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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UN/LDC/2011/0027

**Property: Northumberland Court, Northumberland Avenue,
Margate, Kent CT9 3BS**

Between:

**Northumberland Court Residents
(Cliftonville) Limited
("the Applicant")**

And

**The Lessees
("the Respondents")**

**IN THE MATTER OF AN APPLICATION UNDER SECTION
20ZA OF THE LANDLORD AND TENANT ACT 1985.**

**Members of the Tribunal: Mr S. Lal LIM, Barrister, Chairman
Mr R Athow FRICS**

Date of Hearing: 5th March 2012

Date of Decision: 5th March 2012

Background

1. The Application relates to repair works, which have already been carried out to the pointing and flat dividers to the front of the Property. These additional works were identified during the course of other works to the Property for which the Section 20 consultation procedure had been carried out.

2. The Tribunal gave directions on 1st September 2011, following the Applicant's request that the matter be dealt with as a paper determination without an oral hearing. The time limits in the initial directions had not been adhered to. Neither the Applicant nor the Respondents have submitted any of the documentation referred to in the initial directions within the time limits specified therein.
3. The Tribunal subsequently received a letter from one of the Respondents (Mr Paul Kelleher) dated 16th November 2011 in which he both objected to the Application and expressed his wish that the matter go to a full hearing, if it were not immediately refused by the Tribunal. It was unfortunate that Mr Kelleher had left it to the 16th November 2011 to request an oral hearing as the earlier Directions clearly specified that any objections to the matter being treated as a paper hearing to be received well before this date.
4. In the circumstances the Tribunal decided to deal with the Application by way of a full oral hearing as it was quite clear to the Tribunal that the issues were both sufficiently complex and contentious that the matter cannot be disposed of fairly without an oral hearing following an inspection of the subject premises.
5. The matter was the subject of further Directions 21st November 2011.

Inspection

6. The Tribunal inspected the property on the morning of the hearing; it is a hotel converted into residential units. The Tribunal were able to access the balcony area and had sight of the works carried out.

The Hearing

7. The Hearing commenced at the Canterbury Christchurch University Campus at 11am. Miss Hayfield and Mr Oliver represented the Applicant in person. The Respondent (Mr Kelleher) was represented by Mr Ratnasingham and Ms June Barnett in person.

The Case for the Applicant

8. Miss Hayfield stated that the freehold was purchased by 25 of the lessees and formed the management committee. She accepted amateur errors of judgement in terms of a lack of best value for tradesmen. When the Committee decided upon a need for a survey they relied on an old survey that not been updated, however the Committee felt that the money they had they could only do some of the work required. They obtained three estimates for various options of the work to waterproof the balconies and deal with downpipe issues. They had used one company for many years and treated them as their preferred contractor. As the estimated cost was below £10,500 they decided it was below the limit for consultation requirements under Section 20 of the Landlord & Tenant Act 1985 as amended by the Commonhold Leasehold Reform Act 2002. In Nov 2010 the company issued a letter to residents saying costs were £7,000 for the windbreak dividers, and £3,500 for waterproofing the balconies, including scaffolding. When the scaffold went up in December 2010 it was found that there was extra cracks, cementing round balconies, the structure of the dividers had crumbled. They only took advice from the contractors on site and no independent professional advice was sought.
9. In summary the Applicant said that when re-pointing work was carried out to the subject premises, it was recommended that additional repairs be undertaken that were not identified at the time of the original quote, especially that when the balcony dividers were taken down, the iron work was so rusted, it was deemed unreasonable to repair so new quotations and estimates were taken in order to replace. The scaffolding was already in place. By way of further submission dated 18th December 2011, the Applicant says that they enclosed a statement by the majority of the leaseholders that confirms that they are happy with the work that has been carried out.

