

13063



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

Case reference : LON/00AG/LDC/2018/0159

Property : 8 Buckland Crescent, London NW3
5DX

Applicant : 8 Buckland Crescent Limited

Representative : Mr Davidoff, ABC Estates

Respondent : The Lessees

Representative : Kaveri Niththyananthan in person
appearing as the only objector,
lessee of Flat 8

Type of application : Landlord's s20ZA application and
Ms Nithythyyananthan's s20C
application

Tribunal members : Judge Hargreaves
Hugh Geddes

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR

Date of decision : 7th November 2018

DECISION

The Tribunal directs as follows:-

1. Dispensation pursuant to s20ZA Landlord and Tenant Act 1985 is granted to the Landlord for the works referred to in the first point of the letter from MA Premier Property Services Limited addressed to the Applicant c/o ABC Estates

Limited dated 12th September 2018 namely and limited to "Scaffolding erected to rear corner of building. Total length 14 metres and 12 metres high. All scaffolding to be tied into the main walls and to have kick boards, to be fully boarded on all levels and laddered access to all levels."

2. For the avoidance of doubt, no further dispensation is granted.
3. Ms Kaveri Niththyananthan's application for an order pursuant to s20C is refused.

REASONS

1. This is a sad and sorry state of affairs because the really critical issue, that repairs are required to the exterior of the property in terms of attention to a particular section of guttering and associated rainwater goods, is agreed by the parties who appeared before us this afternoon. Had communications between all parties been better, there is a possibility (but we do not put it higher than that) that this application might not have been necessary.
2. This should have been a relatively straightforward s20ZA application. The property is a five storey house converted into four flats. The four long leaseholders, including Ms Kaveri Niththyananthan ("the Objector") are directors and shareholders of the Applicant landlord. The Objector says she has been excluded from decision making. She has a long list of historical grievances. Mr Davidoff, of the managing agents ABC Real Estates, confirms that: he says his instructions from the other leaseholders are to exclude the Objector from emails and informal contact unless necessary. This is because, although his firm ABC Estates was appointed only about a year ago, he was told that the Objector causes problems and interferes with the efficient (otherwise consensual) running of the property. We can see plenty of evidence in the bundle, most of which was completely irrelevant to the issues we had to decide, to support what both sides say. It is highly regrettable, but stripping out vaguely argued and technical issues of company law (which usually blur rather than assist in the effective running of residential properties converted into several flats), the bottom line is that the managing agents have an obligation to communicate with all leaseholders who are expected to pay their management fees. Any managing agent who picks and chooses with whom to communicate is heading for trouble. However, we note this merely because the point came up frequently in the course of argument and has clearly added to the Objector's sense of grievance, a substantial part of which is historic and therefore of little direct relevance to the current application. On the other hand, the Objector has received the basic information in relation to this application and has even discussed the works with the Landlord's preferred contractor.
3. We should stress that the Objector's submissions are not the reason why the order providing dispensation is limited, and we return to this below.

