



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

Case Reference : LON/00BE/LSC/2013/0712

Property : 18 Netley House, Dalwood Street,
London SE5 7EY

Applicant : Mr Huseyin Ermis
Mrs Inayet Ermis

Representatives : Mr Huseyin Ermis and Mr Ersen
Ermis (Son)

Respondent : London Borough of Southwark

Representatives : Ms E Bennett LBS
Mr J E Sheehy LBS

Type of Application : Section 27A Landlord and Tenant
Act 1985 - determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Judge John Hewitt
Mr Duncan Jagger FRICS

**Date and venue of
Hearing** : Wednesday 2 April 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 2 April 2014

DECISION

Decision of the Tribunal

1. The decision of the Tribunal is that:
 - 1.1 The Tribunal does not have jurisdiction to determine that the Applicants' contribution to the cost of the proposed major works should be discounted by virtue of the Applicants' health, limited financial circumstances and reliance on benefits: and
 - 1.2 The section 20 consultation notice was hand delivered to the Applicants' property on 13 August 2013 and there was more than 30 days from and including 14 August 2013 to 13 September 2013, the date specified in the notice by which written observations on the matters raised in the notice were to be received by the Respondent
2. The reasons for our decisions are set out below.

NB. Later reference in this decision to a number in square brackets ([]) is a reference to the page number of the trial bundle provided to us by the Respondent for our use at the hearing.

Procedural background

3. The Applicants made an application pursuant to section 27A Landlord and Tenant Act 1985 (the Act) [41]. The application related to major works proposed to be carried out by the Respondent landlord (the Council). The Council had delivered to the Applicants a Schedule 3 Notice of Intention dated 13 August 2013 in which it gave notice of an intention to carry out major works. The notice stated that the Applicants' contribution to the cost of those works was estimated at £30,053.
4. An oral case management conference was held on 14 January 2014 and directions were given [52]. The directions were varied by letter dated 27 February 2014 [76].
5. The application came on for hearing before us. Mr Huseyin Ermis attended with his son who represented him. The Council was represented by Ms E Bennett, Income Enforcement Officer. Ms Bennett was accompanied by Mr J E Sheehy, Capital Works Officer who gave evidence and was cross-examined.

The gist of the case for the Applicants

6. The Applicants' statement of case is at [68]. Essentially it takes two points. The first is that the Applicants are unable to pay their contribution due to financial hardship and reliance on benefits. In consequence they sought a discount. The second was that the section 20 notice was delivered to them on 15 August 2013 and the date specified for written observations to be delivered to the Council was 13 September 2013 which was less than 30 days being the 'relevant period' defined in Regulation 2 of The Service Charge (Consultation Requirements) (England) Regulations 2003.

Evidence

7. The Applicants did not wish to call any evidence but Mr Ermis Jnr was prepared to hand in a doctor's certificate relating the health of Mr Ermis Snr. We did not require that to be done for reasons we shall explain shortly.
8. Mr Joseph Sheehy gave evidence. His witness statement is at [85]. Mr Sheehy confirmed that he hand delivered an envelope containing the section 20 notice to the Applicants' property on the afternoon of 13 August 2013. Mr Sheehy was asked questions about that and described in some graphic detail the circumstances in which he delivered the notices on that day to several properties in Netley House and an adjacent development.
9. Mr Ermis Jnr said that originally it was contended that the notice was 'received through the post on the 15th August...' Having discussed matters with his father they did not wish to call any evidence to support that contention.
10. Mr Ermis Jnr also said that his parents had decided not to make written observations on the notice but that his father would, on 10 September 2013, attend a meeting of tenants which had been convened by the Council and make his observations orally. Mr Ermis attended that meeting and made his observations orally.
11. Mr Sheehy said that following the consultation process the Council reviewed the outcome of the process and decided to proceed with the proposed works. A contract has been placed. Work has commenced and is due for completion in November 2014.

Discussion

12. We find that we have no jurisdiction to direct that the Applicants be given a discount on the contribution payable by them whether for medical, financial hardship or any other reasons. The contribution will be payable as a consequence of the share attributable to the subject property as provided for in the lease and the ultimate cost of the works.
13. We explained to the Applicants that when the works are completed and the final costs ascertained it will be open to them, and any other lessees, to challenge the scope of works, the quality of the works and the reasonableness of the cost of works. They can do so by way of an application under section 27A of the Act. There was a discussion as to how they might go about this and how they may wish to collaborate with other lessees who may have similar issues.
14. There was also a discussion at the hearing about schemes offered by the Council to assist lessees with a payment plan or the deferral of the payment date. Mr Sheehy outlined the schemes which Mr Ermis Jnr said he and his parents were aware of. Ms Bennett confirmed that it was still open to the Applicants to take advantage of one of the schemes and that they should contact the Council if they wished to do so.

15. We found Mr Sheehy to be an honest and genuine witness upon whom we could rely with confidence. We accept his evidence. We find as a fact that the notice was hand delivered by him to the Applicants' property on the afternoon of 13 August 2013. The date specified for the receipt of written observations was 13 September 2013 and this date was more 30 days later than 13 August 2013.
16. Given that it was argued we should wish to point that even if the notice had been delivered on 15 August 2013 that would not have invalidated the process or excused the Applicants from the liability to make the contribution payable by them pursuant to the terms of the lease.
17. The Act and the Regulations are silent as to the manner in which notices of intention have to be given and when such a notice is deemed to have been given. In those circumstances guidance may be taken from dicta of Lord Denning in *Schnabel v Allard* [1967] 1 QB 627. Applying that to this case we find that the 30 day period commences on the day after the notice was delivered and expires on the 30th day thereafter.
18. If the notice had been delivered on 15 August 2013 the 30 day period would commence on 16 August 2013 that the 30th day thereafter would be Sunday 14 September 2013. This would have been one day after the deadline specified in the notice. Given that the deadline date specified by the Council was a Saturday, we infer that any observations delivered on that day would not have been considered by the Council until the following Monday at the earliest. We also infer that any observations delivered on the Sunday would be treated similarly and would not have been rejected or dismissed out of hand by the Council.
19. The Act and the Regulations are also silent as to the consequences if consultation requirements are not strictly adhered to. Section 20ZA of the Act gives this Tribunal the jurisdiction to dispense with all or some of the requirements where it is reasonable to do so. Of course there was no section 20ZA application before us but the fact of that section leads us to the view that non-compliance of the requirements does not of itself render the notice or the process invalid or of no effect such that a lessee is relieved from the obligation to contribute to any of the costs of works which are the subject of the notice, or limit the contribution to the appropriate sum of £250.00.
20. We are reinforced in this view by the decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 54 which discussed the matters which Tribunal shall have regard to when considering applications made under section 20ZA. The Court made clear the focus should be on the prejudice (if any) suffered by the lessee as a consequence of the particular non-compliance in issue.
21. We find that in the instant case there was no prejudice. On their case the Applicants had the notice by 15 August 2013 at the latest. They had decided they did not wish to make written observations but instead to make oral observations at the meeting to be held on 10 September 2013

and Mr Ermis Snr attended that meeting and made his oral observations.

Judge John Hewitt

2 April 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) 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 .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of

service charges) to relevant costs incurred on carrying out the works or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.