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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of a Claim transferred from the County Court (Service Charges) and an Application under Section 20ZA of the Landlord & Tenant Act 1985 (Determination to dispense with the statutory consultation requirements in relation to major works)

Case No. CHI/29UN/LSC/2011/0037

Property: Flat 2
Marwell House
2-3 Marine Drive
Margate
Kent
CT9 1DJ

Between: Marwell House RTM Limited
("the Applicant")

And

Mr. Richard Phelps
("the Respondent")

Dates of Hearing: 7th September 2011 and 2nd February 2012

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Ms L. Farrier

Date Decision issued: 6th February 2012

FLAT 2, MARWELL HOUSE, 2-3 MARINE DRIVE, MARGATE, KENT CT9 1DJ

Decision

1. The Tribunal made a determination to dispense with all the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 ("the Act") in respect of all the major works carried out in 2008, the subject of the contract with Commercial Group Contractors Limited, being remedial works to the front, side and roof of Marwell House at a cost of £34,800.

Agreement

2. After the Tribunal had announced its decision in respect of the application for dispensation under Section 20ZA of the Act, those present at the hearing were given the opportunity to consider the implications of that decision and, after negotiation in the absence of the Tribunal, they informed the Tribunal that agreement had been reached that a total of £6,953.67 was owed by Mr. R. Phelps (“the Respondent”) to Marwell House RTM Limited (“the Applicant”) in respect of service charges to 31st October 2011 and costs and expenses to 2nd February 2012. The figure does not include any additional costs which are incurred in enforcing payment of that sum. The Tribunal noted that agreement.

Background

3. The Applicant is the Right to Manage Company in respect of Marwell House of which Flat 2, Marwell House, 2-3 Marine Drive, Margate, Kent CT9 1DJ (“the subject property”) forms part. The Respondent is the lessee of the subject property.

4. The Applicant had commenced proceedings against the Respondent in the County Court (Claim Number 0QZ03306) claiming payment of service charges and costs. That matter was transferred to the Tribunal for determination of the matters the subject of the claim which were within the jurisdiction of the Tribunal.

5. In advance of the hearing on 7th September 2011, documents had been produced on behalf of the Applicant and by the Respondent.

6. On 7th September 2011 there was an inspection of Marwell House followed by a hearing attended by the Respondent and, on behalf of the Applicant, Ms Read, Mr. Wills, Mrs. Power, and Mr. Keeling. Mr Parkin MRICS attended the inspection and part of the hearing.

7. At that hearing evidence was given by those present and the documents which had been produced before the hearing and some additional documents which were produced at the hearing were considered. The copy of the lease of the subject property which had been produced in advance of the hearing was illegible in part and the Respondent produced at the hearing a clear copy of his lease.

8. Ms Reed stated that the Applicant was claiming £4,501.74 at the time of commencement of the County Court proceedings plus the Court Fee of £100 but by 7th September 2011 the sum claimed from the Respondent had risen to £5,473.41 because further service charges had become due and further Court Fees, a hearing fee and a Solicitor’s fee had been paid.

9. Details of the sum of £5,473.41 had been provided to the Tribunal and the Respondent. They were considered item by item and those present were invited to give evidence about them.

10. The Respondent accepted that he was liable to pay the outstanding service charges to April 2010 totalling £1,219.00 and that he was entitled to a credit of £430.01 against those service charges in respect of payments made for cleaning of the internal common parts from January to September 2007.

11. The Respondent's evidence was that he was entitled to £375 for cleaning which he had carried out between October 2006 and December 2006. He stated that in a telephone call with Mr. Mills on behalf of the Applicant it had been agreed that the Respondent be paid £25 per week for cleaning the internal common parts.

12. The Respondent disputed the claim for £4,350 (of which he had paid £800) for building works in 2008, on the basis that the consultation procedure under Section 20 of the Act had not been complied with. However, he stated that but for the lack of compliance with the consultation procedure he would have had to pay the outstanding sum of £3,550.

