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LON/00AA/LDC/2007/0010

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE
RESIDENTIAL PROPERTY SERVICE ON AN APPLICATION UNDER SECTION
20ZA OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED**

Applicant: Marindale Ltd

Respondents: Various residential tenants of 5 New Bridge Street,
London, EC4V 6AB

Address: 5 New Bridge Street, London, EC4V 6AB

Application date: 30 January 2007

Hearing date: 22 February 2007

Appearances: Miss S Fisher For Applicant
Smith Melzack Pepper Angliss (Management) Ltd

No appearances
for the Respondents

Date of Tribunal Decision: 5 March 2007

Tribunal Members: Mrs J S L Goulden JP (Chairman)
Mr I Thompson BSc FRICS
Mrs L Walter MA (Hons)

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PROPERTY: 5 NEW BRIDGE STREET, LONDON, EC4V 6AB

BACKGROUND

1. The Tribunal was dealing with an application dated 30 January 2007 under Section 20ZA of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the Act"), for the dispensation of all or any of the consultation requirements contained in Section 20 of the Act in connection with the repair of defective render above Flat 1A (on the first floor), 5 New Bridge Street, London, EC4V 6AB to prevent water ingress to that flat and also to the restaurant on the ground and basement floors.
2. The Tribunal was advised that 5 New Bridge Street, London, EC4V 6AB (hereinafter referred to as "the property") is a Victorian building which has been converted into five residential units over a restaurant which occupies the ground floor and basement. Flats 1A and 1B (originally Flat 1 and now divided) are on the first floor, Flat 2 is on the second floor, Flats 3 and 4 are on the third floor and there is a maisonette on the fourth and fifth floor. The lessee of Flats 1A, 1B and the maisonette on the fourth and fifth floor is a Mr D Pfeiffer.
3. The Tribunal's remit is limited to the residential units only.
4. A copy of a specimen lease was provided to the Tribunal.

GROUNDS FOR SEEKING DISPENSATION

5. The grounds for seeking dispensation were attached to the application and stated the following:-

"There is water leaking into the bedroom of one flat making it uninhabitable. A temporary [word missing] has been carried out but has not worked. The render is defective and needs to be repaired as soon as possible to stop the water ingress.

Remedial repairs to the flat and the restaurant will be needed to restore them to their original state."

HEARING

6. The hearing took place on 22 February 2007. The Applicant company was represented by Miss S Fisher, Property Manager, of Smith Melzack Pepper Angliss (Management) Ltd (hereinafter referred to as SMPA). There was no appearance by or on behalf of any of the Respondents. No written submissions were received from or on behalf of either the Applicant or any of the Respondents.
7. Miss Fisher went through the chronology in some detail and provided documentation in support.

8. Miss Fisher said that when SMPA had taken over the property, approximately three years ago, it had been in a poor condition, and the company had been instructed to bring it up to a better condition.
9. Miss Fisher said that in or about October 2006, she had been notified of a leak into the bedroom ceiling of a first floor, Flat 1A. This was a one-bedroom flat which was owned, as was Flat 1B and the maisonette on the fourth and fifth floors, by Mr D Pfeiffer. Miss Fisher said that as far as she was aware, Flat 1A was sublet and she confirmed that she had been notified of the leak by Mr Pfeiffer's letting agents.
10. Miss Fisher said that she arranged for contractors West Heath Design Ltd to inspect. She provided a summary report prepared by them, from which it could be seen that seven visits had taken place. The dates of the visits were not set out, but Miss Fisher thought that they had taken place between about 16 October 2006 and Christmas 2006. On the last visit the contractors reinstated the plasterboard to the bedroom ceiling of Flat 1A. In addition, there were also two abortive visits when keys to Flat 1A could not be obtained. In December 2006 a schedule of remedial works to remedy the cause of high level damp penetration was prepared by Leach & Co, Chartered Surveyors.
11. Miss Fisher said that she had not been aware that water penetration was continuing, since she heard nothing until 19 January 2007 when Mr Pfeiffer's managing agents asked for an update. She had assumed that the leaks had stopped although she did accept that Flat 1A was uninhabitable in that the contractors had disconnected the light fitting in the bedroom on health and safety grounds.
12. The Section 20 consultation process commenced and a Notice of Intention dated 26 January 2007 was sent to the tenants to which no response was received. In an email to Mr Pfeiffer dated the same date as the Notice, namely 26 January 2007, Miss Fisher *"as far as I am aware there is no further water ingress, however if there is please do let me know. I understand from the contractors that the ceiling needs to be repaired in the bedroom, but that (they) have advised that this should take place when the final repair has been carried out in order to avoid duplicating costs. I am sending out the first letter of the Housing Act. This will advise the residents that the works need to be carried out and allows them to put forward their own contractor. These are the terms of the legislation ..."* The response from Mr Pfeiffer on the same day was *"that is not acceptable. The final repair could be months away at this point. I have a non paying tenant. I want that tenant in on 1 February with a ceiling that is fully repaired. Get it done today"*.
13. On the same date as the first Notice was served, namely 26 January 2007, Miss Fisher sought and received legal advice as to dispensation, and a firm of chartered surveyors, Leach & Co were instructed by SMPA to prepare a specification of works. They were advised that the Notice of Intention had been sent to the tenants *"and the specification will need to be ready for 26 February 2007"*. Leach & Co duly obtained two estimates, one from Trademasters Ltd and the other from West Heath Design, and details were sent in a letter from Leach & Co to Miss Fisher on 16 February 2007.

