



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

**Case reference** : LON/00AW/LDC/2018/0147

**Property** : 182 Holland Park Avenue  
London W11 4UJ

**Applicant** : Abdul Naleem Kherallah

**Respondent** : Adrian Ross-Magenty

**Type of application** : To dispense with the requirement to  
consult lessees about major works

**Tribunal** : Judge Nicol  
Mr K Ridgeway

**Date & Venue of  
Hearing** : 31<sup>st</sup> October 2018  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 6<sup>th</sup> November 2018

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**DECISION**

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The Tribunal has determined that the Applicant shall be granted unconditional dispensation from the statutory consultation requirements in relation to the exterior and interior works carried out to the subject property and invoiced on 17<sup>th</sup> July 2017.

### **Reasons**

1. The subject property, 182 Holland Park Avenue, is part of a terrace which is Grade II listed and in a conservation area. It consists of five storeys, including the basement and the roof space. The Respondent is the lessee of one of the flats at the property.
2. The Applicant purchased the freehold of the subject property on 24<sup>th</sup> November 2016 subject to an outstanding notice under section 215 of the Town and Country Planning Act 1990 dated 12<sup>th</sup> November 2015 from the Royal Borough of Kensington & Chelsea to repair the exterior (the Respondent had been one of the original recipients of the notice). The Council had written as recently as 16<sup>th</sup> November 2016 to say that the notice had yet to be complied with and so a criminal offence was occurring for which they had the power to prosecute. On 19<sup>th</sup> December 2016 the proprietor of the barber shop on the ground floor complained that falling masonry had nearly hit his customers, although the Respondent asserted that it had fallen from the Applicant's neighbouring property at number 186.
3. In any event, the Applicant was keen to act quickly. The Respondent was too – he wrote on 1<sup>st</sup> December 2016 to say he was pleased to see that scaffolding had gone up that day. On 9<sup>th</sup> December 2016 the Applicant wrote to the Respondent informing him that he had gone with his preferred scaffolders for £2,000 plus VAT, rather than the slightly cheaper ones suggested by the Respondent, on the basis that they had the correct insurance cover and were properly qualified. He also said that he had chosen his own company, Zetalook, to do the substantive work for £9,750 over two other contractors who had also quoted, one to his predecessor-in-title (£12,500 inclusive of scaffolding) and one obtained more recently (£14,000, also inclusive). He explained his choice was “so there is certainty of no additional costs and overruns being incurred.”
4. Once the scaffolding was up, the Applicant brought in Mr Djemal Moustafa, a Chartered Building Engineer, to inspect the exterior more closely. He reported on 6<sup>th</sup> January 2017 that the work would be more extensive than originally thought due to water penetration and structural movement. The Applicant had additional works carried out and, when he invoiced the Respondent on 17<sup>th</sup> July 2017, the cost had increased to £18,000 of which the Respondent's share was £7,200.
5. The Applicant's position is that he was in constant communication with the Respondent during this time, verbally more than in writing, and that he was under the impression that the Respondent was pleased with what he was

doing, particularly in contrast to the neglect he had experienced with the Applicant's predecessor-in-title.

