Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

DIRECTIONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)

Landlord and Tenant Act 1987 ss 22 - 24

Premises:	95/97 Cathedral Road, Cardiff, CF11 9PG ("the property")
LVT ref:	qA1034823/1
Date of hearing:	27 November 2012
Applicants:	(1) Dean Fletcher (2) Gavin Fairclough (3) Amanda Fairclough (4) Kathy Kettle (5) Alan Kettle (6) Cheryl Davies/Jarrett (7) Philip McKenzie
Respondent:	Brynley Morgan/Morgan Services
Tribunal:	Mr R S Taylor – Lawyer Chair Mr R Baynhan – FRICS

DECISION

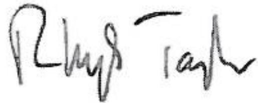
Upon hearing the solicitor for the Respondent and there being no attendance by any Applicant.

IT IS ORDERED THAT:-

1. The application dated 12 September 2012 is dismissed.

2. Pursuant to Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002 the Applicants shall pay the Respondent £500 costs.

27 November 2012



Lawyer chairman

REASONS

1. This is an application pursuant to s.24 Landlord and Tenant Act 1987 dated the 12 September 2012.

2. The Applicants are the leaseholders named in the application. The Respondent is a joint owner of the freehold title of the property. The other freehold owner is the Respondent's wife, Mrs Julia Clare Morgan.

3. Prior to making a s.24 application it is necessary for the Applicants to have complied with s.22 Landlord and Tenant Act 1987. This provides that a 's.22 notice' must have been served on the landlord.

4. Upon the application being made, the Respondent denied, in a letter dated 17 September 2012, being served with a s.22 notice. We do not need to determine this point for the reasons given below at paragraph 8.

5. The Tribunal also received a response from Mrs Morgan dated 17 September 2012 stating that she had not received notice of the application.

6. On the 20 September 2012 the Tribunal issued directions, setting up a preliminary hearing as to whether the s.22 notice had been served.

7. In an undated response on behalf of the Applicants received at the Tribunal on the 28 September 2012, Mr. Fletcher admits, "...I do not dispute that J Morgan is a joint landlord. However, she is the wife of Mr. B Morgan and their contact address is the same address. I therefore did not include her on the application" and further states, "I would propose varying the order by adding J Morgan to the application and by allowing the s.22 notice to be reissued with the 30 days required for Mr. Morgan to respond."

8. In light of Mr. Fletcher's letter the Tribunal issued further directions on the 3 October 2012 indicating that it was minded, pursuant to Regulation 11(1)(a) Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004 to dismiss the application on the basis that the application was an abuse of process, as it appeared that Mrs Morgan cannot have received the s.22 notice (putting aside the argument as to whether Mr. Morgan was in fact served). As required by the Regulations, we gave time for the Applicants to seek a hearing which was listed for today and to which the parties were served with notice.

9. The Applicants have not been in communication and have failed to attend the hearing to make any representations concerning the defective nature of the application, which arises on account of Mrs Morgan not being named in the s.22 notice.

10. We remind ourselves of the guidance in *Volosinovici v Corvan Properties Ltd* LRX/67/2006 (Lands Tribunal) in which it was stated that before dismissing any application the Tribunal must:-

    a. Remind itself of the provisions of regulation 11, ensure that proper notice has been given to the applicant and ensure that hearing required is held;

    b. Analyse the facts relating to the application under consideration and reach a conclusion as to whether the application (or some identified part of it) can properly be described as one or more of frivolous, or vexatious or an abuse the process of the tribunal;

    c. Consider whether, if the application can, in whole or in part, properly be described as frivolous or vexatious or otherwise an abuse of process of the Tribunal, the facts are such that the LVT should exercise its discretion to dismiss the application in whole or in part under regulation 11; and

    d. Give clear and sufficient reasons for its conclusions.

11. Regulation 11 provides that we may dismiss an application where "(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal."

12. We are satisfied that the Applicants have received notice of this hearing.

13. We do not consider that this application is frivolous or vexatious. However, on the Applicant's own account they have failed to serve to Mrs Morgan with the required notice, and, as such the application must be defective.

14. The Applicants have sought in Mr. Fletcher's undated letter for us to vary the application so as to retrospectively include Mrs Morgan.

15. Whilst we have a power under s.22(3) to dispense with the serve of a notice, "...where [we are] satisfied that it would not be reasonably practicable to serve such a notice upon the person." However, in this case it is not suggested that it has not

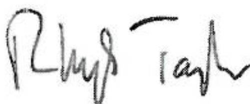
been reasonably practicable, simply that the Applicants declined to do so as the landlords on the joint legal title are married to each other. We do not think that comes anywhere near justifying a failure to serve the notice. Married couples may disagree with how a property should be managed or applications be responded to, and it is a statutory requirement that the landlord is served. No one has submitted any authority to us which suggests that service upon one landlord can be deemed as service upon the other.

16. In the preamble to the order dated 3 October 2012 the Applicant's were invited to withdraw their application on the basis of the problems which they admit they have with the application. They declined to do so and have put the Respondent and his solicitor to the trouble and cost of coming to the Tribunal to ensure that the Tribunal is not faced with a late appearance by the Applicants, where new arguments may be put. This could have been avoided had they withdrawn an application which they accept is defective. We hold that this is an abuse of the Tribunal's process and that it is appropriate for us to dismiss the application pursuant to regulation 11.

17. The solicitor on behalf of the Respondent told us that he has been engaged for some three hours in advising upon this application and attending at the hearing. His hourly rate is £200 + VAT. He submits that it would be appropriate, pursuant to Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002, for us to make an order for costs up to the maximum of £500 allowed by that provision. In particular, the solicitor drew our attention to the jurisdiction to make a costs order where a party has acted abusively, which we have found in this case.

18. We are persuaded that it is entirely appropriate that the Applicants should meet the cost of the Respondent responding to this defective application and that £500 is the figure which we should award. For the avoidance of doubt the Applicants are jointly and severally liable for this amount.

27 November 2012



Lawyer chairman