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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20ZA OF THE LANDLORD AND TENANT ACT 1985

28 THE AVENUE, EASTBOURNE, EAST SUSSEX BN21 3YD

Applicants:	DJ WEST and MP FLORES-VASQUEZ (Flat 4) C CHRISTOU (Flat 3)
Respondent:	L CAMPION (Landlord)
Date of hearing:	27 November 2007
Date of inspection:	27 November 2007
Appearances:	The applicants (in person)

Members of the Leasehold Valuation Tribunal:

Mr M Loveday BA(Hons) MCIArb
Mr R Athow FRICS MIRPM

BACKGROUND

1. These are linked applications in respect of a block of flats at 28 The Avenue Eastbourne. The applicants are the lessees of two of the flats. The Respondent is the freehold owner. The issue relates to repairs and decorations to internal common parts in 2006/07.

2. On 6 August 2007, the lessees of Flat 4, Mr West and Ms Flores-Vasquez applied to the Tribunal for a determination under section 27A of Landlord and Tenant Act 1985 in respect of their liability to pay service charges for 2006/07. The application raised issues of whether the cost of the works was reasonably incurred and whether the landlord had complied with consultation requirements under section 20 of the Landlord and Tenant Act 1985. At a pre-trial review on 6 September 2007, the Tribunal joined the lessee of Flat 3 (Mr Christou) as a party to the application and gave directions. These included provisions that in the event that the respondent wished to apply to the Tribunal for dispensation with the consultation requirements under section 20ZA of the 1985 Act, that application was to be heard with the substantive matter. The respondent duly applied to the Tribunal for dispensation by a letter dated 14 November 2007 (which is referred to in further detail below). The Tribunal therefore deals with both applications together.

3. The Tribunal was provided with the lease for flat 4 dated 29 October 1981 which was said to be in similar form to the leases of flats 2 and 3. The lease includes rudimentary service charge provisions at clauses 1, 3 and 4. By clause 3(2)(ii) and the Third Schedule, the lessee is to pay on demand one third of the cost of the common entrance hall and the steps leading to the hall.

4. The issue relates to relevant costs of £4,702 incurred by the respondent in relation to repairs and decoration to the internal common parts. A copy of an undated service charge statement in relation to Flat 4 has been provided to the Tribunal. This seeks a contribution of £1,567.34 (i.e. one third) towards such costs incurred in the 2006/07 service charge year. The works were carried out by L&H Tiling and Decoration Services and an invoice giving details of these works dated November 2006 has been provided.

5. The hearing took place on 27 November 2007. All three applicants appeared in person. The respondent did not attend. He stated (letter 14 November 2007) that he was too ill to attend and that he could not get anyone to represent him. No request was made for an adjournment. The respondent therefore relied on written submissions dated 14 November 2007.

INSPECTION

6. The inspection took place on the morning of the hearing. The applicants were all present. Mr Moulding of L&H Tiling attended the inspection on behalf of the respondent (although Mr Moulding also did not attend the hearing). The contractor pointed out the areas of repair and redecoration undertaken by his firm, which the applicants agreed had been carried out.

7. The property comprises a four storey mid-terrace house in a busy tree-lined avenue which has been converted into 4 flats. It is built on three floors and basement of brick under a pitched replacement tile roof. The external decorative condition is good. Internally, there is a hallway with stairs to a landing at first floor level. The walls, ceilings, skirting boards and other woodwork have been recently painted. It is accepted that the walls and plaster had been stripped from the entrance door to a point 3m along the hallway before being re-plastered. Parts of the cornicing were replaced and other plaster detailing repaired. The walls to the entrance hall and stairs to first floor level were re-papered. The walls, ceilings, woodwork and plaster details had then been painted.

THE SECTION 20ZA APPLICATION

8. The section 20ZA application is in the form of a letter addressed to the clerk to the Tribunal giving Mr Campion's name and address. The letter gives the reasons for making the application, the address of the premises and it is signed by the respondent. The letter was accompanied by the appropriate fee and the final two pages of a one of the Tribunal's section 20ZA application forms. Those pages include a signed statement of truth.

9. The application forms made available by the Tribunal at its offices and on the RPTS website are not prescribed forms which are mandatory. However, the forms have the distinct advantage for all parties that they comply with paragraph 3(1) to the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003. By contrast, Mr. Campion's letter and attachments did not include the particulars required by paragraphs 3(1)(b) and (c) of the procedure regulations. The regulations require the application to name the landlord and give details of the respondents to the application. Mr. Christou, on behalf of all three applicants, did not ask the Tribunal to disallow the s.20ZA application on these grounds. The Tribunal considered that it could deal with the s.20ZA application notwithstanding the above defects and further considered that no prejudice was caused to any party. Under regulation 3(8) of the procedure regulations the Tribunal therefore dispensed with the requirements for the application notice.

