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

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| **Case Reference** | : | **LON/00AA/LDC/2013/0065** |
| **Property** | : | **Spencer Heights, 28 Bartholemew Close, London EC1A 7ES** |
| **Applicant** | : | **OM Limited** |
| **Representative** | : | **OM Property Management Limited** |
| **Respondents** | : | **The leaseholders of the 34 garage spaces in Spencer Heights** |
| **Representative** | : | **In person** |
| **Interested person** | : | **Proxima GR Properties Limited** |
| **Type of application** | : | **For dispensation with the consultation requirements** |
| **Date and place of hearing** | : | **17 September 2013, 10 Alfred Place, London WC1E 7LR** |
| **Tribunal** | : | **Margaret Wilson**<br>**Neil Maloney FRICS** |

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| **Date of Decision** | : | **17 September 2013** |

## DECISION

## Introduction

1. This is an application by a management company, which is a party to the relevant leases, under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation with the statutory consultation requirements in respect of works which have been carried out to replace the main control system of the car lift serving the underground car park at Spencer Heights, a block of 49 flats with a basement car park containing 34 parking spaces. The respondents to the application are the leaseholders of the parking spaces. The freeholder of the block is Proxima GR Properties Limited.

2. The lift broke down on 18 April 2013. The managing agent instructed a lift contractor, Amalgamated Lifts and PIP Lift Services Ltd ("Amalgamated"), who removed the main processor which they sent to a specialist for inspection and repair. The repair was not effective and the contractor advised that a new control system should be installed. The managing agent then, having notified the leaseholders of the parking spaces of what they proposed to do, instructed an independent expert, International Lift and Escalator Consultants Ltd ("ILEC"), to inspect the lift and provide a report. ILEC inspected the lift on 2 May 2013 and provided a report which confirmed that a new control system was required and recommended some health and safety upgrades to the lift. The managing agent then obtained two quotations for the work, one from Amalgamated and the other from PIP Lift Services Ltd, and notified the leaseholders of the parking spaces of the quotations and of the management company's intention to instruct Amalgamated, which had provided the lower quotation.

3. The works commenced on 5 June 2013 and were completed on 21 June 2013.

4. Directions for the determination were made on 9 August 2013. They required the applicant to send copies of the application and of the directions to the respondents and to the landlord, invited the landlord to apply to be joined as a party if it wished to do so and directed those respondents who

opposed the application no later than 30 August 2013 to provide to the landlord a statement in response to it. The landlord has not applied to be joined and none of the respondents has provided a statement or indicated to the management company or to the tribunal that they oppose the application.

5. It was suggested in the directions that the tribunal might not have jurisdiction because the service charges which will be payable in respect of the cost of the works will be payable by the leaseholders of the parking spaces under the leases of the parking spaces and not by leaseholders of dwellings. For that reason it was directed that the application should be the subject of a short oral hearing rather than disposed of on the papers as had been proposed in the application.

6. Accordingly a hearing took place on 17 September 2013. It was attended by Azmon Rakoli, a solicitor employed by the managing agent's parent company. None of the respondents attended. We were satisfied that they had all been given notice of the hearing and that it was in the interests of justice to proceed with the hearing, none of the respondents having indicated any opposition to the application.

## The statutory framework

7. Section 20 of the Act limits the *relevant contribution* payable by tenants towards qualifying works unless the consultation requirements have been complied with or dispensed with. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). By section 20(2) of the Act *relevant contribution* is defined as *the amount [the tenant] may be required under his lease to contribute (by the payment of service charges) to relevant costs incurred in carrying out the works.* By section 20ZA(2), *qualifying works* means *works on a building or any other premises. Service charges* are defined by section 18(1) of the Act as *an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly, for services, repairs, maintenance, maintenance, improvements or insurance or the landlord's costs of management.* By section 38 of the Act a *dwelling* means *a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with it.*

8. Section 20ZA of the Act provides that where an application is made to a Tribunal for a determination to dispense with any of the consultation requirements the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

## The leases

9. The leases of the flats are in standard form. Clause 2 contains the relevant definitions. It defines *the building* as *the building edged blue on the plan comprising several flats ... and all structural parts thereof ... but not the underground parking facility situate thereunder,* although the building is differently described in the first schedule to include *any building or structure erected or to be erected on the site or some part thereof.* The *maintenance expenses* to which the leaseholders of the flats are required to contribute by way of a service charge are set out in the sixth schedule. They include, at paragraph 1, the maintenance and so forth of the passenger lifts in the building. They do not include any expenses referable to the maintenance of the car park.

