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

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| **Case Reference** | **:** | CHI/45UH/LSC/2020/0043 |
| **Property** | **:** | 6 Beach House, Brighton Road, Worthing BN11 2EJ |
| **Applicant** | **:** | Mr Robin Biggs |
| **Representative** | **:** | |
| **Respondent** | **:** | Beach House Residents Association Company Limited |
| **Representative** | **:** | |
| **Type of Application** | **:** | Determination of liability to pay and reasonableness of service charges |
| **Tribunal Member(s)** | **:** | Judge D. R. Whitney |
| **Date of Determination** | **:** | 9th November 2020 |

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| **Representative** | **:** | |
| **Respondent** | **:** | Mr Robin Biggs |
| **Representative** | **:** | |
| **Type of Application** | **:** | Dispensation from consultation requirements |
| **Tribunal Member(s)** | **:** | Judge D. R. Whitney |
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DETERMINATION

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## Background

1. Mr Robin Biggs is the owner of the leasehold interest in flat 6 Beach House also known as Mackenzie. Throughout this decision he is referred to as the Applicant.

2. Beach House, Brighton Road, Worthing ("the Property") is a large house which has at some point in the past been converted into 7 flats in total. Beach House Residents Association Company Limited is the freeholder. Each long leaseholder is a member of the company. Throughout this decision it will be referred to as the Respondent.

3. On 11th May 2020 the Applicant made an application challenging his liability to pay and the reasonableness of certain specified service charges. It would appear that partly due to this application the Respondent issued an application dated 24th July 2020 seeking dispensation from the requirement to consult in respect of three specified areas of major works. These were all three items challenged by the Applicant within his original application.

4. Various directions were issued in respect of both cases. The Applicant is the only person who has objected to dispensation being granted. The directions provided for both applications to be determined on the papers unless any party objected and no party has objected.

5. The Tribunal has determined that both applications should be determined by the same Tribunal within a combined decision.

6. The directions had been complied with by the parties and the tribunal was provided with an electronic bundle. References in A[] are to pages within the bundle for the service charge application provided by the Applicant and references R[] are to pages within the bundle supplied by the Respondent for the dispensation application.

## Determination

7. The Tribunal in making its determination has considered all of the documents included within the two bundles. Both bundles contain many emails and other documents which will not be specifically referred to within the decision but all have been fully considered.

8. I have considered whether or not this matter remains suitable for a paper determination. I am so satisfied.

9. The Respondent has a board of volunteer directors. It would appear the Respondent has via its various boards of directors' self managed the Property for many years. The Respondent contends that this is by way of consensus with majority decisions being effective for giving effect as to how the Property should be managed and maintained.

10. The Applicant has only relatively recently acquired his flat, completing the purchase in or around June 2018. It is apparent from the emails that there is disharmony between himself and members of the board of the Respondent. Ultimately it is this that has led to the applications before me today.

11. The Applicant in his application seeks a determination as to various items with the service charges for the years 2018/2019 to 2020/2021 inclusive as well as orders pursuant to section 20C of the Landlord and Tenant Act 1985 and pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act 2002. He suggests that demands are invalid for failing to have a attached a summary of rights and obligations. He challenges three specific items:

    Installation of cctv
    Installation of a fire alarm system
    Rendering and painting costs

12. The Respondent has accepted within its application that they failed to comply with the requirements for consultation and has made an application for dispensation. No other leaseholder save for the Applicant has objected to dispensation of the works.

13. The Applicant includes a copy of the lease for his flat, which is known as Mackenzie A[13-33]. The Respondent provides a copy of the leasehold documents for another flat, Priestley, within the Property R[15-38].

14. The Respondent in its statements of case makes the point that the Respondent is a company in which the leaseholders are all members. It suggests it attempts to manage by consensus and has done so for many years. What is plain from these two applications is that the Respondent has had little regard to the lease terms under which each flat is owned or the statutory responsibilities upon it as a freeholder.

15. Whilst I may sympathise with the Respondent and its directors who plainly are trying to manage in a way that they believe is appropriate for the Property I must remind them that adherence to the lease and its terms is required. In making my determination the lease and its terms provide the starting point for me to look at as to whether or not the amounts claimed are due and owing.

