

**CHI/29UN/LDC/2007/0010**

**DECISION OF THE SOUTHERN LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND  
TENANT ACT 1985: SECTION 20ZA, AS AMENDED**

Address: St Mildreds Flats, 7 Ethelbert Terrace,  
Cliftonville, Margate, CT9 1RX

Applicant: Mr Terence Foster

Respondents: (1) Ms Christine Gray  
(2) Mr M MacGorgarry

Application: 7 March 2007

Inspection: N/A

Hearing: N/A

Appearances: N/A

Members of the Tribunal: Mr I Mohabir LLB (Hons)  
Mr R Athow FRICS MRIPM

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/29UN/LDC/2007/0010**

**IN THE MATTER OF SECTION 20ZA OF THE LANDLORD AND TENANT  
ACT 1985**

**AND IN THE MATTER OF ST MILDRED'S FLATS, 7 ETHELBERT  
TERRACE, CLIFTONVILLE, KENT, CT9 1RX**

**BETWEEN:**

**MR TERENCE FOSTER**

**Applicant**

**-and-**

**(1) Ms CHRISTINE GRAY  
(2) MR H MacCORGARY**

**Respondents**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application by the Applicant pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements imposed by s.20 of the Act. The qualifying works in respect of which this application is made have already been set out in this Tribunal's preliminary decision dated 30 January 2007 and it does not propose to repeat these here. Both this decision and the Tribunal's earlier preliminary decision should, therefore, be read together. It is a matter of common ground that the

qualifying works fall within the meaning of s.20 of the Act and that the Applicant was required to consult with the Respondents in accordance with the statutory requirements of that section and had not done so.

### **Decision**

2. The Tribunal's determination took place on 30 July 2007 and was based entirely on the documentary evidence before it. There was no hearing and the parties did not attend, as they were content for the application to be dealt with as a "paper determination". For the avoidance of doubt, the Tribunal did not carry out a further inspection of the subject property.
  
3. The Applicant's statement in support of this application is dated 7 March 2007. In that statement, he contends primarily that he did not consult with the Respondents because, as a lay person, he had not knowledge of the statutory requirement imposed by s.20 to do so. The Applicant further contends that, at the relevant time, the other two leaseholders had requested that the works be carried out because the building had become run down. Moreover, they were satisfied that the estimated cost and standard of work carried out were reasonable. Whilst the Applicant accepts that he did not obtain a formal estimate for the cost of the works, nevertheless, he had negotiated the labour costs with the contractor, Mr Batchelor, who had carried out the work. He submitted, in terms, that the Respondents had not been in costs by the failure to consult.

4. The basis on which the Respondents oppose this application are set out in their statement dated 15 May 2007. This is on 3 main grounds:
  - (a) that the Applicant's ignorance of s.20 provide him with no defence.
  - (b) that there was no urgency for the work.
  - (c) that the Respondents had offered to pay the service charge contribution provided that the necessary remedial work was carried out to a proper standard and that this proposal had been refused by the Applicant.
  
5. The test to be applied in s.20ZA of the Act when considering an application such as this whether the Tribunal is "*satisfied that it is reasonable to dispense with the requirements*". In deciding if the test is met, the Tribunal must have regard to all of the relevant the circumstances in the case.
  
6. Having regard to all the circumstances, the Tribunal grants this application for the following reasons:
  - (a) the Applicant is a lay landlord and the Tribunal accepted that he was not aware of his statutory obligation to consult in relation to the works. The Tribunal, therefore, did not accept the Respondents submission that this should provide an absolute bar to granting this application.
  - (b) at the relevant time, all of the other leaseholders agreed that the works were necessary, including the Respondents predecessor in title. It was also relevant that the Applicant was the owner of two of the other flats in the building and had a financial interest in having the work carried out at a reasonable cost and standard.

- (c) at the time the Respondents acquired the leasehold interest, a £1,000 retention was made by their mortgagee. They would have, therefore, been on notice that the works were in fact required.
  - (d) the main thrust of the Respondents case appears to have been not about the Applicant's failure to consult, but the standard of the work carried out. This, presumably, is the reason for the Respondents proposal to pay the service charge contribution provided that the necessary remedial works were carried out.
  - (e) there is no requirement within s.20ZA for qualifying works to be of an urgent nature before an application to dispense is made and granted. The urgent requirement for works to be carried out is only one consideration and not the sole reason for granting an application of this kind. The Tribunal, therefore, did not accept the Respondents submission in these terms. The correct approach for a Tribunal is to have regard to all the circumstances that give rise to the application.
  - (f) s.20ZA is intended to a "shield and not a sword" for tenants. By not granting this application, the Tribunal was of the view that it would indeed have had the effect of being a "sword".
7. The Tribunal should make it clear that, in granting this application, it does not also make a finding that either the works concerned were reasonably incurred or reasonable as to standard and/or cost. Those matters fall to be considered in the Applicant's substantive s.27A application, which was stayed in the Tribunal's preliminary decision and permission granted to restore it by 30 April 2007. However, it appears that the s.27A application was not restored

by the Applicant by 30 April 2007, as ordered. In the event that it was not, the Applicant will need to re-apply for a fresh determination to be made under s.27A. In any event, any such determination is reserved to this Tribunal.

Dated the 13 day of September 2007

CHAIRMAN.....J. Mohabir.....

Mr I Mohabir LLB (Hons)

**THE LEASEHOLD VALUATION TRIBUNAL for the  
SOUTHERN RENT ASSESSMENT PANEL**

**CHI/29UN/ILDC/2007/0010**

**Commonhold and Leasehold Reform Act 2002**

**DECISION ON AN APPLICATION FOR LEAVE TO APPEAL  
RE: St MILDRED'S FLATS, 7 THELBERT TERRACE,  
CLIFTONVILLE, KENT**

**Applicants:** (1) Mr H R MacCorgarry (2) Ms C A Gray

**Respondent:** Mr T Foster

1. The Tribunal has considered the Applicants' request for Leave to Appeal dated 2 October 2007 and determines that Leave be refused on the basis that the grounds of appeal relied on do not disclose a reasonable prospect of success.
2. The grounds of appeal, taken together, essentially assert that in granting the application to dispense, the Applicants have suffered prejudice. For the reasons set out in the Decision dated 13 September 2007, the Tribunal was satisfied that no such prejudice accrued to the Applicants.
3. The Applicants also seek to introduce further evidence that was not before the Tribunal when the application was determined.
4. In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the Applicant may make further application for Leave to Appeal to the Lands Tribunal.

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**Tribunal:** Mr I Mohabir LLB (Hons)  
Mr R Athow FRICS MRIPM

**Signed:**

*J. Mohabir*  
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**Dated:**.....15/11/07