

9424



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

**Case Reference** : LON/OOBK/LDC/2011/51

**Property** : Emanuel House, 18 Rochester Row,  
London SW1P 1BS

**Applicant** : The Lord Mayor and Citizens of the  
City of Westminster

**Representative** : Mr R. Bhose QC instructed by Judge  
and Priestley LLP, Solicitors

**Respondents** : The lessees of Flats 1-70, Emanuel  
House (excluding Flats 6, 7, 20, 27, 31  
and 47)

Housing Property Law Partnership  
represented the lessees of Flats 2, 4,  
10, 11, 13, 17, 32, 34, 35, 38, 39, 41, 42,  
48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59,  
60, 67 and 69.

Mr Dorian Van De Braam, 62 Emanuel  
House in person.

The lessees of Flats 1, 3, 5, 8, 9, 14, 15,  
16, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29,  
30, 33, 36, 37, 40, 43, 44, 45, 46, 50, 61,  
63, 64, 65, 66 and 70 were not present  
and were not represented.

The lessee of Flat 12 had entered into a  
contractual settlement with the  
applicant prior to the hearing.

**Type of Application** : Section 20ZA(1) Landlord and Tenant  
Act 1985

**Tribunal Members** : Judge Dowell  
Mr T. Sennett MA FCIEH  
Mr A. Ring

**Date and venue of  
Hearing** : 1 October 2013  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 31 October 2013

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## DECISION

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### Decision of the Tribunal

1. The tribunal makes an Order under section 20ZA Landlord and Tenant Act 1985 dispensing with the requirements of Part 2 to Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 so far as is necessary so that the applicant's notice of intention dated 25 July 2008 for certain works ("the works") complies with the statutory requirements, and on the following terms:

(1) So far as concerns the Respondents of flats 2, 4, 10, 11, 13, 17, 32, 34, 35, 38, 39, 41, 42, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67 and 69 who are parties to a settlement agreement dated 29 September 2013 and signed by both parties' solicitors, (a copy of which is annexed hereto), and upon those parties having agreed terms in that Agreement, including that:

- a. the total costs of the works (including fees) for the purposes of their service charge liabilities is £1,804,588; and
- b. the applicant will pay to those respondents a total of £39,000 (including VAT) in legal costs and professional fees

Dispensation is granted on condition that the applicant has paid to these respondents' solicitors the sum of £39,000 no later than 4pm on 28 October 2013.

(2) So far as concerns all other respondents, dispensation is granted unconditionally. The applicant has confirmed to the tribunal that it has not, and will not, include any of the costs incurred by it in this application, or application LON/00BK/LSC/2010/0616, in those respondents' service charge liabilities.

(3) For the benefit of any respondent who has taken no part in this application and/or has not attended this hearing, it is recorded that the applicant has informed the tribunal it would be willing to enter into a settlement agreement with any respondent, who agrees to the terms set out in paragraph (4) below, and under which:

- a. the actual costs of the works (including fees) for the purposes of the individual respondent's service charge liabilities is limited to £1,804,588 ("the total costs"); and that accordingly

- b. the respondent will be liable to pay the applicant the figure stated in the "total" column in the schedule forming part of the settlement agreement, for their flat ("the individual sum").
- (4) The terms referred to in paragraph (3) would be that the individual respondent enters into a written agreement with the applicant within which he or she formally agrees and admits for all purposes (including under s.27A(4A) Landlord and Tenant Act 1985) that he or she is legally liable to pay to the applicant the individual sum, and further agrees and admits that:
  - a. the total costs were reasonably incurred;
  - b. the Works were carried out to a reasonable standard;
  - c. he or she is contractually and statutorily liable to pay the individual sum;
  - d. the individual sum has been lawfully demanded of him or her.
- (5) Any respondent who wishes to consider entering into such a settlement agreement should contact the applicant's solicitor, Rebecca Francis, Judge and Priestley LLP, Justin House, 6 West Street, Bromley, Kent BR1 1JN (tel. no. 020 8290 7377) before 7 January 2014. It is entirely a matter for any respondent if he or she wishes to do so.
- (6) There is permission to any lessee who was not present and not represented at the hearing on 1 October 2013 to apply to the tribunal by 4pm on 29 November 2013 to set aside the Order for dispensation. Any application should be made pursuant to Rule 51 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, is to be in writing and supported by a detailed statement that:
  - a. states whether he or she knew of this hearing and if they did not, what steps they have taken since October 2012 to remain informed of the progress of the application;
  - b. states if he or she knew of the hearing listed for 1 October 2013 why they did not attend; and
  - c. sets out the specific observations they claim they would have made to the applicant in July to August 2008 in response to the notice of intention had it been compliant, and what difference they claim this would or may have made on the scope extent or cost of any part of the works.
- (7) If any application to set-aside is made, further directions will be given by the tribunal, including to provide for the applicant's response, and for the hearing of such an application.
- (8) The applicant is to notify the tribunal whether it wishes to maintain its application for permission to appeal the tribunal's decision dated 22 February 2012 in application LON/00BK/LSC/2010/0616. It is to do so by 4pm on 13 December 2013 or, in the event of any application to set-aside having been made, by 4pm on the day 7 days following the final determination of any such application.

