

Consultation, demands, costs

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20 minutes... what can we cover?!

Consultation

- Three cases to check you know

Demands

- s.20B, LTA 1985 and a forthcoming case

Costs

- The *Stemp v Ladbroke Grove* litigation

Consultation

- 1) Qualifying works
- 2) Qualifying long term agreements
- 3) Service of consultation notices

Qualifying Works

Phillips v Francis [2014] EWCA Civ 1395

- ‘qualifying works’ means works on a building or any other premises”
- Consultable if any one leaseholder will pay more than £250

Permissible to have “sets” of works – not an annual aggregate approach

Avoid artificial splitting – common sense test having regard to

- (i) the various works are carried out in the same location;
- (ii) they are all the subject of one contract;
- (iii) they are done at the same time; and
- (iv) the items of work are different in character from, or have no connection with, each other

Qualifying Long Term Agreement

Corvan v Abdel-Mahmood [2018] EWCA Civ 1102

- QLTA is “an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months”
- Under which any leaseholder pays more than £100 per accounting period

Clause: “The contract will be for a period of one year from the date of signature hereof and will *continue* thereafter until terminated upon three months’ notice by either party.”

“...the deciding factor is the minimum length of the commitment...”.

Service of consultation notices

Trafford Housing Trust v Rubenstein [2013] UKUT 581 (LC)

Consultation generally involves two periods of 30 days from the “date of the notice”

That means the date it performs its function, *i.e.* when it is received (deemed or actual).

Proof of posting and proper address if relying on Interpretation Act 1978

Demands, s.20B, LTA 1985

Special limitation period for service charges – s.20B, LTA 1985

- 18 months from date when you incur the cost to either (a) demand or (b) serve s.20B(2) notice

Brent LBC v Shulem B Association Ltd [2011] EWHC 1663 (Ch)

- Needs to be a contractually valid demand
- Permission to appeal was granted but not pursued

West India Quay Ltd v East Tower Apartments Ltd, UT February 2019,
permission to argue *Brent* is wrongly decided

Costs

Stemp v 6 Ladbroke Gardens Management Ltd [2018] UKUT 375 (LC)

- Major works demand
- Disputed and goes to FTT
- FTT eventually sets a figure, but, in the meantime, there have been demands for payment of other service charges
- Can you enforce the major works determination by forfeiture or has there been waiver by virtue of the other demands?
- And don't forget s.81, HA 1996
- Waiver of the breach can occur before the right to exercise it arises!
- But acts which are consistent with LL protecting his position (e.g. s.20 consultation) is not necessarily waiver
- Court of Appeal in March 2020

Thank you for listening

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