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

Case Reference : LON/OOBE/LSC/2013/0231

Property : Flats 1 to 6 Sophia Court, 1 Anstey Road, London SE15 4JX

Applicant : Fairleigh Construction Ltd.

Representative : Circle Residential Management Ltd.
Ms K O Anderson and Mr C R Allan

Respondents : Mr C R Reynolds (Flat 1)
Mr C R Reynolds (Flat 2)
Mr R V Stewart (Flat 3)
Mr M Gunatillaka (Flat 4)
Mr N Meyer (Flat 5)
Mr J P Bramfitt (Flat 6)

Representative : None provided

Type of Application : S20ZA and S27A of the Landlord and Tenant Act 1985

Tribunal : Judge Goulden

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

Date of Decision : 5 July 2013

DECISION

Ref: LON/OOBE/LSC/2013/0231

1. The Applicant, Farleigh Construction Ltd. has, through its agents, Circle Residential Ltd., applied to the Tribunal by two applications under S20ZA and 27A of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements contained in S20 of the Act and reasonable of service charges. The applications were both dated 15 March 2013 and were received by the Tribunal on 25 March 2013. The Respondent tenants are those as set out in the applications and the frontsheet to this Decision.

2. Sophia Court, 1 Anstey Road London SE15 4JX (“the property”) is described in the application as a *“purpose built block of 8 flats spread over 4 floors including basement. Only 6 flats are leasehold”*. At the Pre Trial Review held on 2 May 2013 it had been advised that the remaining two flats were owned by the freeholder and let out on ASTs.

3. A copy of the leases of all six flats were included within the hearing bundle.

S20ZA application

4. The application did not describe the qualifying works, but merely submitted an estimate. It was stated that the Notice of Intention had been sent to the Respondents on 1 February 2013. The works were described as urgent *“due to the potential of a trip hazard”*.

5. Directions of the Tribunal were issued on 2 May 2013 following an oral Pre Trial Review held on the same date. None of the Respondents attended.

6. The Applicant had requested an oral hearing but, at the Pre Trial review, a paper determination in respect of both applications was requested. The Tribunal’s Directions had listed the matter for a paper hearing unless any party had requested an oral hearing. No application had been made for on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Friday 5 July 2013.

7. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

The Applicant’s case

8. The Applicant’s representatives said that the S20ZA application had been made as a direct result of the decision in Philips v Francis (No 2) (2012) EWHC 3650 (Ch) a copy of which was supplied in that *“the statutory £250 per tenant threshold is in relation to the total cost of all qualifying works that are incurred during any financial year”* It was argued that *“in essence the landlord of a residential property which is subject to long leases has to consult under the provisions of S20 of the Landlord & Tenant Act 1985 in relation to qualifying*

works which may result in a tenant contribution more than £250 in any given financial year or the Landlord should apply for dispensation under the provision of S20ZA of the Landlord and Tenant Act 1985”.

9. The works were stated to be the replacement staircase emergency light fitting and replace three 16 watt 2D lamps. The managing agents said that they had become aware of the problem following a property inspection which identified that the emergency light in the communal areas was no longer working. A Notice of Intention had been issued on 1 February 2013 and expired on 8 March 2013. The works have now been completed. It was stated *“these works were instructed on in order to comply with Health and Safety requirements and to prevent personal injury by eliminating a potential trip hazard”.*

The Respondents’ case

10. It appears from the case file that none of the Respondents had requested an oral hearing. The tenant of Flat 1 stated that she had not been aware of the Pre Trial Review or the Tribunal’s Directions, (although these had been sent by the Tribunal on 2 May 2013). However, the Directions were varied in order to take this into account.

The Tribunal’s determination in respect of the S20ZA application

11. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

12. Dispensation is dealt with by S 20ZA of the Act which provides:-

“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”

13. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period; and**
 - (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

14. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

15. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

16. No evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received from or on behalf of any of the Respondents

17. The Applicant states that the absence of staircase emergency lighting could represent a potential trip hazard and therefore it is possible that it could present health and safety concerns.

18. On that basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.

S27A application

19. The Tribunal has had sight of a quotation from RJ Holmes Electrical Contractors Ltd. in respect of the above works in the sum of £215 plus VAT and a quotation from B McGuinness Decorators & Maintenance dated 21 February 2013 in the sum of £315, which gave no indication as to whether the sum quoted was inclusive or exclusive of VAT. The Applicant instructed R J Holmes Electrical Contractors Ltd. and supplied an invoice from that contractor, dated 19 March 2013 in the total sum of £258 (being £215 plus VAT of £43).

The Tribunal's determination in respect of the S27A application

20. The Tribunal determines that the sum of £259 (being £215 plus VAT of £43) is relevant and reasonably incurred and properly chargeable to the service charge account.

21. As a general point in respect of both applications, the Tribunal deprecates the amount of paperwork which has been submitted for this simple matter. The Applicant's representatives provided a Pre Trial Review bundle (although this had never been requested) together with a hearing bundle of some 200 pages

(which included copies of all six leases). This is considered wholly disproportionate.

22. The amount requested by way of service charge contributions in relation to this matter from each of the Respondents is small.

23. The Tribunal notes that there is at present no S20C application under the Act (limitation of landlord's costs of proceedings) before the Tribunal and the Respondents, being unrepresented, should consider whether they wish to lodge such an application.

.....**Judith Goulden**.....

..... **5. July. 2013**.....