IN THE LEASEHOLD VALUATION TRIBUNAL

REF. No. CHI/40UE/LSC/2004/0012

IN THE MATTER OF FLAT 3, WALFORD HOUSE, WALFORD CROSS, WEST MONKTON, TAUNTON, SOMERSET, TA2 8QW

BETWEEN:

(1) MR GEOFFREY FARR
(2) MRS GABRIELLE FARR

Applicants

-and-

WALFORD HOUSE MANAGEMENT COMPANY LIMITED

Respondent

THE TRIBUNAL'S DECISION

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1. This is a joint application by the parties for a determination on a preliminary point of law, namely, whether or not the Tribunal has jurisdiction to dispense with the consultation requirements required by section 20 of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The parties have agreed that the application be dealt with solely on the basis of the written submissions made by them. It may prove useful to set out briefly the factual background of this matter.

2. The Applicants are the lessees of Flat 3, Walford House, Walford Cross, West Monkton, Taunton, Somerset, TA2 8QW ("the subject premises"). They occupy the premises by virtue of a lease dated 12 April 2001 granted initially by the Respondent to a Mr and Mrs Lamont. I am not told when the Applicants took an

assignment of the lease. For the purposes of this application it is not necessary to set out the relevant service charge provisions in the lease.

3. I am not told when but, possibly during 2003, a decision was made by the Respondent to carry out repairs to the roof of the main house ("the roof works"). I am not told if a specification for the proposed roof works was prepared and whether tenders for those works were sought and no evidence has been adduced by the Respondent in this regard. By a letter dated 14 October 2003, the Respondent notified all of the lessees in the subject property of the pending roof works. The Respondent submits that this letter amounts to a valid notice under section 20 of the Act ("the section 20 notice"). A copy of that letter has not been provided by either party. Apparently, prior to 31 October 2003 scaffolding was erected and the substantive repair works commenced on or about 11 November 2003. The commencement date for the works is disputed by the parties. The Applicants subsequently issued a section 27A application under the Act dated 22 March 2004 seeking a determination of their liability to pay and the reasonableness of service charges which included, inter alia, the cost of the roof works in the sum of £20,037. In the application, the Applicants also challenged the validity of the purported section 20 notice relied upon by the Respondent. A pre-trial review hearing took place on 9 July 2004. A jurisdictional point arose as to whether or not the Tribunal could dispense with the section 20 consultation requirements in the event that the Respondent's purported section 20 was found to be invalid. The Tribunal gave directions that the parties should file written submissions on the issue of jurisdiction so that a determination of this preliminary point of law could be decided. Those submissions are dated 4 and 18 August

2004 respectively. Both parties submit that the Tribunal may have jurisdiction and would prefer that this matter be dealt with entirely by the Tribunal rather than sending it up to the County Court.

4. It seems to me that I do not need to consider the validity of the Respondent's section 20 notice. In any event, there is no evidence before me to do so. This is a finding the Tribunal hearing this matter will have to make having heard the evidence. I only have to be satisfied if the Tribunal finds that the notice is invalid, it can properly exercise its discretion to dispense with the section 20 consultation requirements if it is minded to do so.

5. The Respondent's purported section 20 notice is dated 14 October 2003. On 31 October 2003 section 20 of the Act was amended by section 151 of the Commonhold and Leasehold Reform Act 2002 ("CLRA") to introduce new and extensive consultation requirements. It also created a new section 20ZA giving a Tribunal a discretion to dispense with those requirements if it was reasonable to do so in relation to "qualifying works". From this date the Tribunal acquired a new jurisdiction, which had only previously exercised by the County Court.

6. The Tribunal hearing this matter will have to determine whether the old or new consultation requirements apply in this case and if these have been met. If they have not been met, the Tribunal can entertain the Respondent's application to dispense with the consultation requirements under section 20ZA. Before doing so, it must be satisfied that the roof works are "qualifying works".

7. The old section 20(2) defines "qualifying costs" in relation to a service charge as:

"works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge".

Sub-section (3), as amended, imposes a minimum financial threshold cost of £1,000 for the qualifying works before consultation is required. The new section 20 broadly defines qualifying work as *" works on a building or any other premises"* subject to a minimum financial threshold of £250 per lessee. Prima facie, the roof works appear to satisfy either definition as qualifying works.

8. I, therefore, find that the Tribunal hearing this matter will have jurisdiction under section 20ZA of the Act to dispense with the relevant consultation requirements in the event it is found that the Respondent's purported section 20 notice is invalid. The Tribunal's jurisdiction to do so arose on 31 October 2003, which was the commencement date of section 151 of CLRA. On or after this date the Tribunal could entertain applications to dispense with the relevant consultation requirements even in relation to qualifying works that were commenced or completed before that date. The significance of 31 October 2003 is only in relation to which consultation requirements apply to the qualifying works. The relevant date for the Tribunal to exercise its discretion to dispense with consultation requirements is whether the application to do so is made on or after 31 October 2003. The Applicants application in this matter is dated 22 March 2004 and accordingly, for the reasons stated above, the Tribunal will have jurisdiction to dispense with the relevant consultation requirements if it minded to do so.

