



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/23UB/LDC/2013/0029**

Property : **10 Queen's Parade, Montpelier,
Cheltenham, Gloucestershire, GL50
3BB**

Applicant : **10 Queen's Parade Residents
Association Ltd**

Representative : **Mr Dale Jones of Metro PM**

Respondent : **The Lessees**

Representative : **Dr RWD Nicholls of Flat 6**

Type of Application : **Application under Section 20ZA of
the Landlord and Tenant Act 1985 for
the dispensation of all of the
consultation requirements provided
for by Section 20 of the Landlord and
Tenant Act 1985**

Tribunal Members : **Judge D Archer (Chairman)
Mr M Ayres (Chartered Surveyor)**

Date and Venue of Hearing : **25th June 2013 at Cheltenham
Town Hall**

Date of Decision : **26 June 2013**

DECISION

For the reasons set out below, the Tribunal makes a determination to dispense with all of the consultation requirements in relation to the lift repairs and upgrades set out in the Triangle quotation dated 17 May 2013 (in the sum of £11,273 plus VAT) because the Tribunal is satisfied that it is reasonable to do so. The decision was notified to the parties on 26 June 2013.

REASONS

Background

1. Metropolitan PM Limited ("Metro PM") is the current proprietor of the freehold reversion of 10 Queens Parade ("the Property"). The Applicant, 10 Queen's Parade Residents Association Limited, is a leaseholder owned and controlled management company. The Respondents are the leasehold owners of the 10 flats that fall within the Property.
2. On 17 May 2013 the Applicant applied to the Tribunal for a dispensation of all of the consultation requirements provided by section 20 of the Landlord and Tenant Act 1985 ("the Act"). Metro PM was notified on 9 May 2013 that the lift at the four storey Property had broken down and a leaseholder was trapped within the lift car. The leaseholder was rescued and the incumbent lift maintenance contractor, Triangle Lift Services ("Triangle"), was instructed to inspect the lift and carry out repairs to restore the lift to good working order. Triangle visited the Property on 15 May 2013 and confirmed that the lift required a new control panel and associated equipment. Triangle was unable to restore the lift to a reliable service and therefore provided Metro PM with a quotation for the works required. The quotation was submitted on 17 May 2013 in the sum of £11,273 plus VAT.
3. The quotation exceeded the Section 20 threshold and therefore Metro PM arranged for Bullet Lift Services ("Bullet") to provide a second quotation based upon the agreed specification. Their quotation was submitted on 23 May 2013 in the sum of £12,745 plus VAT. Metro PM served the notice of intention in accordance with the Section 20 requirements on the Respondents on 17 May 2013. The first stage of the consultation process expired on 17 June 2013.

4. The application was accompanied by a copy of the lease of a flat within the Property, a quotation from Triangle dated 17 May 2013 and a covering letter dated 17 May 2013. The Tribunal issued directions on 24 May 2013 requiring the Applicant to send to the Respondents no later than 5 June 2013 copies of all correspondence, witness statements, specifications, Section 20 notices, tenders and other documents to be relied upon. They should also supply a formal statement of case setting out in detail the grounds of the application and refer to the specific clauses in the lease on which they rely. The Respondents had until 14 June 2013 to contest the application (and submit a statement and supporting documents) or to consent to the application.
5. The application was listed for hearing on 25 June 2013. The Respondents were notified of the date, time and venue of the hearing by letter from the Tribunal.

The Law

6. Section 20ZA of the Act provides that 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 do so. Qualifying works means works on a building or any other premises.
7. In **Daejan Investments Limited v Benson (2013) UKSC 14**, the Supreme Court held that Sections 19 to 20ZA of the Act are directed towards ensuring that tenants of flats are not required to pay for unnecessary services or services that are provided to a defective standard or to pay more than they should for services which are necessary and are provided to an acceptable standard. The consultation requirements are intended to reinforce and give practical effect to those two purposes. Dispensation should not be refused solely because of a serious breach or departure from consultation requirements and in the absence of substantial prejudice to the tenants. The factual burden of proving substantial prejudice is upon the tenants but the Tribunal should be sympathetic to tenants.

