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

Case Reference : **LON/00BK/LDC/2013/0058**

Property : **210 PORTNALL ROAD LONDON
W9 3BJ**

Applicant : **ORYAN WILSON**

Representative : **NONE**

Respondent : **ALL LESSEES AS PER
APPLICATION**

Representative : **n/a**

Type of Application : **For dispensation from the
consultation requirements
required by section 20 of the
Landlord and Tenant Act 1985**

Tribunal Members : **Dr Helen Carr
Mr C. Gowman BSc MCIEH**

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

Date of Decision : **18th September 2013**

DECISION

Decision of the Tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

The Application

2. The freeholder of the premises, Oryan Wilson, applied on 19th June 2013 under section 20ZA for dispensation from the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

Procedure

3. The Tribunal held a pre-trial review of this matter on 26th June 2013 and issued directions on the same date. In those directions it was decided that in view of the urgency of the application the matter should be determined on the basis of written representations and without an oral hearing.
4. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing. None of the parties requested an oral hearing.
5. Following receipt of documentation from the parties, the Tribunal reconsidered its decision, decided that the matter was appropriate for a paper hearing and issued further directions on 15th August 2013. The Tribunal listed the matter for a short oral hearing.

The Hearing

6. The Applicant, Mrs Oryan Wilson, attended the hearing. She was not represented. She was accompanied by her husband who assisted her in presenting the application.
7. Dr Isabel Miller and Ms Denise Ferguson of the Respondents attended the hearing and represented themselves.

Determination

The Evidence

8. The evidence before the Tribunal indicates as follows:
 - a. The Applicant decided to carry out works to the flat roofs and bay roof of the premises which were in some disrepair. She made a service charge demand some time in the summer of 2012 in connection with these works. Ms Ferguson and Dr Miller requested that she carry out the statutory consultation procedures in connection with the proposed works.
 - b. The Applicant provided Ms Ferguson and Dr Miller with three quotations and a notice under s.20. One of the quotations was from Find a Builder, a company owned by the Applicant's son. Ms Ferguson and Dr Miller responded to the consultation by asking that the Applicant contract with Hambro Roofing. Hambro Roofing's estimate was £16,815.74 as compared with Find a Builder's estimate which was £15,180.
 - c. The Applicant did not respond to the request from Ms Ferguson and Dr Miller. She contracted with Find a Builder on the basis that it was sensible to accept the lowest estimate.
 - d. Find a Builder commenced work on 3rd June 2013. When it commenced work on the ground floor extension roof they discovered that the boards and joists were rotten. The contractor offered two options to the Applicant; (a) to take out the existing roof joists and install new ones which would involve ripping out the bedroom ceiling and electrical wiring and then re-installing them. This would mean that the bedroom would be unuseable for about 14 days. The cost would be £4000 (b) to treat, repair and strengthen the existing joists as well as possible without destroying the ceiling. This would not be the optimum solution but would be quicker and cheaper at a cost of £1,200.
 - e. The Applicant chose the latter option.
9. The Applicant did not consult with the Respondents. She informed the Tribunal that the work was urgent, that the weather was very poor and if there was a delay the expense of the work would increase. It was therefore in her view reasonable to instruct the builder to proceed immediately.
10. The Applicant produced extensive photographs showing the need for the additional works and the works being carried out.
11. It is on this basis that the freeholder has made the application for dispensation.

12. Dr Miller and Ms Ferguson object to the application. It should be noted that they do not object to the original works being carried out and indeed paid their contribution promptly.
13. Their argument in connection with the additional works can be summarised as follows:
 - a. The additional works to replace the joists were either included in the original estimate, or if not, then they should have been.
 - b. They were not convinced that the works were necessary, nor that they had been carried out.

The Law

14. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:
15. “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**” (emphasis added).

The Tribunal’s decision.

16. The Tribunal determines to grant the application.

The reasons for the Tribunal’s decision.

17. The Tribunal determines that the additional works were necessary, were urgent and were carried out by the applicant’s contractor. Any delay may well have resulted in additional costs and would certainly have caused great inconvenience to the Applicant.
18. Dr Miller and Ms Ferguson were not able to point to any prejudice that they had suffered by the failure to consult. Their objections were rooted in a dissatisfaction with the freeholder and their concern that the property was not being properly maintained. They could not understand why the freeholder did not discuss the problems with the roof with Ms Ferguson who was in her flat at the time the decision was made to carry out the additional works.

19. Whilst the Tribunal has some concerns about the attitude that the freeholder has taken towards consultation, and in particular that no attempt was made to inform the Respondents of the problems and the decision reached at an early date, the Tribunal considers that in this particular case it is reasonable to grant the dispensation, particularly as it could discern no prejudice to the Respondents.
20. The Tribunal would urge the Applicant to make greater efforts to work with the other lessees and to rebuild the trust that is necessary for the effective management of the premises. In particular the Applicant should ensure that she fully and properly complies with all statutory requirements in connection with the management of the building.

The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.

Signed Judge Carr

Dated 18th September 2013