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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0049/03/15

In the Matter of 2, 4 and 8 Manchester House, The Square, Aberbeeg, Abertillery NP13 2AB

In the matter of an application under Regulation 20 of The Leasehold Valuation Tribunals (Procedure)(Wales) Regulations 2004

Applicants Mr David Walker, Mr Kevin Forbes,

Respondents Crown Management UK Ltd and Crown Builders Ltd

APPLICATION FOR PERMISSION TO APPEAL

PENDERFYNIAD / DECISION

1 BACKGROUND

1.1 On the 5th August, 7th and 8th September, 26th and 27th October and 14th December 2015 we heard an application brought by Mr David Walker, Mr Kevin Forbes (the Applicants) and others for us to determine whether certain service charges for the years 2012 to 2014 demanded on behalf of Crown Builders Ltd (Crown) were reasonably incurred and whether those budgeted for 2015 were reasonable. The charges related to various costs including repairs, insurance and management charges. We concluded that many of the costs were not reasonably incurred/ reasonable. The decision was published on the 28th June 2016.

1.2 The Applicants have applied for permission to appeal to the Upper Tribunal.

2 PRINCIPLES

2.1 Permission to appeal will only be granted where:

(a) The Tribunal has wrongly interpreted or applied the law;

(b) The Tribunal has wrongly applied or misinterpreted or disregarded a principle of valuation or professional practice;

(c) The Tribunal has taken account of irrelevant considerations or failed to take account of relevant considerations or evidence or there was a substantial procedural defect;

(d) The point or points at issue is/are of potentially wide implication.

2.2 A finding of fact is generally not able to be appealed unless it falls within paragraph 2.1(c) above or it is one which no tribunal could reasonably have reached based upon the evidence. It is not the purpose of this procedure to re-argue the issues dealt with at the hearing, nor is it for us to re-consider our Decision.

3 GROUNDS OF APPEAL

3.1 The grounds of appeal are contained in two documents: an e-mail from Mr Forbes dated 19th July 2016 and a letter from Mr Keith Collier (who represented Mr Walker) and Mr Forbes dated the 18th July 2016. Both were received on the 19th July 2016.

3.2 The letter from Mr Forbes refers to a single issue, namely the requirement for the lessees to pay for repairs to the building caused by an escape of water from Flat 10 which was at the time unoccupied. We shall refer to this as the insurance issue.

3.3 The letter from Mr Collier and Mr Forbes sets out "general reasons", "specific reasons" and also requests more time. The general reasons relate to "unjustifiable assumptions", "numerous omissions", "evidence…misinterpreted", "evidence….not…mentioned" and "contradictions". These are not particularised and we are therefore unable to grant permission to appeal as we do not know either the nature or the substance of what the Applicants wish to appeal.

3.4 Of the three specific reasons quoted in the letter, two refer to the insurance issue and the third relates to the extent of the Respondents' concession made during the original proceedings that the Applicants were not obliged to pay amounts due from predecessors in title.

3.5 The Applicants request more time as they wish to negotiate with the Respondents, they need more time to study the decision, they want to liaise with other applicants to see if they wish to appeal, some may wish to take legal advice and to consult with other parties not involved with the original application. This is not as such a ground of appeal, but an application to extend the time in which to seek the Tribunal's permission to appeal pursuant to regulation 24(2) of The Leasehold Valuation Tribunals (Procedure)(Wales) Regulations 2004. This will be dealt with separately.

4 THE INSURANCE ISSUE

4.1 On the basis of the evidence, we found as facts that in about April 2012 (the date was open to question) a flood occurred in Flat 10 causing damage to the staircase accessing Flats 7-10 and to Flats 7 and 8, the latter being owned by Mr Forbes. Although claims were submitted by Countrywide Residential Lettings Ltd (Countrywide) on behalf of the then lessors Ground Rents (Regis) Ltd (Regis), insurance moneys were not paid to Mr Forbes and no credits were shown in the Service Charge accounts registering the payment of any insurance money. No official reason was given for the failure to pay the claims. One suggestion was that the Flats 8 and 10 were unoccupied and the conditions relating to unoccupancy had not been complied with. The other was that the escape of water predated Regis' ownership of the Building. Notwithstanding this, a document which appeared to be a claims record showed an amount of £5,865 as having been paid in respect of Mr Forbes' claim. It was subsequently alleged that this amount represented the loss adjuster's costs of investigating the claim. In view of the sketchy and conflicting evidence, we adjourned consideration of this aspect. Without determining whether a payment had been made and if so what had happened to it, we could not ascertain the extent of Mr Forbes' service charge liability and we therefore gave the parties the opportunity either to agree the amount or to apply for this aspect to be determined adducing evidence upon which we could make a determination.

