



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

Case Reference : **CHI/00HY/LDC/2014/0009.**

Property : **20 Bedwin Street, Salisbury,
Wiltshire, SP1 3UT.**

Applicant : **20/20A Bedwin Street (Salisbury)
Management Limited.**

Representative : **Mr. William Dickinson, Managing
Director.**

Respondents : **1. Anne Pritchard (Flat 1)
2. Patricia Osborne (Flat 2)
3. Helen Wendy Bray (Flat 3)
4. William and Judith Dickinson (Flat
4)
5. Matthew and Charlotte Andrews
(Flat 5)
6. Lloyd Molton (Flat 6)
7. Imagine Property Rentals Limited
(Flat 6).**

Representative : **Respondents 1, 2, 3, 5 and 6 did not
appear. Mr. Dickinson appeared in
person. The 7th Respondent was
represented by Mr. Richard Molton.**

Type of Application : **Dispensation with Consultation,
S20ZA of the Landlord and Tenant
Act 1985 (as amended).**

Tribunal Member : **Judge J G Orme**

**Date and Venue of
Hearing** : **18 June 2014.

The George Inn, Longbridge Deverill,
Warminster.**

Date of Decision : **19 June 2014.**

Decision

- 1. For the reasons set out below, pursuant to section 20ZA(1) of the Landlord and Tenant Act 1985 (as amended), the Tribunal dispenses with the consultation requirements set out at paragraphs 5(1) and (2) of Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 in respect of a qualifying long term agreement entered into by the Applicant, 20/20A Bedwin Street (Salisbury) Management Limited with The English Plumbing Company on or about 5 April 2014 in relation to building maintenance work to be carried out at 20 Bedwin Street, Salisbury SP1 3UT.**
- 2. Further, pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169, the Tribunal orders the 6th Respondent, Mr. Lloyd Molton, to reimburse to the Applicant the sum of £190 being the hearing fee paid by the Applicant for the hearing of this application.**

Reasons

The Application

1. 20 Bedwin Street, Salisbury (“the Property”) is a purpose built block of flats consisting of 4 flats and 2 maisonettes constructed in 2003. The freehold is owned by the Applicant, 20/20A Bedwin Street (Salisbury) Management Limited (“the Company”) which is a Resident’s Management Company. The flats and maisonettes are let on long leases and the Respondents are the owners of the 6 leases. The lease of Flat 6 was vested in Mr. Lloyd Molton but on 28 March 2014 he assigned it to Imagine Property Rentals Limited (“Imagine”). The intention is that the owners of the 6 leases should be owners and shareholders in the Company. Mr. Lloyd Molton was not a member of the Company at any relevant time and Imagine is not yet a member although the parties are corresponding about that issue.
2. On 4 March 2014, the Company applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for the dispensation of part of the consultation requirements set out in Section 20 of the Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) (“the Consultation Regulations”) in relation to 3 qualifying long term agreements which the Company proposed to contract. The agreements were:
 - a. A 6 year contract for the role of managing director which the Company proposed to award to Mr. Dickinson;
 - b. A 6 year contract for the role of Company Secretary which the Company proposed to award to Mrs. Dickinson;
 - c. A 6 year contract for building maintenance which the Company proposed to award to The English Plumbing Company (“EPC”).

3. On 10 March 2014, the Tribunal issued directions providing for the application to be determined without a hearing on written submissions, for the leaseholders to indicate whether or not they opposed the application and for the parties to exchange statements of case. The leaseholders of Flats 1, 2, 3, 4 and 5 indicated that they supported the application and that they were content for the application to be determined without a hearing. Lloyd Molton indicated that he opposed the application and that he wanted an oral hearing.
4. On 24 April 2014, the Tribunal issued further directions. By that time, Lloyd Molton had informed the Tribunal that he had sold Flat 6. The Tribunal directed that Imagine be joined as a Respondent to the application. The Tribunal notified the parties that the Consultation Regulations do not apply to contracts of employment (see Regulation 3(1)(a)) and that the application would proceed only in relation to the contract for building maintenance. The Tribunal directed Lloyd Molton and Imagine to prepare a statement of case by 9 May, for the Company to reply if so advised, for the Company to prepare a bundle of documents for use by the Tribunal and for the application to be determined by a Judge sitting alone at a hearing on 18 June.
5. Imagine prepared a written statement of case in the form of a letter dated 8 May 2014 which is at page 95 of the bundle. Lloyd Molton wrote a letter to the Tribunal on the same date concurring with the statement. Mr. Dickinson prepared a lengthy statement of case on behalf of the Company and prepared a bundle of documents for use by the Tribunal.