The Lease

8. The Tribunal had before it a copy of a lease dated 7 May 1998 registered at the Land Registry under title number GR79839. Under Clause 5(p) of the lease, the Lessors must maintain, renew, repair and keep in good order and condition the lift in the Property and all equipment ancillary thereto provided that the Lessors shall not be liable for any non or malfunctioning of any lift caused by any act, neglect or default of any person using such a lift or by any temporary breakdown or interruption of the use of any lift or howsoever caused otherwise than the negligence of the Lessors.

Inspection

9. The Tribunal inspected the Property on 25 June 2013. The Property is a four storey period property in central Cheltenham. There is a steep narrow staircase between the floors in the Property. Flats 1 and 2 are on the third (top) floor, flats 3 and 4 are on the second floor, flats 5 and 6 are on the first floor and flats 7 and 8 are on the ground floor. Flats 9 and 10 are in the basement which has a separated entrance. There is a single front entrance to flats 1-8 and the lift provides access to flats 1-6 without the need to use the staircase.
10. The Tribunal observed that the lift was not functioning and there were “out of order” signs on the lift and in the lift room which is accessed through the basement car park at the rear of the property. The lift room appeared to be relatively modern.

The Hearing

11. The hearing took place at Cheltenham Town Hall on 25 June 2013. The Applicant was represented by Mr Jones. The Respondents were informally represented by Dr Nicholls on behalf of Mr JD Tucker (the Chairman of 10 Queen’s Parade Resident Owners Association). Neither party had submitted any witness statements and the Applicant did not seek to call any oral evidence.

The Evidence

12. The evidence submitted by the Applicant on 31 May 2013 included the following;
- 1) The application form signed by an agent for the Applicant.
 - 2) The Applicant’s statement dated 31 May 2013.
 - 3) A certificate of incorporation for the Applicant company.
 - 4) A report and a second quotation from Triangle.
 - 5) A quotation from Bullet.
 - 6) Notice of intention.
 - 7) A copy of the lease.

At the hearing, Mr Jones submitted a call out report from Triangle dated 15 May 2013 (“the call out report”). The Tribunal also received a letter from Mr Tucker dated 7 June 2013 (“the Respondents’ letter”).

The Submissions

13. Mr Jones submitted that Triangle tried to repair the lift but further faults developed and an upgrade is required. If the lift could have been repaired then it would have been repaired. There has been no end of complaints from the residents since the breakdown. Mr Jones was confident that the Triangle quote was like for like with the Bullet quote and was competitive. The money has not yet been paid to the lift company but a levy has been sent out to the leaseholders and all 8 liable leaseholders have paid £1690.95 each. The levy was sent out on 30 May 2013. The amount raised is sufficient to pay the higher Triangle quote (£11273 plus VAT).
14. Mr Jones explained that there are two quotes dated 17 May 2013 from Triangle because the lower quote (£9323 plus VAT) does not include the new door gear. The higher quote dated 17 May 2013 from Triangle (£11273 plus VAT) was actually received by Metro PM on 28 May 2013. Following the call out on 15 May 2013 there was another visit by a surveyor from Triangle to complete the survey for the quotation and produce the report.
15. Mr Jones concluded by stating that everyone in the block is keen to get on and do the work. The residents wish to get on with their lives. Some cannot even leave the Property and dispensation should be granted.
16. Dr Nicholls submitted that the lift has been unchanged since 1986 and there has been no upgrade since then. The context is moderate to severe disability of three quarters of the residents. No one wants further breakdowns. There has been little information from Triangle. Dr Nicholls had looked at documents relating to the lift over the previous 10 years and there was little evidence of sign off or regular maintenance. He was surprised that Triangle now wants to replace everything. There should be a mechanism for talking to Triangle. There is not much evidence of that going on.
17. Nonetheless, Dr Nicholls confirmed that all of the residents want to get on with the work now. There may be a need for more reviews to cover any future issues.