4. In particular (and for example of some of the practical difficulties operating in this case) the Objector insists that Mr Davidoff is using this application to validate his firm's appointment as managing agent, which she insists is an invalid appointment. Neither party produced any relevant document or evidence on this (apart from Mr Davidoff's statement) and we proceed on the basis that ABC Estates is the appointed managing agent of the property. It would be wholly disproportionate to adjourn the hearing to obtain further evidence on the point, particularly since the main object (as agreed) is to sort out the problematic rainwater goods.
5. The issue was identified in a report written in August 2018 by Beaumont surveyors for the purchaser of one of the flats (Flat C). It contains the usual express caveat that it is not to be relied on by anyone other than the buyer, Mr T. March. That raises the obvious question whether the Landlord should be relying on it without taking independent advice on which it can rely, backed up by appropriate professional indemnity insurance. ABC Estates uses in-house experienced but non-qualified staff for jobs such as this, and Mr Davidoff accepted that he should confirm the firm's insurance for such jobs. He has not taken steps to obtain his own report on the problem on which the Landlord can rely. On any view the Beaumont report in fact forms the basis of the Landlord's decision to undertake remedial works which require s20 consultation. It was then sent by ABC Estates to two building firms, including MA Premier Property Services Limited, who responded by the letter dated 12th September with an extremely generalised quote for £5950 plus VAT. This was in response to a works order issued by ABC Estates on 22nd August, with an equally vague job description ie "Inspect malfunctioning gutter causing leak".
6. On 14th September ABC Estates issued a notice of intention. The second stage s20 letter dated 22nd October was shown to us and it refers to the MA Premier quote and a further quote from Kaloci Limited for a sum of £9,950 plus VAT, a figure which was not explained because the quote (which has unsurprisingly been rejected) is so much higher than the MA Premier one. The deadline for observations is 26th November, three weeks away.
7. The application was made on 21st September and directions issued on 25th. Any objections were to be made by 12th October, the Landlord replying by 26th October. A considerable amount of documentation has been produced which made it hard to identify the critical documents. The Objector is the only one of the four leaseholders to object. She instructed her own surveyor LBB Chartered Surveyors, who inspected on 20th September and whose report is dated 4th October. The writer did not see the Beaumont report because the Objector did not (it appears) have a copy then. But it is clear that the LBB surveyor agrees that there are gutter issues to be addressed, and it is extremely hard to understand what if any point of difference there is between the LBB report and the Beaumont report on that. Indeed the Objector could not really point to any and emphasised that she was concerned about the "process". But water ingress cannot, usually wait. However, the LBB report correctly observed that there was uncertainty as to the works proposed by ABC Estates in the FTT

application, and that a simple specification should have been prepared against which a quote could be provided. We agree with that observation.

8. None of the Objector's arguments actually address any valid objection she might have apart from this point: apart from her sense of grievance with the rest of the leaseholders we found it hard to pinpoint any legal reason in the context of s20ZA why dispensation should not be given in principle. But as she objected, we have to look at the application, see how we can exercise our discretion judicially, and it is flawed. In a nutshell, as the LBB report concludes, what *exactly* is the subject of the proposed works? Why is the MA quote so generalised? The Applicant's paperwork is on balance inadequate in providing an answer to this basic question and the parties in this case were never going to be able to agree a form of wording which we could have ordered by consent. It is not reasonable to expect a Tribunal to make an order in vague and undefined terms. That is wholly unsatisfactory. We are entitled to be able to rely on a solid paper trail indicating precisely what is the subject of the dispensation order. It is possible (we have no way of knowing) that the Objector will be able to show that with a precise specification, someone might come up with a lower quotation. To the extent of being able to gain alternative quotations on the basis of a more particularised specification, it is arguable that she might be prejudiced, though the Objector did not outline her case as such (as per the *Daejan* case).
9. In the circumstances we concluded that the only order we could reasonably make is limited to the erection of scaffolding. It is entirely reasonable to dispense with consultation on that. *Hopefully* that will enable the Applicant to obtain a proper report from a qualified surveyor and a firmer and better quote based on a specification which will satisfy all the leaseholders and enable the works to be carried out efficiently, with a minimum of fuss and no further trips to the Tribunal to argue about their reasonableness under s27A, though we can only express that as a firm hope.
10. The Objector made a s20C application on 5th November. She makes many points in the application which go far beyond the remit of a s20C application. She also argued that ABC Estates is not validly appointed and should not have made the application. We have dealt with that point. It does not assist the Tribunal at all. Furthermore in cases such as this where the leaseholders are in effect the Applicant, she will have to pay for the application in some way in any event.
11. We are grateful to Mr Davidoff for dealing with the application this afternoon though he had only just received notice of it. It would not in our judgment be just and equitable to make a s20C order. Although we have limited the successful scope of the application, it was only made because of the Objector's opposition which as she argued it, was largely based on irrelevancies which we rejected. There was no real basis for her objection as she argued it: the right approach would have been to discuss a way forwards based on the LBB recommendations. Her objections resulted in the Applicant spending an inordinate amount of time and energy in

compiling a response to many unnecessary allegations which blurred the issue we identified as problematic.

12. The result is unsatisfactory for both sides. The Applicant will now no doubt expend more money obtaining a report from an independent expert. In the circumstances there is no clear winner. The costs burden can fall where it lies as a matter of contract (as to which we are making no detailed findings, neither party being in the position of making proper submissions on the relevant clauses in the lease). If they are excessive, they can in any event be challenged subsequently.

Judge Hargreaves
Hugh Geddes
7th November 2018