The Law

6. Subsection 1 of Section 20 of the Act as amended provides:

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) the appropriate tribunal.
7. A qualifying long term agreement is defined by Section 20ZA(2) of the Act as “(subject to subsection 3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.” Subsection 3 provides that the Secretary of State may by regulation prescribe circumstances in which an agreement is not a qualifying agreement.
8. The effect of subsections 2 and 4 of Section 20 and the Consultation Regulations is that the consultation requirements apply where the contribution which any tenant has to pay by way of service charge as a consequence of the agreement exceeds £100 in any accounting year. In particular, Regulation 4(1) of the Consultation Regulations provides “Section 20 shall apply to a qualifying long term agreement if relevant costs incurred

under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.”

9. The consultation requirements are set out in the Consultation Regulations. Those that apply to qualifying long term agreements for which public notice is not required are those set out in Schedule 1 to the Consultation Regulations. They require the landlord to enter into a 3 stage consultation process with the tenants. The information which must be given in the consultation notices is prescribed. At the second stage of the process, the Landlord is required to put forward 2 separate proposals, based on 2 estimates. In particular, paragraphs 5 (1) and (2) provide:

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.”

10. Subsection 1 of Section 20ZA of the Act provides:

Where an application is made to the appropriate 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.

11. In the case of *Daejan Investments Limited v Benson* [2013] UKSC 14 the Supreme Court gave guidance to tribunals as to how they should exercise the discretion given to them by Section 20ZA. At paragraph 42 of the speech of Lord Neuberger, he says “*It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. ... The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes.*” Then at paragraph 44 he says “*it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.*”

The Agreement for building maintenance

12. Attached to the various consultation notices served by the Company on the leaseholders was a document headed “*Appendix C – Terms of Reference for Building Maintenance Contractor.*” Mr. Dickinson informed the Tribunal that the contract had been awarded in that form between 5 and 8 April 2014.

No separate written contract had been drawn up with EPC. A copy of the document at Appendix C had been signed on behalf of the Company and EPC and that represented the contract that had been concluded between the parties.

13. The document notes that Mr. Andrews, a leaseholder of Flat 5, is a partner in EPC and that Mr. Dickinson, a leaseholder of Flat 4, might be employed by EPC as a labour only contract employee. It provides that the contract is for a period of 6 years, may not be assigned and may be terminated by either party on 90 days notice without penalty. EPC is to provide its own public liability insurance cover. The contract provides that all work provided by EPC will be charged at the rate of £15 per hour, indexed linked. Any materials, contract tradesmen and equipment are to be provided at cost and any sub-contracts are to be charged to the Company without any additional profit element. The agreement provides for the Company to provide a schedule of work to be carried out each year and for EPC to plan and manage that work.
14. The agreement does not specify what work is to be carried out by EPC. There is no clause in the agreement preventing the Company from instructing another contractor to carry out work if it sees fit to do so. The effect of the agreement appears to be to fix the rate at which EPC will be able to charge for any work which it is instructed to carry out for a period of 6 years. If it receives an instruction to carry out specific work, that instruction would appear to form a separate contract which may, in itself, be subject to consultation requirements.

Inspection

15. The Tribunal did not inspect the Property.

The Hearing

16. The Hearing took place at the George Inn, Longbridge Deverill, Warminster on 18 June 2014. Mr. Dickinson appeared on behalf of the Company. Mr. Richard Molton, father of Lloyd Molton, appeared on behalf of Imagine and produced a letter from Imagine authorising him to do so. He indicated that he was not representing his son, Lloyd Molton, as Lloyd had no further interest in the Property, having assigned the lease of Flat 6 to Imagine on 28 March.
17. Mr. Molton accepted that the Company had complied with the consultation requirements in all respects other than it had not complied with paragraphs 5(1) and (2) of Schedule 1 (as accepted by the Company) and that it had failed to take account of observations made by Lloyd Molton.
18. The issues to be determined by the Tribunal were, therefore:
 - a. Had the Company failed to take account of observations made by Lloyd Molton;
 - b. Should the Tribunal make an order dispensing with compliance with those requirements which had not been met?
19. Both parties asked for orders for costs against the other.