Conclusions

18. The Tribunal finds that all of the leaseholders in flats 1-8 wish the works to proceed in accordance with the higher Triangle quotation of 17 May 2013. That conclusion is based upon the Respondents' letter, the submissions made at the hearing and the fact that all liable leaseholders have paid their share of the works. The Respondents' letter states that it is absolutely vital to the health and safety of the owners of the flats at the Property that the lift which broke

down on 13 May is repaired as soon as possible. The reason why the resident owners bought the flats is because there was a lift that ran from the top floor to the basement car park. The majority of the resident owners are now over 80 and have walking difficulties and have to use sticks to get around. One resident owner has to use a Zimmer. The resident owners on the top floors can only with great difficulty and discomfort walk down the stairs out of the Property and down the steps on the outside to access the basement garage. Getting back into the Property with shopping is even more difficult. The Respondents urgently request that dispensation is granted by the Tribunal.

19. The Tribunal finds that the proposed works are qualifying works within the meaning of the Act. The proposed works are permitted and required under Clause 5(p) of the Lease. The Tribunal finds that the words, "maintain, renew, repair and keep in good order and condition" are sufficiently wide to cover the proposed upgrade to the lift. The Tribunal finds that the Applicant has obtained two independent quotations for the proposed works and that the higher Triangle quotation of 17 May 2013 is competitive.
20. The remaining issue is whether the dispensation will cause any substantial prejudice to the Respondents. None of the Respondents seek to argue that it will. There is no evidence that the proposed works will be defective or are unnecessary or are unnecessarily expensive. The call out report confirms that the control panel was installed in 1988 and that a panel upgrade is required. The fault summary in the call out report states that there is a processor fault. The higher Triangle quotation of 17 May 2013 is based upon a site survey and recommends replacing the obsolete control processor with a modern controller which would include fault logging. The recommended works include removal of the existing worn lift control from the lift motor room, supplying and installing a new micro-processor control panel, fitting the control panel with a hand winding switch and buzzer (to facilitate release of trapped passengers in the event of a power failure), replacement of shaft switches with new proximity levelling switches to obtain accurate levelling and re-levelling, supplying and installing new door gear with variable frequency control and completely rewiring the lift installation. The Tribunal finds that all of the proposed works are necessary to ensure that the lift is reliable, functional and safe. There is no evidence of any potential or actual substantial prejudice to the Respondents arising from dispensation. The Tribunal finds that it is reasonable to grant dispensation.
21. The Tribunal finds that all of the requirements of Section 20ZA of the Act are met and therefore makes a determination that dispensation from all of the consulting requirements is granted. To avoid delay, this decision was communicated to the parties on 26 June 2013.
22. Dr Nicholls made strong submissions regarding the history of limited maintenance and renewal of the lift. The

Tribunal notes that the lift is an essential feature of the Property for most of the leaseholders and any interruption to service is a matter of extreme inconvenience. Even if there were no consultation requirements, the lift broke down on 13 May 2013, the higher Triangle quotation was not received by Metro PM until 23 May 2013 and the quotation refers to a lead time of 3-4 weeks on the order of parts with a further 2 weeks for fitting and testing. That means that after the breakdown, the lift was always going to be out of use for up to 52 days or over 7 weeks. The leaseholders do not regard that period as acceptable. The Tribunal suggests that the leaseholders, who control the Applicant company, should ensure that the maintenance contract for the lift provides for a more effective approach to maintenance and renewal of essential parts for the lift. That is ultimately a matter for the parties to resolve.

Appeals

23. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
24. If the person wishing to appeal does not comply with the 28-day time limit the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
25. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the ground of appeal, and state the result the party making the application is seeking.

Judge D Archer (Chairman)
Dated: 5 August 2013