13. As to the claims for the following:

	£
Court Fees	100.00
Court Fees	35.00
Hearing Fee	300.00
Solicitor's Fee	62.75

The Respondent considered that he should pay only £150 being 50% of the hearing fee of £300 but not the other fees because it was the Applicant that had decided to take the matter to the Court.

14. The Respondent agreed that he was liable to pay the following sums which were claimed:

	£
Fire risk inspection	25.70
Electric risk inspection	48.46
Valuation	7.34
Stair lighting	15.97
Stair cleaning	37.50
Building insurance May – March 2011	205.70
Building insurance April – March 2012	296.00

15. The following additional sums were claimed at the hearing and the Respondent accepted that he was liable to pay them:

	£
Cleaning of stairs etc. to 6 September 2011	15.62

Electricity for stairs to 6 September 2011	3.75
Drain works	35.89

16. The result was that the only items disputed by the Respondent were:

(a) The claims for court fees, part of a hearing fee and a solicitor's fee which were matters which would have to be decided by the County Court

(b) The £375 which the Respondent claimed for cleaning

(c) The Respondent's contribution to the major works.

17. The Tribunal was satisfied that the building works in 2008 were major works and that in respect of them there had not been compliance with the consultation procedure under Section 20 of the Act.

18. The Act provides that if the consultation procedure is not complied with, the lessee does not have to pay more than £250 towards the cost of major works unless part or all of the consultation requirements are dispensed with by a Leasehold Valuation Tribunal.

19. If the Applicant was seeking to recover more than £250 from the Respondent in respect of the major works then, unless the parties were able to reach an agreed settlement, the Applicant would have to make an application under Section 20ZA of the Act for a dispensation and it would be considered by the Tribunal along with this present matter.

20. The Tribunal decided to adjourn the hearing so that the Applicant had the opportunity to make such an application and directions, which were outlined at the hearing, were issued.

21. In response to those directions an application for dispensation under Section 20ZA was received from the Applicant and further documents were received from the parties and a hearing was scheduled to take place on 2nd February 2012.

Hearing 2nd February 2012

22. Present at the hearing were the Respondent and, on behalf of the Applicant, Mr. Wills, Ms Read, Mrs. Powell and Mr. Keeling.

23. The Tribunal announced that it would deal first with the application for dispensation under Section 20ZA.

24. Mr. Wills presented the case for the Applicant.

- (a) The Applicant had been formed with all the lessees of Marwell House and when meetings were held the majority, if not all, of the lessees attended.
- (b) He believed that the Respondent had attended the initial meetings.
- (c) The major works had been done by common agreement. At the time of the works being carried out the Applicant was managed by Mr. Mills, the lessee of Flat 4, but sadly he had died. Mr. Mills had been the main link between the Applicant and the lessees. At the time the works were carried out the lessees were all in agreement that the works be carried out and Mr. Wills believed that the Respondent was in agreement at the time and he had indicated that that was correct at the hearing on 7th September 2011. There was common agreement that the works be carried out and Section 20 notices were not issued. The works were carried out with some degree of supervision by a surveyor Mr. Parkin MRICS and he had confirmed that the works were necessary and that the charges were reasonable in accordance with building industry rates.
- (d) Since then the Respondent's personal circumstances had changed. The lessees understand that and have tried to work with him to address the difficulty. However the situation that exists is unfair and prejudicial to the remaining seven lessees.
- (e) Following the hearing on 7th September 2011, representatives of the Applicant had met with the Respondent. He had made an offer to rejoin the Applicant and to bring his monthly payments to the Applicant up to date but he did not make an offer to contribute to the outstanding cost of the major works. Those present at the hearing had told the Respondent that if he made a contribution of £2,000 to the major works they would recommend to remaining lessees that that be accepted. The Respondent agreed to consider the offer and to revert to the Applicant's representatives but they did not hear back from him.
- (f) Bearing in mind the directions issued at the hearing on 7th September 2011 and the deadlines for making the application under Section 20ZA, the representatives of the Applicant took advice from Mr. Parkin who completed a specification of the major works and submitted them to contractors known to him.
- (g) In March 2008, a contractor, LMS Residential Commercial Property Maintenance Limited had estimated for the original works, which did not include works to the side elevation, in the sum of £29,720 plus VAT. That estimate had not been submitted as part of the documents provided to the Tribunal for the hearing on 7th September 2011 but had been provided for the hearing on 2nd February 2012. When the major works were being carried out it was found that work to the side elevation was required and LMS have written to the Applicant stating that the works to the side elevation would have added £11,000 plus VAT to the original estimate producing a total of £40,720 plus VAT. The cost may also have increased because of additional work to the balconies.
- (h) Mr. Wills believed that the specification prepared by Mr. Parkin was the specification of what was actually carried out and that was given to two further contractors for retrospective pricing. Mr. Wills believes they came to the site and priced in accordance with the specification.
- (i) The Applicant hoped that the specification and the further estimates demonstrated that the works were required and that the pricing was reasonable.
- (j) As had been stated at the hearing on 7th September 2011, the company that carried out the major works is one Mr. Wills owns and controls. He did not have a hand in the

