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RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0030/04/12
1024196

In the Matter of Flat 11, Llannerch Hall, Llannerch Park, Trefnant, Denbighshire LL17 OBD

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

TRIBUNAL AVS Lobley
C Williams FRICS
ER Williams FRICS

APPLICANT Llannerch Hall Limited

RESPONDENTS Mr TEM McGregor
Mrs SL McGregor

ORDER

1 In 2000, Mr and Mrs McGregor bought a 999 year lease of a flat in Llannerch Hall. The lessor's obligations under the lease were to maintain the main structure and in particular the roof. The lessees' obligation was to pay a proportion of the lessor's expenses in the repair and renewal of the building pursuant to the fourth schedule of the lease. Clause 6 of the lease allowed the lessor to include in the service charge sums for reasonable provision for anticipated expenditure.

2 In November 2011, Llannerch Hall Limited (Llannerch Hall) commenced proceedings in the Rhyl County Court against Mr and Mrs McGregor for unpaid rent and service charge deemed reasonable by determinations of the Leasehold Valuation Tribunal (LVT) in the sum of £7,377.75 and interest of £2644.38. A schedule of outstanding service charges was attached and referred to determinations of the LVT in respect of the years 2004/5, 2005/6 and 2006/7 in July 2007 and July 2008 and in June 2010 in respect of the years 2007/8. 2008/9 and 2009/10.

3 In the Defence and Counterclaim, Mr and Mrs McGregor admitted that the Tribunal had determined the reasonableness of the service charges in June 2010 and sought to set off as much of the sum counterclaimed as to extinguish their liability. They counterclaimed that there had been a failure to consult for major works pursuant to Section 20ZA of the Landlord and Tenant Act 1985 (the Act). In May 2007, an LVT had determined that the sum of £144,407.50 for major works to the roof for the service charge year 2007/8 was reasonable. Llannerch Hall had served a Section 20 consultation notice in relation to roof works and in 2008 was informed that additional works were needed and a further £25,000 had been allowed in the 2009 budget in respect of such works. In June 2010, an LVT found that the sum for the major works for 2008 of £136,492 was reasonable and that the estimated figure for 2009 of £25,000 was also reasonable. It was said that as Llannerch Hall had failed to consult in relation to the additional works carried out that their contribution was limited to £250. Mr and Mrs McGregor relied upon the case of *Martin v Maryland*

Estates (1999) 2 EGLR 53. The defence also referred to two other matters not transferred to this Tribunal.

4 In its Reply and Defence to Counterclaim Llannerch Hall asserted that Mr and Mrs McGregor were aware that major works were needed and that when parts of the roof were removed, additional works were identified which needed to be immediately addressed. These works could not have been identified without the removal of the roof. It was admitted that statutory notices were not served and asked the court to dispense with the requirement to consult.

5 Having considered the pleadings, District Judge Jones Evans ordered Llannerch Hall's claim to be stayed and the defendant's counterclaim on the issue to serve a s20 notice was transferred to the LVT .Directions were issued in September 2012 and the parties subsequently filed their statement of case and reply thereto. The Tribunal convened at the Oriel Hotel, Upper Denbigh Road, St Asaph on 6th February 2013 having previously inspected the property on 5th February 2013. Llannerch Hall was represented by Miss Mattsson of Counsel, with Ms Last and Mr Dean, directors of Llannerch Hall in attendance with Mr Broadhurst. Mr and Mrs McGregor attended.

THE INSPECTION

6 Llannerch Hall is a grade II listed building converted into 13 flats and situated on the outskirts of St. Asaph. The Tribunal inspected the property on 5th February 2013, particularly the common parts, the grounds and gardens. Ms Last and Mr Dean, directors of Llannerch Hall were present during the inspection but Mr and Mrs McGregor were not. It appeared from the inspection the property was being well maintained and extensive repairs had been carried out to the roof.

LLANNERCH HALL'S STATEMENT OF CASE

7 Llannerch Hall repeated that although proper consultation had not taken place in respect of the additional roof works, these were mostly replacement of timber completed on an urgent basis after extensive decay and rot was discovered part way through the works about which consultation had taken place. As Mr and Mrs McGregor had already challenged these service charges in the proceedings in the LVT in 2010, it was asserted it was therefore an abuse of process to bring forward issues now which ought to have been brought forward in those proceedings. It was also said, in the alternative, that the extra works were not separate qualifying works so that a second consultation was not required, or that Llannerch Hall applied for dispensation or sought payment for the planned works only.