16. The original leases were granted in the 1980's and have a similar form. The Applicant covenants to pay 15% of the service charge costs under clause 3(d) of the lease A[19]. The Respondent under clause 4(d) covenants to repair and maintain the Property.

17. The Fourth Schedule sets out what costs may be included within the service charge and the Fifth Schedule the mechanism for recovering the same. In summary the Fifth Schedule provides that the service charge year is the year ending 31st March. Accounts are to be produced and certified by a Chartered Accountant. Any deficit may be recovered. An interim charge is payable by bi-annual instalments on the 25th March and 29th September in each year. Such sum to be one half of the total for the last service charge accounts produced A[31-33].

18. The Respondent has conceded that the original demands have not been properly issued. The Respondents accept that no summary of rights and observations as required under section 153 of the Commonhold and Leasehold Reform Act 2002 was served with the original demands.

19. I observe that the Respondents contend they have now remedied this by serving demands attaching the summary. However I am not satisfied that the demands comply with the lease terms. The dates for the periods covered are fixed under the lease as is the mechanism. Accounts, referred to as "service charge statements", must be produced and served. These are required to be certified by a Chartered Accountant and the interim charge in each year will be calculated based on the last set of service charge statements served. This does not appear to have taken place.

20. Currently I am not satisfied that any sums have been validly demanded and so the monies are not due and owing.

21. Turning to each of the specific items I will deal with each in turn. The Applicant contends amongst other specific points that there has been no consultation pursuant to section 20 of the Landlord and Tenant Act 1985 and so his liability for any works is capped at £250.

22. As a general point the Respondent suggests that it has consulted with all leaseholders. It appears to accept that this may not be strictly in accordance with the statutory requirements but refers to company meetings where matters are discussed and emails sent out advising leaseholders of works being undertaken and inviting comments and suggestions.

23. I remind myself that in determining whether or not to grant any form of dispensation I must have regard to the principles set out in Daejan Investments Limited v. Benson and others [2013] UKSC 14.

Closed circuit television

24. Much of the email correspondence over this issue appears to focus on various matters not relevant to this decision. As a result I do not refer to the same.

25. The Respondent explains that a CCTV system was installed following two burglaries to flats in the Property. This had been discussed at company meetings and meetings of what is described as Beach House Residents Association. This later body appears to have no constitution and any person who is resident at the Property may be a member. It is contended the works were contracted for and undertaken prior to the Applicant completing his purchase. The Respondent suggests that the solicitors for the Vendors and the Applicants solicitors were made aware, see for example A[134 and 183]

26. The Applicant contends that the cost of installing a CCTV system is not within the terms of the lease. Further he suggests that this should not have been a priority and the costs are unreasonable.

27. I have considered the lease. Clause 4d(viii) states that the Respondent covenants to:

"provide and maintain a TV and VHF radio aerial and a communal security system serving Beach House and each apartment therein"

28. Mr Biggs contends that the provision of a door entry telephone system satisfies this covenant. I do not agree. It is for the Respondent freeholder to determine how it complies with such a covenant. In my determination such a covenant would allow the freeholder to install a CCTV system being a security system.

29. Turning now to dispensation I am satisfied that for the works undertaken in or about April/May 2018 the Respondent is entitled to dispensation.

30. I make this determination having regard to the documents provided. It is plain that the then leaseholders were consulted all be it not in a fashion in compliance with the statutory requirements. Mr Biggs as part of his purchase was made aware that such a system was installed. I have considered whether or not Mr Biggs has suffered any prejudice. I find there is none. The replies to the solicitors disclosed what works were undertaken and Mr Biggs chose to proceed.

31. I must also consider whether the costs incurred of the original works and the subsequent extension of the scheme (for which consultation is not required as the amount claimed falls below the statutory limit) are reasonable. I am not provided with any alternative quotes and I am satisfied having regard to the

correspondence and the works undertaken that the costs claimed for the CCTV works undertaken in two separate tranches are reasonable.

Rendering

32. The Applicant once again contends that there has been no consultation. He suggests that the works have not been done to an appropriate standard or within a timely period. He suggests if consultation had been undertaken these points could have been explored and addressed.