- (9) The applicant's solicitors are to serve this Order on each respondent.

## **Reasons for the Decision of the Tribunal**

### **The application**

2. This is an application under s.20ZA Landlord and Tenant Act 1985 ("the Act") dated 9 June 2011. The application was not heard until 1 October 2013 for the reasons set out in the chronology below. The application was originally made as a precaution pending the outcome of an application made under s.27A(3) of the Act in respect of major works to be carried out at Emanuel House, 18 Rochester Row, London SW1P 1BS ("the property"). The covering letter with the application under s.20ZA from the applicant stated that the application was made out of caution as an alternative to the denial by the council in its reply to the application under s.27A.
3. In our decision of 22 February 2012 we decided that the notice of intention required pursuant to s.20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 was invalid. The applicant lodged an application for permission to appeal against this decision on 2 April 2012 which has been stayed until twenty-eight days after the decision of the tribunal in respect of the s.20ZA application has been issued or until further order.

### **The law**

4. The relevant provisions of the Act are as follows:

#### **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) a residential property tribunal.

#### **Section 20(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.

### Section 20ZA(1)

Where an application is made to a residential property 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.

### Section 20ZA(2)

In s.20 and this section – “qualifying works” means works on a building or any other premises, and “qualifying long term agreement” means an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

## **Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”)**

5. The Consultation Regulations prescribe the detailed consultation requirements that apply under the s.20 scheme of service charge consultation.
6. *Daejan Investments Limited v Benson and Others* [2013] UKSC 14. The Supreme Court has held that the existence or absence of prejudice to lessees due to non-compliance with the Consultation Regulations is the fundamental consideration for the tribunal when considering whether to grant dispensation.

## **Chronology of proceedings before the Leasehold Valuation Tribunal/Residential Property Tribunal**

7. 13.09.10 : Application by the applicant under s.27(A)(3) of the Act.
- 09.06.11 : Application by the applicant under s.20ZA of the Act.
- 14.07.11 : Directions that the application made under s.20ZA be stayed until the decision of the tribunal was issued in respect of the s.27A application or until further order.
- 28, 29 & : Hearing of s27A(3) application.  
30.11.11  
and 01.12.11
- 22.02.12 : Decision of LVT on application under s.27A(3) of the Act.

- 02.04.12 : Application by applicant for permission to appeal the decision of the Leasehold Valuation Tribunal.
- 23.04.12 : Section 20ZA application listed for a PTR on 22 May 2012. Application for permission to appeal stayed until 28 days after the decision of the tribunal in respect of the s.20ZA application.
- 22.05.12 : Directions issued for the future conduct of the application under s.20ZA. Hearing date fixed for 2 days in September 2012. The exact date to be listed on the basis of dates of availability of the parties. The applicant was ordered to send copies of the directions and attached reply form to each of the respondents.
- 13.07.12 : Decision of the LVT that the application for permission to appeal the decision under s.27A(3) of the Act be deferred until 28 days after the tribunal's decision in respect of the application under s.20ZA.
- 06.08.12 : Reasons for decision dated 13 July 2012.
- 11.10.12 : Hearing of s.20ZA application listed for 11 and 12 October 2012 postponed and further directions issued.

Hearing listed for 29 April 2013 and the following 3 days.

- 05.04.13 : Decision postponing the hearing listed for 29 April 2013 at the request of the respondents so that the respondents may adduce evidence as to whether the work could have been carried out at lower cost if the consultation requirements had been complied with.

