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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UF/LDC/2017/0081

Property : 10 The Esplanade, Seaford, East Sussex.
BN25 1JL

Applicants : Hattenstone Investments Limited

Representative : Godfrey John & Partners – Managing
Agents

Respondents : Katherine Ann Crook, Pauline Esther
Miller & Sarah Elizabeth Pegg

Representative : N/a

Type of Application : Dispensation of consultation requirements

Tribunal Member(s) : Judge JA Talbot, Mr N I Robinson FRICS

Date of Application : 22 November 2017

Date of Decision : 22 January 2018

DECISION

Background

1. This was a retrospective application under Section 20ZA of the Landlord and Tenant Act made by Mr John on behalf of the landlord, Hattenstone Investments Limited, following Directions given after a related hearing held on 30 October 2017 of an application by the tenants under Section 27A of the 1985 Act as to whether service charges are payable.
2. The tribunal directed that if a S.20ZA application was made the tenants were to give a written response following which the tribunal would decide the application on the papers. The tenants' attention was drawn to the approach the tribunal has to take when considering whether to dispense with all or any of the statutory consultation requirements (*Daejan Investment Limited v Benson et al* [2013] UKSC 14).
3. The tenants' response was received on 12 December 2017. The tribunal has fully considered the written representations of both parties and the relevant evidence given at the related oral hearing.
4. The issue to be decided was whether to dispense with the requirement to comply with the 2nd stage of the S.20 consultation procedure, called a "paragraph (b) statement" in the Regulations but referred to as a Notice of Estimates by the parties (*Service Charges (Consultation Requirements) (England) Regulations 2003, Sch 4, Part 2, SI/2003/1987*).

Factual Background

5. The overall dispute concerns the costs of redecoration and repair works carried out at the property by Tork Kent & Sussex between September 2013 and June 2014.
6. In January 2012, Mr John served on the lessees a Notice of Intention under Section 20 to carry out redecoration works at the property. No copy of the Notice was available, so its form and contents are unknown, but its service was not disputed.
7. Mr John obtained an estimate for the works from Tork Kent & Sussex dated 20 June 2012, but he did not send it to the lessees until April 2013, when Ms Pegg, lessee of Flat 2, concerned about the lack of progress, independently obtained three estimates and sent them to Mr John. An estimate from Andrews was included in the S.27A bundle of papers but not the others, including The Builders Club, the tenants' preferred contractor.
8. There was no written specification of works. It appears the contractors' quotations were based on a visual inspection of the property. The Tork quote was broken down as £5,900 for external "labour, plant & materials", £3,800 for scaffolding and £315 for internal lobby decorations, with a "budget price" of "extra works" to the rear elevation of £500 and £700 to replace rainwater goods. This totals £11,215 plus VAT @ 20% (£13,458). The Andrews quote is for £12,725 with no VAT. It is not itemised and does not mention internal works or replacement rainwater goods.

9. A meeting subsequently took place at the property between Mr John and the lessees in May or June 2013 in order to discuss the way forward with the works. There is some dispute about certain aspects of this meeting. No contemporaneous notes were taken. The overall outcome of the meeting was that Mr John recommended using Tork, and the tenants agreed subject to satisfactory references being obtained.
10. Mr John contends that all the tenants were in agreement with using Tork, that references were forthcoming and satisfactory, and that the tenants wanted the works to proceed as quickly as possible during the summer. The tenants say that no references were received, they had no time to research Tork, and that the urgency of the works was not discussed.
11. In the papers in preparation for the S27A hearing (doc.159) Mr John said that at the hearing the tenants also agreed to dispense with the need to serve the 2nd stage Notice of Estimates. He does not, however, repeat this in the S.20ZA application.
12. The tenants contend that at that time they were unaware of the S.20 2nd stage procedure, that this was not discussed at the meeting, and that they thought they had to make a decision at the meeting. They also believe that their estimates and preferred contractors were not properly considered by Mr John, and whatever they said at the meeting, Mr John had already decided to engage Tork, because had said in a prior telephone conversation that he had the final decision because he was responsible for the work.