8 In view of Mr and Mrs McGregor's repeated refusal to pay service charges, in 2007 Llannerch Hall had made an application to the LVT in respect of the major works to the roof and in July 2007, these works were found reasonable. The additional roof works included replacement of defective timbers and lead. The LVT decision of 14th June 2010 found the sum of £136,492.46 in respect of the major works to the roof for 2007/08 was reasonable and that the sum of £21,945.40 for the additional roof works for 2008/09 was also reasonable.

9 Mr and Mrs McGregor, in their reply, stated that the Section 20 consultation in relation to the planned roof works did not apply to them as in part they related to works that had previously been ordered by District Judge Williams Sitting at Rhyl County Court. They said they were doubtful that the charges in relation to the roof works were recoverable from them (even though they had been found reasonable by the LVT in June 2010) because part of the works related to the court order in the Rhyl County Court in 2004. It was not accepted that time was of the essence in relation to the additional roof works and they should have been consulted. They did not accept there was an emergency. It was also said that they had raised the issue of the lack of consultation before the LVT in 2010. Mr and Mrs McGregor also asked the Tribunal to refuse Llannerch Hall's request to recover its costs through the service charge as in 2004 it had been recorded that no costs could be recovered by Llannerch Hall and Llannerch Hall's application for leave to appeal was refused.

THE HEARING

10 At the hearing, Miss Mattsson asked the Tribunal to determine first whether the issue about lack of consultation could be heard at all as she submitted this was an abuse of process. Consultation had taken place in 2007 and the LVT had determined in 2010 that the sums were reasonable. Mrs McGregor's argument was that the issue of the roof had been resolved in 2004 and it had been decided that only £250 was payable. In 2004 they had been granted a specific performance order for roof works.

11 Miss Mattsson responded that the costs of all the roof works from 2007 to 2009 had been challenged and all approved by the LVT determinations. She invited the Tribunal of its own motion to dismiss the claim as an abuse of process. She referred to *Henderson v Henderson* 3 Hare 99 and the Civil Procedure Rules. Parties to litigation are required to bring forward the whole of their case. By Mr and Mrs McGregor's own account, all these matters were drawn to the attention of the LVT. They had all the information in 2010 and the sums were found to be reasonable so Miss Mattsson invited the Tribunal to cut the proceedings short.

12 Mrs McGregor, in response, said in her view the abuse of process was the controlling element at the Hall continuing to appeal a judgment order in consolidated claims in 2003/4 in which permission to appeal had been refused. She said if the necessary roof repairs were undertaken in 2000 then it was unlikely that the additional works would have been required. From the SPP Survey in 2002 it was obvious that the roof was in a very poor condition. She was of the view the entire issue of the roof was resolved in 2004. The fact the work was carried out in phases was irrelevant, it was all one contract.

13 The Tribunal indicated to Miss Mattsson that it was not prepared to deal with such an application as formal notice had not been given to Mr and Mrs McGregor and if Miss Mattsson did wish to Tribunal to proceed on that basis, then it considered an adjournment would be necessary to allow Mr and Mrs McGregor to consider this further and if necessary take legal advice. Miss Mattsson therefore withdrew her request and said in the circumstances she was happy for the Tribunal to proceed to determine all matters today.

14 A short adjournment was granted for Mr and Mrs McGregor, who had asked for an adjournment to take legal advice, to consider whether they wished to adjourn, it having been explained that Miss Mattsson had withdrawn her request that the Tribunal dismiss Mr and Mrs McGregor's claim of lack of consultation as an abuse of process, without hearing the parties on any other issues. After consideration, Mrs McGregor confirmed she was happy to proceed.

