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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0016/08/15

In the Matter of Flat 23 Vincent Court, Vincent Road, Cardiff, CF5 5AQ

In the matter of Section 27A of the Landlord and Tenant Act 1985

TRIBUNAL	**Timothy Walsh (Chairman)** **Roger Baynham (Surveyor)** **Juliet Playfair**
APPLICANT	**Dealswar Investments Limited**
RESPONDENT	**Mr. Carl Alan Tugwell**

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON THE RESPONDENT'S APPLICATION FOR PERMISSION TO APPEAL

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1. For the reasons that follow the Leasehold Valuation Tribunal refuses the Respondent's application for permission to appeal.

2. This Tribunal gave reasons for its determination in the substantive application in a detailed written decision dated 30 May 2016. By a letter from the Respondent's solicitors dated 29 June 2016 the Respondent sought permission to appeal. That letter stated that: *"The grounds for the appeal are that the decision does not mirror aspects of the hearing which our client thought had been agreed in open court".* As no grounds for appeal were otherwise articulated, the Tribunal requested clarification of the basis upon which permission to appeal to the Lands Tribunal was sought. By letter erroneously dated 21 June 2016 (but presumably drafted on 21 July 2016) the Respondent's solicitors set out the Respondent's grounds of appeal in seven numbered paragraphs. In this short decision, those paragraphs will be referred to as grounds 1 to 7. For the reasons that follow, the Tribunal is satisfied that none of the grounds have a real prospect of success and the Tribunal is satisfied that it was open to it to have reached the decisions that it did based upon the evidence before it.

Ground 1

3. The first paragraph of the grounds of appeal reads as follows:

   "1. Paragraph 9 of the decision makes reference to the common parts and acknowledges the poor maintenance in Block 1. It is accepted that whilst this does not specifically fall into the service charge issue it does still have a bearing on future maintenance and costs. We point

this out for the sake of good order and not because there is any specific expenditure which can be challenged per se. However, whilst the electricity costs are not great we wonder how efficient it really is and when it was last monitored or serviced."

4. This paragraph discloses no basis for an appeal. The Tribunal was not concerned with future maintenance and costs but with six years of historic service charges dating from 2009 to 2014 inclusive. Indeed, the above paragraph itself concedes that it contains no challenge to any specific head of expenditure. Finally, at the hearing the electricity charges were effectively agreed in the amounts recorded in the decision; they were not challenged on the basis of any lack of servicing of the material appliances.

Ground 2

5. The second ground of appeal is in these terms:

   "2. The applicant appears to have failed to observe the majority of the covenants in clauses 4(d) and 4(e) of the lease and has sought to recover these costs either within the maintenance or estate charges for the years in question. Can this be right?"

6. This ground of appeal appears to relate to the Respondent's general dissatisfaction with the Applicant's alleged failure to perform the lessor's covenants in clauses 4(d) and 4(e) of the material lease. Most of the expenditure that comprised the service charges was, however, agreed to have been reasonably incurred and was agreed to have been to a reasonable standard and to be reasonable in amount. Where "maintenance" and "estate" charges were not agreed or were challenged in any way they were the subject of a determination by the Tribunal. Insofar as this ground of appeal implies that the Tribunal's decision has allowed for recovery of service charges for work that was not carried out, that is incorrect and not borne out by the Tribunal's substantive decision. It is, moreover, inconsistent with the Respondent's express concessions in relation to the various heads of expenditure at the hearing (as recorded in the decision).

Ground 3

7. Paragraph 3 states as follows:

   "3. In accordance with clauses (37), (38) and (39) of the decision we believe that the applicant needs to reissue every service charge demand for the six years in question rather than relying on simply adjusting the total."

8. Paragraphs 37 to 39 of the decision address the requirements of the Services Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 and the effect of section 21B(3) of the Landlord and Tenant Act 1985 in conferring rights upon tenants to withhold payment of service charges on appropriate facts. The determination of the Tribunal is self-explanatory and reflects the terms and requirements of section 21B as they apply to the facts of the present case. It is no part of this Tribunal's role to pre-emptively adjudicate upon the form of any future demands.