Hearing listed for 1 October 2013 and the following 4 days.

## **The Hearing**

8. Ranjit Bhose QC appeared for the applicant. Also present were solicitors Rebecca Frances and Mark Oakley of Judge and Priestley, David McAllion, Georgina Wingham and John Haydon City West Homes and Paul Eslinger Chartered Building Services Engineer, the applicant's expert.
9. The only respondent who attended and participated in the proceedings was Mr Dorian Van De Braam of Flat 62. Also present for part of the hearing, in the capacity of an observer, was Mr Thurston of Flat 26. Mr

Van De Braam served a statement dated 29 September 2013 on the applicant at the hearing. The applicant took no objection to the late service of this statement and copies were provided to the tribunal which we added to volume 5 of the trial bundle at pages 407-410.

10. The respondents who were represented by Housing Property Law Partnership had entered into the settlement agreement referred to in paragraph 1(1) above. Neither the solicitors nor the lessees attended as settlement had been reached on 29 September 2013.

## **Service**

11. We were satisfied that this application had been served on all the respondents and also that the directions dated 22 May 2012 had been served on all the respondents. Served with these directions was a reply form which gave each respondent an opportunity to return to the tribunal a form stating whether he or she opposed the landlord's application for dispensation, giving the name and address of any spokesperson or representative and stating if he or she would not be represented whether he or she would send in a statement by 3 July 2012 and would attend the hearing in September 2012. The lessees of Flats 2, 4, 8 and 9, 10, 12, 13, 15, 17, 21, 22, 26, 29, 30, 36, 38, 40, 41, 42, 48, 49, 51, 52, 53, 54, 55, 57, 58, 59, 60 and 69 returned these forms to the tribunal. A number of these lessees have now entered into a settlement agreement with the applicant, the lessee of Flat 12 has entered into a contractual settlement and the lessee of Flat 21 indicated on the form that she did not oppose the landlord's application for dispensation.
12. Unfortunately it appears that the lessees who were not represented, apart from Mr Van De Braam who had engaged with the tribunal throughout, were not sent copies of any of the orders after 22 May 2012 and were not notified of the hearing date fixed for October 2013. It appears to us that those who have not settled and were not represented are the lessees of Flats 1, 3, 5, 8, 9, 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, 28, 33, 36, 37, 40, 43, 44, 45, 46, 50, 61, 63, 64, 65, 66, 68 and 70. After the directions issued on 22 May 2012 a number of lessees served statements in accordance with those directions. Most of those lessees have participated in the settlement agreement save for David Capri (Flat 40), Mr and Mrs Swales (Flat 30), Mrs Forty (Flats 8 and 9) and Mr Thurston (Flat 26).
13. Mr Bhose pointed out that the order of 22 May 2012 placed the onus on any respondent wishing to oppose the application to send a statement to the applicant in response to the applicant's statement of case. It was ordered that with this statement should be sent copies of any essential documents upon which the respondent(s) wished to rely that were not included in the document bundles for the service charge hearing. In compliance with that order a statement of case for the leaseholders represented by solicitors and counsel was served on 3 July 2012. A list

of the leaseholders represented is included in the bundle (3/1028). All of those lessees have now participated in the settlement agreement apart from Mrs E. Forty (Flats 8 and 9) and Mr G. Thurston (Flat 26). Statements were served by three individual lessees not represented, D.R. and N.G. Swales (Flat 30), David Capri (Flat 40) and Mr Van De Braam (Flat 62). At the PTR on 27 July 2012 it is recorded that Mrs King represented herself and a number of other lessees. All those lessees have participated in the settlement agreement except for Mrs Forty (Flats 8 and 9) and Mr Thurston (Flat 26). At the case management conference on 11 October 2012 the respondents who attended were represented by Mr Piers Harrison of counsel. Of those listed only Mrs Forty has not settled. The case was then set to be heard on 29 April 2013 but was postponed in order that expert evidence may be obtained.

14. Mr Bhowse submitted that it was incumbent on the individuals who were not represented to find out what progress had been made in the case and when the hearing was fixed. Mr Thurston who attended for part of the hearing as an observer informed the tribunal that he had found out the hearing date by telephoning the tribunal. Mr Bhowse's solution to the unsatisfactory situation in relation to service of the unrepresented respondents was that the tribunal should hear the case, make a decision and give permission to those unrepresented individuals to make an application to set aside the order in relation to that individual, including the application details of whether they knew of the hearing and if they did not what steps they took to find out about the progress of the application and set out specific observations they claim they would have made in response to the notice of intention had it been compliant and what difference this would or may have made on the scope, extent or cost of any part of the works.