The Case for the Respondent


10. The Respondent, Mr Kelleher has supplied a written submission dated 23rd January 2012 and received at the Tribunal's office on 23rd January. A further submission from Miss J Barnett was received on 16/02/12. In summary the Respondent says that the so-called urgent repairs were known about in 2010 and that these should have been included in the original s20 notice.
11. Mr Ratnasingham, representing Mr Kelleher, referred to 2008 LVT case where he assisted Northumberland Court, when Miss Barnett was the applicant. They reached a negotiated agreement during the course of the hearing during which that LVT had explained S20 & other requirements to run the building. He submitted that they have a duty to follow statute. He was next involved in Aug 2008 to advise on purchasing the freehold.
12. In his opinion unfortunately no one appears to have learned any lessons regarding statute. In 2009 he met the committee, advised that a S20ZA application be made and had not further involvement until late 2009 when he found that no application had been made as one committee member apparently did not agree £350 being spent. He attended most of the management company's monthly meetings from Jan 2010, meet once a month and had attended all meetings up to Nov 2011.
13. He said that he was aware of the intention to do balcony work and advised that the S20 consultation process was needed and the need to have a specification so that like for like quotes could be obtained. Most of the work would have been obvious before the works started. He argued that if the S20 process had been done properly and served on the lessees they would have been aware of the shortfall of intended works and could have then requested that there should be a requirement to consult.
14. Miss Barnett added that there was not a full serving of all notices. All of the works could have been seen easily without scaffolding.

The Law

15. The Respondent Miss Barnett has made various allegations about unlawful detention as well as libel and bribery. This Tribunal has no jurisdiction to determine these matters but can only determine whether it is reasonable to grant dispensation if it is reasonable to do so. It is important to distinguish between the reasonableness of dispensing with the notice requirements and the reasonableness of the works themselves. The decision of the LVT cannot give or imply any judgement about the reasonableness of the works themselves.
16. The matter has been considered in the leading case of **Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38, 2011** in which three main issues were identified namely (i) whether the financial consequences to the landlord were relevant to a grant of dispensation under s.20ZA; (ii) whether the nature of the landlord was relevant; and (iii) the correct approach to prejudice allegedly suffered by a tenant as a consequence of a landlord's failure to comply with the Consultation Regulations.
17. In the above case it was held that the financial effect of refusing dispensation on the landlord is an irrelevant consideration when exercising discretion under s.20ZA (1) [59 of the Judgment]. Although there is no "closed list" of situations in which dispensation might be granted, the following situations might commend a grant of dispensation: (i) the need to undertake emergency works; (ii) the availability of only a single specialist contractor; and, (iii) a minor breach of the procedure under the Consultation Regulations which causes no prejudice to the tenants [63].
18. In the above case it was noted that the nature of the landlord can be a relevant factor, e.g. where the landlord is a company owned or controlled by the leaseholders [67].

19. It was further noted that in considering whether to grant dispensation, the LVT should consider whether the breach of the consultation regulations has caused significant prejudice to the leaseholders [72]. The landlord's failure to comply with the regulations, as ruled by the LVT, caused the respondents serious prejudice. The curtailment of the consultation exercise was a serious failing [73].
20. In the present case the Tribunal is satisfied that no such emergency situation exists as identified in **Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38, 2011**, but rather this was an example of works being "added to" upon advice by the builders. However s20Za cannot be used as a mechanism for a rolling programme of works in the absence of a proper s20 procedure. Such a proper procedure would involve a proper survey, the obtaining of proper quotes and notice being served in the required format and at the right time. To allow s20Za to retrospectively circumvent such a proper procedure has the potential to cause significant prejudice to the Respondent's.
21. In the circumstances, the Tribunal accepts the contention advanced that the s20 procedure itself was flawed, as it did not have all the elements that it must have and that which was bad cannot be made good by a retrospective application under s20Za in respect of some of the works. In the circumstances the current application to dispense with the consultation requirements in respect of the work so identified is dismissed.
22. The Tribunal does have an element of sympathy for the Applicants in so far as it accepts that they have tried to do what they perceive to be right in respect of the subject premises but unfortunately none of the observations made by the Tribunal in 2008, that is how to do a proper s20 exercise, have been acted upon and that has resulted in the present situation. The Tribunal makes no assessment as to the reasonableness of the works themselves as that is out of its jurisdiction in assessing the matter under s20Za.

23. The Application for Dispensation is dismissed for the reasons above.

Chairman.....

Date.....