

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0072/03/17

In the Matter of Premises at Penstone Court, Ezel Court, Hansen Court and Judkin Court, Century Wharf, Cardiff, South Wales

And In the matter of an Application under Landlord and Tenant Act 1985 — Section 20ZA

APPLICANT: Century Wharf RTM (1, 2 & 3) Company Limited

RESPONDENTS:

Hugh Wainwright	224 Zurich House, Century Wharf
Anne Smith	102 Penstone Court
Debbie Lewis	143 Bordeaux House, Penstone Court and 159 Porto House, Penstone Court
Elizabeth Norsworthy	76 Penstone Court
Mr and Mrs Tomkins	27 Penstone Court
Dr Jonathan Whelan	43 Penstone Court
Mr Ian Hunt	122 Penstone Court
Karoline Kluz	179 Lyon House
S Jervis	194 Penstone Court
Scott and Luke Davies	57 Hansen Court
Noel Patterson	23 Ezel Court
Yvonne Wilday	131 Hansen Court
Mr O G Dyer	141 Penstone Court
Kerry Dearden	151 and 155 Hansen Court

TRIBUNAL David Foulds (solicitor)(chair)
Hefin Lewis FRICS (surveyor)
Dr Angie Ash (lay member)

RESPONDENT REPRESENTATIVES:

Owein Matthey (Property Manager of Warwick Estates)
Karl Reid (Regional Property Manager of Warwick Estates)

Date of Hearing 18 July 2017

Date of Decision 14 August 2017

DECISION

Unconditional dispensation is granted from all of the consultation requirements provided for by section 20 Landlord and Tenant Act 1985 in respect of the following works –

- 1) Replacement of the FIKE Fire Alarm Equipment with the Siemens Cerebus Pro range fire alarm system at the following Houses namely Malaga, Genoa, Geneva, Zurich, Porto, Calais, Munich, Nice, Bordeaux, Lyon, Sorrento, Marseille, Prague, Dubrovnik, Vienna and Cannes.
- 2) Upgrade Seville House only with new Siemens Cerebus Pro fire alarm system.

REASONS

The Application

- 1) Whilst the Applicant is described in the title of these proceedings as Century Wharf RTM (1, 2 & 3) Company Limited, this is in fact a combined application by three separate applicants namely Century Wharf (One) RTM Company Limited, Century Wharf (Two) RTM Company Limited and Century Wharf (Three) RTM Company Limited. Each of the companies is responsible for the management of a number of blocks of flats (called "Houses") at the Century Wharf development in Cardiff. For the sake of good order their respective responsibilities are now set out as follows -
Century Wharf (One) RTM Company Limited – Malaga, Genoa, Geneva, Porto, Calais, Bordeaux, Seville, Vienna and Cannes
Century Wharf (Two) RTM Company Limited – Munich, Sorrento, Prague
Century Wharf (Three) RTM Company Limited – Zurich, Nice, Lyon, Marseille, Dubrovnik
- 2) The Tribunal considered the application as a combined application by all three companies as the works in respect of which dispensation was sought are of a like nature and had exactly the same history and were the subject of the same report/quotation dated 6 February 2017 ("the Quotation") compiled by Mr Stuart Bailey of Dragon Fire & Security Systems Ltd ("Dragon") and which accompanied the application to the tribunal. Mr Bailey was also in attendance to give evidence to the Tribunal at the hearing. Hereafter for ease of reference this decision will simply refer to the Applicant to include all three Applicant companies.
- 3) The Tribunal had issued directions dated 18 April 2017 requiring the Applicant to file a Statement in support exhibiting any relevant documents and requiring any of the Respondents, if they so chose, to file a Statement in response. A Statement was filed by Mr Owein Matthey dated 27 April 2017 on behalf of the Applicant. No statements were filed on behalf of any of the Respondents.
- 4) An inspection took place on 18 July 2017 prior to the holding of the hearing. The Tribunal inspected the foyer area of Penstone Court with Mr Matthey and

Mr Reid in attendance. No Respondents were in attendance at either the inspection or the later hearing. The inspection was of limited value as the faults with the fire detection system were not visually apparent.

