RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/21UD/LSC/2009/0010**
Property:	**Capel Court** **Albany Road** **St. Leonards-on-Sea** **East Sussex** **TN38 0LL**
Applicants:	**Mrs. A. Lyons** **Mrs. R. Pooley** **Mr. and Mrs. J. Smoothy** **Mrs. B. Still**
Respondent:	**Capel Court Residents Association Ltd.**
Date of Hearing:	**15th June 2009**
Members of the Tribunal:	**Mr. R. Norman** **Mr. R. A. Wilkey FRICS FICPD** **MR. P.A. Gammon MBE BA**
Date decision issued:	1/7/09

RE: CAPEL COURT, ALBANY ROAD, ST. LEONARDS-ON-SEA, EAST SUSSEX, TN38 0LL

Background

1. Mrs. A. Lyons, Mrs. R. Pooley, Mr. and Mrs. J. Smoothy and Mrs. B. Still ("the Applicants") made an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay service charges and an application for an order under Section 20C of the Act that the costs of these proceedings do not fall to be paid as part of the service charges.

2. Capel Court Residents Association Ltd. ("the Respondent") made an application under Section 20ZA of the Act to dispense with the consultation requirements under Section 20 of the Act.

3. The Tribunal determined that all the applications should be considered at the same hearing.

Inspection

4. On 15th June 2009 the Tribunal inspected the exterior of Capel Court Albany Road St. Leonards-on-Sea East Sussex TN38 0LL ("the subject property") in the presence of Mr. Okines on behalf of the Applicants and Mr. Eglington on behalf of the Respondent.

5. The subject property is a post war detached 3 storey block of 26 purpose built self contained flats. The main roof is pitched and covered with interlocking concrete tiles. The elevations are part brick, part tile hung and part painted panels. There are upvc double glazed windows to the flats and upvc doors to the common parts. The subject property is in its own grounds with on site parking. Balconies at the rear were concrete covered with asphalt.

Hearing

6. The hearing was attended by almost all the lessees from the subject property including Mrs. Lyons, Mrs. Pooley, and Mrs. Still of the Applicants. Mr. Okines attended to represent the Applicants. Mrs. Humphreys, Mr. Eglington and Mr. Wiggins represented the Respondent.

7. We explained the role of the Tribunal in relation to the applications before us.

8. The Respondent is a company and so is governed by the legislation relating to companies and that generally is not within the jurisdiction of a Leasehold Valuation Tribunal.

9. However, the Respondent is also a landlord and so is governed by the landlord and tenant legislation and the reasonableness and payability of service charges is within our jurisdiction.

10. We deal with applications made by landlords and by lessees or tenants in respect of these matters. We do not go round checking on landlords to see that they are complying with the law but if a lessee makes an application to us then we will look into it and if the landlord is not complying then we must deal with it appropriately.

11. In this case we have an application by some of the lessees to determine service charges and as a consequence of that application the Respondent has applied under Section 20ZA of the Act to dispense with the consultation requirements under Section 20 of the Act. Section 20ZA provides that a Leasehold Valuation Tribunal may make a determination to dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to dispense with the requirements.

12. We decided that it would be appropriate to deal first with the Section 20ZA application for dispensation.

13. In a letter dated 13th May 2009 from the Respondent it was accepted that the Respondent had not complied with the landlord and tenant legislation in the past but intended to comply in the future. This was confirmed at the hearing by Mr. Wiggins.

14. At the Pre-Trial Review it was noted that the cost and quality of all the works was not in dispute. Included in the documents supplied by the Applicants in relation to the Section 20ZA application and in particular in respect of the refurbishment of balconies there was a reference to additional costs and legal fees. However at the hearing Mr. Okines confirmed that he had not investigated whether the works could have been carried out more cheaply and it was not disputed that the work had been done properly.

15. On behalf of the Respondent Mr. Wiggins stated that the Respondent will do what is required by the RICS Code and that there had been a genuine misunderstanding. There had been no intention to defraud or mislead. He had not been involved at the time but he said that the records show that every effort had been made by the Board of the Respondent to ensure that everything was above board and that good quality work was done.