CHAIRMAN..... J. Nicholson .....

DATE..... 3/12/04 .....

THE SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NO CHI/40UE/LSC/2004/0012

IN THE MATTER OF FLAT 3, WALFORD HOUSE, WALFORD CROSS, WEST MONKTON, TAUNTON, SOMERSET, TA2 8QW

BETWEEN:

(1) MR GEOFFREY FARR
(2) MRS GABRIELLE FARR

Applicants

-and-

WALFORD HOUSE MANAGEMENT COMPANY LIMITED

Respondent

Members of the Tribunal

Mr A D McC Gregg, Solicitor, Chairman
Mr J Reichel, BSc., MRICS
Mr C S Gale

Inspection and Hearing – 23rd May 2005

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

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1. **The Applications were as follows:-**

   (a) By the Applicants under Section 27A of the Landlord and Tenant Act 1985 for determination of the liability to pay service charges for the calendar years ending on the 31st of December 2002 and the 31st December 2003.

(b) By the Applicants under Section 20C of the Landlord and Tenant Act 1985 in respect of costs incurred by the landlord for legal and other advice relating to the disputed service charges.

2. Inspection

The Tribunal inspected the property on the 23rd of May 2005 in the presence of the Applicants and their representative, Mr Andrew Diamond instructed by Messrs Foot Anste Sargent and the Respondents together with a number of other tenants (owner occupiers) and their representative, Mrs Joanna Carter from Clarke Willmott. Wallford House is a Grade II* Listed Building divided into ten flats set in extensive grounds. The main building comprises six flats and the Applicants are the owners under a long leasehold of Flat 3. Extensive repairs had been carried out to part of the roof of the main building and it was clear that further extensive repairs remain to be carried out to the remainder of the roof of the main building. The main item in dispute related to the liability of the Applicants to contribute towards the cost of those repairs that have already been carried out. It was apparent from the inspection that prior to the repairs being carried out extensive damage had been caused to a number of the flats as well as the common parts as a result of ingress of water.

3. The Hearing

The hearing took place at Taunton Library, Paul Street, Taunton, when the following people attended:-

(a) For the Applicants, Mr Andrew Diamond instructed by Messrs Foot Anste Sargent together with the Applicants.

(b) For the Respondent, Miss Joanna Carter of Clarke Willmott. Many of the other flat owners/tenants were also in attendance as observers.

Prior to the hearing the Tribunal had been provided with, albeit at very short notice, two paginated and indexed lever arch files containing all relevant copy documentation and correspondence relating to this application.

It was noted that the directions given in this case on the 8th of February 2005 had not been fully complied with particularly with regard to the preparation and circulation of all the papers.

There had been a previous joint application to the Tribunal to determine as a preliminary point of law whether the Tribunal had jurisdiction to dispense with the consultation requirements required by Section 20 of the Landlord & Tenant Act 1985 as amended. The decision with regard to that preliminary point was made on the 3rd of December 2004 and found that the Tribunal would have jurisdiction to dispense with the relevant consultation requirements if so minded.

The Applicants' Case

Mr Diamond, on behalf of the Applicants opened their case and referred to the terms of the lease. He maintained that no notice had been served that would fall within Clause 4 of the lease and in particular Clause 4.3 With regard to the roof repairs he maintained that there had never been a proper demand in accordance with the terms of the lease in respect of the sum of £20,000.37. In support of his case he cited the case of Martin and Seale –v- Maryland Estates Limited. He pointed out that the Respondents were well aware of the roof problem and this had been well documented (see Paged 141 and 142 of Bundle 1). He maintained that the Respondents had drafted a letter (Pages 115 and 116) in an effort to sidestep the provisions of the lease and in particular Clause 4. Furthermore, that the invoice (Page 77 of Bundle 2) was not a valid demand in accordance with the lease. He pointed out that his instructing solicitors had set out in detail the requirements of Section 20 (Page 66 of Bundle 1) but that the Respondents had totally ignored that letter and indeed two days later at a meeting of the directors of the company the Applicant, Geoffrey Farr, had been dismissed as a director of the Respondent Company. The Applicants had in fact paid to the Respondents the sum of £1,000 on the 14th of January 2003 without prejudice of their liability to do so.

A further letter from Foot Anste Sargent again set out the requirements of the lease that had been ignored (see Page 75 of Bundle 1). Mr Diamond maintained that notwithstanding that by now the company was fully aware of what was required by Section 20 of the Landlord & Tenant Act 1985 the company chose to ignore those requirements and its obligations. By the autumn of 2003 remedial works had become urgent as was indicated by the photographs (Pages 158 to 180 of Bundle 1). Mr Diamond maintained that the Applicants had no liability to contribute towards the roof repairs and other service charges demanded due to

(a) The failure to comply with the terms of the lease.