33. The Respondents again suggest that they did consult informally and obtained quotes which are within the bundle A[165 & 166]. Photographs are also included and the Respondent suggests works was required to prevent further deterioration.

34. Having regard to all the evidence I find that the costs of these works are reasonable.

35. I have considered carefully the question of whether dispensation should be granted. Certainly I can see that the Respondent believes it did encourage consultation. The Applicant sets out how he believes matters could have been improved. Ultimately the contracting for works is the responsibility of the Respondent. I find that in the instance case it is appropriate for dispensation to be granted to the Respondent. I determine that no conditions should be attached to the same.

Fire Alarm System

36. The Applicant appears to accept in principle this is a cost for which he can be required to contribute. He seems to suggest that whilst making that concession he does not accept that this is a cost which would be recoverable under the lease.

37. For the sake of completeness I determine that the cost of installing a fire alarm system given this was recommended under the fire risk assessment is a cost which is recoverable under the terms of his lease.

38. Again the Respondents accept they have not properly consulted. The Respondents rely upon informal consultation supported by various emails and minutes of meetings.

39. Turning to the costs and the like the Applicant calls into question the professional qualifications of the contractor who fitted the system and whether or not the same will comply with the requirements of the fire risk assessment. A copy of the fire risk assessment was supplied as a separate document and extracts from

it were contained within the bundle. It appears both parties accept that report required some system to be installed. The issue is over what system?

40. At R[73 and 74] are copies of the fitters qualification and commissioning certificate. Copies of these and other documents relevant to the issue are also found elsewhere within the bundles. It is unclear whether any further fire risk assessment has been undertaken or whether there was any discussion with the assessor as to the works undertaken.

41. On balance I am satisfied that the cost of the works actually undertaken was reasonable.

42. I have then considered whether dispensation should be granted. I am satisfied on balance that the Applicant has shown that he will have suffered prejudice due to the failure to consult. Mr Biggs suggests he may have nominated his own contractor and or commented upon the specification. It is not clear to me what professional advice the Respondents took as to the specification.

43. I have weighed up whether or not dispensation should be granted. The Respondents have ignored their statutory obligations. I am however mindful that a system has now been fitted which they are satisfied is adequate. I determine that as a result it is appropriate for a condition to be attached to the granting of dispensation.

44. Dispensation is granted to the Respondent on the basis that they will obtain an up to date fire risk assessment. Such assessment will at the cost of the Respondent with such cost not to be included within any service charges levied upon the Applicant. The assessment is to address specifically the question of the adequacy of the Fire Alarm System fitted and confirm the adequacy of the same. Upon the Applicant being supplied with an assessment confirming the adequacy of the system fitted the costs will be deemed to be reasonable. Unless and until there has been compliance the Applicants contribution to such costs will be capped at £250.

Conclusion

45. The above determines the items in dispute. The Applicant has also looked to make various applications relating to costs and the like. I note he refers to wishing to include another flat owner but I decline to do so. Any and all flat owners may make, if they so wish, their own applications.

46. All such orders are at the discretion of the Tribunal. In reaching my decision I have taken account of all matters including the fact that the Respondents income is solely from service charge funds and all leaseholders have an interest in the company. I do not know what if any costs the Respondent has incurred which it may wish to

recover. Certainly, it does not appear to have been represented in respect of either case. Making any such decision is not simply a question of considering if there is a "winner". I must weigh up my decision and all matters raised by both parties in exercising my discretion.

47. I determine that I make an Order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering any costs solely from the Applicant as an administration charge.

48. I decline to make an Order pursuant to section 20C of the Landlord and Tenant Act 1985. It would appear that probably no costs have been incurred by the Respondent but taking account of the circumstances this is in my determination the correct exercise of my discretion.

49. I order that the Respondent will reimburse the Applicant in the sum of £300 for the Tribunal fees paid. I reach this decision on the basis that it was reasonable for the Applicant to make his application given the failures some of which the Respondent has admitted.

50. This is a sorry outcome. All parties have an interest in the Property and moving forward they must put behind them these matters so that they can work together. I have no doubt everyone involved in this case genuinely believes they have the Property's best interests at the forefront of their thoughts.

## RIGHTS OF APPEAL

1. 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 rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking