

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0049/03/15

In the Matter of 2 Manchester House, The Square, Aberbeeg, Abertillery NP13 2AB

Applicant Mr David Walker

Respondents Crown Management UK Ltd and Bells Management Ltd (formerly Crown Builders Ltd)

APPLICATION FOR PERMISSION TO APPEAL

PENDERFYNIAD / DECISION

1 Mr David Walker (the Applicant) is the lessee of Flat 2 Manchester House, The Square, Aberbeeg, Abertillery (the Property). Bells Management Ltd (Bells) is the freeholder, having changed its name from Crown Builders Ltd earlier this year. Crown Management UK Ltd (Crown) is the managing agent for the Property. Bells and Crown are together referred to as the Respondents.

2 The Property, which is a converted mill comprising 10 flats held on long leases, has experienced a troubled history over the last few years culminating in a long and hard fought application to determine the amount of the service charges payable by several of the lessees for the service charge years for 2012, 2013, 2014 and the amount payable on account for the year 2015. The decision (the Original Decision), published on the 28th June 2016, largely vindicated the lessees in respect of many of their complaints concerning the management and service charges. The charges were reduced significantly and the Respondents were directed to prepare revised accounts incorporating the Tribunal's findings. They have done so. Any of the applicant lessees who did not agree the revised accounts was given leave to ask the Tribunal for a further determination of the amounts not agreed. The Applicant is the only lessee to have made such a request.

3 On the 29th September 2016, a pre-trial review was held. The Applicant did not attend and declined the opportunity to participate by telephone. In an e-mail dated the 28th September 2016, Mr Collier, who has represented the Applicant throughout, stated that in the Deed of Assignment, "the figures for the completion statement are incorrect". He also referred to the management agreement between the Respondents as having been "concocted during 2015 for the benefit of the Tribunal but dated 2012". The Respondents participated by telephone. Directions were given including directions requiring the Applicant to indicate whether he agreed the balance of his service charge account as at the 14th August 2013 (when Bells completed the purchase of the freehold of the Property) adjusted to take into consideration the Original Decision. He was also required to indicate whether or not he agreed his 1/10th proportion of the subsequent service costs as set out in the revised accounts. It was considered appropriate to determine the application without an oral hearing and the parties were informed of the proposed arrangements for doing so.

4 Mr Collier's responses are contained in two letters dated the 1st November 2016 and the 17th November 2016 (respectively documents 25 and 24 in the bundle submitted with the request

for permission to appeal (the Bundle)). In both, Mr Collier refers to the Deed of Assignment of the service charge balances as being a falsified document. He does not address the issue of the amounts set out in the revised accounts. He does not point to any item in the revised accounts as incorrectly interpreting the Original Decision. He does not indicate any mathematical error. As neither party requested an oral hearing, the application was determined without the parties being present on the 18th November 2016 and the Decision was issued on the 23rd November 2016. The Applicant now wishes to appeal that Decision.

5 The Bundle which accompanies the Applicant’s request for permission to appeal includes a number of e-mails and other documents no doubt intended to explain why Mr Collier, on behalf of the Applicant, considers the Deed of Assignment to be “false”. In his e-mails to Ms Cleasby, the Solicitor at Pier Management which acted for Ground Rents (Regis) Ltd (Regis), the previous freeholder, and to Ms S Garlish of Hatch Brenner, the Respondents’ former Solicitors (documents 4 and 16 in the Bundle), Mr Collier refers to two issues which in his view indicates the false nature of the Deed of Assignment: one is the signature of a director signing on behalf of Regis; the other is the incorrect reference to the amount of ground rent payable by Mr Neild, the lessee of Flats 5 and 10. Ms Cleasby deals with the former (document 6). With regard to the second, the amount owed by Mr Neild is not an issue for the Applicant to take up. That is for Mr Neild. In any event, as the issue related to ground rent, it is not a matter we could deal with in any case as we have no jurisdiction. Ground rent is a matter for the County Court. Further, the Applicant needs to approach this argument with great caution as the Deed of Assignment is, in the Applicant’s case, assigning a credit balance to which further credits have been added. The Respondents have applied these credits against the service charges incurred subsequently.