Ground 4

9. The fourth paragraph of the Respondent's solicitors' letter correctly identifies that the Tribunal's determination at paragraph 66 of the decision was not reflected in the table at

paragraph 69 and in the subsequent totals. That error results in a reduction in the Respondent's liability of £2.63. As a clerical error resulting from an accidental slip, a certified and corrected decision will be sent out to the parties in accordance with Regulation 18 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004.

Ground 5

10. At paragraph 5 the Respondent observes that the overall reduction in the amount claimed by the Applicant is small (£123.54) because it relates to electricity costs, repair and maintenance whereas professional costs and insurance charges are noted to have been "left unaltered". That paragraph, however, does not advance a ground of appeal nor any reason for revisiting the determination of the Tribunal in an appeal.

Ground 6

11. Paragraph 6 reads as follows:

    "The Respondent still has great difficulty with the insurance charges which represent the single biggest item. The applicant has stated that brokers undertake this work but it is noted that the insurance company has not changed throughout. The Respondent was asked what evidence he had to contradict the charge but he had no facts with which to re-broke or provide alternative quotes. The onus is on the applicant to do so regularly (not necessarily every year) but across the six year period one would expect a re-brokering exercise at least twice."

12. This ground of appeal is misconceived for the reasons given in paragraphs 60 to 62 of the Tribunal's decision. The primary evidence available to, and accepted by, the Tribunal was that of Mr. Anthony Edwards, a director of the Applicant. It was his evidence that the Applicant engages an insurance broker to review the costs of insurance each year and that the broker negotiates discounts and advises the Applicant which then acts on that advice. On the basis of that evidence, in the absence of any competing evidence suggesting that the insurance premiums were unreasonable in amount, the Tribunal was bound to reach the decision that it did on this issue.

Ground 7

13. The final paragraph of the Respondent's letter adds the following:

    "Clause 100 of the decision is not understood. In a matter of this nature where there were a considerable number of adjustments a just and equitable solution would have been each side by [sic] pay it [sic] own costs. A claim for £8,123 is not just and equivable [sic] under the circumstances and section 19 of the LTA (1985) and the LTA (1987) provide statutory safeguards for tenants. Equally these costs were never tasked [sic] and had they been the Respondent would have asked for them to be taxed. The magnitude of such costs and expenses were first notified to the Respondent by way of written demand of 8th July 2016. No breakdown or analysis has ever been provided."

14. By order dated 7 August 2015 the Procedural Chairman gave detailed case management directions including provision for submissions on section 20C of the Landlord and Tenant Act 1985. By further order made on 12 November 2015 the Chairman directed that: "*If the*

Respondent intends to make an application under section 20C of the Landlord and Tenant Act 1985 he shall give the Applicant, and shall file with the Tribunal, notice in writing of that application by 12 noon on 21 January 2016 when filing his list of issues and shall provide details in outline of the basis of that application." No application was made and the Respondent's solicitor was specifically asked whether this meant that no application was being pursued. Paragraph 100 of the decision accurately records that he expressly disavowed any intention to make an application under section 20C and accordingly the Tribunal made no determination under that section.

15. In the circumstances, when the Tribunal issued its decision there was no application before it under section 20C of the 1985 Act. Similarly, to the extent that the Respondent may wish to challenge the recoverability, the amount or the reasonableness of the legal costs as part of any future service charges, those were not issues before the Tribunal in the present proceedings. Accordingly, paragraph 7 discloses no basis for appealing the decision of the Tribunal dated 30 May 2016.

16. The Tribunal accordingly refuses the Applicant's application for permission to appeal. The Respondent may renew his application for permission to appeal by applying to the Upper Tribunal Lands Chamber in accordance with regulation 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. The Respondent's attention is drawn to the time limits in regulation 21(2) for making any further application for permission to appeal.

DATED this 8th day of August 2016

CHAIRMAN