16. Mr. Okines stated that the lessees often did not know what they were to pay until after the works had been completed. The lessees were not consulted. A vote was taken to spend £5,000 and the cost was eventually £20,000. Some lessees were concerned and tried to bring their concerns to the attention of the Board of the Respondent and it was for that reason that the Section 27A application was made.

17. Mr. Wiggins pointed out that the Applicants had not complained at the time the works were done, that concern was only shown in November 2008 and that at the time the works were carried out and decisions made two of the Applicants were members of the Board of the Respondent.

18. Mr. Eglington explained that in 2005 he had suggested that service charges be a lump sum so that tenants would not have additional money to find during the year. The charge was set by the members and they decided what they wanted to pay and they would not have anything further to pay during the year. Sometimes more was paid out than collected in a year. A surplus fund had been created. The lessees knew at the beginning of the year what the service charges would be and nobody had ever been charged more than the figure agreed at the Respondent's AGM. This was also helpful when prospective purchasers made enquiries as a figure for the year as agreed at the AGM could be provided. Mr. Okines understands that it is the case that no further money has been asked for.

19. We adjourned to consider the evidence we had received. When we had reached a decision the hearing continued and we announced that we were satisfied that it was

reasonable to dispense with all the consultation requirements in respect of the past works and therefore granted such a dispensation.

20. We stressed that the dispensation related only to past works and not to any works to be carried out in the future.

21. Mr. Okines stated that the Applicants were disappointed that a dispensation had been granted but they accepted the decision and the decision having been made there was no point in disputing the small amounts involved in the other issues and the Applicants wished to withdraw their application.

22. There remained only the question of costs, the application for an order under Section 20C of the Act and the possibility of the reimbursement of fees.

23. Mr. Wiggins told us that the Respondent's only expense was the fee of £350 for making the Section 20ZA application and that would be borne by all the lessees.

24. Mr. Okines told us that the only Applicants' expense was the fee of £500 (£350 on the application and £150 for the hearing). He felt that the case had genuinely been brought before the Tribunal because of the irregularities. It had been necessary to bring the application. There had been a case to answer. The Applicants felt that the £500 should not be a cost just to them and asked if it could be reimbursed by the Respondent so that it would be paid by all the lessees.

Decision

25. As to the application under Section 20ZA of the Act for dispensation of the consultation requirements we considered all the evidence supplied by the parties. The consultation requirements provide a safeguard for lessees against landlords who either do not care how much works cost and how well the work is done because it is the lessees who will foot the bill and will live with the poor workmanship or who for various reasons beneficial to themselves might employ an unsuitable contractor or accept a higher then reasonable quote for the work. In particular we were aware that there was no suggestion that the works could have been carried out more cheaply or that the work was not done properly. That was accepted by the Applicants. We found no good reason for refusing to grant a dispensation. Consequently, we were satisfied that it was reasonable to dispense with all the consultation requirements in respect of the past works and granted such a dispensation.

26. We determined that there was no justification for a Section 20C Order. The Respondent had had to make a Section 20ZA application to try to correct the situation which had arisen because there had not been compliance with the consultation requirements of Section 20 of the Act. The Respondent's costs of £350 should be charged to the service charges and in that way would be paid by all the lessees.

27. Because the applications were heard together only one hearing fee was payable and had been paid by the Applicants. Had there been a separate hearing for the 20ZA application the Respondent would have had to pay £150.

28. We considered the question of the £500 in fees paid by the Applicants. Under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 we are able to require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

29. We considered that although the original application had been withdrawn at the hearing, it had been properly brought. The Respondent, by not carrying out the consultation requirements was not complying with the Act and it was necessary to make the application to make the Respondent aware that compliance with the Act was required. That had been achieved. On behalf of the Respondent it had been acknowledged that there had not been compliance but that in future there would be compliance. The Applicants wanted to make the valid point that the Respondent must consult when required by the Act. We considered that the justice of the situation could be met by requiring the Respondent to reimburse the Applicants the £500 in fees and the result would be that that sum would be paid by all the lessees as part of the service charges.

R. Norman
Chairman.