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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER LANDLORD AND TENANT ACT 1985 SECTION 20ZA

Case Reference:	**LON/00AM/LDC/2011/0126**
Premises:	**5 King Edwards Road, E9 7SG**
Applicant:	**Lemon Land Limited**
Respondents:	**Spokane Trading Limited and the various leaseholders of 5 King Edwards Road**
Date of application:	**1 May 2012**
Tribunal:	**Mr M Martynski** **Ms S Coughlin MCIEH** **Mrs R Turner JP BA**
Date of decision:	**10 September 2012**

DECISION

Decision summary

1. The Tribunal dispenses with the requirement to give 30 days notice on the consultation notice dated 1 September 2009.

Background

2. The Applicant has made an application for dispensation of the requirements to consult leaseholders[1] regarding re-carpeting and redecoration of common parts.

3. The application arises out of earlier proceedings and decisions of the Tribunal. The Tribunal's decisions in respect of the subject property are dated 9 January & 15 March 2012 and reference should be made to paragraphs 36-45 and 6-12 respectively of those decisions.

4. The works in question were carried out in 2009/10. There was no dispute that the statutory consultation regulations[2] applied to the works.

5. Following the previous decisions of the Tribunal in this matter, the only issue as to consultation concerned the second stage consultation notice giving details of estimates. That notice is dated 1 September 2009. The Tribunal had noticed that the deadline for responses to that notice was stated to be 30 September. The correct date should have been 1 October 2009. The Tribunal concluded that the notice failed to give the required 30 days period for a response and so the notice was defective[3].

Directions and responses to the application

6. Directions were given on this application on 16 May 2012. Those directions set this application on the paper track. There was no request from any party for an oral hearing and accordingly this application was decided by the Tribunal on the basis of the documents and written submissions contained in a bundle sent to the Tribunal by letter dated 19 July 2012 from the Applicant's managing agents and on the basis of a later written submission from Sterling Estates Management on behalf of Spokane Trading Limited dated 26 July 2012.

7. Apart from the response from Spokane Trading, the only other responses to the application[4] were from:-

   (a) Flat 111 – Supporting the application

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[1] Pursuant to section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003

[2] Service Charges (Consultation Requirements) (England) Regulations 2003

[3] Paragraph 11(10) of the consultation regulations

[4] These were contained within the bundle referred to

(b) Flat 210 – not indicating whether or not the application is opposed and making no comment on the application

(c) Flat G04 – opposing the application but not giving any reason for opposing

(d) Flat G8 – not indicating whether or not the application is opposed and simply stating that they would wish to be consulted on any future works of re-carpeting and decoration

(e) The Right to Manage Company[5] indicating that they did not object to the application.

8. The response from Spokane opposed the application. Spokane had been granted a long lease of the airspace at the top of the building by a lease dated 9 February 2001. It then built 19 flats in that airspace resting upon the building and granted long sub-leases of those flats. The terms of Spokane's lease made it responsible for the maintenance and repair of the new floor built by it and made it liable to contribute in respect of works to other parts of the building. Spokane was therefore entitled to be consulted regarding any works to the building that required statutory consultation.

9. The first point in Spokane's response was that it had never been served with the consultation notices in question. However, the Tribunal's decision of 9 January 2012 recorded Spokane's position as follows:-

> *Major works – section 20 Landlord and Tenant Act 1985 consultation*
> 36. The major works in question concerned internal decorations and carpeting in 2009/10. The total cost of those works was not known as at the date of the hearing. There was no dispute that the consultation regulations applied to the works.
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> 37. On this point, Mr Ahmed for Spokane confirmed to the Tribunal that Spokane was no longer pursuing an objection (which was an allegation that Spokane had not been consulted regarding major works) regarding the consultation. Mr Southam, for the leaseholders, confirmed that he did not wish to rely on this point either.