SECTION 20 LIMITATION

10. The limitation on service charges in respect of qualifying works is set out in section 20 to the Act:

"***20-(1)*** *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-*
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal."

The current limitation under s.20 is £250 per leaseholder. The consultation regulations appear in Schedule 4 Part 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

11. The facts do not appear to be in dispute. During the course of 2006, the respondent was undertaking major works to the exterior of the property, and he had already carried out proper consultation in respect of those works which complied with section 20 and the regulations. The appointed contractor was L&H Tiling. During the course of the works, Ms Flores-Vasquez approached Mr Moulding of L&H tiling to point out that the hallway was in a poor state of repair. In fact, no work had been carried out in the common parts since at least

1984 (letter from L&H Tiling 14 August 2007). On 7 August 2006 she wrote to the respondent suggesting that "*it would be a good idea to ask [L&H Tiling] for an estimate to redecorate the hallway area as well*". The respondent then approached Mr Moulding and asked him to carry out works to the common parts. A letter from Mr Moulding dated 14 February 2007 (marked without prejudice but plainly not a privileged document) explains that in the week commencing 25 September 2007, the respondent instructed L&H to remedy the dilapidated condition of the hallway areas while they were on site. The respondent's letter of 14 November 2007 states that the work was on a "*running contract basis*" and another letter from Mr Moulding dated 14 August 2007 states that the work was undertaken on a "*time and materials*" basis. The works were completed in November 2007 and there is an undated invoice from L&H Tiling to the respondent which gives a figure for internal works of £4,702. On 8 December 2007, the respondent rendered service charge demands to Flats 2, 3 and 4 seeking a contribution of 33% from each towards the cost of the works.

12. Applicants' case. The applicants contend (statement of case) that the respondent did not comply with any of the requirements of Schedule 4 to the Consultation Regulations. There was no initial notice, no further statements summarising observations received and no Notice of Intention to carry out Works. They stated that there was no consultation whatsoever despite requests for an estimate by the first and second applicants. The applicants had lost the chance to obtain alternative estimates for the work or nominate alterative contractors.

13. Respondent's case. The respondent's written arguments (letters 20 August and 14 November 2007) cover both sections 20 and section 20ZA together. He contends that the internal works were carried out in response to a request from Ms Flores-Vasquez. It was not possible to give an estimate of costs in advance because L&H Tiling stated that there was too much unforeseen work. The works were urgent because the plaster coving was dangerous and there was considerable mildew and damp in the building. It was possible the building would be condemned by the Health and Safety Executive. Moreover, had the works not been done it is unlikely anyone would have bought one of the flats. The respondent relied on letters from L&H Tiling (14 February and 14 August

2007) that they could not remember a building in such a poor state of repair. The letters include a list of works carried out which included removing areas affected with fungus and mildew, plastering, papering, specialist work to the cornicing, sealing with waterproof sealant and painting.

14. Decision. There is no doubt that the landlord failed to comply with Schedule 4 Part 2 to the consultation regulations. There was no notice of intention under paragraph 8 to the Schedule, no opportunity given to the lessees to inspect the proposals under paragraph 9, no "paragraph (b) statement" under paragraph 11(5)(b). The landlord failed to obtain more than one estimate under paragraph 11(5)(a) and he failed to serve a notice on entering into a contract under paragraph 13. The matters raised by the respondent go to the question of whether the Tribunal should exercise its discretion under section 20ZA rather than to the issue of whether the regulations have been complied with.

15. The Tribunal therefore finds (subject to the question of whether the consultation procedures should be dispensed with) that the recoverable service charges for the qualifying works are limited by section 20(1) and (5) to £250.

SECTION 20ZA DISPENSATION

16. The material facts are set out above.

17. Applicants' case. The applicants contended at the hearing that it was not reasonable to dispense with the consultation requirements. There was no urgency: The qualifying works were "cosmetic" internal decorations which had been outstanding for several years. There was no imminent danger to health: Eastbourne BC had inspected the common parts for a fire risk assessment and neither suggested there was any danger to anyone nor served any environmental health notices. Furthermore, it would have been quite practicable to consult with the lessees and obtain estimates. Indeed, the contractors carried on working to the outside of the property for several weeks after the internal works were carried out. The letter from Ms Flores-Vasquez dated 7 August 2006 did not absolve the respondent from having to consult; the letter merely asked the landlord to get an estimate (which he never did). The lessees had lost the

protection afforded by section 20 and had suffered real prejudice. The landlord had not even attempted to comply with the consultation requirements.

