Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

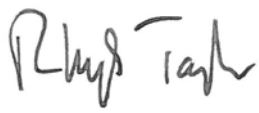
DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)
COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SCHEDULE 11

Premises:	Flats 1 and 2, 266 Holton Road, Barry, Vale of Glamorgan.
LVT ref:	**LVT/0011/04/13**
Order:	29 July 2013
Applicant:	Mr Pjotrs Sevcovs
Respondent:	Wellington Investments Limited
Members of Tribunal:	Mr R S Taylor – Chairman Mr R W Baynham FRICS Dr A Ash

ORDER

Upon the Applicant having already paid the Respondent £2,071.67 via his mortgagee, Birmingham Midshires, the Tribunal makes no order.

Dated 29 July 2013



Lawyer Chairman

REASONS

1. This is an application for us to determine the reasonableness of administration charges which were incurred by the Respondent in respect of unpaid ground rent on a property known as Flat 1, 266 Holton Road.

2. The background to this matter is very extensive and will not be rehearsed in this decision. Alongside this decision we are also issuing another decision under case number LVT/WAL/883/12 which deals with many other issues between the parties and it fully rehearses the background to this matter. That decision, also dated the 29 July 2013, should be read to understand the background.

3. During a hearing on the 11, 12 and 13 February 2013 it became apparent to the Tribunal that the Applicant's mortgagee, Birmingham Midshires had made (in addition to another payment which we addressed in case number LVT/WAL/883/12) a payment to the Respondent of £2,071.67 on the 14 September 2011. The payment was made up of unpaid ground rent (over which we do not have jurisdiction) and administration costs incurred in pursuing the unpaid sum. We do have jurisdiction over the latter by virtue of Part 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, which allows the LVT to determine what administration charges incurred, on account of chasing the unpaid ground rent, are reasonable. During the February 2013 hearing we did not have any formal application to resolve the £2,071.67 nor did we have enough evidence to be able to understand the position. Accordingly, we simply indicated that if this matter was to be the subject of a determination a further application would have to be made.

4. The Applicant lodged an application with the Tribunal on the 16 April 2013, inviting us to determine the figure of £2,071.67. Directions were then given on the 22 April 2013 for a breakdown of how the figure was arrived at, submissions on reasonableness and any submissions in respect of s.20C.

5. The Applicant submitted a letter dated 9 May 2013, giving some indication of how the figure had been arrived at, but not a complete picture. His evidence related to sums incurred after a default judgment had been made, but not how the figure in the default judgment had been arrived at. The Applicant submitted in this letter that the sum was unreasonable in terms of the amount claimed. Further, it was submitted that it was unreasonable for the Applicant to have been charged as the default judgment for the sum of £838.91 was sent to the wrong address. It was also suggested that no invoices were sent by the Respondent.

6. For the Respondent's part, it submitted an email dated 24 May 2013 in which it drew attention to its right at clause 7.13 of the lease, to claim all reasonable expenses and fees '...incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Sections 146 or 147 of that Act...' The email submission also stated that 4 hours at £60 per hour was reasonable for the service of 146 notices and that a consultation fee of £750 with a solicitor in respect of the service of notices was also entirely justified.

7. On the 30 May 2013 the Tribunal issued further directions, requiring the Respondent to produce a complete breakdown as to how the £838.91 default judgment had been arrived at, together with any argument it may wish to make that the Tribunal does not have jurisdiction to deal with this matter by virtue of a default judgment having been entered. The Applicant was given permission to reply. The Respondent did not comply with our directions.

8. At the outset of the hearing of this matter on the 18 July 2013, Mr Furneaux, on behalf of the Respondent, was asked to explain why it had failed to comply with the directions. Mr Furneaux was most unhelpful and discourteous to the Tribunal, stating variously that he had no more documents to produce and then producing several lever arch files, leafing through them to see if any relevant document could be found. The Tribunal indicated to him that he should desist from wasting the Tribunal's time and that the time for supplying documents helpful to the Respondent's case had long since passed.

9. However, after the hearing had commenced it became apparent that the Respondent did have easily available (1) the claim form which resulted in the default judgment (2) an acknowledgement of service, and (3) a notice of part admission. Once the 'penny had dropped' with Mr Furneaux that these documents may assist the Respondent's case his attitude to producing documents changed and he made an application to admit the documents out of time. We invited the Applicant to comment upon this application, giving him plenty of time to study the documents prior to stating his considered position. The Applicant did not object to our seeing the documents but entered a caveat that he did not wish to end up with a deluge of further papers being served during the course of the hearing. This was a difficult application for us to consider. On the one hand we were faced with a Respondent, who had contumaciously refused to comply with our directions, seeking our indulgence for the late filing of significant documents. The Tribunal had very little sympathy with the

Respondent's position. On the other hand, the documents only ran to a few pages and appeared to contain (we had not seen them at this stage) important facts which we had been asking for, in order to enable us to do justice. It would have been a very hard decision to make had the Applicant objected to the filing of the documents. However, on balance and in light of the Applicant's agreement for the documents to be read, we admitted them into the hearing.

