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

Case reference	: LON/ooBK/LDC/2020/0084 PAPERREMOTE
Properties	: 79 Sutherland Avenue, London W9 2HG
Applicant	: 79 Sutherland Avenue Residents Company Limited
Representative	: LMP Law Limited (Bethanie Brown)
Respondents	: Long residential leaseholders in the Property as set out on the schedule attached to the application
Type of application	: To dispense with the requirement to consult leaseholders pursuant to s20ZA Landlord and Tenant Act 1985
Judge	: Judge Tagliavini
Date of decision	: 28 September 2020

DECISION

IMPORTANT – COVID 19 ARRANGEMENTS

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are in a bundle of 284 pages, the contents of which the tribunal has noted. The order made is described in these reasons.

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Decision of the tribunal

- (I) The tribunal determines that dispensation is granted to the applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 in respect of the works only that were carried out and completed in February 2020 and which have been identified in the Summary of Works dated 07/11/2019 as being in the sum of £39,377.97 (inclusive of VAT).
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The application

1. This is an application made pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) seeking the tribunal’s dispensation from the consultation procedures that are required under section 20 of the Act, in respect of works carried out and completed on 21 February 2020 to the structure and exterior of the subject property in the sum of £39,377.97 (inclusive of VAT) as set out in the Summary of Works dated 07/11/2019.

Background

2. The subject property comprises a property that has been converted into 5 flats. The applicant is the freehold owner of the subject premises and each lessee is a director of the freehold company.

The applicant’s case

3. The applicant seeks the tribunal’s dispensation for works that were identified in a letter dated 24 April 2019 and confirmed in a Summary of Works dated 07/11/2019. These works were said to include urgent structural works, predominantly to the front elevation and included works to rectify falling masonry from external parts of the subject premises. In support of the application the tribunal was provided with a statement from the applicant’s representatives dated 07/09/2020 with exhibits in answer to the objections made by Mr. Jamal to this application.
4. The tribunal was informed that major works to the exterior of the subject premises had initially been identified by a surveyor, Mr. John Wren of Thames Valley Surveying, who had been instructed by the applicant in 2017. Subsequently, in 2019, Mr. Wren identified more urgent works required to the subject premises said to be due to falling masonry and the health and safety concerns that this raised and which were confirmed in a letter dated 11 September 2019.
5. It was said by the applicant that all lessees had been notified of these urgent works and that they had all been given an opportunity to raise any objection to them, although none had been received until after the works had commenced in about April 2019. The applicant also asserted that Mr. Jamal had not been prejudiced by the works being carried out without full consultation as the works had been required in any event and that a scheme of proposed major works had

already been notified to the lessees in 2017. The applicant also asserted that Mr. Jamal had suffered no financial loss.

6. The tribunal was informed that a majority of the Freehold Company's directors had approved the carrying out of the works without full consultation and that these had been paid for from the funds "in hand."

The respondent's case

7. The tribunal received notification from the lessee of the third floor flat, Mr. Naim Jamal that he objected to the applicant and opposed the grant of dispensation. In support of his objections, the tribunal were provided with a signed statement from Mr. Jamal dated 18 August 2020 with exhibits, which set out his reasons for objecting to the application. These are summarised below:
 - (i) The bad faith on the part of the managing agents who want to use the dispensation to cover-up past irregularities.
 - (ii) The use of fraudulent tenders to justify the costs of the works and the choice of contractor Woodnut Construction & Development Ltd.
 - (iii) Whether the works were necessary and able to solve the problems identified and whether they were carried out at a reasonable cost.
 - (iv) Whether works were "urgent."
 - (v) There is a breach of fiduciary duty on the part of the managing agents and bad faith by the applicant's legal representatives.
 - (vi) The tribunal's dispensation would cause injustice to Mr. Jamal.

The tribunal's decision and reasons

8. The tribunal determines that it is appropriate to grant dispensation from the consultation requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works identified in the schedule dated 07/11/2019 in the sum of £39,377.97 (inclusive of VAT).
9. The tribunal finds that the works carried out and that were completed by February 2020 did include works that had a degree of urgency due to the health and safety risk posed by falling masonry. In reaching its decision, the tribunal also has regard to the absence of any objection by any other leaseholder to this application, the majority of whom had voted as directors to circumvent the consultation requirements.
10. Although Mr. Jamal referred to "my architects and Structural Engineers" in his statement of 18 August 2020, no report from them was provided to the tribunal. The tribunal finds that Mr. Jamal has not established that these works were not required to remedy the health and safety risk identified by the applicant.

11. The tribunal also considers that it is unnecessary for Mr. Jamal's widespread allegations of fraud and bad faith to be determined for the purpose of this application and therefore, it declines to make any findings on them.
12. The tribunal does not accept Mr. Jamal's narrow definition of "urgent works" as being correct as he appears to equate this term with "works of emergency." The tribunal is of the opinion that the term "urgent" in this context requires to be interpreted more widely and by having regard to the particular circumstances of an application.
13. Further, the tribunal finds that the concerns raised by Mr. Jamal's are largely irrelevant to this application, as they appear to be primarily related to the cost of the works rather than the issue of the prejudice caused to him by the grant of dispensation.
14. The tribunal finds that Mr. Jamal has not identified any prejudice that would be caused to him by the grant of dispensation, *Daejan Investments v Benson ad others* [2013] UKSC14. Mr. Jamal, does remain able under the provisions of the Act to challenge the reasonableness/cost of the works that have been carried. Whether, Mr. Jamal wishes to make any application to the tribunal in this respect is a matter for him to decide.
15. Therefore, the tribunal determines that it is in all the circumstances appropriate and reasonable to grant the application for dispensation that is sought.
16. The tribunal determines that dispensation is granted to the applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 in respect of the works only that were carried out and completed in February 2020 and which have been identified in the Summary of Works dated 07/11/2019 as being in the sum of £39,377.97 (inclusive of VAT).

Name: Judge Tagliavini

Date: 28 September 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).