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**HM Courts
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**Residential
Property
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL**

Case Reference: CHI/00ML/LDC/2013/0004

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

Applicant: 12 Chichester Terrace Management Company Limited

Respondent: The Lessees

Property: 12 Chichester Terrace, Brighton, East Sussex BN2 1FG

Date of Hearing 11TH April 2013

Appearances

Applicant

Mr C Welton, Director
Mr D Lowe, Director
Mr J Rolls, Managing Agent
Ms P Massey Employee of the managing agent

Respondent

Mr and Mrs Maguire

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Ms C. Barton BSc MRICS
Mr T. Sennett

INTRODUCTION

1. This is a claim under section 20 ZA of the Landlord and Tenant Act 1985 seeking dispensation from the consultation requirements under that act. The Applicant is the owner of the freehold and the Respondents are the leasehold owners of the flats in the building 12 Chichester Terrace, Brighton BN2 1FG ("the Property").
2. All the Respondents save for Mr and Mrs Maguire the owners of Flat 2 agree to dispensation being granted to the Applicant. Mr and Mrs Maguire object.
3. The application relates to external redecoration works undertaken in 2011. The works were undertaken in two tranches. The front of the building was done first and then later in the same year the rear was decorated. Both parts were undertaken by the same contractors Clarke and James Limited.
4. A first stage consultation Notice of Intention to Effect Qualifying Works was served on all leaseholders dated 1st March 2011 (page B13 of the bundle). On the 16th April 2011 the Applicants held an Annual General Meeting attended by all Leaseholders. Thereafter the works were undertaken without any further consultation notices being served.
5. Mr and Mrs Maguire had previously made application to the Tribunal challenging the payability and reasonableness of the cost of the redecoration works to the rear of the building under case reference number CH/00ML/LIS/2012/0075. A copy of the decision was before the Tribunal at pages B118-B120. That Tribunal determined that Mr and Mrs Maguire should pay the sums claimed for the works to the rear and the cost was reasonable. Mr and Mrs Maguire are currently seeking leave to appeal that decision from the Upper Tribunal (Lands Chamber).

THE LAW

6. The law relevant to this application is set out in section 20ZA of the Landlord and Tenant Act 1985. The Tribunal has had regard to section 20 of the Landlord and Tenant Act 1985 and also Daejan Investments Limited v. Benson and others [2013] UKSC 14. We set out below section 20ZA:

Section 20ZA Consultation requirements: supplementary.

(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. .

(2) In section 20 and this section— .

"qualifying works" means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement— .

(a)if it is an agreement of a description prescribed by the regulations, or .

(b)in any circumstances so prescribed. .

(4)In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State. .

(5)Regulations under subsection (4) may in particular include provision requiring the landlord— .

(a)to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them, .

(b)to obtain estimates for proposed works or agreements, .

(c)to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates, .

(d)to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and .

(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements. .

(6) Regulations under section 20 or this section— .

(a) may make provision generally or only in relation to specific cases, and .

(b) may make different provision for different purposes. .

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

INSPECTION

7. Prior to the hearing the Tribunal inspected the Property. It is a mid terrace Grade 1 listed Regency building in a Conservation Area overlooking the seafront. The Tribunal inspected the building externally to the front, from the rear using the flat roof over Flat 2 and then from Rock Grove. It was apparent that the external parts had been recently redecorated although at the front as one would expect from such an exposed building there was some weathering apparent.
8. The parties pointed out to the Tribunal certain glass panels providing a wind break on the flat roof to the rear. It was agreed by Mr and Mrs Maguire that these had required urgent replacement and these had been replaced. It was pointed out that the flat roof had been painted with reflective paint. Mr and Mrs Maguire also pointed out that plant pots which had been on the flat roof had now been removed.

HEARING

9. Before the hearing started the Tribunal had provided to the Applicant and Mr and Mrs Maguire a copy of the Supreme Courts recent decision in the case of Daejan Investments Limited v. Benson and others [2013] UKSC 14. The Tribunal invited all parties to consider and review this decision before the start of the hearing.
10. The Tribunal explained at the start that the Daejan Case was a recent Supreme Court decision which was binding upon the Tribunal and set out how the Tribunal should deal with an application such as this one before it today. The Tribunal reminded the parties that in making its decision it would have regard to this decision.
11. The Applicant, represented by Mr Douglas Lowe as Company Secretary (and also a leaseholder of Flat 5) and Mr Jonathan Rolls the buildings managing agent, explained at the outset that the application was supported by all the Leaseholders save for Mr and Mrs Maguire. Mr Welton (Flat 3) was present and confirmed his consent and in the bundle were letters from all the leaseholders save Mr and Mrs Maguire (pages B87 to B100 inclusive).
12. It was explained that it had been believed that redecoration works at the building were overdue. The rear had not been redecorated for about 8 years and the front for about 6 years. Mr Rolls had been instructed to issue a first stage consultation notice indicating that

re-decoration works to the front and rear elevations were planned. Mr Rolls confirmed that he received no responses to that Notice.

