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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/11UF/LDC/2016/0013**
Properties	:	**Crossroads House, 155-169 The Parade, Watford, Herts. WD17 1NA**
Applicant	:	**Health and Stress Solutions Ltd.**
Respondent	:	**Paradigm Homes Charitable Housing Assciation Ltd.**
Date of Application	:	**19th April 2016 (rec'd 28th)**
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 roof works to the property to make it watertight.

Reasons

Introduction

2. The Applicant is the landlord of part of the ground floor, the whole of the first, second and third floors and the plant room of the property and the Respondent is the long leaseholder. It is the Applicant's responsibility to maintain the structure including the roof. In or about December 2015, the Respondent issued proceedings against the Applicant in the county court to enforce the terms of the lease because the sub-tenants in flats 16, 17, 18 and 20 had complained of the ingress of water through the roof causing damage.

3. The Respondent has asked the court to order a mandatory injunction to force the Applicant to undertake remedial works and to order damages. By making this application the Applicant has stated that it wants to undertake remedial works. It has supplied the Tribunal with copies of

the court papers, the lease and a roof report and specification dated 30th March 2016 from IKO for what is described as a Goldseal Re-roofing. This document runs to some 23 pages.

4. Amongst the papers supplied is an exchange of e-mails including one from Ravi Bhanot representing the Applicant to Steve Schollar representing the Respondent dated 10th April 2016. It says "*as you are aware we intend to commence works to repair the roof of 155-169 The Parade on 13 April 2016*". It then explains that a consultation is needed and refers to an agreement that the works should commence. It ends with the words "*on the basis that works are due to start on Wednesday and no objection has been raised to the works being conducted so far, unless we hear from you by 5:30pm on Monday 11th April 2016, we will assume you waive your rights to the consultation and statutory notice and are content with the works to commence*".

5. The reply from Mr. Schollar is dated 11th April 2016 and says "*I am able to confirm that we will not seek to enforce our right to s.20 consultation*".

6. It seems clear that the Applicant reconsidered its position and possibly sought legal advice which no doubt will have confirmed that it is not possible to just waive a right to be consulted. Hence this application.

The Law

7. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works to £250 per flat unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. These requirements last well over 2 months.

8. 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. There has been much litigation over the years about the matter to be considered by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

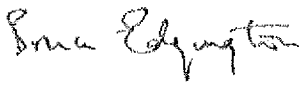
9. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by a lessee or, perhaps put another way, what would they have done in the circumstances?

Conclusion

10. It is self-evident that repair works are required in view of the evidence that there have been leaks to at least 4 flats and the report from IKO. The delay which would have been caused by undertaking the full consultation exercise would clearly have been likely to have caused further substantial internal damage. There is no evidence that the full

consultation process would have resulted in different works. In any event the only long lessee clearly wants, indeed insists, on the works commencing immediately. The Tribunal therefore finds that there will be little or no prejudice to the Respondent from the lack of consultation. Dispensation is therefore granted.

11. If there is any subsequent application by the Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of other contractors at the time of the repairs. It will also want some explanation from the Respondent as to why it was prepared to give authority for the work to commence immediately without getting any competitive quotes – if that indeed is the case.



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Bruce Edgington
Regional Judge
29th April 2016

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.