The Evidence

20. Mr. Dickinson had prepared on behalf of the Company a lengthy statement of case with supporting documentation in which he had addressed the issues raised by Imagine in its letter dated 8 May. The documentation included a copy of the lease to Flat 4, a tribunal decision varying the terms of the lease and copies of the 3 notices served by the Company in purported compliance with the consultation requirements.
21. The essence of the Company's case was that Mr. and Mrs. Dickinson and Mr. and Mrs. Andrews are the only resident leaseholders at 20 Bedwin Street. The other flats are sub-let. It is recognised that there needs to be a programme of works to the Property in order to maintain it over the next 6 years. Mr. Andrews, being in the building trade, has the ability to carry out much of the work himself or access to others who will be able to do so. He is also able to access trade discounts for materials and hire of equipment. Mr. Dickinson is retired and has time available to assist with the work. Both Mr. Andrews and Mr. Dickinson have agreed to limit their charges for any work carried out to £15 per hour, subject to index linking. By doing the work themselves at that rate, the work will be carried out much cheaper than it would be if an outside contractor were employed. That would be to the benefit of all leaseholders. Mr. Dickinson said that no other company was prepared to quote for the work once they were told that the existing rate was £15 per hour.
22. Mr. Dickinson has been advised that if the Company enters into this long term contract, then consultation in relation to annual work schedules will be reduced as the Company will only have to comply with the requirements of Schedule 3 of the Consultation Regulations.
23. Mr. Dickinson submitted that neither Lloyd Molton nor Imagine would suffer any prejudice as a result of the Company entering into the agreement.
24. The only evidence filed by Lloyd Molton or Imagine was the letter dated 8 May and a bundle of copy correspondence from Lloyd Molton to Mr. Dickinson. The issues raised in the letter dated 8 May were:
 - a. The structure of the Company is such that Lloyd Molton has been deprived of an opportunity to take an active part in the management of the Property.
 - b. Lloyd Molton had questioned the experience of EPC to carry out general maintenance work. Mr. Richard Molton produced a copy of a web page showing that the company specialises in bathrooms and kitchens and that there is no obvious expertise to carry out general maintenance work. He was concerned that the agreement would merely increase overheads.
 - c. There is a conflict of interest in that both Mr. Andrews and Mr. Dickinson are leaseholders and stand to benefit under the agreement. At the hearing, Mr. Richard Molton said that it would be more open and transparent if the Company contracted direct with Mr. Andrews and Mr. Dickinson.
 - d. Flat 6 is responsible for payment of 27.8% of the service charge but only has 1 vote in the Company. It is a long term agreement without

safeguards to permit the leaseholders to have any say over the works to be carried out.

- e. It suggests that as a condition of granting dispensation, the service charge proportions should be varied to provide for 6 equal portions. Mr. Molton was unable to provide any authority to say that the Tribunal had jurisdiction to make such a variation.
 - f. It is a long term agreement with no ability to analyse or assess any individual item of work.
25. Mr. Molton produced no evidence to suggest that any other contractor might be prepared to contract to work at a rate of £15 per hour. Indeed, he accepted at the hearing that it was unlikely that any existing company would be able to compete with that rate. In relation to observations, Mr. Molton referred to the bundle of letters filed by Lloyd Molton and, in particular, his letter to Mr. Dickinson dated 6 December 2013. He said that the Company had failed to respond to Lloyd Molton.
26. In relation to costs, Mr. Dickinson submitted that Lloyd Molton had acted unreasonably in relation to this application. He accepted that the Company had to make the application to the Tribunal and was not seeking reimbursement of the application fee but he was seeking reimbursement of the £190 hearing fee and an award of costs in the sum of £750 made up as to £350 for legal advice on the draft statement of case, for which no invoice had yet been received, and £400 for his own time in preparing for the hearing. He said that he recorded his time spent in a day book which was not available at the hearing but he estimated that he had spent about 150 to 160 hours in preparation at £15 per hour.
27. Mr. Molton asked the Tribunal to make an order for the Company to pay the costs of Imagine. He said that the company had obtained advice from its solicitors but no invoice had been received.