- 5) At the hearing the Tribunal had the benefit of receiving oral evidence from Mr Stuart Bailey who, as stated above, had compiled the Quotation. He confirmed that rather than relying on data supplied to him he had analysed data concerning false alarms at all of the Houses over a six-month period starting when he first became involved with the site at the invitation of the managing agents, Warwick Estates, around May 2016. From analysing that data he formulated a list of 10 Houses that he considered most at risk due to the number of failures of the fire alarm system in those Houses. All of these Houses had the FIKE system installed. He explained that the fire alarm panels would “lock out” which he explained was most likely caused by electrical surges arising from both hardware and software failures within the current FIKE systems. He gave the example of Malaga House where there had been five “lockouts” in six months. In addition to “lockouts” he described another fault being where a panel detects an apparent fault and locks out the detector in the property. He explained that if any of the systems that he inspected demonstrated either of these types of faults he would place them on his list requiring urgent works to be carried out to meet fire and safety regulations.
- 6) Mr Bailey explained that the current FIKE systems were particularly prone to what he described as “ghosting” which in lay terms, were false electrical signals being caused by the four cable system installed. He reiterated the contents of the recommendation in his Quotation that a possible solution would be to change the four cable system but this would cause major disruption and his recommendation remained that the issues were best resolved by replacement of the FIKE system with Siemens equipment and leaving in place the current four cable installation.
- 7) Mr Bailey was asked to explain why he had separated out the essential works to be carried out into section 1 and section 3 on his Quotation if all of the Houses concerned required urgent work. The Tribunal's concern was that if only the works concerning the 10 Houses listed in section 1 were urgent it may not be appropriate to issue dispensation in respect of the works concerning the further 6 Houses listed in section 3. He explained that the Houses in section 3 only demonstrated the second type of fault referred to in paragraph 4 above but that in his express opinion the works are required in respect of all of the matters listed in his Quotation as set out in sections 1, 2 and 3 as the present fire detection systems were in his words “an accident waiting to happen” and he expressly confirmed he would describe all the works as “urgent” by nature.
- 8) Mr Bailey was asked about the work described in section 2 of his Quotation namely the upgrade of the current Siemens system in Seville House to a more modern updated Siemens system. The Tribunal noted that it was only in respect of section 2 of the report that it was concerned with considering a House containing the Siemens system and that all other works required as set out in sections 1 and section 3 were in respect of replacement of the FIKE system. Mr Bailey explained that the Siemens systems were not giving any

problems so it was proposed to change just one of the Houses, namely Seville House, to the new and upgraded system known as Cerebrus Pro and put the old present equipment in storage on site which can be then used as free issue spares for any faulty detector replacement required for other Houses on site containing the old Siemens detection system. The Tribunal was prepared to accept his evidence that this work was also urgently required. No evidence to the contrary had been presented to the Tribunal.

