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HM COURTS AND TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
CASE NO CHI/00HN/LDC/2012/0033**

Application: Section 20ZA of the Landlord & Tenant Act 1985

Applicant/Landlord: Mrs R Shoebridge

Respondents/Leaseholders: Mr M Pearce and Mr T Fancy

Building: 5 Southern Road Southbourne Bournemouth Dorset BH6 3SR

Date of Substantive Hearing: 9 October 2012

Venue: Court 8, Bournemouth County Court, Deansleigh Road, Bournemouth, BH7
7DS

Appearances for Applicant/Landlord: Mr Geoffrey Thomas Collier

Appearances for Respondents/Leaseholders: Mrs Julie Pearce

Members of Tribunal: Mr N P Jutton BSc (Chairman), Mr K M Lyons FRICS

Date of Tribunal's Reasons: 16 October 2012

1 Introduction

2 This is an application by the Applicant/Landlord under Section 20ZA of the Landlord & Tenant Act 1985 (the 1985 Act) for the Tribunal to determine whether it is reasonable to dispense with the consultation requirements referred to in Section 20 of the 1985 Act and which are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the 2003 Regulations).

3 The application is dated 6 August 2012. It is an application for retrospective dispensation in respect of works to replace the roof of the Building.

4 Directions were made by the Tribunal on 30 August 2012 which provided for the Applicant to produce in advance of the hearing and to send to the Respondents any further documents (including for example any reports concerning the condition of the roof, estimates and invoices for the costs of

repair) and similarly for the Respondents to file and serve any documents or witness statements upon which they wish to rely.

5 **The Inspection**

6 The Tribunal inspected the Building on the morning of the hearing on 9 October 2012. Mr G T Collier who was representing the Applicant was present. The Tribunal also met with a Lessee of Flat 3 Mr Fancy and Mrs Julie Pearce who was representing both of the Respondents.

7 The Building appeared to originally have been a detached residential property, probably some 80-100 years old, which had subsequently been converted into four flats. It is of brick elevation and is part rendered. The main roof appeared to have been recently renewed and finished with interlocking Marley tiles. There was a rear extension in respect of which the roof had not been renewed.

8 The Tribunal noted that if facing the Building the main roof to both the left and right sides appeared to be subject to a degree of bowing.

9 **The Law**

10 Section 20 of the 1985 Act provides as follows:

"20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with either sub-section (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 Leasehold Valuation Tribunal.

(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.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount

(5) an appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount –

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of sub-section (5) the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that sub-section, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contributions would otherwise exceed the amount prescribed by, or determined in accordance with the regulations, is limited to the amount so prescribed or determined.

11 The relevant provisions of the Service Charge (Consultation Requirements) (England) Regulations 2003 are set out in Schedule 4 part 2 of those Regulations.

12 It is not proposed to set out those provisions in detail here. In summary the requirements may be divided into 3 stages.

- 13 Stage 1 provides for the Landlord to serve a notice of intention to carry out qualifying works on each Leaseholder. The notice must describe in general terms the proposed works or specify a place and hours where the description of the works may be inspected. The notice must state the reason for the works and invite written observations specifying where they should be sent, over what period (30 days from the notice) and the end date. The notice must contain an invitation for nominations of persons from whom the Landlord should obtain estimates. The Landlord must have regard to written observations that he receives during the consultation period.
- 14 Stage 2 provides for the Landlord to seek estimates. Thereafter the Landlord must issue a statement setting out the estimated cost from at least two of the estimates, and a summary of the observations received during the Stage 1 consultation period and his responses to them. If any estimates have been received from the Leaseholder's nominees, they must be included in the statement.
- 15 With the said statement, the Landlord should issue a notice detailing where and when all the estimates may be inspected and inviting each Leaseholder to make written observations on any of the estimates, specifying an address where they should be sent, the consultation period (30 days from the notice) and the end date. The Landlord must then have regard to written observations received within this second 30 day consultation period.
- 16 Stage 3 provides that unless the chosen contractor is the Leaseholder's nominee or the lowest estimate, then the Landlord must give notice within 21 days of entering into the contract to each Leaseholder stating his reasons for the selection or specifying a place and hours for inspection of such a statement.
- 17 Section 20ZA of the 1985 Act provides:

“(1) 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”.