13. The Applicant then called an Annual General Meeting on 16th April 2011. This was attended by all the leaseholders and the Applicant said that it was agreed to proceed with the works unanimously. At the AGM details of three quotes obtained were referred to. There was some urgency as the preferred contractor, Clarke and James Limited, had a cancellation which meant they could undertake the front elevation works almost immediately. It was then hoped that the works to the rear would be undertaken in September of that year although in fact due to previous jobs of the contractor overrunning these works did not start until the end of October 2011. A copy of the minutes were at pages B21 and B22 of the bundle.
14. The Applicants believed that all leaseholders, including Mr and Mrs Maguire, had expressly agreed to the appointment of Clarke and James Limited and for the works to begin. The Applicants referred to a letter from Mr and Mrs Maguire dated 27th July 2011 (page B28 of the bundle) as further evidence that the Maguires agreed to the works being undertaken by the Applicant.
15. The Applicants indicated that they are seeking dispensation from the second and subsequent consultation requirements under section 20 of the Landlord and Tenant Act 1985. The application for dispensation has been made to endorse the agreement reached at the AGM and to allow the Applicant to move on. All leaseholders agreed to proceed at the AGM with the decoration works and if the Applicant had looked then to formally consult they would have lost the opportunity to have Clarke and James Limited do the work when they did.
16. Mr Rolls explained that he had not personally attended the AGM but had been informed of the outcome. He did advise Mr Lowe as to the consultation requirements but Mr Lowe had explained to him that the meeting had given him a mandate to proceed. Mr Rolls explained that he had set out his role in the document at pages B23 and B24 of the bundle. He asked the Tribunal to consider the earlier decision of the previous Tribunal.
17. It was explained that the front of the building was painted with a paint called "Classic Stone". This paint could only be applied between May and September. The rear was painted with "Weathershield" which could be applied all year round. The contractors who had been chosen had previously decorated the building and the quotation offered this time matched their last charge for decorating. All had been satisfied with their previous works and they were a well regarded firm in the area.
18. Mr Lowe explained that when the scaffolding to the front went up the Maguires had asked for the wooden fringe to the front of the property to be repaired as well. Mr Lowe had arranged for this to be done.
19. It was explained that the contractors gave a fixed price quote. As a result the Applicant would not expect to receive receipts showing quantities etc. When this issue had been raised by the Maguires the Applicants had obtained from the contractors some invoices to show the paints purchased to try and satisfy them. The Maguires had themselves acknowledged that the replacement of the glass panels was urgent and these works were undertaken. Also with regards to the Belvedere the Applicants had offered to arrange for the contractor to come and undertake any remedial snagging works but the Maguires had declined this.