revised specification and quotes. He thought it would not be appropriate to be involved apart from providing information.

(k) Mr. Wills referred the Tribunal to the photographs which had been provided showing the condition of Marwell House before, during and after the major works.

(l) The representatives of the Applicant had done their best to resolve the situation and the Respondent was involved throughout the works and his agreement obtained initially. The contractor, the price and that the works needed to be done were all agreed by the Respondent at the time.

(m) While the other lessees sympathise with the Respondent's financial position the Applicant and the other lessees were keen to resolve the matter and would like to work with the Respondent to come to some reasonable financial settlement.

(n) The Applicant asked the Tribunal to allow the application for dispensation.

25. Mr. Phelps presented his case.

(a) He stated that he had read all the documents and seen all the photographs supplied on behalf of the Applicant but pointed out the photographs of his window sill taken on 7th December 2011 which he had supplied showing the paint peeling and that the painting had not been done according to the specification of taking down to the bare wood, undercoat and topcoat. As to the rest of the works he could not see them. He did not know when the photographs supplied on behalf of the Applicant had been taken but accepted that it was probably correct that they were taken before, during and after the works.

(b) In his written representations he said he had made a fair offer, which was that having paid £800 towards the major works he would forgo the balance of £550 (the excess over the £250 payable in the absence of consultation) and would pay £50 per month as all the lessees pay, starting immediately after the hearing on 7th September 2011 but that was rejected. That would have meant that his contribution towards the major works would have been £800 and of the £50 per month paid by all the lessees, he thought some should go towards major works.

(c) In his representations he had asked to see the insurance policy and he confirmed that he had now seen it.

(d) Asked what he was aware of in relation to the major works, the Respondent stated that he knew the works were planned when they were first discussed. He did not think he was there when they were discussed but he received the paperwork from Mr. Mills saying the works were going to be done. He thought that was quite some time before the works were done; about 18 months. He thought there had been trouble with the scaffolding which became loose in a storm and had to be rearranged. The Fire Brigade spent a day taking it down. No-one had taken him round and discussed the works. Having received the paperwork he did nothing about it. It did not really affect him apart from the front window and pointing on the wall by his window: an area about 10 feet by 6 feet. The flank wall did not affect him. They said the works needed to be done and he did not object. He did not suggest any contractors to do the works. He knew Mr. Wills' company would probably do it and was happy about that. He thought that company did most of the maintenance work at Marwell House and thinks he was happy about that. Asked if he thought Mr. Wills was making any unfair gain out of doing the work, the

Respondent stated that there was absolutely no suggestion of that. The only thing he was not happy with was his windowsill. As far as he could see there was nothing else. He was not suggesting that the work could have been done by another contractor. Asked when he had noticed the paintwork deteriorating, he said it was about a year ago. He did not tell the directors of the Applicant about it. It got worse over the last year. He stated he had nothing else to complain about. He accepted that from the outside the building looked fine but if you were to get up close he did not know. He thought the works were completed early 2009.

(e) Asked if he had anything else he wished to tell the Tribunal he said he had not.