18 The Leases

19 The Tribunal had before it copy leases for Flat 1 (Lessee: Mr M Pearce) and Flat 3 (Lessee: Mr T Fancy).

20 Clause 2 of each lease provided that the Lessee covenanted with the Lessor to:

“(2) pay and contribute the following amounts to the Lessor (hereinafter referred to as ‘the Lessee’s maintenance contribution’);

(a) A one quarter part per annum of:- ...

(ii) the cost of maintaining, repairing, decorating and renewing:-

(a) the structure of the Building including the foundations, walls, drains, roofs, gutters and rainwater pipes and boundary walls and fences and the surface of the parking area”.

21 Clause 5 of the lease provided that the Lessor covenanted with the Lessee ...

“(2) Subject to the payment by the Lessee of the contributions hereinbefore provided to maintain, repair, redecorate and renew; -

(a) the exterior, structure and in particular the main walls, drains, roofs, foundations, gutters and rainwater pipes of the Building and the boundary walls and fences and the surface of the parking area”.

22 Documents

23 The documents before the Tribunal were:

i. The Applicant’s original application to the Tribunal.

- ii. A letter from Mr G T Collier on behalf of the Applicant to the Tribunal dated 24 August 2012.
- iii. A Statement of case prepared on behalf of the Applicant by Mr G T Collier.
- iv. Copy leases of Flat 1 and Flat 3 of the Building.
- v. The Respondents' Statement of case dated 28 September 2012 prepared by Mrs Julie Pearce with attached documents.
- vi. A copy Certificate of completion of work produced by the Building Control Department of Bournemouth Borough Council dated 1 December 2011 in respect of work described as "*replacement of roof covering*".
- vii. A form of invoice from B&S Roofing headed "*To 5 Southern Road re new roof*" which was undated in the sum of £15,000.
- viii. An undated document from B&S headed "*Report on main roof to Ruth Byron re No.5 Southern Road, list of works carried out*".

24 The Hearing

25 The Applicant was represented at the hearing by Mr G T Collier. Written confirmation had been filed with the Tribunal prior to the hearing from the Applicant confirming that she wished Mr Collier to represent her.

26 The Respondents were represented at the hearing by Mrs Julie Pearce. Similarly written confirmation signed by the Respondents had been filed with the Tribunal prior to the hearing confirming that the Respondents wished Mrs Pearce to represent them.

27 The Applicant's Case

28 Mr Collier confirmed that there had been a failure on the part of the Applicant to comply with the requirements of Section 20 of the 1985 Act. That was not in dispute.

- 29 Mr Collier explained that the lessor at the relevant time had been the Applicant Mrs R Shoebridge and her husband Mr Byron Shoebridge. Mr Shoebridge had been terminally ill with cancer. He sadly died on 4 June 2012.
- 30 Mr Collier said that some time towards the end of 2010 Mrs Pearce on behalf of the Respondents had told Mrs Shoebridge that there was a problem with the roof to the Building. That water was coming in to the bathroom of Flat 3.
- 31 Mr and Mrs Shoebridge were concerned. They consulted a builder. That was a Mr Bamforth of a firm called B&S. That Mr Bamforth inspected the roof. That he advised Mr and Mrs Shoebridge that the roof was bowed and in bad shape. That tiles appeared to be missing and others were fractured and required replacing. That Mr Bamforth advised that it would be unwise to put pressure on the roof and that his advice was that the roof needed replacing.
- 32 Upon being questioned by the Tribunal, Mr Collier said he understood that the advice given by Mr Bamforth was given verbally and not reduced to writing.
- 33 Further, that Mr Bamforth thought it would be wise to consult with Bournemouth Borough Council to seek guidance as to the materials to be used in replacing the roof. That Mr Bamforth was conscious that the Respondents would also have an interest in the proposed works to be carried out, he wanted to appear neutral and to protect the interests of both parties. As Mr Collier said Mr Bamforth put it, he did not want to be "*piggy in the middle*".
- 34 Mr Bamforth produced an estimate for the works in November 2010. That was a verbal estimate.
- 35 Mr Collier said that Mr Shoebridge regarded the works to the roof as urgent. Sadly he was dying. He did not wish to leave his wife, the Applicant, with the burden of completing the works. He wanted to get the works finished before he died. That for his peace of mind.
- 36 However unfortunately the commencement of the works was delayed Mr Collier said for two reasons. Firstly, because of Mr Bamford's wish to consult with

Bournemouth Borough Council. Secondly, because Mrs Pearce on behalf of the Respondents had indicated that the Respondents would like further estimates to be obtained. That the Applicant told Mrs Pearce that the Respondents should take steps to obtain estimates. But that in the event Mr Collier said the estimates obtained by the Respondents had not been forthcoming. If they were they were not copied to the Applicant or to Mr Shoebridge.

