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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LDC/2017/0116**
Property	:	**St Saviours Wharf, 25 Mill Street, London SE1 2BE**
Applicant	:	**St Saviours Wharf Co Ltd**
Representative	:	**Deborah Stuart, Director**
Respondent	:	**The Lessees**
Representative	:	**In person**
Type of application	:	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	:	**Judge I Mohabir**
Date and venue of determination	:	**6 November 2017** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**6 November 2017**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. St Saviours Wharf, 25 Mill Street, London SE1 2BE ("the property") is a Victorian warehouse that has been converted into 47 residential flats and 11 commercial units. The Applicant holds a long lease of the property, which requires it to provide services and the leaseholders to contribute towards the cost by way of a variable service charge.

3. It sees that urgent repair and/or replacement works were required for a sloping glass roof structure at the property. However, there was uncertainty as to whether the required works fell within the Applicant's repairing obligations or was the responsibility of the leaseholder of Flat 47.

4. Due to the urgent nature of the works, the Applicant asked the leaseholder of Flat 47 to pay for the works personally, which he did. In the meantime, the Applicant sought a determination from the Tribunal as to who was contractually liable to carry out the works and, ultimately, who should be liable for the cost.

5. In the earlier decision dated 10 July 2017 (LON/00BE/LSC/2017/0186), the Tribunal concluded that the cost of repair, renewal, replacement and maintenance of the glass roof at the property was payable as a service charge by the Respondents (as relevant costs).

6. Subsequently, on 20 September 2017, the Applicant made this application seeking retrospective dispensation in relation to the replacement and/or replacement works carried out by the leaseholder of Flat 47. Ultimately, the Applicant seeks to indemnify the leaseholder of Flat 47 for the costs that he has incurred for the works to the glass roof. The mischief this application seeks to prevent is any point being taken by any of the Respondents that the Applicant had not in fact carried out statutory consultation in relation to the works and, therefore, could only recover a maximum contribution of £250 from each of them for the cost of the works.

7. On 29 September 2017, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

8. No Respondent has filed any objection to the application.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The determination of the application took place on 6 November 2017 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.

11. The relevant test to the applied in application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

12. The first issue the Tribunal considered was whether the works carried out by the leaseholder of Flat 47 were "qualifying works" within the meaning of the Act. Under section 20ZA(2), they are simply defined as "works on a building or any other premises".

13. The Tribunal found that the works carried out by the leaseholder of Flat 47 were qualifying works within the meaning of the Act for two reasons. Firstly, the leaseholder was acting on the instructions of the Applicant and, arguably, as its agent in having the works carried out at the time. Secondly, the definition of qualifying works within the meaning of section 20ZA(2) is not contingent only upon a landlord carrying out the works.

14. The second issue the Tribunal considered was whether dispensation should be granted. Having carefully considered the available evidence, the Tribunal granted the application the following reasons:

    (a) the fact that each of the leaseholders had been served with a copy of the application and documents in support.

    (b) No leaseholder has objected to the application.

    (c) that the Applicant is a "tenant owned and run" company and the potential financial prejudice to it by not being able to seek an indemnity from the Respondents for the cost of the works is significant.

    (d) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.

15. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

16. It should be noted that in granting this part of the application, the Tribunal does not also find that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Judge I Mohabir **Date:** 6 November 2017