### **Notice of intention and LVT's decision**

15. The notice of intention is dated 25 July 2008. It related to a major works contract and sets out a description of the qualifying works being some thirteen items and reasons for carrying out the qualifying works which were set out in Appendix A to the notice. We found the notice of intention to be invalid in our decision dated 22 February 2012 which also set out our reasons. The applicant's case is that it is reasonable for the tribunal to grant dispensation under s.20ZA(1) of the Act unconditionally.

### **The case of the respondents who have not participated in the settlement agreement and who served statements**

16. Mr Van De Braam's first statement is dated 9 August 2012 and was therefore prepared before the Supreme Court decision in *Daejan v Benson* was known. It does not therefore address the question of dispensation as directed in *Daejan v Benson*. However Mr Van De Braam also relied on a statement dated 29 September 2013 which was



- served and filed at the hearing on 1 October 2013. He sought to distinguish *Daejan v Benson* from the particular facts of Emanuel House. He submitted that the breach of procedure was substantial and even more significantly the major works were not urgent. The many years of delay in finally executing the major works created prejudice for every Emanuel House leaseholder because the difference in cost was considerable. Further the applicant only consulted with the self-appointed major works committee consisting of five people rather than all the lessees in Emanuel House.
17. The statement of Mr and Mrs Swales of Flat 30 which is undated does not address the question of prejudice caused by the invalidity of the notice of intention or indeed the notice of intention at all.
  18. Mr Capri on behalf of his wife and himself in his letter dated 1 August 2012 denied that all the leaseholders were fully consulted under s.20. He alleged that most of the major works that were carried out was due to Barratt Homes's involvement.
  19. No further statement was served by Mr and Mrs Swales or Mr Capri. They therefore did not address prejudice as required by *Daejan v Benson* and as directed in the order dated 22 May 2012.
  20. Mrs Elizabeth Forty who is the lessee of Flats 8 and 9 filed a statement dated 6 November 2012 which stated that the notice of intention was "so vague as to be incomprehensible". However she did not address the question of prejudice although she explained that the knowledge of impending costs for her flats was extremely stressful.

### **The Applicant's case in rebuttal**

21. Terms of agreement had been reached with the twenty-seven lessees who were party to the settlement agreement. In relation to the other respondents the applicant submitted that the tribunal should grant dispensation unconditionally. The applicant confirmed that it has not and will not include any of the costs incurred by it in this application or the application under s.27A LON/00BK/LSC/2010/616, in those respondents' service charge liabilities. The lessee of Flat 12 had entered into a contractual settlement on the assignment of his lease. In addition, Mrs McDonald of Flat 21 had confirmed in her reply subsequent to the directions issued on 22 May 2012 that she did not oppose the landlord's application for dispensation. That left thirty-five lessees who were not present and were not represented at this hearing. Of the six who had filed statements of case none had raised any prejudice and none identified any items which would have led to a reduction of costs. Mr Van De Braam's initial statement dated 9 August 2012 was written before the judgment in *Daejan v Benson* which was issued in March 2013. His subsequent statement of case filed and served at the hearing did not show any prejudice as required by *Daejan v Benson*. Mr Bhose submitted it was fanciful to suggest that if the

notice had been fully compliant that any observations which were raised within the 30-day period could have led to any significant changes in the contract or savings.