37 The first time Mr Collier said that the Applicant had received copies of the estimates obtained by the Respondents (copies of which were attached to the Respondents' Statement of case) was when he had received the Respondents' Statement of case a week or so prior to the hearing.

38 Mr Collier produced to the Tribunal a further document from Mr Bamforth of. A copy was shown to Mrs Pearce. The document which was undated was headed "*List of works carried out*". Upon being questioned by the Tribunal, Mr Collier confirmed that the document had only recently been produced by Mr Bamforth.

39 The document stated that the roof "*... was in need of renewal as over half of the tiles were shelling and causing a hazard to anyone below roof level. Any attempt of repair will be a waste of money as roof needed renewing*".

40 Mr Collier explained that there was concern he understood on the part of Mr and Mrs Shoebridge that there was a risk of harm being caused to people or property by damaged tiles falling, particularly to the front of the building on the parking area.

41 Mr Collier was referred by the Tribunal to his letter to the Tribunal dated 24 August 2012. This referred to "*... water was entering the property from a partially collapsed roof and it needed urgent repairs*".

42 Mr Collier explained that by partial collapse, he was referring to the bowing of the roof rather than an actual collapse of the roof. That on the advice from Mr

Bamforth, the Applicant and Mr Shoebridge had been concerned of the risk of water penetration and tile slippage. Mr Collier believed that battens in the roof may have slipped or broken. That as such, the need to replace the roof was a matter of urgency.

- 43 Mr Collier confirmed that the work to replace the roof commenced in the week starting 26 September 2011.
- 44 Upon being questioned by the Tribunal, Mr Collier said he understood that neither the Applicant nor Mr Shoebridge had obtained advice in advance of the works being carried out from a surveyor. Nor did they obtain estimates or advice from anyone else other than Mr Bamforth. That they relied upon Mr Bamforth.
- 45 Mr Collier submitted that the fact of non-compliance by the Applicant with the requirements of Section 20 had to be assessed against the totality of the decision made by the Applicant and Mr Shoebridge at the time to press on with the work. This was not a matter where Mr Shoebridge or the Applicant were seeking to benefit financially. The fact was that sadly Mr Shoebridge was not *"long for this world"*. He wanted the work completed before he died. He had no other motive.
- 46 Further, Mr Collier submitted that no disadvantage was suffered by the Respondents. Their interests were looked after by Mr Bamforth and by his reference to Bournemouth Borough Council.
- 47 Upon being questioned by the Tribunal, Mr Collier confirmed that he had no documents from Bournemouth Borough Council or passing to and from Bournemouth Borough Council and the Applicant other than a Certificate of completion of works dated 1 December 2011.
- 48 Mr Collier said that Mr Shoebridge and the Applicant had not been looking for the cheapest estimate for the works nor the most expensive. That had this been a matter that was of genuine concern to the Respondents, they should

have produced estimates themselves. This was as much as he put it "*a human problem as a building problem*".

49 The Tribunal referred Mr Collier to the estimates produced by the Respondents attached to the Respondents' Statement of case. Mr Collier again stated that these had not been received by him until a week or so before the hearing. He was asked by the Tribunal if he felt the estimates were comparable with the estimate produced by Mr Bamforth and the work carried out by Mr Bamforth. After giving the matter some thought (and the Tribunal invited Mr Collier to take as much time as he wished) he said he did not have the professional knowledge to make a comment on the estimates.

50 Mr Collier said that given, as he put it, the totality of the situation he did not believe that Mr Shoebridge and the Applicant could have reasonably done anything more. This had not been a normal "*business situation*". That the fact that Mr Shoebridge was terminally ill was a circumstance that took precedence.

51 **The Respondents' Case**

52 Mrs Pearce submitted that the Respondents had been seriously prejudiced by the failure of the Applicant to follow the consultation process. That in effect the Respondents were now asked to contribute significant sums for the cost of work which in the Respondents' view was not required and in any event exceeded the estimates which the Respondents had obtained.