STATUTORY AND REGULATORY CONSIDERATIONS

14. Section 20ZA(l) of the Act states:-

“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”.

15. The question for the Tribunal in this case is clearly one of reasonableness. Is it reasonable in the circumstances of this case to dispense with all or any of the consultation requirements? In its terms S20ZA (1) does not require the Tribunal to be satisfied that the landlord acted reasonably.
16. Regulation 7(4) of the Service Charges (Consultation Requirements) (England) Regulations 2003 sets out the qualifying works for which public notice is not required, and, in order to assist the parties, these can be summarised as follows:-

Notice of intention

17. A notice of the landlord's intention to carry out qualifying works (i.e. works on a building or any other premises) must be sent to each leaseholder and to any recognised tenants' association (RTA) (if any). This notice must, inter alia,
- (a) Describe in general terms the works proposed to be carried out or specify a place and hours where the proposals can be inspected;
 - (b) State the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) Invite observations in writing;
 - (d) Specify:
 - the address to which such observations must be sent;
 - the date on which the consultation period ends (30 days);
 - indicate that any observations must be sent by this date.
 - (e) Invite each tenant and the residents' association (if any) to nominate a person from whom the landlord should try and obtain an estimate for carrying out the works (again within 30 days).
18. The place and hours for inspection must be reasonable and a description of the relevant matters must be available for inspection free of charge. If copies cannot be made on inspection, the landlord must provide a copy, on request by the tenant, and again free of charge.
19. Where observations are made within 30 days the landlord must have regard to them.

Obtaining estimates

20. At least two estimates must be obtained and where a contractor is nominated by the leaseholders, the regulations provide that if only one leaseholder nominates a contractor, the landlord must try and obtain an estimate from that contractor. There are further provisions where nominations are made by more than one leaseholder.
21. Following the receipt of tenders, a further notice must be sent.

Notification of the estimates

22. This notice must be sent to each leaseholder and the RTA (if any).
23. It must include a statement containing:-
- (i) for at least two for the estimates, the amount specified in the estimate as the estimated cost of the proposed works (one of which must be from a contractor wholly unconnected with the landlord. In addition, one of them must be from a nominated contractor, if an estimate was obtained);
 - (ii) where leaseholders have made observations by the due date, the landlord must provide a summary of them and his responses to them;
 - (iii) specify a (reasonable) place and hours at which all the estimates may be inspected;
 - (iv) invite observations in writing regarding the estimates;
 - (v) give the address and the date by which (30 days) observations must be sent;
 - (vi) state that they must be delivered by the due date;
 - (vii) if facilities to provide copies of the documents referred to in 3(i) are not available at the place specified, then copies must be provided free on request.
24. The landlord must have regard to any observations received by the due date.