22. There was discussion and involvement with the lessees both through the major works committee and with individual lessees. The lessees had access to reports and clearly could have made observations on the notice of intention as it was drawn and indeed some did so.
23. There was no conceivable prejudice to any of the lessees. The proper approach to prejudice is that the evidential onus is on the lessees and then for the landlord to answer it.
24. Mr John Haydon, a qualified electrical engineer, gave evidence. He had been employed by City West Homes Limited as the mechanical and electrical engineer since January 2012. Prior to that he was employed as a director of Ingleton Wood. He confirmed that he first was aware of Emanuel House in 2007 when Ingleton Wood tendered for the appointment as consultant engineer for the proposed repair and maintenance works. When Ingleton Wood were appointed in November 2007 he was the project manager and very closely involved in the repair and maintenance of the building including works to the ventilation system. His witness statement dated 8 October 2012 was included in the bundle. He confirmed that the residents were at liberty at any time to seek information or make observations and that all the relevant documents were available in a library set up in Flat 20 of Emanuel House. He went through the specification of works with the major works committee on 3 July 2008 and leaseholders came to see him and consideration was given to their comments before the final specification was agreed. Ingleton Wood's final report submitted to the applicant is dated 11 February 2010 and identifies the repair and improvements required at Emanuel House. This report took into account all the comments made by leaseholders and was the final solution to the disrepair at Emanuel House. In Mr Haydon's opinion no further observations could have been made which would make him change his advice in any way from the advice the council were given in this report.
25. Mr Paul Eslinger Chartered Building Services Engineer also gave evidence in support of his report dated 30 August 2013. He had considered the report of Mr Barry Gore C.Eng dated 12 July 2012 which had been obtained by those lessees who were represented and had entered into the settlement agreement. He concluded that there was no substance in the four items identified in the report of Mr Gore where it was claimed that savings could have been made. Some of the points of Mr Gore were made with the benefit of hindsight and other items, such as the gas pipework, were required by the terms of the leases.
26. In conclusion Mr Bhowe submitted that there was no cogent case to show prejudice to any of the lessees. The tribunal was required to consider what steps lessees would likely (alternatively may) have taken

had there been compliance with the consultation regulations and what the response of the lessor would likely (alternatively, may reasonably) have been. No prima facie case has been made against Westminster Council by any of the lessees.

## **Discussion**

27. Our first concern in this case was in respect of service of the proceedings on the unrepresented lessees. Counsel for the applicant accepted that the unrepresented lessees had not been notified either by the tribunal or the solicitors acting for the applicant of the hearing. Indeed it appeared that the unrepresented lessees had not been notified of any of the hearings after 22 May 2012. Mrs Forty, the lessee of Flats 8 and 9, Mr and Mrs Swales, the lessees of Flat 30 and Mr Capri the lessee of Flat 40 all submitted statements. Of the other unrepresented lessees Mrs McDonald of Flat 21 had confirmed that she did not oppose the application and Mr Thurston of Flat 26 attended the hearing but told us that he did not wish to participate. We concluded at the start of the hearing that as this application had been made over two years ago and the applicant was fully prepared for the hearing, and there had been two previous postponements of this hearing that it was in the interests of justice that we should proceed, taking into account the overriding objective in Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
28. Rule 32 of the Rules requires that the tribunal must give each party reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing. Regrettably this Rule was not complied with by the tribunal.
29. Rule 34 of the Rules deals with hearings in a party’s absence. If a party fails to attend a hearing the tribunal may proceed with the hearing if the tribunal is satisfied that the party has been notified of the hearing or that reasonable steps had been taken to notify the party of the hearing and considers that it is in the interest of justice to proceed with the hearing. Again, regrettably we cannot be satisfied that the unrepresented parties have been notified of the hearing. In proceeding with the hearing we relied on Rule 8(1) of the Rules “an irregularity resulting from a failure to comply with any provision of these rules does not of itself render void the proceedings or any step taken in the proceedings”. In order to protect the unrepresented lessees we have included in our decision permission for any of those unrepresented lessees to apply to the tribunal under Rule 51 for this decision to be set aside insofar as it relates to the individual lessee who has made the application. Rule 51 allows the tribunal to set aside the decision which disposes of proceedings or part of such a decision and remake the decision or the relevant part of it if the tribunal considers it is in the interests of justice to do so and, inter alia, a document relating to the proceedings was not sent to a party and/or a party or a party’s

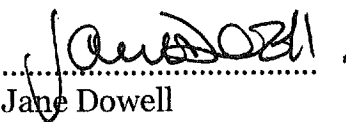
representative was not present at a hearing relating to the proceedings and/or there has been some other procedural irregularity in the proceedings. Rule 51(3) requires that a party applying for a decision or part of a decision to be set aside must make a written application to the tribunal so it is received within twenty-eight days after the date on which the tribunal sent notice of the decision to the party or if later within twenty-eight days after the date on which the tribunal sent notice of the reasons for the decision to the party. In this case the decision and reasons will be sent out together. The Order setting out our decision specifically requires in paragraph 1(9) that the applicant's solicitors are to serve this Order on each respondent.

