

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

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| Case Number: | CHI/21UG/LDC/2006/00 |
| Property: | Tobago West Parade Bexhill-on-Sea TN39 3YB |
| Applicant: | West Parade Estates Limited |
| Respondents: | The Leaseholders of Flats 1 to 29 of the Property |
| Date of Application: | 28 th December 2006 |
| Date of Hearing: | 30 th January 2007 |
| Venue: | Hornbye Park Sports Complex, Hastings |
| Appearances: | |
| For the Applicant: | Miss Hall Counsel for the Applicants Stuart Keen Surveyor for the Applicants Miss McDougal, Structural Engineer for the Applicants Mr Daniel & Mrs Moss Directors of the Applicants Mrs Denman, Secretary of the Applicants |
| Tribunal Members: | Mr Robert Wilson LLB Chairman Mr Neil Cleverton FRICS Valuer Miss Jayam Dalal Lay Member |
| Date of Decision: | 12 th February 2007 |

THE TRIBUNAL'S DECISION

1. BACKGROUND

- 1.1 This is an application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in Section 20 of the Act. The lessees in the subject property are joined as Respondents to the application.
- 1.2 The work covered by this application is the installation of remedial lintels to support the existing concrete balcony slabs in relation to the fourteen balcony flats at the subject property "The Works"

2. INSPECTION

- 2.1 The Tribunal inspected the subject property on the 30th January 2007 prior to the hearing. It is a substantial block of flats situated close to the sea front at Bexhill-on-Sea. There are 29 flats comprising of 7 three bed roomed flats, 21 two bed roomed flats and one penthouse. The property was built in the 1970s and is constructed of cavity brick and block walls under a flat roof. Out of the total of 29 flats 14 flats have balconies all of which formed the subject of this Application.
- 2.2 The Tribunal was shown the interior of Flat 23 on the fifth floor which was said to be representative of the problems which faced all 14 balcony flats. The Tribunal was shown the balcony where the concrete elements had been blasted back to reveal the balcony supports. The Tribunal was shown a diagonal crack to one of the supports which appeared to be about 7mm wide. The balcony appeared to be cast as a single slab, cantilevered each side and supported at the ends by two tooth bearings. The Tribunal was told that the bearings were formed by casting the concrete against a recessed brick. Unfortunately the construction was such that the balcony was not adequately supported at one end. This was aggravated by the fact that there was no lintel provided over the door onto the balcony. Drawings were provided by the structural engineer which helped clarify the situation.

3. LAW

- 3.1 Section 20 of the Act limits the contribution that Lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
- 3.2 Section 20ZA (2) of the Act defines "qualifying works" as works on a building or any other premises. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then consultation in accordance with Section 20 of the Act must take place before those works commence.

3.3 The consultation requirements are set out in the Regulations and it is not proposed to set these out here.

3.4 Under section 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.

3.5 The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements?

4. HEARING

4.1 The hearing took place at the Horntye Park Sports Complex, Bohemia Road, Hastings on 30th January 2007.

5. THE EVIDENCE PRESENTED AT THE HEARING

5.1 Miss Hall, Counsel for the Applicants, stated that a major work contract to the exterior of the property was entered into in September 2006. The work included concrete repairs. The normal consultation procedure had been complied with in relation to this work and work was currently in progress.

5.2 During the course of this work the paintwork covering all concrete elements was blasted off back to the concrete surfaces on the underside of each balcony. This revealed a diagonal crack of about 7mm wide affecting the support of each balcony. The consulting engineer was requested to carry out investigations. From this it became apparent that the balcony slabs have a design defect which in certain circumstances could prove catastrophic. The investigations revealed evidence of one support failing with similar detail existing in all 14 balcony flats.

5.3 Miss Hall referred the Tribunal to the repairing covenants in the various leases and she contended that the balconies formed part of the structure of the building and thus it fell to the freeholder to repair in accordance with its repairing obligations. As a consequence Miss Hall contended that the remedial work came within the definition of qualifying works as set out in Section 20ZA of the Act.