53 Mrs Pearce said that sometime in October 2010 Mr Fancy had noticed water staining on the ceiling in his bathroom to Flat 3. He realised there was a leak in the roof. That he advised the Applicant and Mr Shoebridge. It was suggested he get someone to look at it.

54 That Mr Fancy contacted a company called Reeves Roofing.

55 Mrs Pearce referred to a form of statement from Reeves Roofing which was attached to the Respondents' Statement of case dated 26 October 2012. This appeared to be a statement made by Matthew Reeves of Reeves Roofing. It

stated that Reeves Roofing had inspected the roof at the request of Mr Fancy on 13 October 2012. That Mr Fancy had reported a leak in his bathroom after some heavy rainfall. That Reeves Roofing discovered that three tiles had slipped because the apron flashing surrounding the roof light had lifted. That they had retrieved the tiles from the gutter and fixed them back into place and the flashing kit dressed to leave the area water tight.

56 That Reeves Roofing then at the request of Mr Fancy gave a verbal report as to the condition of the roof. That Reeves Roofing reported that certain small works were required and if they were carried out there would *"be no problem in the foreseeable future and the roof in our view still has a 5-7 year lifespan"*.

57 Thereafter Mr Fancy obtained a written estimate from Reeves Roofing for the cost of replacing the roof. Because the Applicant had indicated that she wished in any event to replace the roof entirely, he was concerned as to what the price of that might be.

58 Mrs Pearce referred to an estimate from Reeves Roofing dated 15 November 2010 which was attached to the Respondents' Statement of case. This set out in some detail the work that would be carried out to replace the roof and gave three figures for the estimated cost of the work depending upon the type of tiles used. The estimates ranged from £10,995 to £11,995.

59 Mrs Pearce also referred to a letter from AM Beasley Roofing Ltd dated 7 February 2011 which was attached to the Respondent's Statement of case. She said this had been obtained by her at her son's request. This quoted a total price for carrying out re-roofing of £9,080 plus VAT.

60 Mrs Pearce said the Respondents had been of the view at the time that they could not contest whether or not the work to renew the roof was necessary. They had believed that the lease allowed the Landlord to determine what work was reasonably necessary. That the estimates they obtained were just to give the Respondents an idea of the sort of cost that might be involved.

- 61 However subsequently in March 2011 Mrs Pearce had sought advice and was told that properly the Applicant should follow the Section 20 consultation process. She said that she then spoke to Mrs Shoebridge and suggested to her that the Respondents would prefer that the matter be dealt with in a more formal manner. She did not however refer directly to the provisions of Section 20. Nor were the estimates from Reeves Roofing or AM Beasley Roofing Ltd forwarded to the Applicant.
- 62 That when the Respondents were given to understand in September 2011 that Mr Bamforth had been instructed by Mr and Mrs Shoebridge to proceed with works to renew the roof, that Mr Fancy was told by Mrs Shoebridge that in hindsight perhaps Mr and Mrs Shoebridge should have renewed the roof at the time that the property had been converted into four flats. The Respondents read into that statement, bearing in mind that Mr and Mrs Shoebridge did not appear to be following the Section 20 consultation process, that presumably it was not going to be their intention to seek to recover a full contribution for the works from the Respondents.
- 63 Mrs Pearce said that the works to renew the roof were not on the advice the Respondents had received required. Further in any event the works were not urgent. The Respondents did not accept that there was any evidence of tiles slipping from the roof and as such causing a hazard to property or persons.
- 64 That the fact that the original estimate provided by Mr Bamforth was on 3 November 2010 but the work did not commence until September 2011, indicated as she put it that the Applicant's argument that the work was required as an emergency was "*null and void*". That as far as she was aware, neither Respondent had experienced any problems with the roof during the period from November 2010 to September 2011 when the works commenced.
- 65 Mrs Pearce said that it was the Respondents' case that they had been seriously prejudiced by the failure of the Applicant to follow the Section 20

consultation process. That they had not had the opportunity to address their concerns as to whether or not the work was required or further the costs of the works for which in turn they would be expected to pay their part.