30. The only representations which were made to us are the statements of Mr Capri, Mr and Mrs Swales, Mr Thurston, Mrs Forty and Mr Van De Braam. These were all made after the pre trial review of May 2012. None of these statements show any prejudice due to the non-compliance with the consultation regulations as identified in the tribunal's decision of 22 February 2012. Mr Van De Braam has made every effort to engage in these proceedings and attended the hearing. He produced a statement at the hearing which the applicant did not object to the tribunal allowing to be filed. However this statement did not address the issue of prejudice as required by the case of *Daejan v Benson*. In fact Mr Van De Braam dismissed this decision of the Supreme Court and tried to distinguish his case from *Daejan v Benson*. We regret we were not persuaded by his arguments.
31. A settlement agreement has been entered into by twenty-seven lessees. The applicant has agreed that the total cost of the works for the purposes of the respondents' service charge liabilities are £1,804,588 being £1,703,609 (the amount the council is content to treat as the final account costs for the works) less the further amounts of £50,421 (for hot water inline pumps) and £3,600 (for fire alarms) to give a total of £1,649,588 together with fees of £155,000 (Ingleton Wood £130,000, Huntley Cartwright £25,000). The council has agreed not to seek to recharge an additional £130,000 for Ingleton Wood's fees or to charge any other management fee for the works. In addition the council agreed to pay the represented respondents' legal costs totalling £39,000 and confirmed that it would not pursue its appeal in the s.27A application against those tenants who had entered into a settlement agreement. The tenants consented to a determination by the tribunal that the consultation requirements for the works be dispensed with under s.20ZA of the Act. The settlement agreement was conditional upon and subject to the agreement of the tribunal making a determination for dispensation under s.20ZA of the Act.
32. Mr Bhoose on behalf of the applicant informed us at the hearing that for the benefit of any respondent who has taken no part in this application and/or has not attended this hearing the applicant is willing to enter into a settlement agreement with any respondent who agrees to the terms set out in paragraph 1(4) of our decision above. This concession by the applicant was essential in our decision to allow the hearing to

proceed notwithstanding non service of the unrepresented respondents. The offer does not apply to the lessee of Flat 12 who has entered into a separate contractual agreement with the applicant.

33. We are guided by the principles set out by the Supreme Court in the case of *Daejan v Benson* the judgment of which was issued in March 2013. In this case Lord Neuberger identified the issues as follows:
- (i) the proper approach to be adopted on an application under s.20ZA(1) of the Act to dispense with compliance with the consultation requirements;
  - (ii) whether the decision on such an application must be binary, or whether the LVT can grant a s.20(1)(b) dispensation on terms;
  - (iii) the approach to be adopted when prejudice is alleged by tenants owing to the landlord's failure to comply with the consultation requirements.
34. The tribunal should focus on the extent if any to which the tenants 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 requirements, no distinction should be drawn between "a serious failure" and a "technical, minor or excusable oversight, save in relation to the prejudice it causes", the financial consequence to the landlord of not granting a dispensation is not a relevant factor, neither is the nature of the landlord.
35. The tribunal has power to grant a dispensation on such terms as it thinks fit, provided that any such terms are appropriate in their nature and effect. Thus the tribunal can conclude that it would be reasonable to grant a dispensation if the landlord accepts appropriate conditions which can include a condition as to costs.
36. The tribunal should identify the prejudice if any that the tenants would suffer if unconditional dispensation was given. It should also identify the extent of that prejudice. The tribunal should view the tenants' arguments in this respect sympathetically, for instance by resolving in their favour any doubt as to whether the works would have cost less if the tenants had been given a proper opportunity to make their points. The more egregious the landlord's failure, the more readily would a tribunal be likely to accept the tenants suffered prejudice. Once the tenants have shown a credible case for prejudice the tribunal should look to the landlord to rebut it. Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the consultation requirements. Tenants have an obligation to identify what they would have said had the consultation requirements been met.
37. Section 20ZA(1) of the Act permits the tribunal to make a determination to dispense with all or any of the consultation requirements *if satisfied that it is reasonable to dispense with the requirements.*

38. Taking into account the guidance which we have set out under the leading case of *Daejan v Benson* we determine it is reasonable to dispense with the requirements unconditionally. No prejudice has been demonstrated.
39. No application was made by any of the respondents under s.20C of the Act. However Mr Bhoose on behalf of the applicant told us that the applicant would not add any of the costs of the application made under s.27A(3) and the s.20ZA application to the service charge.
40. Accordingly we make the order set out at the beginning of this decision.