15 Miss Mattsson outlined the remaining issues which were whether the additional works were part of the major works or whether they were separate works which required separate consultation and if so whether consultation could be dispensed with. She referred to the consultation document sent out in 2007, which referred to qualifying works proposed to be carried out as being "works to all the roof areas of Llannerch Hall as identified in the roof condition survey undertaken by SPP projects in August 2005 including all inner and outer slopes to the main house". It was accepted that no one knew that additional works were required to the wood and it was accepted the work went over budget. She referred to a witness statement from Mr. David Greenhough dated 19th December 2012, a director of the roofing company who were contracted to carry out the roof works. He said it was clear from the tender that the work required to the roof was effectively sectional replacement and when the roof was opened up, they were able to identify significant problems of decay and damage caused by wood boring insects to the timber supports in the roof. These works could not be identified prior to the work commencing on site and they were essential works and the works were urgent as large sections of the roof had been removed. Miss Mattsson sought to distinguish this from *Martin v Maryland estates* as in that case, the additional works were almost double what was originally anticipated, she asserted in this case the additional works were only 10% over budget. (later she accepted the Tribunal's view that the contract was 23% over budget).

16 If the Tribunal held that there were 2 separate sets of qualifying works, then Miss Mattsson asked the Tribunal to dispense with the requirement to consult in relation to the additional works. The works were necessary for the decay to be remedied and the contractor was in no position to stop the works in order to carry out the consultation procedure, against the background that every cost had been challenged by Mr and Mrs McGregor. The works were urgent and the consultation process would have taken months. The board minutes showed that the decay had been discovered in November and the works had commenced in January, showing the urgency. It was accepted there was a prejudice to the tenant when he was prevented from having an input but this was outweighed by the cost of stopping the work, potentially the CADW grant may have been lost and it may been necessary to move the tenants out if work had to be stopped.

17 In response. Mrs McGregor repeated that works on the roof should have been commenced long before and the works were not urgent or an emergency. She said that in her view Llannerch Hall were only entitled to recover £250 from them in respect of all the major roof works.

COSTS

18 Miss Mattsson submitted that the defence was an abuse of process as the reasonableness of the roof works had been determined in 2010. She asked the Tribunal to make a costs order against of £500 against Mr and Mrs McGregor.

19 Mrs McGregor appeared to be saying she wished to have an order under section 20C of the Act. Miss Mattsson resisted this.

THE TRIBUNAL'S FINDINGS

20 The decisions of the LVT in 2007 and 2010 dealt with the issue of reasonableness of the costs of the works to the roof in 2008 and 2009. Estimated costs were approved in the 2007 decision and the actual costs in the 2010 decision. The latter decision is binding upon Mr and Mrs. McGregor. She sought leave to appeal that decision and leave was refused. The issue of lack of consultation which she has raised in this application was not raised by her then and it is too late for her to raise it now. The Tribunal finds it is an abuse of process to raise the issue of failure to consult in these proceedings and dismisses her claim. The Tribunal also finds that the additional works were impliedly covered by the consultation carried out in 2007 and that given that both dry and wet rot were discovered there was urgency in carrying out the additional works so that even if consultation was necessary, the Tribunal finds that it is reasonable to dispense with such consultation under Section20ZA of the Act. The 2004 decision has nothing whatever to do with the roof works carried out in 2008 and 2009.

21 The Tribunal does not make any order under Section 20c of the Act. It was not reasonable for Llannerch Hall's application for payment of service charges to have been resisted. The costs may be recovered against Mr and Mrs McGregor through the service charge.

22 Paragraph 10 of schedule 12 of the Commonhold and Leasehold Reform Act 2002 provides that an LVT may determine a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in circumstances where that party has made an application to the LVT which is dismissed in accordance with regulations made by virtue of paragraph 7 and that party has, in the opinion of the Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Paragraph 7 provides that procedure regulations may include provision empowering an LVT to dismiss applications or transferred proceedings on the grounds that they are frivolous or vexatious, or otherwise an abuse of process. Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004 provides that a Tribunal may dismiss an application where it appears to the Tribunal to be frivolous, vexatious or otherwise an abuse of process of the Tribunal and a respondent to an application makes a request to a Tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of the process of the Tribunal. Given that the Tribunal had dismissed every point raised by Mr and Mrs McGregor, the Tribunal considered it had power under this regulation to make an order under Paragraph 10 of schedule 12 of the Commonhold and Leasehold Reform Act 2002

23 The Tribunal was satisfied Llannerch Hall had incurred costs of at least £500 in connection with these proceedings. Counsel's fees alone were likely to be that much. In the Tribunal's view, any matter relating to the proceedings in 2004 or lack of consultation should have been raised in the LVT proceedings in 2007 and 2010. They should not have been raised now. The Tribunal ordered that Mr and Mrs McGregor should pay Llannerch Hall £500.

DATED this 27th day February 2013

CHAIRMAN