66 Mrs Pearce said that she and the Respondents were of course sympathetic to the medical condition that Mr Shoebridge found himself in but at the risk of appearing hard, that was not relevant in the sense that it was not a reason for the Applicant and Mr Shoebridge not to comply with the Section 20 consultation requirements. That any urgency arose solely sadly due to Mr Shoebridge's condition, not because water was pouring through the roof (which it wasn't). That indeed once Reeves Roofing had carried out the repair to the tiles and flashing above the bathroom to Flat 3, there was no problem with the roof. That she accepted that the roof was old and might have required replacing within the next 10 years. Further time would have allowed the opportunity for a reserve or sinking fund to be built up to cover the costs of such work. That the Applicant and Mr Shoebridge had acted in a gung-ho manner. That they had decided that they wanted the work carried out and their decision had been final. That the interests of the Lessees had been ignored. That the Lessees had been denied the opportunity to have their say as to how their money was to be spent.

67 **The Tribunal's Decision**

68 The principal question which the Tribunal must ask itself is whether any significant prejudice has been sustained by the Respondents as a consequence of the Applicant's failure to comply with the Section 20 consultation requirements (**Camden LBC v The Leaseholders of 37 Flats at 30-40 Grafton Way** LRX/185 2006 Lands Tribunal).

69 The financial effect of the grant or refusal of dispensation is an irrelevant consideration for the Tribunal when exercising its discretion under Section 20ZA(1) of the 1985 Act (**Daejan Investments Ltd v Benson & Others** (2011) EWCA Civ 38).

- 70 The Tribunal does not accept Mr Collier's submissions on behalf of the Applicant that the roof required replacing as a matter of urgency. That this was some form of emergency. There was no evidence before the Tribunal that the roof towards the end of 2010 was about to collapse.
- 71 That it may well have been the case that there was at that time evidence of the roof bowing. That there was a risk of water penetration and tile slippage. However there was no evidence before the Tribunal as to why such matters could not have been addressed on a temporary basis to allow time for the Section 20 consultation process to run its course.
- 72 Further, the fact that Mr Bamforth produced an estimate to replace the roof in November 2010 but that the work did not commence until September 2011 was entirely inconsistent with a contention that the work was required as a matter of urgency. There was clearly ample time within that period for the Applicant and Mr Shoebridge to invoke the Section 20 consultation process.
- 73 The Tribunal does not accept the Applicant's contention that the delay in commencing the works was in some way justified by Mr Bamforth's apparent desire to consult with Bournemouth Borough Council or by the Respondents' stated desire to obtain their own estimates. That if the replacement of the roof was a matter of urgency in order for example to safeguard the property and/or people, those would not have been reasons to delay commencing the work.
- 74 The Tribunal has great sympathy nonetheless with the position that the Applicant and Mr Shoebridge found themselves in. It accepts that this was not a matter of Mr and Mrs Shoebridge trying to find the cheapest or indeed the most expensive quote. That they were not in any way seeking to profit by reason of the work being carried out by Mr Bamforth. That it was entirely understandable that the late Mr Shoebridge wished to have the roof replaced during his lifetime so as to remove that burden from his wife.

- 75 However the Tribunal does not accept Mr Collier's submission on behalf of the Applicant that Mr Shoebridge's terminal illness was a circumstance which should take precedence and which would in itself in whole or in part make it reasonable to dispense with the consultation requirements.
- 76 In the Tribunal's view the Respondents did suffer significant prejudice by reason of the failure of the Applicant and Mr Shoebridge to follow the Section 20 process. They were denied the opportunity to consider whether or not the works were necessary. They were denied the opportunity to address and be consulted upon the cost of the works. The consultation requirements are in place for the protection of lessees; to allow them to have a say as regards the scope and costs of works for which they are going to be asked to pay a significant sum by way of service charges. In this case, the Respondents were deprived of the benefit of that protection. There was no good reason in the view of the Tribunal for the Applicant and Mr Shoebridge to fail to comply with the Section 20 requirements. That there was no particular urgency for the work to be carried out before the consultation process could have run its course.
- 77 In all the circumstances, the Tribunal does not consider that it is reasonable for the consultation procedure set out in Section 20 of the Act to be dispensed with.
- 78 It follows that the Applicant is limited to recovering from each of the Lessees a total of £250 in respect of the works to replace the roof which properly should have been subject to the Section 20 consultation process.
- 79 Accordingly the Tribunal determines that it is not satisfied that it would be reasonable to dispense with the consultation requirements provided for by Section 20 of the 1985 Act.

Dated the 16th day of October 2012

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N P Jutton (Chairman)

A Member of the Tribunal appointed by the Lord Chancellor