10. There was no appeal or other objection to the Tribunal's decision of 9 January 2012 from Spokane.

11. Spokane's response made further reference to the service of notices point as follows:-

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[5] The Service Charges in question in the proceedings were those incurred up to March 2010, the Right to Manage company only started to manage in July 2010 and so was not directly involved in those Service Charges

> Alternatively should the Tribunal agree to dispense with the requirement for the Applicant to issue the required Section 20 Notice for such qualifying works, the Tribunal must be so minded to clarify in their determination that the Respondents underlessees are prohibited to refuse to pay or contribute towards such works due to the fact that the Applicant and the Managing Agents at the time failed to issue either to the Respondent or directly onto the Respondent underlessees the required Section 20 Notice. In effect any determination in favour to dispense with the requirement to serve a Section 20 Notice must be enforceable and apply to the Respondents underlessees and the Respondent allowed to collect from their underlessees any such liabilities.

12. On the question of the second consultation notice not giving the required 30 day notice, the only comments on this in Spokane's response was to record this fact and to say; *"As such Section 20 Notice was and is defective and invalid"*.

13. The response went on to raise a new issue, that is that the actual works undertaken following the consultation process; *"were of a substantial variation to those works as noted within the defective section 20 notice"*

The issues and the Tribunal's decision

14. As to the objections raised by Spokane, the Tribunal comments as follows: First, the point regarding service of the relevant notices upon Spokane was conceded by it at the hearing which took place on 12 December 2011. The Tribunal's decision dated 9 January 2012 confirmed Spokane's position on the point. There was no objection to or appeal of the Tribunal's decision and accordingly, Spokane is not now entitled to raise this objection.

15. Second, as to Spokane's own lessees, this application concerns only those liable to contribute directly to the Applicant in respect of the costs of the works in question, the issue of the payablitity of Service Charges between Spokane and its tenants is a separate question which would have to be the subject of a separate application. This objection however hints at a further and much more relevant point which is dealt with later in this decision.

16. Third, as to the issue of the works that were carried out being different from those in the consultation notices, this is a new issue. It was not raised by Spokane at the hearing on 12 December 2011 which specifically dealt with the section 20 consultation procedure. In any event, no detail was given as to how the works carried out were allegedly different from those set out in the consultation notice. The Tribunal therefore dismisses this objection.

17. There being no further substantive objection to the application, the Tribunal went on to consider the matter generally and the question of whether, in all the

circumstances, it would be reasonable to dispense with the requirement to give a 30 day response period in the second consultation notice.

18. As recorded earlier in this decision, the notice stated that the deadline for a response was 30 September. In order to comply with the consultation regulations, the correct date should have been 1 October or any day after that day. The effect of this mistake was that the recipients of the notice were only given 29 days notice, just one day short of the statutory requirement.

19. There is no evidence before the Tribunal from any party that prejudice was suffered by any party as a result of the short notice. However there is clearly the potential for prejudice so far as Spokane and its tenants are concerned. We return here to that part of Spokane's response that has been set out in paragraph 11 above. In that part of its response, Spokane refers to the possibility of its own lessees refusing to pay for the works in question as a result of failures in consultation. The clear potential prejudice therefore of the failure to give the statutory 30 days notice is that, even if the Applicant is granted dispensation in respect of the statutory requirement between itself and Spokane, that could leave Spokane in a position of not having complied with the statutory requirement as between itself and its tenants.

20. The problem for Spokane in maintaining an objection in this way is that, at the time in question, the building was managed by managing agents who acted on behalf both of the Applicant and Spokane. The evidence in the hearing on 12 December 2011 indicated that the section 20 notices were sent to all leaseholders, including Spokane's leaseholders. Spokane were not therefore in the position of having the notice served on it and having to pass that notice, or to pass a separate notice to its lessees, Spokane simply relied on the managing agents at the time.

21. There is no evidence that any lessee of Spokane had any observation or comment on the works. There is no evidence before the Tribunal that any lessee of Spokane was unduly prejudiced by the short notice. All leaseholders at the building, including Spokane's, have been named as Respondents in this application, no leaseholder has raised any substantive objection to the application.

22. In the circumstances therefore the Tribunal concludes that, in all the circumstances, it would be reasonable to dispense with the requirement to give 30 days notice on the consultation notice dated 1 September 2009.

Mark Martynski, Tribunal Chairman
10 September 2012