- 9) Mr Bailey confirmed that he had been advising as a fire and security systems expert for 30 years and the Tribunal concluded that it was content to accept his uncontested evidence.
- 10) The Tribunal went on to hear from Mr Matthey who was the property manager for the Houses the subject of the application. He confirmed that the contract for the works in respect of which dispensation was sought had already been signed with Dragon late February/early March 2017.
- 11) He was asked whether or not alternative quotations had been sought from alternative contractors and he said that one alternative quote had been provided from a company called Plexus. In evidence before the Tribunal he said that the quote had been obtained on the same basis as the Dragon quote. On being questioned Mr Matthey said that the Plexus quote had been put to the directors of the three right to manage companies and he went on to explain that a representative from Plexus and Mr Bailey from Dragon went to a meeting of the directors of all three companies and it was after that meeting that the three companies decided they wished to appoint Dragon. He also confirmed that Plexus were not Siemens approved contractors. To the best of his recollection Mr Matthey said that Plexus had advised the same solution and that the same remedial works were required albeit he was unclear whether they agreed with Dragon about the cause of the faults.
- 12) The Tribunal asked Mr Matthey to provide a copy of the Plexus quote and he confirmed that he would do so.
- 13) On being questioned further Mr Matthey said he was unsure if any correspondence had been entered into with contributing leaseholders about the costs of the works and Dragon being appointed the contractor. He confirmed that he had received no complaints from any leaseholder and no enquiries concerning the contractor appointed or the costs of the works but of course he would not have done so had the leaseholders not been kept informed in any event.
- 14) After the hearing concluded the Tribunal allowed a period of time for the Plexus quote to be supplied voluntarily by Mr Matthey on behalf of the Applicant. As it had not been received by 26 July 2017 the Tribunal issued a formal direction that it be filed. In consequence of that direction the Tribunal was sent an e-mail from Mr Matthey apologising for the late submission which had been due to annual leave and supplying a copy e-mail from Plexus to a representative of the managing agents dated 20 February 2017. That e-mail states that Plexus could/would not be able to provide a quotation for replacing the FIKE system to

the Siemens system as they were not an approved Partner company. The e-mail goes on to mention reference to “managed protocols” and “open protocols” but without the benefit of further evidence, which the Tribunal does not consider necessary for the reasons set out below, the meaning of this is unclear.

- 15) The Tribunal feels obliged to point out that there were a number of concerns with the way that the Applicant presented its case and the evidence submitted. The Tribunal was only told about the alternative quotation from Plexus after the Applicant was pressed through questioning at the hearing and it was not attached to the application or included with the Applicant’s Statement. This is in keeping with the scant detail contained in both the application and Statement supplied by the Applicant. The Tribunal, after questioning, was told that an alternative quote had been provided and had been seen by the directors of the Applicant companies and that it had been prepared on a like basis to the Dragon quote. If it were the case that the circumstances surrounding this quotation were of material importance to the tribunal's decision then it would seek further evidence on this issue as the e-mail referred to in paragraph 13 appears to contradict the oral evidence given on this point at the hearing. However, for the reasons set out below, the Tribunal is content to come to its decision without the need for further consideration of this evidence.
- 16) The Tribunal found the expert evidence of Mr Bailey to be impressive but the Tribunal wishes to point out that the way the Applicant presented its case and in particular the lack of particularity in the application and lack of explanation in respect of the wording of the Quotation on which it relied, ran a serious risk that the Tribunal might have taken the view that dispensation should not have been granted in respect of the works that were the subject of section 2 and section 3 of the Quotation. The Applicant would then have been in grave danger of lack of recovery of significant costs. Again it was only through Tribunal questioning that it was established that all of the works were indeed urgent and could justify being the subject of dispensation being granted.
- 17) The Tribunal reminds itself of the approach to be taken to applications for dispensation as set out in the decision of Daejan Investments Limited (Appellant) v Benson and others (Respondents) [2013] UKSC 14. The Tribunal is not concerned whether there has been a serious failing or a technical minor or excusable oversight in respect of the consultation requirements. The issue on which the Tribunal should focus is the extent, if any, to which the tenants were prejudiced either paying for inappropriate works or paying more than would be appropriate by the failure of the landlord [RTM Companies] to comply with the requirements. The Tribunal also reminds itself that whilst the legal burden of proof would be and would remain throughout on the landlord [RTM Companies] the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants.

- 18) There has been no evidence put to the Tribunal of any potential prejudice whatsoever by any of the Respondents. On this basis, and accepting the evidence of Mr Bailey concerning the urgency of the works, the Tribunal is content to grant unconditional dispensation.

Dated this 14th day of August 2017

A handwritten signature in black ink, appearing to read "DM Foulkes". The signature is written in a cursive, slightly slanted style.

CHAIRMAN