Name:  Jane Dowell

Date: 31 October 2013

**IN THE MATER OF EMANUEL HOUSE,  
18 ROCHESTER ROW, LONDON SW1P 1BS**

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**SETTLEMENT AGREEMENT**

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**THIS AGREEMENT** is made **BETWEEN** the Lord Mayor and Citizens of the City of Westminster (“the Council”) as the freehold owner of Emmanuel House, 18 Rochester Row, London SW1P 1BS (“the Premises”), and the leaseholder owners of the following flats within the Premises (as further identified in the schedule annexed hereto): 2, 4, 10, 11, 13, 17, 32, 34, 35, 38, 39, 41, 42, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67 and 69 (“the Tenants”).

Whereas:

- (1) The Tenants are respondents to two applications made by the Council to the Leasehold Valuation Tribunal, now the First Tier Tribunal (Property Chamber) (“the Tribunal”), being Applications LON/00BK/LSC/2010/0616, and LON/00BK/LDC/2011/0051, relating to major works carried out to the Premises in or about 2010-2011 (“the Works”)
- (2) In its Decision dated 22 February 2012 in Application LON/00BK/LSC/2010/0616, the Tribunal concluded that the Council’s Notice of Intention dated 25 July 2008 in relation to the Works failed to comply with Paragraph 1(2) of Part 2 to Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”)
- (3) The Council has made Application LON/00BK/LDC/2011/0051 seeking a determination to dispense with the consultation requirements under section 20ZA Landlord and Tenant Act 1985
- (4) The Council has made an application for permission to appeal against the Tribunal’s decision
- (5) The Tenants are willing to consent to a determination for dispensation, on the terms and conditions set out in this agreement

And Upon

- (6) The parties agreeing that the total costs of the Works for the purposes of the respondents’ service charge liabilities are to be £1,804,588 (“the Total Costs”), comprised as follows:
  - a. £1,703,609 (being the amount the Council is content to treat as the final account cost for the Works) less the further amounts of £50,421 (for hot water inline pumps) and £3,600 (for fire alarms), to give a total of £1,649,588, together with
  - b. £155,000 fees, of which £130,000 were the fees of Ingleton Wood and £25,000 the fees of Huntley Cartwright

The Council having further agreed not to seek to recharge an additional £130,000 for Ingleton Wood's fees, or to charge and other management fee for the Works

(7) The Council having agreed to pay the Tenants the following legal costs:

- a. £34,000 being legal costs incurred in responding to Application LON/00BK/LDC/2011/0051 which include, for the avoidance of doubt, all experts' and counsel's fees and VAT thereon
- b. £5,000 inclusive of VAT towards the legal costs incurred in Application LON/00BK/LSC/2010/ 0616, reflecting costs incurred in investigating and arguing the issue of the Notice of Intention's non-compliance with the Regulations

(8) The Council consequently confirming that should it pursue its appeal in Application LON/00BK/LSC/2010/ 0616, it will not do so against the Tenants

IT IS NOW AGREED AS FOLLOWS:

1. Upon the Council having agreed to the matters set out in Recitals (6) and (7), the Tenants consent to a determination by the Tribunal that the consultation requirements for the Works be dispensed with under s.20ZA Landlord and Tenant Act 1985 and upon condition that the Council will pay to the Tenants' solicitors the sum of £39,000 for costs. It will use reasonable endeavours to make this payment by 4pm on 26 October 2013.
2. Each Tenant severally agrees and admits for all purposes (including under s.27A(4A) Landlord and Tenant Act 1985) that they are legally liable to pay to the Council the individual sums set out in the attached schedule, as their contributions for the Works. These sums having been calculated based upon the Total Costs.
3. In particular but without derogation from the generality of Paragraph 2, each Tenant severally agrees and admits for all purposes that:
  - a. the Total Costs were reasonably incurred;
  - b. the Works were carried out to a reasonable standard;
  - c. they are contractually and statutorily liable to pay the individual sums;
  - d. the individual sums have been lawfully demanded of them;

save that no Tenant will be liable to pay the individual sum to the Council until the costs of £39,000 have been paid to their solicitors.

