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

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| **Case reference** | **:** | **LON/00AG/LDC/2023/0270** |
| **Property** | **:** | **St Andrews House, 252 Grays Inn Road, London WC1X 8JT** |
| **Applicant** | **:** | **252 Gray's Inn Road Ltd** |
| **Representative** | **:** | **Mr Kyle Duncan** |
| **Respondent** | **:** | **Alison Penelope June Rennie** |
| **Type of application** | **:** | **Dispensation from statutory consultation requirements** |
| **Tribunal** | **:** | **Judge Nicol**<br>**Mr R Waterhouse BSc LLM MA FRICS**<br>**Mr C S Piarroux JP CQSW** |
| **Date and venue of Hearing** | **:** | **8th April 2024**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | **:** | **9th April 2024** |

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**DECISION**

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**(1) The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in relation to the replacement of the main front entrance door to the subject building and the replacement of the audio-only intercom system with a video intercom system.**

**(2) The Applicant's application for an order that the Respondent reimburse their Tribunal fees of £300 is rejected.**

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## Reasons

1. The subject property contains 3 flats. All 3 leaseholders are shareholders in the Applicant company which owns the superior interest. The Respondent is one of the 3 leaseholders. One of the others is Mr Kyle Duncan who purports to be acting on behalf of the Applicant company. The third leaseholder was the Respondent's mother, Mrs June Toleman, but she has passed away and her estate has yet to be distributed by the executors.

2. The Applicant has applied for dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 in relation to two sets of works to the property:

   (a) The replacement of the main front entrance door to the building; and
   (b) The replacement of the audio-only intercom system with a video intercom system.

3. A face to face hearing of that application was held on 8th April 2024, attended by:

   - Mr Duncan
   - Mr Jason D'Heureux, Mr Duncan's husband
   - Ms Marge Eldridge and Ms Rose Robinson, observing
   - Mr Rob Toleman, executor of the estate of the late Mrs June Toleman
   - The Respondent
   - Mr Colin Rennie, the Respondent's husband.

4. The documents provided to the Tribunal for this case consisted of:

   (a) A bundle of 252 pages compiled by the Applicant;
   (b) A document from each party described as a skeleton argument but which made some additional un-numbered submissions; and
   (c) A video showing Mr Rennie accessing the main front door.

5. On 16th January 2024, the Tribunal held a case management hearing attended by both parties. As well as issuing directions for the dispensation application, Judge Nicol dismissed the Applicant's further application for determination of alleged breaches of covenant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 and the Respondent's application for the withdrawal of both of the Applicant's applications. The limited jurisdiction of the Tribunal was explained to the parties and the Tribunal recommended that both should obtain their own independent legal advice.

6. It is not in dispute that the two sets of works in question each incurred service charges for each lessee in excess of £250 so that they were subject to consultation under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. It is also not in dispute that the Applicant did not comply with those consultation requirements.

7. In their written representations, the Applicant sought to suggest that the statutory consultation process was not appropriate for a lessee-owned building owner or manager and so, by implication, any failure to comply with the consultation requirements was of minimal importance. This is not the way the Tribunal sees it. While being a director or shareholder of the company making the decisions can allow for a degree of involvement which makes the statutory consultation process less significant, that process still ensures a minimum standard of participation whatever happens within the company. It is not to be ignored because some of those involved happen to think that it is unnecessary in the circumstances.

8. The Applicant brought proceedings in the county court against the Respondent (claim no: 388MC994) for alleged unpaid service charges, the largest part of which was £3,475.90 for a 30% share of the costs of the door and the intercom. Deputy District Judge Common handed down a written judgment on 6th October 2023. He decided that the charges were payable – he rejected the Respondent's primary contention that the company had not made valid decisions to incur the relevant costs. However, he limited the costs for the works to £250 due to the Applicant's failure to comply with the statutory consultation requirements. Hence, the current application for dispensation.

9. Under section 20ZA(1), the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

   (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]

   (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

   (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

   (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

   (e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

(f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

(g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

(h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

10. The Applicant asserts that the Respondent suffered no prejudice. The Respondent made clear her position both before and after the works that she did not regard either set of works as necessary but the views she expressed made no difference to her fellow shareholders. Put simply, anything she could or did say did not change and would not have changed the outcome.

11. The Respondent's case was reduced to writing, in accordance with the Tribunal's directions, in a Statement of Case. This was supplemented by the skeleton argument. It contained a summary of the background and a number of complaints about whether the works and the costs were reasonably incurred. However, it did not contain anything relevant to the issue of whether the Respondent had suffered any prejudice as a result of the lack of compliance with the consultation requirements.

