Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0028/06/16 – Llys Y Bryn

IN THE MATTER OF: 12, Llys Y Bryn, Birchgrove, Swansea SA7 9PU

On transfer from the County Court at Swansea, Claim Number C1 QZ771J

By order of District Judge P Llewellyn O.B.E. dated 8th August 2016 (hearing 28th July 2016)

Claimant/Applicant: **TAI GWALIA CYF (formerly Grwp Gwalia Cyf)**

Defendant/Respondent: **MISS CLAIRE MICHELLE MATTHEWS**

Tribunal:

Mr. E.W. Paton (Chair)

(on consideration of the papers)

ORDER

UPON CONSIDERING the hearing bundle (and without a hearing)

IT IS ORDERED AS FOLLOWS:-

1. The Tribunal does not have, and therefore declines, jurisdiction to determine this dispute, as it relates to charges claimed against the owner of a freehold property; not a dispute between a “landlord” and “tenant” over a “service charge” within the meaning of the Landlord and Tenant Act 1985.

2. The case is therefore transferred back to the County Court sitting at Swansea.

3. The Tribunal hearing listed for 29th March 2017 in Waterfront Community Church, Langdon Road, Swansea SA1 8QY is vacated.

DATED: 22ND MARCH 2017

CHAIRMAN

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DECISION AND REASONS

(DECLINING JURISDICTION)

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1. This matter began as a money claim in the County Court, issued on 18th February 2016, for "arrears of service charge" in the sum of £347.14 plus court fee and issue costs. The claim arises on a covenant in a transfer dated 25th March 2002 of the freehold property 12 Llys Y Bryn, Birchgrove, Swansea SA7 9PU, registered freehold title CYM 66664, from the Claimant/Applicant ("Gwalia") to a Mr. and Mrs. D'Angeli. The relevant covenant is to "contribute a proportionate part of the cost of repair and maintenance of..." various matters such as footpaths, roads, services and landscaping on what is described as the Transferor's "Estate".

2. The Defendant/Respondent Ms Matthews purchased this property in 2014. She disputed her liability to pay the charges claimed. The claim was then listed for an allocation and directions hearing in the County Court sitting at Swansea. Prior to that hearing, an order made by District Judge Evans on 13th April 2016 had ordered the parties to provide information as follows:-

"If there is still a dispute about the amount of the service charge/quality of work done in request [sic: respect?] of that charge, this case should be referred to the leasehold valuation tribunal."

The Claimant responded to that request by a letter dated 26th April 2016 which summarised the Defendant's apparent grounds of dispute, including a dispute about grass cutting.

3. There was then a hearing in Swansea on 28th July 2016 (order dated 8th August 2016), at which the Defendant appeared in person and the Claimant appeared by its solicitor. The result of that hearing was that District Judge Llewellyn OBE made the following order:

"The issues raised by the Defence be referred to the Residential Property Tribunal."

4. The case file was passed to the Tribunal, and there followed some correspondence between the Tribunal and the Claimant, including questions about whether the front garden of the Property "was the responsibility of the Lessee" [emphasis added]. The matter was then set down for a hearing in Swansea on 29th March 2017.

5. As the Chair appointed for that hearing, I have seen the file for the first time and perused the hearing bundle in advance. Unfortunately, it is clear to me that there has been an error, initially by the County Court, but one left uncorrected by the parties and the Tribunal. The Tribunal does not have jurisdiction to determine this matter, and it must therefore be remitted to the County Court.

6. As is plain on the face of the claim, this is a claim for the payment of "service charges" on the covenants of a transfer of a freehold property, not a leasehold property. The Claimant is the original transferor. The Defendant is a successor in title to the original freehold transferee.

7. The Tribunal's jurisdiction to determine the payability and/or reasonableness of "service charges" under the Landlord and Tenant Act 1985 is not therefore engaged. The problem is apparent from the title of that Act, but to make matters clear, "service charge" in that Act is defined in section 18 as "an amount payable by a tenant of a dwelling as part of or in addition to the rent...(a) which is payable, directly or indirectly, for services, repair, maintenance, improvements..or insurance or the landlord's costs of management" [emphasis added]

8. There is no "tenant" and no "landlord" in this case. This is a claim at common law on a freehold covenant to pay sums described as "service charges" in relation to a freehold estate, against a freehold successor in title to the original covenantor. There is and has been no statutory modification of such covenants, or conferral of any statutory jurisdiction on the Tribunal to determine the reasonableness of such sums claimed. Whether or not they are payable is a common law issue for the Court to determine between the parties before it.

9. While it is unfortunate that this error and want of jurisdiction was not spotted earlier, either by the Court (which first raised the suggestion of transfer to the "leasehold valuation tribunal"), the Claimant's legal representative (the Defendant is and has at all times been representing herself) or the Tribunal when it first received the transferred case and listed the matter for a hearing, the Tribunal simply cannot accept and assume jurisdiction when it does not have any.

10. The only correct course is therefore to vacate the hearing currently listed for 29th March 2017, and to remit the matter to the County Court where it belongs. Given that a hearing bundle has now been prepared, that will presumably serve (with an alteration of the case heading) as a hearing bundle for any disposal hearing in the Court. It is a matter for the Court, however, how it allocates and deals with the case from here on in.

Dated this 22nd day of March 2017

E.W. Paton

Chairman