

S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

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| Case Number: | CHI/29UD/LDC/2010/0012 |
| Property: | 224 London Road, Greenhithe, Kent DA9 9JF |
| Applicant: | Kimmeridge Estates Ltd. |
| Respondents: | Ms. H. Urquart – Flat 224A Ercan Ali and Gulcan Cenkci – Flat 224C Mr. J. Gibson – Flat 224B – represented by EBW solicitors |
| Date of Application: | 29 April 2010 |
| Date of Consideration: | 4 October 2010 |
| Date of This Determination | 16 October 2010 |
| Tribunal Members: | Mr. R. A. Wilkey FRICS (Valuer/Chairman) Mr. J. B. Tarling MCMI (Lawyer Member) |

DECISION

1. The Tribunal determines not to dispense with all or any of the consultation requirements in relation to the qualifying works the subject of this application described as remedial works to the floor and brickwork in the basement flat

NOTICE

2. Following formal notice given in Directions dated 14 May 2010 the Tribunal proceeded to determine the case on the basis of only written representations without a formal oral hearing.

REASONS**INTRODUCTION**

3. This is an application by the freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

4. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
5. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
6. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
7. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
8. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things

a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.

9. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

10. The Tribunal was provided with a copy of lease for Flat A 224 London Road dated 18 December 1986 between B. Wahl & Company Contractors (Kent) Limited (the Lessor) and Steven Barnett and Sharon Pitts (the Lessees).
11. There are provisions for the landlord to *“keep in good and substantial repair order and condition (and where necessary to replace):- (a) The roof and all the walls and the main structure and foundations of the property... (b) all the common parts... (c) All other parts of the property not included in the above sub-paragraphs and not included in this demise or the demise of any other flat in the building”*
12. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
13. There were no matters raised by either of the parties in respect of the interpretation of the lease.

BACKGROUND

14. On 14 May 2010 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the paper track.
15. Some months ago, work to insert a damp proof course together with associated remedial work was carried out in the front part of the basement flat. The Freeholder followed the proper consultation procedure and this work is not the subject of this application.

16. While the work was in progress, it was discovered that the floor joists and adjacent timbers were affected by wet rot.
17. The firm who were carrying out the work provided a quotation in the sum of £3,198 plus VAT for the additional work which comprised:
- (a) Strip out defective flooring to bedroom and passage and remove to a skip
 - (b) Remove wall plates and defective sleeper walls
 - (c) Remove debris from the oversite to expose the slab (rubbish 300mm in depth) to improve sub-floor ventilation
 - (d) Construct new sleeper walls and bed on plates
 - (e) Take and replace the double joists under the hall/bedroom partition
 - (f) Supply and fit new 50x125 floor joists and cover with 25x150 sq edged contract flooring
 - (g) Spray treat all new timbers with Tritec 120 preservative
 - (h) Supply and fit 2 no telescopic air vents to bay front elevation
 - (i) Remove loose brickwork to the front elevation below the window and rebuild render to the underside of the cill externally to match
 - (j) Rebuild the internal corners of the bay
18. The application before the Tribunal relates to this additional work
19. The Freeholder advised the lessee of the basement flat as soon as the extent of the extra work became known and she immediately inspected the defective timber that had been exposed. The applicant's statement of case indicates that the lessees of the other two flats were not notified or consulted about the additional works.
20. Shortly afterwards the Freeholder gave instructions for the additional work to be carried out.

REPRESENTATIONS

21. The Applicant has provided a bundle of documents which include copies of correspondence with the lessees, copies of relevant quotations and photographs of the floor timbers that were affected by wet rot.

22. Mr. Gibson, lessee of the ground floor flat, is represented by EBW solicitors. The other lessees made no representations.
23. The Tribunal has received various letters from EBW solicitors and particular reference is made to a letter to the Tribunal dated 1 July 2010 which states *"It is our client's case that the work subsequently found to be necessary should have been foreseen at the time of the original inspection and further that when it came to light that he was not given the opportunity to raise issues before the work was carried out."*

INSPECTION

24. The property comprises a mid terrace, three storey building which was constructed in 1906 and subsequently converted into three self-contained flats.
25. The works were carried out in the front part of the basement flat and the Tribunal inspected this part of the building only.
26. Ms. Urquart gave us access to the flat and was present throughout the inspection. The Tribunal Members introduced themselves to Mr. J. Gibson (lessee of Flat 224B) but he did not attend the inspection.
27. No representative of the Freeholder was present at the inspection.
28. The work has been completed. The Tribunal noted that relevant floor boards and wall plaster were new. It was not, however, possible to examine the sub-floor timbers which are the subject of this application.

CONSIDERATION

29. It is clear from the supplied papers and the inspection that the work has been completed.
30. However, the freeholder gave instructions for the additional work to proceed without giving the lessees an opportunity to make representations or suggest another contractor
31. The Tribunal carefully considered all the papers and in particular the representations made by EBW solicitors. It considers that the additional works could not have been foreseen at the outset as the rotten wood was beneath the

floorboards and floor coverings. It would not have been visible before the commencement of the works.

32. When considering whether or not to dispense with the requirements, the most important consideration will usually be the degree of prejudice there is to tenants for a failure to comply with the procedure.
33. The Tribunal reminded itself of the Decision in the case of *Martin v Maryland Estates Ltd* (1999) 26 E.G.151 L. & T.R.30 This was a decision of the Court of Appeal where the circumstances were very similar. In that case it was held that the landlord was not entitled to recover through the service charge the sum contended for.
34. Although the lessee of Flat A had been made aware of the extra works, there is no evidence before the Tribunal to indicate that the lessees of the other two flats had been informed early enough for them to make observations.

THE DECISION

35. Taking all the circumstance into account and for the reasons stated above, the Tribunal is not satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of Section 20(1) of the Act in respect of all the works. The application for dispensation is therefore refused.
36. The Tribunal makes it clear that this Decision is restricted to the Application under Section 20ZA for dispensation. It does not prevent an application being made by the landlord or any of the tenants under Section 27A of the Act to deal with the liability to pay the resultant service charges. The effect of this decision is to effectively place a cap of £250 each on the amount which any Lessee can be required to pay for the additional work which is the subject-matter of this application.

Dated 16 October 2010

R. A. Wilkey

Roger A. Wilkey FRICS

Valuer/Chairman