Award of contract

Notification of the award of contract

25. This notice is not required if a tender from a nominated contractor or the lowest tender is accepted. Otherwise within 21 days of the award of the contract the landlord must send a notice to each leaseholder and the RTA (if any) –

- (a) stating the reasons for awarding the contract, or giving the place and hours where those reasons may be inspected; and
- (b) giving a summary of leaseholders' observations on the estimates and the responses to them and a place and hours where they may be inspected.

THE TRIBUNAL'S DETERMINATION

- 26. In the view of the Tribunal, this legislation was enacted for a purpose which included a greater involvement in the consultation process by those who ultimately will be paying the bill. Because of this, greater transparency must be shown by those incurring the costs in the first instance.
- 27. The Notice of Intention, i.e. the first part of the consultation process, was dated 26 January 2007. The Tribunal has considered the contents of that Notice and whilst in general terms it complies with the requirements of the Regulations as set out above, it fails specifically to invite observations in writing within 30 days, and as such it is defective. However, in respect of the Notice of Intention, the Tribunal considers that since the same refers to observations and gives the tenants the opportunity to comment (although fails to spell out clearly what is required) the spirit of the Act has been complied with. Further, to refuse to dispense with this part of the consultation procedure on those grounds is, in the particular circumstances of this case, considered harsh, unproductive and may be prejudicial to the Respondents. The Tribunal therefore dispenses with consultation requirements in respect of the Notice of Intention dated 26 January 2007.
- 28. However, the Applicant seeks to dispense with the remainder of the consultation requirements under Section 20, and the Tribunal must consider whether it is reasonable to do so.
- 29. In the view of the Tribunal, Miss Fisher was under great pressure from Mr Pfeiffer. An email from him dated 1 February 2007 stated, inter alia, "*I refuse to believe that the only way to address this problem is to wait for three weeks with a huge hole in the ceiling while LTV (sic) consider this ... Sarah tell you(sic) freeholder to get off its butt and sign the freehold sale documents. If that happened then I would fix the damn thing myself as freeholder out of my own pocket ... this goes to the solicitors on Monday – I am as serious as a heart attack about that*".
- 30. Another email from Mr Pfeiffer dated 2 February 2007 stated, inter alia, "*does it still leak? If it does, then Sarah is required to fix it without a Section 20 notice – it is an urgent repair regardless of cost ... if it is not leaking, then fix the ceiling today. If it has to be "re-fixed" at a later date so the contractors can get further access to the problem so be it. We will sort that later ... this goes to the solicitors on Monday if all I receive is another finger pointing/passing the buck exercise*".
- 31. Miss Fisher sent a comprehensive reply to Mr Pfeiffer in a letter sent by email and post on 5 February 2007. This stated, inter alia:-

"We were first informed of the leak in October 2006. Upon receipt of this information we arranged for a contractor to investigate the matter. Due to the nature of the building it has been difficult to ascertain the cause of the leak and the contractors went to both flats 2 and 3 (which were in the main unoccupied) several times in order to trace the leak and to carry out various water tests to try and ascertain where the water was coming in from. This includes two abortive visits due to the contractors being given the incorrect keys for Flat 1A.

We have received a verbal quotation from the contractors of approximately £7,000. As this sum was well over the Section 20 limit they proposed carrying out a temporary repair. We advised your letting agents on 7th December in which we confirmed that temporary repair had been done to the defective rendering and further works would need to be carried out under a Section 20 Notice. We also informed Rebecca that the plasterboard to the ceiling would be finished that week. We heard from Rebecca again on the 19th December asking for an update but not informing us that any further water had come through. On the 18th January 2007 I received my first advice from your letting agents that your tenants were not paying rent.

As soon as I heard from your letting agents, I spoke to you to try and ascertain whether there was water coming into the property. I finally received an email from Martina Messing on Friday 26th January confirming that water had been heavily leaking into the property. At this point I arranged for the contractors to attend the property to confirm that the water problem was from the render and after being informed that it was, I arranged for an application to the LVT in order to try and speed up matters."