4.2 The principal argument put forward on behalf of the Applicants was that Countrywide ought to have been aware that many of the flats were let and therefore subject to voids. The policy should have been tailored to the use of the Building. As it did not, it was not appropriate. The Applicants argued that the lessees ought not pay for an inappropriate policy. The further argument was that the failure by Countrywide to notify the lessees of the relevant terms of the policy and the progress and result of the claim constituted poor management. The Respondents' argument was that the policy was of the type normally taken out by lessors for buildings comprising flats. There was no issue as to the reasonableness of the premium.

4.3 In our Decision, we accepted the Respondents' argument and concluded on balance (paragraph 34) that the policy was of the kind usually arranged for premises of this type. Such policies impose conditions requiring notification and regular inspection when voids occur. In our view, the problem was not the policy and we determined that there had been a failure by Countrywide to notify the lessees of the terms (paragraph 36). Accordingly we determined that the premium was reasonably incurred. We did, however, subsequently hold that the management charges of £2,368.20 were not reasonably incurred but that £1,000 was reasonably incurred.

4.4 The first point in the joint letter from Mr Collier and Mr Forbes also relates to the non-payment of the claim or the misapplication of the amounts paid (if any). The point in paragraph 48 is that the balances payable by Mr Neild and Mr Forbes depend on that issue being determined. It is not as such related to the question of whether the premium was reasonably incurred.

4.5 The Tribunal was aware that the works to the communal staircase were as a result of the flood, hence reference to Mr Walker's view that he should not contribute because his flat was not affected (paragraph 144). In paragraph 139, we set out Mr Collier's arguments and in paragraphs 142 to 146, we deal with those arguments accepting his argument with regard to the cost of the doors and explaining why we disagree with the others.

4.6 Our function is to determine the reasonableness of the Respondent's costs. The building needed repair. Crown was under an obligation to repair it. The lessees are obliged to pay the costs reasonably incurred in doing so. We have no power to determine whether the Regis was in breach of its lease and award damages if we consider it to be so. Nor is it part of our function to penalise Crown for Regis' alleged failure to insure properly. If a lessee wishes to pursue such a claim, it must proceed through the County Court.

4.7 We were entitled to come to the conclusion we did and we have explained the reasons for so doing. The decision only affects the parties to the application.

5 INHERITED ARREARS

5.1 Mr Collier and Mr Forbes suggest that not all "inherited arrears" have been accounted for in the Decision. The Respondents have conceded that they are not entitled to claim them. At paragraph 199 we have directed that the Respondents prepare fresh service charge accounts and statements of account for each Applicant. Such statements of account will take account of the concessions that have been made. If there is any issue on the revised service charge accounts or the statements of account, we have given the parties permission to refer the matter back to the Tribunal for further determination. However, as the "inherited arrears" point was conceded by the Respondents, there is nothing to appeal.

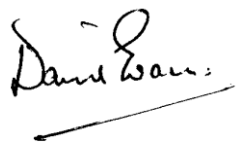
5.2 Again, the decision only affects the parties to the application.

6 CONCLUSIONS

6.1 At paragraph 2.1 above, we set out the basis upon which permission would be granted to enable the Respondent to appeal to the Upper Tribunal. The matter of inherited arrears is not really a matter for appeal and the insurance issue is essentially questions of fact.

6.2 The Applicants' case is that we did not accept their arguments and preferred the arguments presented by the Respondents. They are seeking to re-argue their case. This is not a proper basis for giving permission to appeal. We considered all the evidence when making the decision and on the points raised we were not persuaded by the Applicants' arguments. We were entitled to reach the conclusions we did and we explained our reasons for doing so. There is nothing in the grounds which suggests otherwise. We do not consider that there is a reasonable prospect of success on appeal and accordingly we refuse permission to appeal.

DATED this 27th day of July 2016



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