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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/21UD/LDC/2014/0015**
Property	:	**Marine Court, St. Leonards on Sea, East Sussex TN38 0DZ**
Applicant	:	**Marine Court (St. Leonards on Sea) Freeholders Limited**
Representative	:	**Clifford Dann LLP**
Respondents	:	**The Long Leaseholders at the property**
Type of Application	:	**Section 20ZA of the Landlord and Tenant Act 1985 (as amended)**
Tribunal Members	:	**Mr. R. A. Wilkey (Surveyor/Chairman)** **Judge R. Wilson (Lawyer member)**
Date and venue of Hearing	:	**Wednesday 16th April 2014** **Best Western Royal Victoria Hotel, Marina, St. Leonards on Sea TN38 0BD**
Date of Decision	:	**Wednesday 16th April 2014**

DECISION

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7. 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.

8. S.20ZA provides that a First Tier Tribunal may 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)).

9. As regards qualifying works, the recent High Court decision of Phillips v Francis[2012] EWHC 3650 (Ch) has interpreted the financial limit as applying to all qualifying works carried out in each service charge consultation period. However, this decision is subject to an appeal which has yet to be heard.

10. A lessor may ask a Tribunal for a determination to dispense with all or any of the consultation requirements and the Tribunal may make the determination if it is satisfied that it is reasonable to dispense with the requirements (section 20ZA) The Supreme Court has recently given guidance on how the Tribunal should approach the exercise of this discretion: Daejan Investments Ltd. v Benson et al [2013] UKSC 14. The Tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the Lessor to rebut it.

is clear that water penetration is an ongoing problem. Repairs to the surface of the flat of the balcony immediately above form part of the proposed additional work

16. An inspection was then made of exterior of the rear of the block from ground level. A substantial gantry is in place to give access to the roof areas together with a site hut etc. It is suggested that there will be a substantial saving if these remain in place to enable completion of the additional work to the roof and balconies.

THE LEASES

17. Marine Court encompasses ten types of flat called A to J. The Applicant has provided a copy of a typical lease for each type of flat. The tenant's share of chargeable expenditure varies depending on the type of flat. The majority of the leases expire 24th March 2050 but this varies.

18. By virtue of Clause 5(5)(a), the landlord must, subject to and conditional upon payment being made by the tenant of the Basic Service Charge and the Additional Service Charge, maintain and keep in good and substantial repair and condition:

(i) The main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof...

19. Clause 5(5)(b) requires the landlord, as and when deemed necessary, to:

(i) Paint the whole of the outside wood iron and other work of the building heretofore or usually painted and grain and varnish such external parts as have been heretofore or are usually grained and varnished

(ii) Paint...such of the interior parts of the building as have been or are usually painted...(other than those parts which are included in this demise or in the demise of any other flat in the building)

(iii) Paint...such of the interior parts of any flat or flats or accommodation in the building occupied or used by any caretakers

Since the Directions were issued, forms have been returned by several lessees stating that they are in favour of the application, albeit concern has been expressed at the limited time allowed for observations due to late receipt of the forms.

25. Immediately prior to the start of the Hearing, The Tribunal pointed out that the Hearing Fee has not yet been received. Mr. Cox produced a photocopy showing that a cheque had been sent the previous day and the Tribunal were content to proceed.

26. The Tribunal confirmed that the Application today is solely to dispense with the consultation requirements that would otherwise exist to carry out the procedures in accordance with S.20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under S.27A of the Act to deal with the liability to pay the resultant service charges. It simply removes the cap on the recoverable service charges that S.20 would otherwise have placed upon them.

THE APPLICANT'S CASE

27. Mr. Cox briefly summarised the position and made reference to the supplied documents. The proposal is to extend the current phase of works to include the additional roof works. Over the winter months it has become apparent that there is a need to "speed up" the works to prevent ongoing water penetration to the interior. He became aware in January 2014 that the contract would need to be amended to allow for the additional works to be carried out. He has done his best to keep costs down for this Application.

28. When asked to comment on the savings identified in the Application, Mr. Cox stated that he was unable to be precise and that this had not been the subject of a separate tendering process. Mr. Blake, who is the building surveyor overseeing the project, added that the main saving if the additional work was carried out as an extension to the running contract rather than a separate exercise would be in respect of the rear gantry and site hut.

(d) The Leaseholder of Flat 150 asked although there may be a saving of £30,000 on "scaffolding" will this be offset by the cost of additional works. Mr. Cox replied that either way there will be a saving in the region of £30,000. The saving is being achieved by adding to the existing contract. If the additional works were dealt with on a "stand-alone" basis, the additional cost would be in the region of £20,000 - £30,000

(e) The Leaseholder of Flat 124 believed that the Freeholder was under an obligation from the Council to carry out work up to third floor level. If the money is spent on the additional roof works, where is the extra money coming from. Mr. Cox replied that there would be an adjustment to the contract by reducing the works under Phase 4 to pay for the additional roof works.

THE DECISION

33. It is clear that these are qualifying works which need to be done urgently.

34. The extent of the additional work is summarised on the attached sheet and the project is being supervised by a building surveyor.

35. The Tribunal accepts that it is impractical to obtain competitive quotations for the additional works from another contractor. Mr. Blake's explanation on how he assesses the likely saving and the approach appears reasonable to the Tribunal

36. None of the Leaseholders had objected to the grant of dispensation and they had the opportunity of making representations.

37. The Tribunal has carefully considered all the evidence available to it and has concluded that there is no evidence that Respondents will individually or collectively be prejudiced by the lack of consultation. There is no evidence that the Respondents are being asked to pay for inappropriate work, or more work than is to be done, or are being or will be charged inappropriate amounts..

38. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable in all the circumstances for it to grant dispensation from the requirements of Section 20(1) of the Act in

Appeals

38. 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.

39. 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.

40. 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 the time limit, or not to allow the application for permission to appeal to proceed.

41. 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.

42. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.