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Leasehold Valuation Tribunal

In the matter of S.20ZA Landlord & Tenant Act 1985

CONFIRMATION of DECISION & REASONS

Case Number: CHI/21UG/LDC/2012/0011

Property: Albert Mansions
29-31 Marina
BEXHILL on SEA
East Sussex
TN40 1BP

Applicant: Mr G Venditto.

Represented by: Mr Okines, Arko Property Management

Respondents: Mrs S Claire & Mr E Nahaie

Date of Application: 14 March 2012

Date of Hearing: 2 April 2012

Date of these reasons: 04 April 2012

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)
Mrs J K Morris (Lay Member)

DECISION

1. Confirmation of oral decision announced at the Hearing in accordance with Regulation 18(2) Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (*the Regulations*):
2. The Tribunal determines to dispense with the S.20 consultation requirements in respect of certain of the qualifying works, the subject of this application:

3. Only urgent and emergency work to deal with the unsafe and dangerous gable-end tiling and roof to comprise the scaffolding and netting erected on the South elevation and the removal of dangerous tiles on the hanging and verge. The erection of further scaffolding to the South West corner and to the rear of the building, if required. The removal of the tiles to reduce the load on the roof together with associated emergency work required to any dangerous part of the structure including the provision of temporary weathering as required.

INTRODUCTION

4. This is an application by Messrs Arko Property Management on behalf of their client, Mr G Venditto the freehold owner, for dispensation of all or any of the S.20 consultation requirements in respect of qualifying works in accordance with S.20ZA of the Landlord & Tenant Act 1985.

THE LAW

5. The statutory provisions primarily relevant to this application are to be found in Sections 20 and 20ZA of the Landlord & Tenant Act 1985 (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate Regulations or Statutory Instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
6. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
7. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.

8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include, amongst other things: an initial Notice of intention to carry out the works; a duty for the landlord to have regard to any comments received and to obtain estimates for the work from at least one unconnected contractor; and for the landlord to advise the tenants with a statement of the amounts of the estimates received and make them available for inspection.
9. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to do so. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

10. The Tribunal was provided with a copy of the lease of Flat 3 dated 28 March 1983. It is understood that other leases are in a similar form.
11. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of the representations made to it. There are covenants for the landlord to keep the Building insured and to maintain and keep the main building in good and substantial repair and in clean and proper order.
12. There were no matters raised by the parties in respect of the interpretation of the lease.

BACKGROUND

13. Following the application dated 14 March 2012 the Tribunal issued Directions on 15 March 2012 for the conduct of the case. The matter was listed to be dealt with on the fast track. The Applicant was to provide any relevant additional documents to the Tribunal. Messrs Arko supplied a preliminary report from BdR, Civil and Structural Engineering Consultants dated 16 March 2012 and a copy of the Section 20 "Notice of Intention"

dated 20 February 2012. This included a Schedule of redecoration and associated repairs and roof repairs.

14. The Respondents were Directed to attend the Hearing if they wished to contest the application and bring with them any relevant documents. No Respondent attended the Hearing but the Tribunal received a document headed "To Whom It May Concerne[sic]" which included in its circulation the Tribunal, The Landlord, Mr Okines and "The Mangement of Italian Way Restaurant. The document was received without any statement but was signed by Mr & Mrs Nahaie the Lessee of Flat 3. This document did not address the S.20ZA Application in any way but dealt with alleged damage to the Lessees property and damages sought.

INSPECTION

15. In company with Mr Okines the Tribunal members inspected the exterior from ground level, the commonways and the interior of Flat 3. The Respondents were not in attendance or represented.
16. The property comprises a corner, inner terrace building located on Bexhill seafront road. It has a restaurant on the ground floor and three upper floors each forming a flat approached from a common entrance and staircase from the return frontage to Albert Road.
17. The exterior is rendered with a spar dash finish and the roof is of multi-pitched design covered with interlocking concrete tiles. Within Flat 3 the Tribunal saw some relatively minor cracks to some walls and noticed the uneven floor. At the front of the building scaffolding has been erected on the South elevation to protect and secure the building and some hanging tiles had been removed from the gable.
18. Where visible the exterior woodwork had seriously peeling paint and there were cracks to the external rendering and window cills and dressings.

EVIDENCE

19. A Hearing took place at the Horntye Leisure Centre in Hastings commencing at 11:00 a.m.
20. The Tribunal had regard to the written evidence before it and took oral evidence from Mr Okines.

The Applicant's Case

21. Mr Okines spoke to his application. He explained that the Landlord intended to carry out redecoration of the exterior together with some minor repairs. The S.20 consultation process had commenced with a Notice of Intention to the Lessees in February 2012.
22. On or about 23 February 2012 Mr Okines noticed some loose tiles to the hanging on the South gable end. He organised some protective scaffolding to be erected. Before the work started he was telephoned by Hastings Council warning of the danger to the public but he was able to offer re-assurance that the matter was in hand. Shortly afterwards on 8 March the scaffolding was erected. Any loose or dangerous tiles were removed from the tile hanging and verge.
23. Arko commissioned BdR to inspect the roof and they found several problems with the roof and confirmed "*...that the existing roof structure is inadequate to support the existing roof loads and urgent remedial works are necessary ...There is risk to the occupiers and to the general public*". They went on to identify in general terms the work that would be needed and provided photographs to illustrate the problem. The Tribunal had this report dated 16 March 2012.
24. The S.20 Notice of Intention served in February did not envisage the extensive roof repairs now required although it did include some PC sums for general repairs. Arko was seeking dispensation for all the work but during questioning from the Tribunal reduced this to only the urgent and emergency works.

25. The S.20 consultation process would probably continue and when the engineers had designed the remedial work a further S.20 consultation would be needed.

The Respondents' Case

26. The Tribunal's Directions provided for the Respondents to make submissions at the Hearing if they wished to.
27. No Lessees availed themselves of this opportunity but Mr & Mrs Nahaie provided the letter described at paragraph 13 above. The Tribunal considered the letter but as it did not refer to the S.20ZA Application before it or to any other issues within the Tribunal's jurisdiction it was not considered further. No doubt Mr & Mrs Nahaie may wish to pursue their claims in another jurisdiction.

CONSIDERATION

28. There is no doubt from the Tribunal's inspection and the detailed report received that the front gable tile hanging and the main roof structure is in need of repair. It is also clear that some of the work is urgent in order to protect the occupiers and the public. The scaffolding already erected and the work so far carried out goes some way to relieving the immediate danger but further urgent work is needed.
29. Further detailed work to the roof structure, as yet not defined or designed, will be required but this can be the subject of a full S.20 consultation process.
30. The Tribunal considered whether dispensation would cause significant prejudice to the leaseholders and determined that it would not. All lessees have been made aware of the general works by way of the S.20 Initial Notice already issued. The emergency works are new but to delay them to allow a full consultation process would be likely to prejudice the Lessees to a greater extent.

31. For these reasons dispensation only in respect of the urgent and emergency works is granted.
32. It must be clear that this Tribunal does not however determine the reasonableness of the cost of any of the work and the Applicant should take steps to keep the cost under control and to supervise the work.
33. For the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make an application to the Tribunal under section 27A, or other sections, of the Act for a determination as to the payability and reasonableness of charges either before or after any works. The decision given in this document does not prevent any future application to the Tribunal.

Dated 04 April 2012

[signed]

Brandon H R Simms FRICS MCI Arb
Chairman