26. Mr. Wills thought the works were finished late 2008 and Ms Read stated that the last bill was in December 2008.

27. Mr. Wills stated that the documents submitted show that the Respondent was present at meetings of the Applicant or the leaseholders' association, particularly a meeting on 5th October 2005 where it was said that quotes for painting the Marine Drive side of the building were being obtained. The Respondent did not remember being present at that meeting (although the minutes of the meeting indicated that he was present) or other meetings but accepted he had attended some meetings. A copy of a letter dated 26th March 2008 from Mr. Mills to Mrs. Power, one of the lessees, had been provided before the hearing on 7th September 2011 and Ms Read stated that a similar letter had been written to all the lessees. The Respondent did not remember the letter but thought that probably he had it. He accepted that he had written a letter dated 8th July 2008 to Mr. Mills enclosing a cheque for £800 and stating that this was a shortfall from what they had agreed but that he would make it up later. At that stage he had been happy to pay the rest but his personal circumstances changed, he sought advice and found out about Section 20 of the Act and the £250 limit. Asked if had he known at the time about Section 20 he would have dealt with the matter differently, he stated he did not know but he would not have nominated a contractor.

28. Ms Read pointed out that at the meeting on 26th September 2002 the minutes recorded that Mr. Wills stated his position with regard to the estimate from Commercial Group Holdings Limited and that he abstained from being part of the decision to award the job to that company.

29. The Respondent was asked if he had anything else he wished to say to the Tribunal. He referred again to the windowsill and stated that the work had not been done properly; it was paint on top of old paint.

30. Mr. Keeling stated that the work had been done for the benefit of the building and had been done properly.

31. Mrs. Power stated that the work had been done properly.

32. The Tribunal adjourned the hearing and considered all the evidence which had been received and the submissions which had been made and came to the conclusion that

a dispensation of all the consultation requirements should be granted. The hearing resumed and this was announced. It was made clear that this meant that the £250 limit on the amount the Respondent could be liable to pay in respect of the major works had been removed and that he could now be liable to pay more than £250.

33. In view of that decision, the hearing was adjourned for one and a quarter hours to give those present the opportunity to discuss the position and to clarify which matters were still disputed. Before adjourning, the Tribunal explained that the only matters about which the Tribunal could make a decision, in addition to the dispensation, were those matters which had been transferred from the County Court and that would not include sums claimed since the period covered by the County Court claim. Mr. Wills asked about the position as to awarding costs and reimbursing fees. This was explained by reference to the provisions of Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Reasons for granting dispensation

34. The Tribunal took into account the following matters:

- (a) Although there had not been strict compliance with the consultation procedure under Section 20 of the Act, the Tribunal came to the conclusion that the evidence produced supported the submission that there had been a good deal of practical consultation. Matters had been considered at meetings of the lessees. It was not clear which meetings the Respondent had attended but he was certainly aware that the works were proposed and he had had the opportunity to raise any objections or concerns which he had in relation to the major works.
- (b) The Respondent had not raised any objections or concerns in relation to the major works when they were proposed or being carried out. From the Respondent's evidence at the hearing on 2nd February 2012 it was clear that:
 - (i) He received paperwork about the major works but did nothing about it.
 - (ii) The representatives of the Applicant said the works needed to be done and he did not object.
 - (iii) He did not suggest any contractors to do the works. He knew Mr. Wills' company would probably do the work and was happy about that. He thought that company did most of the maintenance work at Marwell House and thinks he was happy about that.
- (c) Asked if he thought Mr. Wills was making any unfair gain out of doing the work, the Respondent stated that there was absolutely no suggestion of that. The only thing he was not happy with was his windowsill. As far as he could see there was nothing else. He was not suggesting that the work could or should have been done by another contractor.
- (d) Asked when he had noticed the paintwork deteriorating, he said it was about a year ago. He did not tell the directors of the Applicant about it. It got worse over the last year. He stated he had nothing else to complain about. He accepted that from the outside the building looked fine but if you were to get up close he did not know. He thought the works were completed early 2009 but evidence on behalf of the Applicant indicated they were completed late 2008. The Tribunal was not satisfied that the peeling paint

complained of by the Respondent was sufficient to show a poor standard of workmanship. Marwell House is in a very exposed position on the sea front at Margate and paintwork cannot be expected to last.