4. This Settlement Agreement is conditional upon and subject to the agreement of the Tribunal making a determination for dispensation under s.20ZA Landlord and Tenant Act 1985, in respect of these Tenants, and based upon the agreed Recitals (6) and (7).

Dated this 27<sup>th</sup> day of September 2013



Signed by..... *Housing & PHLW*

Housing & Property Law Partnership (On behalf of the Tenants)

Signed by..... *J+P LLP*

**JUDGE + PRIESTLEY LLP  
FOR THE COUNCIL**

Emanuel House

Flat Number	Block Cost	Lease %age	Liability	Total	Estimated	Difference
1	£1,804,588.00	1.89	£34,106.71	£34,106.71	£42,095.15	-£7,988.44
2	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
3	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
4	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
5	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
8	£1,804,588.00	2.02	£36,452.68	£36,452.68	£44,990.58	-£8,537.90
9	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
10	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
11	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
12	£1,804,588.00	1.716	£30,966.73	£30,966.73	£38,219.72	-£7,252.99
13	£1,804,588.00	1.941	£35,027.05	£35,027.05	£43,231.05	-£8,204.00
14	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
15	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
16	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
17	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
18	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
19	£1,804,588.00	1.742	£31,435.92	£31,435.92	£38,798.81	-£7,362.89
21	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
22	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
23	£1,804,588.00	1.122	£20,247.48	£20,247.48	£24,989.82	-£4,742.34
24	£1,804,588.00	1.716	£30,966.73	£30,966.73	£38,219.72	-£7,252.99
25	£1,804,588.00	1.941	£35,027.05	£35,027.05	£43,231.05	-£8,204.00
26	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
28	£1,804,588.00	1.12	£20,211.39	£20,211.39	£24,945.27	-£4,733.88
29	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
30	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
32	£1,804,588.00	2.02	£36,452.68	£36,452.68	£44,990.58	-£8,537.90
33	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
34	£1,804,588.00	1.123	£20,265.52	£20,285.52	£25,012.09	-£4,746.57
35	£1,804,588.00	1.123	£20,265.52	£20,285.52	£25,012.09	-£4,746.57
36	£1,804,588.00	1.716	£30,966.73	£30,966.73	£38,219.72	-£7,252.99
37	£1,804,588.00	1.941	£35,027.05	£35,027.05	£43,231.05	-£8,204.00
38	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
39	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
40	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
41	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
42	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
43	£1,804,588.00	1.782	£32,157.76	£32,157.76	£39,689.71	-£7,531.95
44	£1,804,588.00	2.02	£36,452.68	£36,452.68	£44,990.58	-£8,537.90
45	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
46	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
48	£1,804,588.00	1.716	£30,966.73	£30,966.73	£38,219.72	-£7,252.99
49	£1,804,588.00	1.941	£35,027.05	£35,027.05	£43,231.05	-£8,204.00
50	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
51	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
52	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
53	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
54	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
55	£1,804,588.00	1.782	£32,157.76	£32,157.76	£39,689.71	-£7,531.95
56	£1,804,588.00	2.02	£36,452.68	£36,452.68	£44,990.58	-£8,537.90
57	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
58	£1,804,588.00	1.123	£20,285.52	£20,265.52	£25,012.09	-£4,746.57
59	£1,804,588.00	1.123	£20,265.52	£20,265.52	£25,012.09	-£4,746.57
60	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
61	£1,804,588.00	1.914	£34,539.81	£34,539.81	£42,629.69	-£8,089.88
62	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
63	£1,804,588.00	1.518	£27,393.65	£27,393.65	£33,809.75	-£6,416.10
64	£1,804,588.00	1.518	£27,393.65	£27,393.65	£33,809.75	-£6,416.10
65	£1,804,588.00	1.32	£23,820.56	£23,820.56	£29,399.79	-£5,579.23
66	£1,804,588.00	1.65	£29,775.70	£29,775.70	£36,749.73	-£6,974.03
67	£1,804,588.00	1.848	£33,348.79	£33,348.79	£41,159.70	-£7,810.91
68	£1,804,588.00	1.386	£25,011.59	£25,011.59	£30,869.78	-£5,858.19
69	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
70	£1,804,588.00	1.452	£26,202.62	£26,202.62	£32,339.77	-£6,137.15
93			£1,670,218.35	£1,670,218.35	£2,061,415.01	-£391,196.66

£391,196.66