Conclusions

28. At the hearing, the Tribunal raised with the parties the possibility that the consultation requirements do not apply to this agreement. It is a qualifying long term agreement because it satisfies the definition in section 20ZA(2) and is not excluded by Regulation 3 of the Consultation Regulations. However, Regulation 4(1) of the Consultation Regulations says that section 20 applies if "*relevant costs incurred under the agreement*" exceed £100 in any accounting period. The agreement does not provide for any works to be carried out under the agreement nor does it provide for any costs to be incurred. It merely defines the rate at which work will be carried out by EPC in any future contract entered into between EPC and the Company. So, although it is a qualifying long term agreement, it may not be one to which section 20 applies. If section 20 does not apply, there is no requirement to comply with the consultation requirements or to obtain dispensation.
29. As the point was not raised or argued by either party it is not appropriate for the Tribunal to make any determination on that point and it will proceed on the basis that section 20 does apply to the agreement. However, the issue may

be a real one in future because if the Company is seeking to rely on the consultation requirements set out in Schedule 3 in relation to future qualifying works, that schedule will only apply if the qualifying works are the subject “*of a qualifying long term agreement to which section 20 applies*” – see Regulation 7(1) of the Consultation Regulations.

30. The Tribunal finds as a fact that neither Lloyd Molton nor Imagine made any observations in reply to the first or second consultation notices served by the Company. Further, neither of them nominated a contractor from whom an estimate should be obtained. Mr. Richard Molton relied on the letter dated 6 December. That letter was written in reply to an initial letter from the Company dated 8 November seeking comments prior to starting the consultation process. It raises a number of issues mainly relating to being excluded from management of the Company. The only reference to the agreement is a brief reference to there being a “conflict of interest.” That letter was written before the Company sent out the first consultation notice on 18 December. Although subsequent letters written by Lloyd Molton appear to acknowledge receipt of the notice dated 18 December and make reference to his earlier letter dated 6 December, he makes no specific observations on the proposal set out in the notice dated 18 December nor, for that matter, in the second consultation notice dated 27 January. Lloyd Molton was not entitled to assume that the Company would take notice of comments made before it started the consultation process even if, which does not appear to be the case, he had made any proper observations on the proposal. He ought to have made specific observations in reply to the consultation notices. He did not do so. Imagine made no observations on the consultation notices because it was not then involved in the Property.
31. In the circumstances, the Tribunal finds that there has been no failure by the Company to comply with the consultation requirements by failing to take account of observations from the tenants.
32. The Company accepts that it failed to comply with the consultation requirements by failing to comply with paragraphs 5(1) and (2) of Schedule 1. It put forward only one proposal, that being based on contracting with EPC at a rate of £15 per hour. It acknowledged that the proposal was to enter into an agreement with someone who was not totally unconnected with the Company. It says that Mr. Andrews is prepared to enter into the contract on special terms because he is a leaseholder and that no other company or person would be prepared to enter into a contract on those favourable terms. It is for that reason that it has been unable to comply with the requirements in this respect.
33. The Tribunal accepts the evidence of Mr. Dickinson that no other company or person would be prepared to enter into a long term agreement to provide services at that hourly rate. Indeed, Mr. Molton appeared to accept that fact.
34. The question then is whether Lloyd Molton or Imagine have suffered any relevant prejudice by the failure of the Company to comply with the consultation requirements. It is for the tenant to identify prejudice and if it does, it is for the landlord to rebut it. In considering prejudice, it is important

to bear in mind the purpose of the requirements which is to ensure that tenants are protected from paying for inappropriate works or paying more than would be appropriate.

