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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

PROSPECT COURT, LIVERPOOL LAWNS, RAMSGATE, KENT

Applicant:	UK Property Investment Corporation Ltd (Freeholder)
Respondents:	The lessees of Prospect Court
Date of hearing:	26 April 2007
Date of inspection:	26 April 2007
Appearances:	Mr Samuels of Godfrey Johns & Partners (Managing agents) for the applicant

Members of the Leasehold Valuation Tribunal:

Mr MA Loveday BA(Hons) MCIArb
Mr R Athow FRICS MIRPM
Ms T Wong

BACKGROUND

1. This is an application under s.20ZA of the Landlord and Tenant Act 1985 to dispense with consultation requirements in respect of works to a lift. The applicant is the freehold owner of Prospect Court, Liverpool Lawns, Ramsgate, Kent. The respondents are the lessees of the nine flats within the building. A hearing was held on 26 April 2007 at the conclusion of which the Tribunal gave an oral decision in accordance with regulation 18(2) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003.

2. The Tribunal inspected the property before the hearing. Prospect Court overlooks the seafront in central Ramsgate and comprises a whitewashed block c.1920 on five storeys with a flat roof. Access to the upper floors is via a central staircase and electric passenger lift. The lift car is certified for 3 passengers and appears original. It is panelled internally and has a lattice inner safety gate and a sliding 5 panel outer door. There is a motor room on the roof which is clean and well maintained although access to the head of the lift shaft is limited. On the date of inspection the lift was switched off.

3. Mr. Samuels is employed by the managing agents and has 25 years experience of property management. He has a BTec in property management. He produced a copy of the lease for flat 2 on the ground floor. Mr Samuels had personally managed the property for the past 8 years and during that time the lifts had been serviced and maintained by Kone Lifts. He could find no written maintenance agreement on the file, but this may have been destroyed in a flood at his firm's offices in 2006. The agents would have tendered the work when they took over the property about 15 years ago. Kone inspected four times a year to service it. There was nothing on file to say they had found problems with the lift controls.

4. The lift was insured with Allianz Cornhill who also inspected annually. On 26 January 2007, they wrote to say they had carried out an inspection. Their engineer had been unable to inspect safely as the lift lacked controls on the top of the car. The engineer stated that car top controls should be fitted which complied with BS EN 81-1/2.

5. On 5 March 2007, Kone gave a written "tender summary" for £2,735.76 + VAT. This stated that without the car top control it might not be possible to maintain the shaft equipment because Kone forbade its employees to work in unsafe conditions (citing EN81 "Safe Working on Lifts" made in 1989). Since the quotation was over the threshold provided by s.20 of the Act, the agents applied to the Tribunal to dispense with the consultation requirements. On the same day they served a notice of intent on each of the lessees with a covering letter which invited the lessees to give their observations. Only one response had been received to these; a letter from PWG Properties (the lessee of flat 9) which supported the application.

6. Mr Samuels submitted that it was appropriate to dispense with the consultation requirements because the work was urgent. The insurers were insisting on the controls being fitted. If the applicant was to be required to obtain three tenders and consult further, the works would not be completed for some months. By contrast, Kone had informed him that they could fit the controls within 7-10 working days. The lift was switched off pending the works. Obviously in a property such as this, this caused inconvenience. There was already a maintenance agreement with Kone, and had he sought tenders from other firms this would have left the agents in a quandary. He did not know whether Kone would have continued with the maintenance agreement (he had not asked them). He had not sought tenders from other firms. However, such quotes may well have caused further delay. He did not know the ages of the residents, although most lessees were not resident at the property. When asked why Kone had not reported this problem before, Mr Samuels speculated that the regulations may have changed recently.

7. Under s.20ZA the Tribunal can make a determination "*to dispense with all or any of the consultation requirements in relation to any qualifying works ... if satisfied that it is reasonable to dispense with the requirements*". The works to the lift are plainly qualifying works. Clauses 3(2)(ii)(a) and 6(d)(v) of the lease set out above enables the applicant to recover the costs of those qualifying works from the lessees as part of the service charge.

8. The Tribunal took into account that since the application was made, it would have been possible for the applicant to have sought alternative estimates, and it is regrettable that the agents have not done this. It was also regrettable that the agents were unable to give any detailed explanation about the requirement for the works other than what appeared in the letter from the insurers and the tender summary referred to above.

9. However, the Tribunal considers it is reasonable to dispense with the requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 for the following reasons:

   a. The works are urgent because of the requirement of the insurers.
   b. The costs involved are relatively modest. Any prejudice caused to the lessees in being denied the chance to benefit from cheaper alternative estimates is therefore limited.
   c. Full tendering and consultation would lead to delays. This would cause inconvenience to the occupiers of the flats – particularly those on the top floors.
   d. The landlord has carried out some consultation by way of the notice of intention and the covering letter.
   e. The application was been made promptly.
   f. No objection has been made by any of the respondents. One of the respondents supports the application.

10. The Tribunal therefore determines under s.20ZA of the landlord and Tenant Act 1985 that the consultation requirements should be dispensed with in relation to the qualifying works to the lift set out in the tender summary from Kone Lifts dated 5 March 2007.

Dated: 26 April 2007

Mark Loveday BA(Hons) MCI Arb
Chairman