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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UQ/LDC/2015/0017**
Property	:	**13-20 Chantry Court, Felsted, Essex CM6 3GW**
Applicant	:	**Abacus Land 4 (GR1) Ltd. and Chapel Lawns (Felsted) Management Co. Ltd.**
Respondents	:	**Those leaseholders set out in Appendix 1 to the application**
Date of Application	:	**26th October 2015**
Type of Application	:	**for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of works to repair the lift serving the property.

Reasons

Introduction

2. On 26th October 2015, this application was made for dispensation from the consultation requirements in respect of 'qualifying works' to the lift serving the building in which the properties are situated which had broken down and could not be used. It had broken down on the 14th August 2015 and remained broken at the time of the application in October.

3. Chantry Court is a 3 storey purpose built block of flats containing 3 ground floor flats, 3 first floor flats and 2 second floor penthouses. The fault with the lift was diagnosed as a drive motor failure and the 'urgency' was stated to be because of 'personal and mobility reasons'. The lift motor had, it is said, been installed for 7 years and had been maintained by the well known lift specialists Kone PLC. They provided a quotation for the replacement of the motor drive unit at a cost of £4,925 plus VAT on the 17th August 2015.

4. A quotation from another supplier was sought but as this had not arrived by the 21st September, the instructions to that alternative supplier were cancelled. As the management company considered that the lift should have lasted longer than 7 years, they negotiated further with Kone and reduced the price to £3,000 plus VAT with a 5 year guarantee.

5. A procedural chair issued a directions order on the 29th October 2015 timetabling this case to its conclusion. One of the directions said that this case would be dealt with on the papers on or after 16th November 2015 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received. The directions order said that if any of the Respondents wanted to make representations, then they should do so, in writing, by 13th November. None were received by the Tribunal.

The Law

6. Section 20 of the 1985 Act limits the amount which lessees can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the management company's proposals. Those proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the management company must give its response to those observations.

7. Section 20ZA of the Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

The Lease terms

8. A copy of a blank form of the lease has been submitted which the Tribunal members assume is a sample of the lease applying to all subject flats. The management company's covenants are in Clause 4 and the 4th and 5th Schedules and include maintaining and repairing the lift.

9. The proportion of service charges payable by each tenant is what the management company deems 'fair and proper'. The evidence is that the management company has only asked the 1st and 2nd floor tenants to pay for the lift because they are the only ones who benefit from it.

Conclusions

10. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the issues to be

determined by a Tribunal dealing with this issue which culminated with the recent Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

11. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances? In this case, for example, the lift had ceased working.

12. It is self-evident that repair works were and are required. The Tribunal is somewhat troubled by the delay in this case from the 14th August until the 25th November because that time lapse would have enabled a full consultation to take place. Having said that, there is no evidence that the full consultation process would have resulted in different works or a lower cost. The Tribunal therefore finds that there has been little or no prejudice to the Respondent lessees from the lack of consultation. Dispensation is therefore granted but only on balance and with some hesitation.

13. If there is any subsequent application by a Respondent for the Tribunal to assess the reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of the necessary parts at the time of the repairs.

14. As one final point, the Tribunal was also troubled as to how the cost has been divided. It forms no part of this decision, but the evidence is that the consultation process was not started "*due to an initial belief that the costs would be spread amongst all twenty four lessees*". The managing agent then apparently advised the management company that from past service charge arrangements, the management company had only deemed it "*fair and proper for the five lessees who directly benefit from the lift to be liable for its maintenance*".

15. The 24 lessees presumably refers to the number of units on the whole development although the building only appears to have 8 flats and all the tenants would appear to have access to and the right to use the lifts. If only 5 out of the 8 (or 24) are being charged, then that is a matter for the management company and those 5. As is said, this forms no part of the decision but the Tribunal felt that it should be mentioned.

Bruce Edgington

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Bruce Edgington
Regional Judge
26th November 2015