5.4 Miss Hall continued by stating that the supervising surveyors from Messrs Stuart Keen Associates had been instructed to prepare a selection of proposals for the appropriate remedial work. The appropriate remedial work had been identified and costed and it was now proposed to commence work as soon as possible provided that the Tribunal was prepared to dispense with consultation.

- 5.5 Miss Hall contended that even though formal consultation had not taken place all the lessees had been regularly informed. So good was the communication that all the lessees had now signed letters confirming their consent to the work and every lessee had paid the additional service charge associated with the remedial work.
- 5.6 Miss Hall then called Stuart Keen to give his evidence. Mr Keen confirmed that in his opinion the balconies formed part of the structure of the building and were therefore the responsibility of the freeholders to repair. Secondly he confirmed that in his professional opinion the defects disclosed could result in a catastrophic failure over time. It was therefore not possible to ignore the defect and remedial work did have to be carried out. A range of options had been considered and three were selected for budget purposes. The solution adopted was the cheapest of the three and in his opinion the solution would work.
- 5.7 He also confirmed that if the full consultation procedure were to be carried out the delay of some three months would add considerably to the overall cost. In addition he had no reason to believe that the full consultation procedure would result in any savings to the client. Indeed the reverse would be the case as effectively the freeholders would have to pay the existing contractors to do nothing, whilst still incurring scaffolding costs whilst the consultation took place. Mr Keen confirmed that the original contract price for the Works was a little over £195,000 plus vat. The additional costs of the remedial works would be in the region of £69,000 plus vat.
- 5.8 Mr Keen confirmed that the additional work would be carried out by the same contractors as were responsible for the major contract namely Gunite (Eastern) Limited. Gunites were originally chosen as a result of competitive tendering and it was confirmed that they had provided the cheapest estimate. In addition they had specialist knowledge of concrete repairs. Mr Keen considered that their quotation for the additional work was competitive and he had no reason to believe that an alternative contractor would be able to do the job significantly cheaper. Furthermore Mr Keen felt that to consider a different contractor halfway through a contract could create potential contractual problems at a later stage.
- 5.9 Mr Keen concluded his evidence by confirming that in his opinion there was no option other than to provide the additional support and failure to do so would be exposing users to an unacceptable level of risk.

6. CONSIDERATION

- 6.1 In the opinion of the Tribunal the Works do constitute, "qualifying" works within the meaning of the Act. As the contribution required from each of the Respondents pursuant to the service charge provisions of their leases will exceed the threshold of £250 there is an obligation by the Applicant under Regulation 6 to consult the Respondents in accordance with the procedures set out in the Regulations.
- 6.2 In our view the evidence put before us establishes :-
- (i) There is no option other than to carry out the additional work as failure to do so would expose users to an unacceptable level of risk.

- (ii) The additional work has only come to light during the course of the major work program and the freeholders could not have reasonably known of the defects any earlier.
- (iii) The leaseholders have all been informed of the extra cost. No leaseholder has objected and indeed all leaseholders have already paid for their proportion of the additional cost.

6.3 In the opinion of the Tribunal the current consultation legislation was enacted for a purpose, namely to grant greater involvement in the tender process to those who will ultimately be paying the bill. The consultation procedure is intended to provide leaseholders with more information than was previously the case, and a greater opportunity to make their views known. These rights should not be taken away unless there are compelling reasons to do so.

6.4 In this case the Tribunal can identify compelling reasons to do so. It is satisfied that the delay that would be caused if the full consultation procedure were to be deployed would result in the costs of the work increasing to the detriment of each leaseholder. It clearly makes sense for the existing contractor to carry out the additional work as it has the expertise to do so and has the infrastructure in place to carry out the additional work without delay.

7. The Decision

7.1.1 Having considered all the evidence put forth by the Applicants the Tribunal determines that this is a case where it is reasonable to dispense with all of the consultation requirements in relation to the Works. The application is therefore granted.

CHAIRMAN.....
Signed Mr Robert Wilson LL.B

12th February 2007
Date.....