(b) The failure to comply with Section 20 of the Landlord & Tenant Act 1985.

The Respondent's Case

Miss Carter then presented the Respondents' case pointing out that the Applicants were the only Applicants from all the other owner/occupiers (6 being of relevance as they came within the main building). She pointed out that the Respondent Company was made up of the residents and that the question of the repairs to the roof had been under discussion for some time and indeed that Applicants' own survey highlighted the need to repair the roof. On the 8th of June 2003 Mr Terry had written to all the residents referring to two quotes for the roof repairs (Page 76 of Bundle 1). Miss Carter said the company had therefore felt that it had complied with the requirements of Section 20 though subsequently it accepted that it had not so complied. She pointed out that there was no intention to mislead any of the residents and that it had been accepted that the works were under discussion for some time. She urged the Tribunal to find that the landlord had acted reasonably, with no intention to mislead and that the requirements of Section 20 should therefore be dispensed with under Section 20ZA of the Act. It was accepted that the scaffolding that was necessary for the roof had been erected before the necessary consultation period had expired. Miss Carter also referred to the authorities of Martin and Seale, the Maryland Estates, Decision 1306, and Decision 1220 in support of her contention. It had been accepted by both parties that the works carried out were adequate and to a reasonable standard (see report of Mr Richard Glanville, Pages 182 to 191, Bundle 1). The Respondents accepted the obligation to comply with Clause 4 of the lease and Miss Carter urged that the inadequate attempts by the company should not preclude recovery of the service charges and roof repair costs. She rightly pointed out that the whole purpose behind Section 20 is transparency and said that there had been no cover up by the company. She urged the Tribunal to find that the Respondents had acted reasonably, to the best of their abilities, employing professionals to carry out the works and done everything possible to behave in a reasonable manner.

The Tribunal were asked to decide and adjudicate upon the detailed questions as set out in the Applicants' statement of case (Pages 2, 3 and 4 of Bundle 1).

4. **The Decision and Findings of the Tribunal**

Year Ending 31st December 2002

(i) Whether the service charge items in issue are permitted under the terms of the lease? *The Tribunal finds that they are.*

(ii) If the service charge items in issue are permitted under the terms of the lease, whether they have been demanded in accordance with the terms of the lease? *Both parties have conceded that they have not been demanded in accordance with the terms of the lease and that is our finding.*

(iii) Whether the Respondents should have complied with the detailed consultation process under Section 20 of the Act in respect of service charge Item 1? *The Tribunal is of the view that the Respondents should have complied with the detailed consultation process.*

(iv) If the Respondent should have complied with the detailed consultation process under Section 20 of the Act in respect of service charge Item 1, whether that consultation process was complied with? *The Tribunal finds that the consultation process was not complied with.*

(v) If the costs incurred by the Respondent and passed on to the lessees through the service charge in instructing Bevan Ashford or Euro-Commerce Limited (Service Charge Items 2 and 3) are permitted under the terms of the lease, whether these costs were reasonably incurred? *The Tribunal find that these costs are permitted under the terms of the lease and were reasonably incurred.*

(vi) If the costs incurred by the Respondent and passed on to the lessees through the service charge in restructuring the lease of Flat 6 in order to absolve the lessee of that flat from some or all of the responsibility to pay one sixth of the cost of the roof repairs (on the basis that only part of Flat 6 is situated directly under the main house roof), whether these costs were reasonably incurred? *The Tribunal finds that these costs were reasonably incurred.*

Further Comments

It is not within the remit of the Tribunal to comment on the removal of Mr Farr from the Board of Directors.

Year Ended 31st December 2003

(i) Whether the service charge item in issue has been demanded in accordance with the terms of the lease? *The Tribunal finds that this has not been demanded in accordance with the terms of the lease.*

(ii) Whether the Respondent should have complied with the detailed consultation process under Section 20 of the Act in respect of Service Charge Item 1 and, if yes, whether the Respondent complied with that consultation process? *The Tribunal finds that the Respondent should have complied with the detailed consultation process under Section 20 of the Act and we further find that they did not do so.*

(iii) Whether the cost of the main house roof repairs were reasonably incurred and whether the works are of a reasonable standard? *Both parties agree that the works were reasonably incurred and that they were of a reasonable standard and this was borne out by the report of Mr Glanville with whose findings the Tribunal concurs.*

Section 20ZA Application

Notwithstanding the lack of consultation under Section 20 the fact that the scaffolding was part of the works we find that the scaffolding element of those works amounted to emergency and remedial action in order to prevent further serious deterioration to the building and to that extent we are prepared to dispense with the Section 20 consultation process only amounting to some £46,659.25.

Application under Section 20C by the Applicants

This application is accepted and for the sake of clarification the Respondents should not be able to recover the costs of today's hearing.

Signed.....
Andrew Gregg