far as they relate to the lift. The lease places an obligation on the Applicant to repair and if necessary to replace the lift and the Respondents are obliged to contribute towards the cost by virtue of the service charge provisions of the lease.

19. In the opinion of the Tribunal the lift repair works do constitute "qualifying works" within the meaning of the Act. Furthermore as the contribution required from each Respondent pursuant to the service charge provisions in their 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.

20. The evidence put before the Tribunal establishes that the lift is not working and two contractors have both advised that the drive unit needs to be replaced. On the basis of this evidence the Tribunal is satisfied that the proposed work is necessary and proportionate and that it is not in the best interests of the Respondents for the lift to be out of action for at least three months, which would be the case if statutory consultation is to be carried out.

23. In accordance with *Daejan Investments Limited v Benson et al* [2013] UKSC 14 when considering whether or not to grant dispensation the Tribunal must focus on prejudice. In this case there is no cogent evidence that the Respondents are being asked to pay for inappropriate work, or are to be charged inappropriate amounts. Having carefully considered all the available evidence before it the Tribunal can not identify any prejudice that the Respondents will suffer in the event of dispensation being granted. For this reason it is satisfied that it is reasonable for it to grant dispensation from all the consultation requirements of S.20 (1) of the Act in respect of the lift works and it so determines. This decision was announced at the hearing.

26. 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.

Signed_____
Judge RTA Wilson

Dated 7th January 2014

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.