6. The Applicant further understood that the Respondent was also keen to have works done to the interior and, by letter dated 16<sup>th</sup> March 2017, he gave notice of his intention to carry out such works replacing the carpet, repairing the walls, ceilings and windows and redecorating. A second letter followed on 16<sup>th</sup> April 2017 enclosing three quotes. By a third letter dated 16<sup>th</sup> May 2017 the Applicant notified the Respondent that he had again chosen Zetalook to be the contractor. Despite the letters inviting recipients to do so, no-one had made any written observations. The Applicant also invoiced the Respondent for these works on 17<sup>th</sup> July 2017: they had cost £5,750 of which the Respondent's share was £2,875.
7. In the event, the relationship between the Applicant and the Respondent has completely broken down. The Applicant has accused the Respondent of being a fraudster while the Respondent alleges that the Applicant is subject to some kind of order for malicious communications and harassment. According to the Applicant, the trigger for the collapse of their previously good relationship was his finding out in June 2017 that the Respondent had unlawfully built into the roof space which is owned by the Applicant. For his part, the Respondent has raised numerous complaints with the exterior and interior works and in relation to other matters, including:
  - The scaffolding was up longer than was required to carry out the works.
  - None of the works were properly specified.
  - The cost of the additional works to the exterior were incurred contrary to the Applicant's statement in his letter of 9<sup>th</sup> December 2016 referred to above.
  - Alterations to the stairs were carried out without Listed Building Consent.
  - Some of the costs have been wrongly apportioned.
  - He had to move out for a period due to the works.
  - During the works, damage was caused to his electrical installation.
  - The entire property was flooded and is subject to an insurance claim.
  - Damage was caused to his flat during refurbishment of a neighbouring flat for which there had been no party wall award.
  - One of the flats is being used for AirB&B without the necessary planning consent.
  - Post gets stolen.
  - The stress arising from these matters caused such a deterioration in his mental health that he was sectioned in December 2017 until the following month.
  - The interior works were deficient in various ways specified in a report from Mr M Blooman of B2 chartered building surveyors, although the Applicant

has since carried out additional work aimed at meeting these objections at no further charge to the Respondent.

- Although the Council certified that their notice had been complied with, the Respondent had complained that the works were deficient and the Council has resolved to review its compliance decision.
8. Solicitors acting for the Applicant's predecessor-in-title had written to the Respondent on 5<sup>th</sup> February 2016 to warn that the works required by the Council's notice may cost £12,000 based on a quotation they had obtained. The Applicant says he understood that this was part of his predecessor's compliance with the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. However, he realised that he himself had not complied with the consultation requirements and so, on 20<sup>th</sup> August 2018, he applied for dispensation from those requirements under section 20ZA of the Act.
  9. The Tribunal made directions on 5<sup>th</sup> September 2018 requiring the Applicant to display and send to each lessee both the application and the directions. The Respondent replied that he opposed the application.
  10. The Tribunal was provided with the Respondent's lease under which the Applicant is obliged to maintain the property and the Respondent is obliged to pay a proportionate share of the costs incurred.
  11. In accordance with the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process.
  12. There are three sets of works to consider in this case and it is arguable that consultation was required in relation to each:
    - (a) The exterior works originally proposed at a cost of around £12,000. While there was definitely some consultation, it was not in accordance with the Regulations.
    - (b) The additional works arising from the engineer's input which increased the total cost of the exterior works to £18,000. It is not clear that there was any consultation on this, even verbal.
    - (c) The interior works. The Tribunal is satisfied that the statutory consultation requirements were complied with in relation to these works (see paragraph 6 above).
  13. The problem for the Respondent is that, while he has a significant number of complaints which he could raise on an application challenging the reasonableness and payability of the service charges, he has provided no evidence whatsoever of any specific financial prejudice arising from any default in the consultation process. When he did have the opportunity to comment, he did not take it – there was a suggestion that the state of his mental health may have hindered him in this regard at the relevant time but there was no evidence of this. Even if his criticisms of the works are correct,

there is no evidence that full consultation would have resulted in their being avoided. Moreover, if they are correct, he is still able to pursue them in a different application.

14. In the circumstances, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements to the extent that it is necessary in relation to all three sets of works referred to above.
15. Mr Rifat, counsel for the Respondent at the hearing before the Tribunal on 31<sup>st</sup> October 2018, submitted that dispensation should be subject to a condition that the Applicant pay a £5,000 contribution towards the Respondent's legal costs.
16. Again, the Respondent's problem is that he has no evidence that he has justifiably incurred any legal costs, let alone any of that size, in relation to the current application. Without evidence as to prejudice arising specifically from the lack of consultation, he was always bound to fail in his opposition to this application. Even if that were not the case, his only legal expenses specifically in relation to this application were incurred from the time he instructed solicitors just days before the hearing and that cannot possibly justify a sum as high as £5,000.

**Name:** NK Nicol

**Date:** 6<sup>th</sup> November 2018