18. Respondent's case. The respondent's case on section 20ZA is set out above.

19. Decision. The relevant provision of the 1985 Act is as follows:

> *"20ZA(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."*

20. The purpose of the legislation is to provide protection for the lessees from excessive charges for major works. Landlords who can recover the whole of the cost of any works by way of service charges under the terms of residential leases have little incentive to ensure that these costs are kept down. The Act provides protection to lessees by giving them the statutory right to be informed about the scope and cost of works and gives them the right to nominate alternative contractors. In this case, the landlord failed to make even the most cursory attempt to consult or allow the lessees to have an input. The landlord could have obtained written estimates from contractors and carried out full consultation, but he chose not to do so. This failure to consult could not be excused by the urgency of the situation. On inspection, and from the list of works attached to the L&H Tiling letters, it is clear that the works were not unusual or obviously urgent. These were essentially decorations – not emergency structural works or works to comply with statutory notices. The alleged danger to health from damp or falling cornicing was theoretical and largely illusory. The hallway had, by common consent, not been attended to for over 22 years and there was no obvious reason why redecoration could not be delayed for a few more weeks to allow consultation. As to the letter from Ms Flores-Vasquez, it was no more than a request for an estimate to be provided. It did not state that Ms Flores-Vasquez agreed to the works being carried out, it did not bind the other lessees in the building, and no estimate was in any event provided. Finally, the respondent chose to employ the contractor on an oral time and materials contract – providing the least possible protection to the lessees.

The explanation for this – that the extent of the works was uncertain – is unconvincing. A competent specialist damp treatment business or decorator should be able to give a proper estimate for the cost of plastering and decorating a hallway – even one in such poor condition as this.

21. For all the above reasons, the Tribunal does not consider it would be reasonable to dispense with the consultation requirements. By sections 20(1) and (5) of the Act, the relevant contribution to the cost of repairs and decorations to the internal common parts in 2006/07 is limited to £250 per flat.

REASONABLENESS OF THE SERVICE CHARGES

22. The final issue is whether the relevant cost of the internal repairs and decoration was not reasonably incurred under section 19(1)(a) of the Act.

23. The respondent relies on the letters from L&H Tiling (14 August 2007) which give details of the works carried out and which justify the hourly rates and the time taken on site.

24. The applicants contend that the contractor's list of costs was excessive. The workmen had not attended for the number of days in the list and the daily rate given for each man was said to be excessive. However, the applicants did not produce any evidence about the proper costs involved. They stated that they were unable to obtain estimates from other contractors once the works were completed. They submitted that a reasonable cost for the works would be £900-£1,000 for labour and £502 for materials.

25. The applicants therefore concede it would be reasonable for the landlord to have incurred a cost of at least £1,402 for the qualifying works. Since it has already been determined under section 20(1) of the Act that the respondent may not recover more than a total of £750 for these works, it is unnecessary to make any determination on section 19(1).

26. However, in case the matter goes further, the Tribunal would have rejected the applicants' arguments on the evidence presented. It may have been more

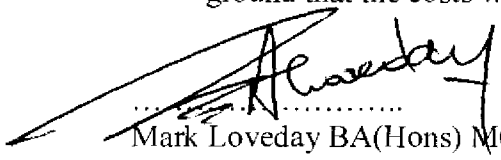
difficult to obtain evidence about the proper cost of the works once they were completed, but such evidence would not have been impossible to obtain. The figures for hourly labour rates and the period for carrying out the works was not supported by any independent evidence from a quantity surveyor or even a builder. Absent such evidence, the Tribunal would not have found that the relevant costs were further limited by section 19(1) of the Act.

CONCLUSIONS

27. By reason of section 20(1) of the Landlord and Tenant act 1985, the relevant contribution of the applicants to the cost of repairing and decorating the internal parts in 2006/07 is limited to £250 per flat.

28. The application under section 20ZA of the Landlord and Tenant Act is refused.

29. By reason of the above findings, it is unnecessary for the Tribunal to decide on the applicants' contention that the service charges should also be limited by section 19(1) of the Landlord and Tenant Act 1985. However, on the evidence presented, the Tribunal would not have limited the service charges on the ground that the costs were not reasonably incurred.



Mark Loveday BA(Hons) MCI Arb
Chairman
Dated: 5 December 2007