35. It is clear from the submissions made by both parties that there has been a long period of antagonism between Mr. Dickinson (and possibly other leaseholders) and both Richard and Lloyd Molton. They have felt that they have been excluded from taking a proper part in the management of the Property. The Tribunal has no knowledge as to the background of that antagonism and it is probably of no relevance. It is unfortunate that it appears that there are 5 leaseholders who are in agreement as to the way in which the Property is managed and one dissenting voice.
36. The question is whether Lloyd Molton or Imagine have established any prejudice as a result of the Company's failure to obtain a second estimate or to obtain an estimate from someone wholly unconnected with the Company.
37. The Tribunal is not satisfied that they have established that any prejudice was suffered for the following reasons:
 - a. The Tribunal has already accepted Mr. Dickinson's evidence that no other company or person would be prepared to enter into a long term agreement to provide services at £15 per hour;
 - b. The reason why EPC is prepared to contract at that rate is for the very reason that Mr. Andrews is a connected and interested person. As Mr. Dickinson pointed out, the "conflict of interest" to which Lloyd Molton refers, is acting to the benefit of the leaseholders in this instance;
 - c. By entering into the agreement, the Company is merely fixing the rate at which EPC is prepared to carry out work in the future. If circumstances change and the Company finds that it can contract with a third party for work to be carried out at a more advantageous rate or to a better standard, there is nothing to stop the Company from contracting with such a party;
 - d. Lloyd Molton and Imagine have produced no evidence to show that EPC is not capable of carrying out normal maintenance work to a reasonable standard;
 - e. As and when the Company enters into a contract with EPC for specific maintenance work, the Company may be obliged to consult in relation to that work, in which case the current leaseholders will be able to make observations;
 - f. Whether or not there is consultation in future, the leaseholders will still be able to apply under section 27A of the Act for a determination as to the reasonableness of the service charges and in such an application they will be able to challenge the service charges on the basis that work was not carried out to a reasonable standard or at a reasonable cost.
38. Imagine submits that the Tribunal should vary the apportionment of the service charge as a condition of granting dispensation. The Tribunal doubts whether it would have jurisdiction to make such a condition but even if it does, it does not consider that it would be reasonable to make such a condition. Imagine has taken an assignment of the lease with full knowledge

of this application and of the share of the service charge which is payable under the terms of its lease.

39. In the circumstances, the Tribunal determines to grant dispensation with compliance with paragraphs 5(1) and (2) of Schedule 1 to the Consultation Regulations and attaches no conditions to that dispensation. It has considered whether or not to attach a condition that the Company should pay the costs of Lloyd Molton or Imagine in relation to this application. Although Mr. Molton says that Imagine has incurred legal costs, there is no evidence before the Tribunal that those costs relate specifically to this application. The submissions made by Imagine do not suggest that the application has been given any serious legal consideration. There was no serious attempt to identify the prejudice alleged to be suffered by Lloyd Molton and/or Imagine. For those reasons, the Tribunal does not make it a condition of granting dispensation that the Company should pay the legal costs, if any, incurred by Lloyd Molton or Imagine.
40. The rules governing orders for costs are set out at Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169. Orders for costs are at the discretion of the Tribunal but may only be made if a person has acted unreasonably in bringing, defending or conducting proceedings.
41. In relation to Mr. Molton's application for costs against the Company, Mr. Molton has failed to show that the Company has acted unreasonably in bringing or conducting this application. The Company considered that it had to make the application in order to comply with the consultation requirements. It has reacted to the objections raised by Lloyd Molton and Imagine. It has succeeded in its application. There will be no order for costs against the Company.
42. In relation to the Company's application for costs against Lloyd Molton and/or Imagine, they have been unsuccessful in their objections but that does not mean that they have acted unreasonably. The Company made the application and they were entitled to respond with their views. The Tribunal is not satisfied that they have acted unreasonably in doing so and will make no order for costs against them. However, the Tribunal is satisfied that Lloyd Molton acted unreasonably in asking for a hearing of this application without fully considering his position in relation to the application. All parties fully stated their positions in their written statements of case. Very little was added by having a hearing. No substantive evidence was adduced at the hearing which was not already in the papers. The consequence of asking for a hearing was that the Company had to pay a hearing fee of £190. The Tribunal will make an order requiring Lloyd Molton to reimburse to the Company the sum of £190.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Judge J G Orme
Dated 19 June 2014.