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Phillips and Goddard v Francis - the Court of Appeal judgment

Nicholas Kissen 5th November 2014

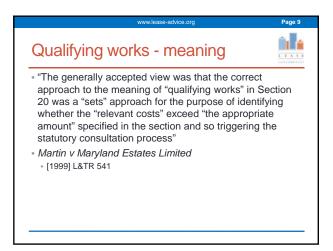
The judgment Francis and another v Phillips and another (suing on behalf of themselves and other owners of 97 Holiday Chalets at Atlantic Bays Holiday Park, Formerly Point Curlew, St Merryn, Padstow, Cornwall and Secretary of State for Communities and Local Government Hearing date 14th October 2014 Judgment dated 28th October 2014 Made public on 31st October 2014

**Sections 20 and 20ZA of the Landlord and Tenant Act 1985 **The Service Charges (Consultation Requirements) (England) 2003 **The Service Charges(Consultation Requirements)(Wales) 2004

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|---|---|-------------------|
| Section 20 of the | ne 1985 Act | L E A S E |
| from residential tenal • Prescribed consulta • Dispensation order | est of qualifying works by nts through a service cha ation procedure followed granted by the appropria operty Chamber) - England Tribunal - Wales | arge unless or |
| | | |

What are qualifying works? • Works on a building or on any other premises

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| When does Section 20 apply? | LIANI |
| If the relevant costs incurred on undertaking the vexceeds the appropriate amount £250 from any one tenant | works |
| | |



So if appropriate amount exceeded... Prescribed consultation procedure to be followed or Dispensation order sought and obtained from the appropriate tribunal First-tier Tribunal (Property Chamber) - England Leasehold Valuation Tribunal - Wales

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| Consultation for qualifying works in a nutshell | LIASE |
| Notice of intention Description of works Chance to make observations and nominate contractors Statement of estimates Chance to inspect all of them Chance to make observations on the estimates Notice of award With reasons Certain exceptions | |

Dispensation from consultation Upon application to the appropriate tribunal to dispense with all or any of the consultation requirements in relation to any qualifying works, the tribunal may make the decision if satisfied that it is reasonable to dispense with the requirements

And if fail to consult or obtain dispensation "Relevant contribution" of a tenant limited to the prescribed amount of £250

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| It all started with | L T A > I |
| Disused WWII airbase | |
| 25 acre holiday site created in the 1970s | |
| Over 150 chalets on 999 year leases | |
| • Sale of freehold in April 2008 to Mr and Mrs Francis | |
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The intended works Announcement to chalet owners of intention to bring the site up to a first class standard from which they might all benefit Meeting of 3rd May 2008 Letter to owners of 15th May 2008

Impact on service charges Last service charge before sale to Mr and Mrs Francis £1,400 approximately per owner First demand after sale £3,100 approximately per owner

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| The yearly ac | counts | 1 1 A 3 1 |
| January 2010 accour | ntants certified recov | erable charges as |
| • 22/04/2008 to 31/12 | 2/2008 - £269.933.49 | 9 |
| • 01/01/2009 to 31/12 | 2/2009 - £583,542.87 | 7 |
| | | |
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Common ground No consultation under Section 20 for service charges demanded for 2008 and 2009 No dispensation order made by the appropriate tribunal Contribution sought from each tenant exceeds £250

What did the owners argue? • All works planned as a single set of works and there should have been Section 20 consultation • Accordingly each owner should not have to pay more than £250 each towards the cost of the works

What did the landlords argue? They were separate individual sets/projects of work undertaken in a piecemeal fashion As none of these sets/projects led to any owner being liable for over £250 the obligation to comply with Section 20 consultation had never arisen

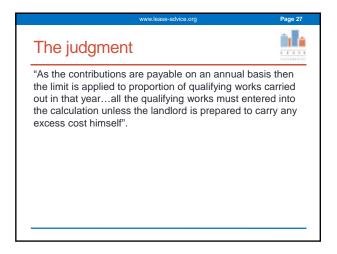
The county court approach Identify individual "sets" of work (eg external decoration, roof repairs) Consultation only required in relation to those sets which would lead to one owner being called upon to pay more than £250

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| What did the county cou | rt decide? | LIASI |
| Section 20 consultation need not "None of the items in the 2008 ar to expenditure recoverable through amounts, individually or together, "qualifying works" for the purpose 20ZA of the 1985 Act" | nd 2009 accounts regh service charges, to a single set of | J |
| | | |

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| The leaseholders appealed | L I A S I |
| On to the High Court, Chancery Division Judgment dated 21st December 2012 | |
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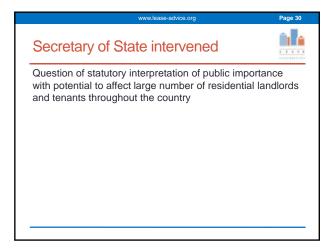
The High Court decided... Found in favour of the owners Section 20 procedure applied The aggregating approach All the works are "qualifying works" for the purposes of Section 20

| The judgment | <u> </u> |
|--|---|
| requires the identificat works. It will be for the on such a scale as to consultation requirement | thing in the present legislation which tion of one of more sets of qualifying a landlord to assess whether they are necessitate complying with the ents or face the consequence that host from the tenants' contributions." |



The aggregating approach No distinction between different sets of works or projects All the works which were qualifying works should be taken into account for working out the contribution and then applying the £250 limit Straddling two service charge years

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| The landlord's ap | peal | LIASI |
| Permission to appeal give | n out of time | |
| Master of the Rolls | | |
| Chancellor of the High Co | urt | |
| Lord Justice Kitchin | | |
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The court view of the aggregating approach "...not a sensible approach and gives rise to serious practical problems. It cannot therefore have been intended by Parliament".

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| The Court of Appeal judgment | LIASI |
| Qualifying works could not mean the total of all w the relevant kind carried out in a given year | orks of |
| Serious practical problems with this approach | |
| Once £250 annual limit reached landlord required consult on any service charge items "however sm might be" | |
| Administrative burden | |
| No mention of annual cap | |
| · | |

The Court of Appeal judgment "Sensible way to control routine works of repair and maintenance, which were unlikely to be the subject of a detailed plan in advance, was through the requirements in Section 19 of the 1985 Act that all service charges should be reasonable and reasonably incurred."

The Court of Appeal judgment Correct approach was to apply the cap by reference to individual sets of works The status quo restored

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| What is a single | set of qualifying | m, a |
| • | est st quality ing | LIADE |
| works? | | 6957444551 |
| Multi-factorial question | on | |
| • To be answered in a | common sense way | |
| • Taking into account a | all relevant circumstances | |
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| Relevant factor | rs likely to include | LIANI |
| Where the items of | work are to be carried out | |
| Whether they are the | ne subject of the same contrac | t |
| Whether they are to at different times; a | be done at more or less the s | same or |
| Whether the items or have no connect | of work are different in charaction with, each other | ter from, |
| List is not exhaustive and degree | and the matter is a question | of fact |

Effect of qualifying works No requirement that they should have a permanent effect modifying effect of what was previously there

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| Applying the | "sets" approach | LIASI |
| , | ed to find work planned and part of a single set of works | |
| | ts supported by evidence an court could not interfere | nd with |
| | to undertake work in such s as they chose so long as the ual obligations | |
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| Applying the " | sets" approach | LIANI |
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