The Submissions

13. Mr John contends that as a result of the meeting and in reliance on the agreement with the tenants, he did not regard it as necessary to serve the 2nd stage Notice of Estimates, and there was no good reason to delay matters by at least a further month when all parties were in agreement. If any tenant had objected at that point then he would have proceeded with the 2nd stage consultation, but no such objection was made.
14. The tenants argue that they felt they had no choice but to reach agreement at the meeting. Had they known about the 2nd stage procedure, and had a Notice of Estimates been served immediately afterwards, they would have acquired all relevant information on which to base their response.
15. Their preferred contractor was The Builders Club. In the absence of a written specification of works, the tenants had no information upon which to obtain their own quotes or to compare estimates. Mr John had given no reason for not using the cheapest contractor (Andrews) or the best value for money (The Builders Club).
16. The tenants further contend that due to the poor workmanship of Tork, they now face further costs for redecoration and rectification of problems, caused by Mr John's choice of contractor and lack of advice given to them about the S.20 procedure.

Tribunal's consideration

17. The tribunal carefully considered the written evidence, the oral evidence given at the hearing, and the parties' submissions.
18. It was not possible to resolve all the disputed aspects of the meeting that took place at the property in May or June 2013. Given the passing of time differing recollections are perhaps not surprising. There was in the papers, however, an email from Mrs Crook to Mr John dated 24 June 2013 which includes: "Tork seem fine to use for the decorating – Sarah [Ms Pegg] called a [sic] got a reference – thank you".
19. The overall outcome was that the tenants agreed with Mr John to proceed with the works using Tork, his preferred contractor. Although the tenants say the urgency of the works was not discussed, it would seem sensible that given the delays which had already occurred since Mr John first obtained the Tork estimate, the works should have started before the autumn and in good weather so in the tribunal's view it is more likely than not that this would have come up in conversation.
20. The tribunal accepted that it would have been good practice for Mr John to have obtained a surveyor's report on the condition of the property and a specification of works for the necessary redecorations and repairs. The estimates obtained by the parties were not precisely like for like or itemised, but they were all based on a visual inspection of the property. The tribunal was only supplied with the Andrews alternative quote.
21. Despite this, the tribunal takes the view that the tenants had sufficient opportunity to investigate Tork had they wished to do so, given the service of the initial S.20 Notice in April 2013, and also to seek advice or inform themselves of the statutory consultation requirements. The landlord is not obliged to advise them, so whether or not Mr John raised the question of the 2nd stage Notice of Estimates is not significant. The tenants' ignorance of the procedure does not assist them in this application.
22. As to the point that Mr John told the tenants he could select his own contractor, this is correct to the extent that the consultation procedure simply requires the landlord to have regard to any alternative estimates put forward by tenants. He is not obliged to accept the cheapest quotation. A landlord is entitled to select his preferred contractor with whom he has had previous dealings.
23. Overall, and on the balance of probabilities, the tribunal took the view that it was not unreasonable for Mr John to rely on the agreement between the parties at the meeting to choose Tork, and for him subsequently to instruct them on that basis.
24. Turning to the approach the tribunal has to take under the principles in *Daejan Investment Limited v Benson et al* [2013] UKSC 14), insofar as is relevant to this application, the tribunal should focus on the extent, if any, to which any tenant were prejudiced in either paying for inappropriate

works or paying more than would be appropriate as a result of the failure by the landlord to comply with the consultation regulations, and that no distinction should be drawn between a “serious failing” or “technical, minor or excusable oversight” save in relation to the prejudice it causes.

25. In this case, in the tribunal’s view, the tenants have not established that they have suffered any prejudice in paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to serve the 2nd stage Notice of Estimates.
26. The tenants argue that they are now facing further costs of external redecoration and repair, but the tribunal does not accept that this is because of the landlord’s failure to consult or even the standard of the Tork works. These were completed in June 2014, over 3 years before the tribunal hearing in the S.27A case. In the tribunal’s view and experience, the external condition of a property of this type and exposed location would inevitably deteriorate and reasonably require redecoration and repair after 3 years in any event.
27. There was at the time of the meeting in June 2013 no significant difference in price between the landlord’s and the tenants’ estimates (as supplied to the tribunal) and no disagreement between the parties as to the nature and extent of the works required.
28. Had Tork carried out those works within a reasonable time and to a reasonable standard, in accordance with their estimate, it is most likely that there would not have been a problem. The dispute which later over service charges has not been brought as a result of any failure to consult at the material time, but rather because the tenants are not satisfied with the subsequent delays and poor quality of the work.

Decision

29. The tribunal therefore determines to dispense with the 2nd part of the S.20 consultation requirements in relation to the “paragraph (b) statement” or service of Notice of Estimates because it is satisfied that reasonable to do so in all the circumstances.

Dated: 22 January 2018

Judge J A Talbot
