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

Case Reference: LON/00AG/LDC/2013/0011

Premises: Oakford Court, 2 Nassington Road, London NW3
2UE

Applicant: (1) Frank Mattes
(2) Jeremy Herman
(3) Mr T Rothen

Representative: Hurford, Salvi Carr Property Management

Respondents: (1) Miss Anna C Merton
(2) Mr Shio-Yun Kan

Representative:

**Date of Paper
Determination:** 5th March 2013

Date of Directions: 15th January 2013

**Leasehold Valuation
Tribunal:** Mr S. Shaw LLB (Hons) MCI Arb
Mr N Martindale FRICS

Date of Decision: 5th March 2013

DECISION

Introduction

1. This case involves an application by the Applicants referred to above ("the Applicants") in respect of Oakford Court, 2 Nassington Road, London NW3 2EU ("the Property"). The application is for Dispensation of the consultation requirements contained in Section 20 of the Landlord and Tenant Act 1985 ("the Act") pursuant to section 20ZA of the Act. The application is made against the leaseholders (as named above) ("the Respondents") of Flat 1 at the Property, in respect of whom dispensation of the consultation procedure is requested.
2. The application is dated 22nd January 2013, and Directions were given by the Tribunal on 25th January 2013. It was directed that the Respondents should respond to the Application by 8th February 2013, and the Respondents were also given an opportunity to indicate whether they required an oral hearing of the Application.
3. As recorded in the Directions, the application relates to remedial works to a flower bed side and front retaining walls at the Property, which it is alleged were cracking and had become dangerous. The Applicants' case is that the works were undertaken following agreement between the 3 leaseholders at the Property (who are also freeholders) and the Respondent leaseholders of the remaining flat (who are not freeholders), but that the Respondents have subsequently withdrawn their consent.
4. It is proposed to set out briefly the parties' respective cases, and then give the Tribunal's determination. Both parties have set out their positions in written representations as directed by the Tribunal. An oral hearing has not been requested and accordingly the Tribunal is dealing with this matter on the basis of the written representations.

Applicants' Case

5. The Applicants' position as set out in that Application, is that the walls had become dangerous through severe cracking and loose brickwork, caused by tree root expansion. Agreement was reached for the works to proceed (and have in fact been carried out) but the Respondents have since withdrawn their consent.

The Respondents' Case

6. In written representations dated 5th February 2013, the first-named Respondent points out that concern in respect of these walls dates from 2010, when the Respondents applied to have the current manager, (Mr J Thornton of Hurford Salvi Carr) appointed as manager by the Tribunal. She contends that there were "*tricky negotiations*" during 2011, and that in April 2012 she received details of one quotation from Woodlands Building Services Limited. Under the impression that other quotations had been obtained, and that this was the lowest, and within the budget for the building, she elected not to demand to see other estimates – a decision she now regrets.
7. Her retrospective regret is explained later in these representations because the flat is occupied by the Respondents' daughter and son-in-law, both of whom are architects. So far as both the Respondents and the occupiers are concerned, they have "*grave concerns*" as to the manner in which the work was carried out, and the completed job. In particular it is asserted that some of the cracks quoted for have not been mended adequately or at all, and the quality of the work generally is poor. Their attempts to discuss these matters have been rebuffed.

The Applicants' Case in Reply.

8. By further representations dated 22nd February 2013, the Applicants contend that the works were in fact approved by Colin Chapman MRICS, a Building Surveyor, and were also found to be of acceptable standard by Chris Shattock MRICS of Ashby Building Surveyors.
9. The Tribunal has received a further e-mail from the first-named Respondent dated 4th March 2013 in which further criticisms are contained about the manner and quality of the work.

The Determination the Tribunal

10. The representations received on behalf of the Respondents go generally to the alleged unsatisfactory manner in which this work was carried out, and the alleged poor quality of the finished job. There is no suggestion that the work should not have been carried out (indeed, as understood by the Tribunal, all leaseholders have been anxious for some time that the work should proceed, and that a possible Health and Safety risk is being created by failure to ensure that the walls are in proper repair).
11. Moreover, there is no clear statement in the Respondents' representations opposing the grant of dispensation. The main concern would appear to be the matters referred to above, and regret that consent was given for the works to proceed without pursuing the full statutory procedure.
12. It seems to the Tribunal that the works having been consented to in principle, and having been desired and urged by all parties, it is

appropriate and "*reasonable*" for the purposes of the Act, to grant the dispensation applied for. The concerns expressed by the Respondents about the quality of the works (and possibly the cost) are all matters which are appropriately the subject of a section 27A application by the respondents, in respect of the reasonableness of the service charge emanating from these works. Indeed, if the matters complained of by the Respondents were made out in the context of such an application, no doubt they would form strong grounds for a successful application by the Respondents. That matter is however a separate matter, and would have to be decided by a Tribunal on the evidence before it.

Conclusion

13. For the reasons indicated above, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements of section 20 of the Act, and a determination to this effect is accordingly given.

Legal Chairman: S SHAW

A handwritten signature in black ink, appearing to read 'S. Shaw', with a stylized flourish at the end.

Date: 15th February 2012