6 Mr Collier also refers to the differences in the completion statements issued at different times. He is correct in saying that the figures in documents 12 and 20 are different. However, the relevant figures as far as the Applicant’s account is concerned are virtually the same:

	Document 12	Document 20
Arrears (GR/Ins)	£25.00	£25.00
Less		
Ground Rent	£114.25	£113.42
Insurance	£115.95	£115.42
Service Charge	£551	£551

The difference appears to be a single day’s apportionment of the Ground Rent and the Insurance - 225 and 145, 139 and 219 days in document 12 and 226 and 146, 138 and 218 days in document 20. The only significant difference is the amount of deposit stated as being £800 in document 12 and £2,000 in document 20. This does not affect the Applicant’s balance. As far as the Insurance and Service Charges for Flat 2 are concerned, the difference is 83 pence (marginally higher in document 12). Incorporating the subtotal in the calculation as the pence figure is missing in the service charge entry in both sets, the figures for the amount of the Applicant’s credit are £666.78 (document 12) and £666.16 (document 20). The former was used in the decision - marginally to the Applicant’s advantage. It also ties in with Ms Cleasby’s e-mail dated 12th August 2013 which refers to the Applicant’s service charge credit balance as £550.83 (document 3) (which +£115.95 Insurance (document 12) produces the same figure of £666.78 (document 12)). The Deed of Assignment was signed by Mr Watts. The document was introduced at the substantive hearing. If Mr Collier had had any reservations about the validity of the Deed, he could have questioned Mr Watts or even Mr or Mrs Haines about it. He did not.

7 The purpose of the Decision was to calculate the actual amounts payable by the Applicant. It was not a review of the Original Decision. Any appeal must therefore relate to the issues determined in the Decision. Matters relating to the insurance policies and the Tribunal's assessments of the witnesses do not arise out of the Decision. They cannot be considered as grounds for appeal.

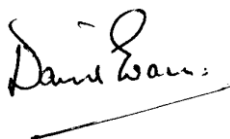
8 Although Mr Collier referred to the Deed of Assignment as a "falsified document", he did not seek to call any evidence to challenge the figures. The only figures given in evidence are those provided by Regis as put forward by the Respondents. There may be discrepancies in the various versions, but they are not significant as far as the Applicant is concerned. The Applicant did not provide any alternative figures. It was reasonable in the circumstances to accept the figures and make a determination based upon them. The Applicant's grounds of appeal appear directed more to the mechanics of the transfer rather than the amount of the credit to which he was entitled. In any event, the questions regarding the signature and the difference in the figures are explained by Ms Cleasby in document 6.

9 In the Tribunal's decision dealing with an earlier request for permission to appeal, it set out the criteria that are generally applied when considering whether or not to grant permission. The Decision in this case related only to a factual issue, namely working out the figures relevant to the Applicant on the basis of the Original Decision. As such, the Applicant will only be able to appeal the Decision if it is one which no tribunal could reasonably have reached based upon the evidence. The Applicant was given the opportunity to challenge the figures. The general statement relating to the "falsified document" was not supported by evidence. Such an allegation could only have affected the Applicant's credit balance as at 14th August 2013. The Applicant provided no evidence as to what the balance ought to have been at that time. He did not challenge any of the figures in the revised accounts. Indeed he does not identify any entry in the revised accounts which he considers to be wrong.

10 The whole basis of this application for permission to appeal appears to be directed at the Original Decision. That is not appropriate. The Applicant has previously sought permission to appeal the Original Decision. Both this Tribunal and the Upper Tribunal refused permission for him to do so. There is nothing in the papers which raises any substantive reason why the figures in the revised accounts are wrong. Nor is there anything which suggests that the apportioned amount payable by the Applicant is incorrect.

11 In all the circumstances, I do not consider that there is a reasonable prospect of success on appeal and accordingly permission to appeal is REFUSED.

DATED the 16th day of January 2017

A handwritten signature in black ink, appearing to read "David Evans", with a horizontal line underneath it.

CADEIRYDD/CHAIRMAN