10. The parking space leases, also in standard form, contain comprehensive covenants on the part of the management company to maintain the basement car park including all *service installations utilised in common by the lessees of two or more of the parking spaces* and a covenant on the part of the leaseholder to pay the cost of, among other things, *maintaining ... renewing reinstating replacing ... the service installations* which are defined to include *vehicle lifts.* They include, in the eighth schedule, a restriction on alienation to anyone except an *existing lessee within the building or any of the nearby buildings,* identified as Wesley House, Buckley House, Franklin House, White Horse House or Milton House.

## The management company's case

11. Mr Rakoli said that in his opinion the consultation requirements did not apply to the works because the service charges payable by the leaseholders in respect of them were payable only by the leaseholders of the parking spaces. They were, he said, not charges payable by the tenants of dwellings and were thus not service charges within the meaning of the Act. He said that in *Uratemp Ventures Ltd v Collins* [2001] 1 AC 301 the House of Lords had said that *dwelling* was not a term of art and simply meant a place where someone lives and he said that on any view parking spaces were not dwellings.

12. Asked why in those circumstances the application had been made he said that, the management company having made the application for dispensation and having informed the leaseholders that it had done so, it was considered that it would attract the suspicion and mistrust of the leaseholders if the application had been withdrawn. He said that the management company did not intend to pass any of the costs it had incurred in respect of the application and hearing to any leaseholders, either of the parking spaces or of the flats.

13. He said that he understood that the great majority of the parking space leases were owned by leaseholders of flats in the block, but there was no means whereby any of those leaseholders could be required in their capacity

as leaseholders of flats to contribute to the costs of the works which are the subject of the application, nor did the management company intend to seek any contribution from anyone but the leaseholders of the parking spaces. He explained that the repair of the lift had been urgently required because, without it, cars were trapped in the car park unless they were winched up by hand.

## Decision

14. We are satisfied that the management company has acted reasonably throughout in that it informed the leaseholders of the parking spaces of what it proposed to do and obtained two quotations for the work. We are satisfied that the work was too urgent to allow for full consultation under the Consultation Regulations. None of the leaseholders who will be asked to pay service charges in respect of the works has asserted any prejudice arising from the failure to carry out full consultation, and we cannot discern any prejudice they might have suffered. If dispensation with compliance with the Consultation Regulations is required, we would grant it.

15. However in our view the Consultation Regulations do not apply to the works. The purpose of section 20 of the Act is to limit the *relevant contribution* payable by a tenant in certain circumstances. Section 20(2) of the Act defines *relevant contribution* as *the amount [a tenant] may be required under his lease to contribute (by the payment of service charges) to relevant costs incurred in carrying out the works. Service charges* are by section 18(1) defined as *an amount payable by a tenant of a dwelling*. In our view it is only the contributions payable by the tenant of the dwelling under his lease of the dwelling which are service charges within the meaning of sections 18 to 30 of the Act, and those sections do not apply to charges payable under leases which are not leases of dwellings. If the leases of the flats had enabled the management company or the freeholder to pass any of the costs of the works to the leaseholders of the flats in their capacity as such, then section 20 of the Act would have applied to the works and dispensation from compliance with the Consultation Requirements would have been necessary. However, it is clear that none of those costs is recoverable under the leases of the flats. Insofar as there is an ambiguity in the description of the building in the leases of the flats (see paragraph 9 above), it would be construed against the grantor. However, read as a whole, in our view the leases are quite clear in relation to the respective liabilities of the leaseholders of the flats and of the parking spaces to pay for the works. The leaseholders of the parking spaces are obliged to pay for them but the leaseholders of the flats are not.

16. This is not a determination that any charges are payable by any leaseholders. It relates only to dispensation from compliance with the Consultation Regulations.

17. We accept the management company's assurance that it will not seek to recover any of the costs it has incurred in connection with this application from any leaseholder, either of a flat or of a parking space.

**Judge: Margaret Wilson**