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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LDC/2015/0060**
Property	:	**68 Compayne Gardens, London NW6 3RY**
Applicant	:	**68 Compayne Gardens Management Co Ltd**
Representative	:	**Akshay Kaul**
Respondents	:	**Clair Constable (Flat 1); Akshay Kaul and Shruti Chopra (Flat 2); Yuan Liu (Flat 3); Sanya Dragacevic (Flat 4); and Malgorzata Grzyb (Flat 5)**
Representative	:	**Only Sanya Dragacevic made representations, and solely on her behalf**
Type of Application	:	**Dispensation from consultation requirements**
Tribunal Members	:	**Judge Adrian Jack**
Venue of Deliberations	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20th July 2015**

DECISION

Decision of the tribunal

(1) The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 grants dispensation from the consultation requirements in respect of the works the subject of the application.

(2) Ms Dragacevic shall pay the applicant-landlord £190.00.

Procedural

1. The applicant landlord applies for a dispensation from the consultation requirements in section 20 of the Landlord and Tenant Act 1985 and the regulations thereunder in respect of the works currently being carried out at the property in respect of the flat roof, the pitched roof, the repair and redecoration of the exterior and interior and electrical works in the common parts.

2. The Tribunal gave directions on 18th May 2015. These provided for a determination on paper of the application unless any parties requested a hearing. In the event, no one did make such a request, so I have determined this matter on paper. The only tenant who opposed the making of the order was Ms Dragacevic of Flat 5.

Determination

3. The property consists of five flats. The applicant company was incorporated in 2002 and took over the management of the property in 2003, about the time when Ms Dragacevic purchased her flat. The company is owned by the tenants and is managed cooperatively. Each tenant is a director and shareholder. Decisions are made at meetings of the tenants.

4. Ms Dragacevic makes extensive criticism of the management of the property since she purchased it. Indeed in 2014 she applied for the appointment of a manager. These criticisms are not relevant to the current application. Insofar as she criticises the cost and extent of the works and the standard of workmanship, these are matters which she can raise in proceedings before the Tribunal under section 27A of the Landlord and Tenant 1985. The current proceedings are concerned solely with whether the consultation requirements of section 20 of the 1985 Act should be dispensed with under section 20ZA.

5. It is common ground that the works which the applicant is doing were discussed at various meetings at which all the tenants attended. At a meeting on 11th October 2014 a list of works was drawn up. The intention was to dovetail the works to the flat roof with some works being carried out by Ms Grzyb in Flat 5 privately to create a roof terrace

for her flat. There was a further meeting on 7th February 2015 where the works were divided into five packages of works. A specification was circulated on 18th February, 11th March and 2nd April 2015. In the meantime on 5th March 2015 there was a further meeting, which approved the letting of the current works. Ms Dragacevic attended all the meetings and was included in the circulation of the specification. Indeed she put forward one firm, Aspect Maintenance Services Ltd, as a possible contractor.

6. It is also common ground that the applicant did not carry out a formal section 20 consultation. Instead it took the view (a view accepted by the other four tenants) that the meetings and discussions provided even greater scope for Ms Dragacevic and the other tenants to participate in the process than if section 20 had been followed.

7. In her witness statement of 2nd July 2015 Ms Dragacevic said that she did not agree the specification of works, not (as one might expect) because they were excessive, but rather because her "own proposals were for the scope of works to be considerably wider." She complains that she was not given adequate time to consider the two quotes obtained for roofing works, whereas she was entitled to 20 days time for consideration. The quotes for the roofing works did not, she suggested, adequately distinguish between the cost of the common parts and the cost attributable solely to Ms Grzyb. She said she was prejudiced and

> "because in all the circumstances of the way this Landlord has been mismanaging the building for such a long time, I do not trust that they are doing it right. Therefore, I need to rely on every one of my legal rights. This is not a technicality. This is not just a small matter of 'missing it by a day or so' – they have totally failed to comply with any S20 requirement – when there was no reason for non-compliance and they had plenty of time (7 months) and plenty of warnings."

8. The Supreme Court in *Daejan Properties Ltd v Benson* [2013] UKSC 14, [2013] 1 WLR 854 at para [65] held:

> "Where a landlord has failed to comply with the requirements [of section 20], there may often be a dispute as to whether, and if so to what extent, the tenants would relevantly suffer if an unconditional dispensation was accorded. (I add the word "relevantly", because the tenants can always contend that they will suffer a disadvantage if a dispensation is accorded; however, as explained above, the only disadvantage of which they could legitimately complain is one which they would not have suffered if the Requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted.)"

9. In the current case, Ms Dragacevic has in my judgment suffered no relevant prejudice. She was able to participate fully in the meetings of all the tenants. True it is that she was unable to convince her fellow tenants to adopt her ideas, but that does not mean there was not adequate consultation. Equally, she was able to put forward a firm which was invited to tender. She fails to say what she would have done differently, if the landlord had given her 20 days to consider the quotes obtained.

10. I have a discretion whether to grant a dispensation under section 20ZA or not. In my judgment, the absence of prejudice to Ms Dragacevic and her participation in the management of this small tenant-owned landlord make this an overwhelming case in favour of granting dispensation. I do not accept that Ms Dragacevic needed "to rely on every one of [her] legal rights." If the works are unsatisfactory or overpriced, she will have a remedy. Section 20 in the current case would have added nothing to the consultation in fact carried out except expense.

11. I have considered whether the dispensation should be granted on terms. However, in my judgment Ms Dragacevic' objection founded on section 20 was misconceived. She had participated in the meetings. Her reliance was section 20 was simply a means of avoiding paying her share of the cost of the works, which all the tenants save she had approved.

12. The applicant-landlord has paid a fee to the Tribunal of £190. The application was necessitated by Ms Dragacevic' refusal to contribute to the cost of works. She has lost. It would be wrong in my judgment for the fee to fall on her fellow tenants. Accordingly, I order that Ms Dragacevic pay the applicant-landlord £190.

Name: Judge Adrian Jack **Date:** 20th July 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 20ZA

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.