12. The Tribunal opened the hearing by describing and reiterating to the parties the limited exercise to be undertaken in determining this application. The issue of whether the works and the costs were reasonable or reasonably incurred was not before the Tribunal and, arguably, had already been determined by DDJ Common in the county court.

13. However, the Respondent (and her husband who also contributed to the hearing) had problems separating out the different issues. Whenever the Tribunal pressed the Respondent to say how or in what way she was prejudiced by the Applicant's failure to comply with the statutory consultation requirements, she went back to the failure itself. She effectively argued that the prejudice consisted of not having the

opportunity to consult in strict accordance with the requirements. That is not the kind of prejudice to which the Supreme Court was referring – they meant actual financial prejudice.

14. The Respondent's approach was also reflected in her attitude to evidence. As well as setting out an argument as to how she had been prejudiced, she needed to support it with evidence. When pressed for evidence, she resorted to giving her opinion as to why the works were unnecessary in the first place rather than pointing to any evidence of prejudice.

15. After about one hour of discussion, the Tribunal was able to tease out of the Respondent what her basic argument was:

    (a) If the Respondent had been properly consulted, she would have been able to obtain alternative quotes for the more limited works first proposed by the Applicant, rather than the later more extensive works, and then talk to her cousin, Mr Gordon Davies, who, along with her estranged brother, Mr Rob Toleman, was responsible for making decisions on behalf of her mother in relation to the flat she owned at the property. The Respondent asserted that Mr Davies would have considered what she said and, if he had changed his mind about the need for the works, that would have shifted the balance amongst the shareholders against the works being carried out.
    (b) Even if that didn't work, as an architect she could have spoken to the contractor or supplier on the works to obtain a trade discount of up to around 35%. Either way, there would have been a substantial reduction in costs but she didn't have the opportunity to achieve that.

16. The problem was that this was the first time either the Tribunal or, more importantly, the Applicant had heard of these arguments. The Applicant had had no opportunity to prepare a response – this might have included talking to Mr Davies or investigating the availability of a trade discount, amongst other possibilities.

17. Further, the Respondent had provided almost no evidence in support. She had provided screenshots of web-pages showing doors and intercoms at cost price. However, she and her husband also wanted to give their own expert evidence as to the necessity of the works and how the problems they were designed to address could have been dealt with instead. The Respondent had no permission to use expert evidence and neither she nor her husband had given any sort of advance notice, whether in a statement, a report or otherwise, as to what they might say.

18. The Respondent and her husband objected to having to provide notice of their arguments and their evidence on the grounds that it was onerous. The Tribunal explained that, rather, these were the basic requirements of a fair procedure. The Applicant could not be expected to respond on the spot to arguments and evidence for which they had had no opportunity to prepare.

19. The Tribunal concluded that it would be unfair on the Applicant to allow the hearing to proceed on the basis that the Respondent to use the argument which had been brought out for the first time in the hearing. The Tribunal invited the parties to make representations as to what should happen instead.

20. Mr Duncan objected both to the Respondent's new argument being allowed in and to any kind of adjournment. The Respondent was frustrated at the limits being placed on her ability to argue what she wanted, and suggested she no longer wanted to continue to resist the application. The Tribunal took that as an expression of genuine emotion rather than a substantive submission.

21. The Respondent also protested that she suffers from dyslexia (the Tribunal had not been aware) and this made it difficult to achieve the standards required by the Tribunal. However, even taking that into account, the Respondent has had sufficient time to prepare her case, with the assistance of her husband and, if she chose, with professional legal advice. It would not be a proportionate use of the Tribunal's time or fair on the Applicant to abandon this hearing in order to give the Respondent a further opportunity to get her case in good order.

22. In the circumstances, the Tribunal concluded that it should proceed to judgment. The Respondent had not provided any argument or evidence to show that she had suffered prejudice in accordance with the Supreme Court's guidance. As a result, the Tribunal had no reason to refuse dispensation from the statutory consultation requirements.

23. The Applicant argued that the Respondent had wasted everyone's time by resisting the dispensation application without good grounds and so the Tribunal should exercise its power to order her to reimburse the Tribunal fees of £300. However, the application was only needed because of the Applicant's failure to comply with the consultation requirements. The fees would have been incurred in any event. Therefore, the Tribunal refuses to order reimbursement.

**Name:** Judge Nicol **Date:** 9th April 2024

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).