32. In the Tribunal's Directions dated 2 February 2007, it is directed *"The Respondents shall, individually or collectively, by no later than 16 February 2007 send to the Applicant a statement in response to the application. If they do not oppose the application they should say so. If they do oppose the application they should give reasons and they should send with their statements copies of any documents upon which they wish to rely at the hearing"*. It may well be that Mr Pfeiffer was unaware of the Tribunal process (although Miss Fisher said that she understood that he was a lawyer) but the Directions are clear, and it is somewhat surprising therefore, in view of the contents of emails which Mr Pfeiffer was sending at the same time to Miss Fisher and his letting agents etc, that he did not see fit to write to the Tribunal with his views in support of the application to dispense with all or part of the consultation process.
33. It appears that the Applicant, at the time of service of the Notice of Intention dated 26 January 2007, intended to comply with the full Section 20 consultation process without applying for a dispensation from all or part thereof under Section 20ZA. In the view of this Tribunal, what altered the Applicant's approach was the pressure exerted by Mr Pfeiffer either himself or through his agents, examples of which are set out above. It may be that Mr Pfeiffer was aggrieved that he was unable to let Flat 1A, but this is not a

matter, in itself, to be considered by the Tribunal when considering whether to dispense with consultation requirements.

34. Miss Fisher comments that water was "pouring" through the ceiling filling "buckets" at regular intervals but she obtained this information from Mr Pfeiffer and/or his agents. She confirmed at the hearing that she had not inspected Flat 1A herself, although she had asked to do so. An email to Mr Pfeiffer from his letting agent dated 19 January 2007 states "*after the leak is fixed (other than a bucket on the floor I have no way of telling if it is still leaking) ...*" Indeed, if water was as has been suggested, pouring through the ceiling, it is not understood why the contractors, on their last visit, before Christmas 2006, reinstated the plasterboard to the bedroom ceiling. Further, in an email from Mr Pfeiffer dated 26 January 2007 he states, inter alia "*if there remains leaking from above, clearly this is an emergency repair. If the leaking has ceased, then the ceiling should be done today on an emergency basis today*". It appears that at the time of writing that email. Mr Pfeiffer was unsure either of whether there was still water penetration or that the plasterboard had been reinstated.
35. From the documentation supplied, for a period of approximately one month, i.e. from Christmas 2006 (when the plasterboard to the bedroom ceiling was replaced), no complaints were received by Miss Fisher until Mr Pfeiffer's letting agents requested an update on or about 19 January 2007 followed by an email from Mr Pfeiffer's relocation agency complaining about water ingress.
36. The Tribunal accepts that Miss Fisher assumed that the water ingress problem had been solved. Indeed in an email to the letting agents dated 18 January 2007, she states "*a temporary repair was effected to the property and as far as I am aware there has been no further water ingress into the flat since when these works were carried out in December. The ceiling was taken down at the time and has since been replaced although admittedly it has not been reset as the contractors were waiting for the final repair to be carried out. As I am sure you are aware we are unable to carry out any works to the property which will cost the individual lessee over £250 under the section 20 legislation and therefore the first letter of the Housing Act will be sent out to all of the lessees shortly ...*"
37. However, following the further complaints as to water ingress, and since she then had knowledge that repairs had proved ineffective, Miss Fisher decided to carry out formal Section 20 consultation. She said that she received no written observations although she received a telephone call from one of the tenants no observations from any of the Respondents. Although the Tribunal has no jurisdiction in respect of commercial premises, Miss Fisher confirmed that the restaurant, which is also suffering some water penetration, is content to allow the full Section 20 consultation process to be completed.
38. The Tribunal must consider the purpose of the legislation (as set out in paragraph 26 above). The landlord is in funds, the next part of the consultation exercise may be embarked upon immediately, quotations are already to hand and it is thought that works could commence within a matter

of weeks. The Tribunal does not consider that the property would deteriorate substantially in that period of time.

39. In the circumstances, the Tribunal determines that that part of the consultation requirements contained in Section 20 which have not already complied with (save for the Notice of Intention dated 26 January 2007 of the Act) may not be dispensed with, and therefore full consultation in respect of repairs to prevent water ingress to the property is to be entered into if the Applicant wishes to proceed with these works and seek reimbursement of the full cost thereof from the service charge.
40. In making this determination it should be noted that the Tribunal has not considered either recoverability under the terms of the lease or the reasonableness of the costs to be incurred. Its determination relates solely to dispensation under Section 20ZA of the Act.

CHAIRMAN 

DATE 5 March 2007

JG