20. Mr Rolls took issue with suggestions that seemed to be made by the Maguires. He relied on his letter to the Tribunal of 14th March 2013 at pages B85 and B86. Mr Rolls stated that he believes he has a reasonable reputation and has acted properly in this matter.
21. The Applicants did not believe that the Maguires had suffered any prejudice as a result of the consultation requirements not being complied with to the letter. The Applicants relied on the fact that a first stage notice was served without any observations being received. At the AGM three quotes were discussed and referred to and it was agreed to proceed with the cheapest who also happened to be available promptly to do the works. The Applicants also referred to the fact that the Maguires had still not paid the full costs of the works placing the Applicant in some financial difficulties. Taking all into consideration the Applicants seek dispensation with no conditions attached.
22. The Maguires suggested that they had suffered prejudice. In the previous proceedings before the Tribunal they had understated the prejudice they had suffered.
23. Mr Maguire explained that they had lived in the building for 13 years and were one of the longest residents. Mr Maguire had on going issues with Mr Lowe. In the past works had been undertaken without consultation and their knowledge. Mr Maguire also stated he had on going issues with the Managing Agent, Mr Rolls. In his opinion Mr Lowe and Mr Rolls both look after each other's interests. Mr Maguire believes Mr Lowe has earned lots of money from the building by undertaking various jobs.
24. Mr Maguire referred to the fact that when he was buying the building he was advised as part of his survey that there were lots of maintenance issues. He was also advised as to a damp problem with his flat which has not been resolved.
25. Mr Maguire took the view that the redecoration works were not urgent. He accepted that he received the first stage notice and that he did not respond. He further agreed that he attended the AGM and agreed to the front being undertaken immediately but there were no firm dates for the rear. Mrs Maguire stated that she thought if it was not done by September it would be postponed until the following Spring. At the AGM they had agreed with matters as wanted to be good neighbours. They believed that Mr Rolls would inspect the building and that they recalled at the AGM specifically requesting that someone should come and inspect the Belvedere. The fact that no one did was to their detriment.
26. Further Mr Maguire did not understand why the same contractor was required to do the front and back. He saw no reason for both front and back to be undertaken in the same year. This had not happened previously and given the works were not urgent was not required. Mr Maguire relied on the fact that the rear parts of many of the adjacent buildings were in a much worse state and yet were not being decorated. Further he suggested that even though the building was grade I listed there was no requirement by the Local Authority for the rear to be painted at that time.
27. It was the opinion of the Maguires that the works were only being pushed through to assist two other leaseholders who were looking to sell their flats. Mr Maguire relied on an email from the former owners of the basement flat which was marked Note 3 of his submissions.
28. Mr Maguire says that he would not have agreed to Clarke and James Limited as he was not satisfied with their previous works and would have wanted another estimate if the second stage notice had been served. At the AGM he had simply wanted to keep the peace and get on with his neighbours

29. He believed that he should have had sight of receipts for all the paints used by the contractor to check what was done. Mr Maguire did not accept that he should have to pay and did not believe there was any value to the painting to the front and rear. He did not believe that there were any conditions which the Tribunal could impose which would overcome the prejudice he had suffered.
30. The works were in his opinion unnecessary. He accepted he had originally agreed in principle but had then asked for the works to be postponed. He saw Douglas Lowe as the go between with Jonathan Rolls and he never authorised Douglas Lowe to make decisions.
31. When questioned, Mr Maguire candidly accepted with hindsight that he should have done things differently and should have taken more interest. He does take pride in the building but did not believe all works needed to be done in same year.

DECISION

32. This is an unfortunate case. It is plain that there is much animosity between Mr and Mrs Maguire and Messrs Lowe and Rolls. Mr Lowe is a leaseholder in the Property and also the Company Secretary of the Applicant. Mr Rolls is the long standing managing agent of the Property.
33. The Tribunal has regard to the Supreme Court decision in the Deajan Case. The Tribunal is mindful that the nature of the Applicant is not a relevant factor for this Tribunal to have regard to.
34. The Tribunal has considered the section 20ZA of the Landlord and Tenant Act 1985.
35. The Tribunal notes from its inspection that the Property is well maintained to a good standard in a prime location for residential property in the Brighton area.
36. The Tribunal has looked carefully at the submissions made by Mr and Mrs Maguire. Whilst they have referred to having suffered prejudice the Tribunal is not satisfied that they have suffered any relevant prejudice.
37. The Tribunal is mindful of the fact that the Applicants in making their application have candidly admitted that they only complied with the service of a First Stage Notice. They have however explained that an AGM was held attended by Mr and Mrs Maguire who agreed to the redecoration works being undertaken by the contractor and that subsequently Mr and Mrs Maguire wrote affirming this on 27th July 2011 when they paid a proportion of the cost of the works.
38. Whilst it is clear that there is animosity between the Maguires and Messrs Lowe and Rolls this of itself does not give rise to prejudice. The Maguires accepted that they did not respond to the first notice and that they agreed to the works to "be good neighbours". It is not asserted by the Applicants that the works (save for the glass panel replacement) were urgent. Simply that they needed to be undertaken and a particular window of opportunity existed. The fact that adjacent buildings are not as well maintained appears to this Tribunal to be irrelevant to the issues to be determined.
39. The Tribunal could find no relevant prejudice. The works, as accepted by all, were works of maintenance required to be undertaken by the Applicant under the lease. All parties were provided with an opportunity to comment upon the works and unanimously agreed at the AGM.

40. Neither party suggested any conditions should be attached to the granting of dispensation. The Tribunal finds in all the circumstances having considered the evidence presented and submissions made that dispensation from the consultation requirements should be granted to the Applicant without any conditions being attached.

David R. Whitney LLB(Hons)

Lawyer Chair

20th April 2013