(e) At the hearing on 7th September 2011 the Respondent stated that but for the lack of compliance with the consultation procedure he would have had to pay the outstanding sum of £3,550.

(f) By his letter dated 8th July 2008 to Mr. Mills enclosing a cheque for £800 and stating that this was a shortfall from what they had agreed but that he would make it up later, the Respondent had shown his willingness to contribute towards the major works. At the hearing on 2nd February 2012 the Respondent stated that at that stage he had been happy to pay the rest of his contribution to the major works but his personal circumstances changed, he sought advice and found out about Section 20 of the Act and the £250 limit.

(g) He did not know whether, had he been aware of the Section 20 consultation procedure at the time, he would have done anything differently but he would not have suggested any contractors to carry out the work.

(h) No complaints about a lack of consultation had been received from any of the other lessees.

(i) No communication had been received from any other lessee indicating a lack of support for the major works or indicating a wish to contest the application for dispensation.

35. The Tribunal was satisfied that the Respondent had had the opportunity to object to the major works, the necessity for them, their cost, his liability to contribute towards them and the choice of contractor but he had not done so. He had been happy to contribute to the works until his personal financial circumstances changed. Based on the Respondent's lack of concern about the works, the Tribunal found that had the Respondent received the formal Section 20 notices it was unlikely that he would have responded to them and that he had not been disadvantaged by not having received those notices.

36. Consequently the Tribunal was satisfied that it would be right in all the circumstances to make a determination to dispense with all the consultation requirements in relation to the major works.

37. All determinations were made on a balance of probabilities after consideration of all the written and oral evidence provided and the submissions made.

Resumption of the hearing

38. The hearing resumed and Mr. Wills informed the Tribunal that agreement had been reached in the following terms:

At the hearing on 7th September 2011 the Respondent had accepted he was liable to pay the following sums:

Outstanding service charges to April 2010 totalling £1,219.00	£
less a credit of £430.01.	788.99

	£	
Fire risk inspection	25.70	
Electric risk inspection	48.46	
Valuation	7.34	
Stair lighting	15.97	
Stair cleaning	37.50	
Building insurance May – March 2011	205.70	
Building insurance April – March 2012	296.00	
Cleaning of stairs etc. to 6 September 2011	15.62	
Electricity for stairs to 6 September 2011	3.75	
Drain works	<u>35.89</u>	
		691.93

On 2nd February 2012 the Respondent had agreed that he was liable to pay also the following:

Contribution towards the major works of £4,350.00	
Less a credit of £800 paid:	3,550.00

	£	
Court Fees	100.00	
Court Fees	35.00	
Hearing Fee	300.00	
Solicitor's Fee	<u>62.75</u>	
		497.75

Service charges 1 st May 2010 to 31 st October 2011: 900.00	
Less credit of £375 in respect of cleaning:	525.00

	£
Preparation of costings AJK Construction Ltd:	60.00
Preparation of costings LMS RCPM Ltd	120.00
Preparation of costings CD Harrison	96.00
K. Read Fees Administration, P & P	375.00
Fee of Mr. Parkin	<u>600.00</u>
Total	1,251.00

Reduced to:	500.00
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Section 20ZA Fees	<u>400.00</u>
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Total:	6,953.67
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39. Mr. Wills added that if further costs were incurred in enforcing payment of that sum then those costs would be claimed against the Respondent in addition to the sum of £6,953.67.

40. The Respondent confirmed that he agreed he was liable to pay £6,953.67 in settlement of service charges to 31st October 2011 and costs and expenses up to 2nd February 2012.

41. There being nothing more for the Tribunal to determine, the Tribunal informed those present that the terms of the agreement would be reported to the County Court and pointed out that although a dispensation had been granted on this occasion, the Applicant should not expect that a dispensation would be granted in respect of any future works and that the consultation procedure should be followed.



R. Norman
Chairman