10. The claim form disclosed that the Respondent had utilised the services of a solicitor in bringing the case.

11. The Respondent indicated that it had no objection to our hearing the matter, despite the fact that a judgment in default had been granted. The identical argument had been determined between these parties in the other application which we had resolved on the 27 July 2012 (see that decision for our reasons why we assert jurisdiction to entertain this application). Mr Furneaux stated that "we were hardly likely to change our minds." For the reasons given on the 27 July 2012 we determine that we have jurisdiction to deal with this matter.

12. Piecing the figures together it would appear that the £2071.67 is arrived at in the following manner:-

    a. £300 (2 years ground rents)

    b. £180 – about 6 letters at £30 per letter

    c. £28.91 - interest

    d. £250 – "Administration costs" stated on claim form

    e. £70 - court fee

    f. £10 – sum added by court when default judgment issued (possibly an administrative error?)

    g. £2.76 – interest post judgment (albeit this figure does not appear correct)

    h. £240 – service of notices upon Applicant

    i. £240 – service of notices upon Applicant's mortgagee

j. £750 – stated by Respondent to be "our costs and time in this matter since judgment" cf Respondent's email dated 24 May 2013 in which it is stated "£750 is the cost of consultation with a solicitor regarding service of section 146 notices."

13. The Respondent has severely hampered our ability to determine this matter, even with the late admitted documents. In response to the assertion that invoices were not sent, Mr Furneaux stated that they were sent. However, by failing to provide "all supporting documentation" as directed he has left us without the necessary evidence to be able to properly determine this matter. Given the absence of the documents and the Applicant's stance, we cannot be satisfied on the balance of probabilities that all the work claimed has actually been carried out.

14. The further disclosure did reveal one startling fact. Despite a written submission to the Tribunal that the judgment in default had been issued due to service on a wrong address, the Applicant had to accept that he had signed the acknowledgment of service form and that the documents had been sent to his requested address. We found the Applicant's evidence, that this had arisen due to his having moved house, confused and unsatisfactory.

15. We are mindful of the need to determine cases in accordance with the evidence before us. However, here we have not been provided with all documents directed. Further, neither party has supplied us with any evidence which would give this Tribunal an evidential foundation for saying what the reasonable costs of enforcing compliance with unpaid ground rent should be. In a low value claim such as this it would be wholly disproportionate to further adjourn and given the state of the evidence, we are not at all satisfied that an adjournment would result in a complete picture emerging.

16. We have in mind the guidance provided in the case of *Country Trade Ltd v Marcus Noakes* [2011] UKUT 407 (LC) in which HHJ Gerald stated:-

> "14 It is not in my judgment the effect of the above-cited authorities that the LVT must accept the evidence of the landlord without deduction if there is no countervailing evidence from the tenant. The evidence required in these types of service charge disputes is quite different from the sort of complex largely non-factual evidence and issues addressed in

cases such as Arrowdale .

15 The LVT does not have to suspend judgment or belief and simply accept the landlord's evidence. It is entitled to robustly scrutinise the evidence adduced by the landlord (and, of course, the tenant) which, after examination, it is entitled to accept or reject on grounds of credibility. The course of scrutiny is not just looking through the invoices or other documents, but identifying issues of concern and asking the landlord's (or tenant's) witnesses for explanations and observations. It is not necessary for each and every invoice to be minutely examined, but sufficient for them to be dealt with on a sample basis. It is only once this process has been gone through that the LVT will be able to reach any decision on the credibility of witnesses which will be based on the answers given and any other available evidence.

16 The difficulty comes where the LVT accepts that “some” work has been done but does not accept that the “rates” or “charges” claimed as reasonable are credible or justified but there is no other comparative or market evidence (in the form of estimates, or quotes or such like) of what those rates or charges might be. The LVT will not be able to reject the sum claimed because it has accepted that some work has been done to justify a charge, but will have concluded that the amount claimed is too high.

17 In those circumstances, the LVT is entitled to apply a robust, common sense approach and make appropriate deductions based on the available evidence (such as it is) from the amounts claimed always bearing in mind that it must explain its reasons for doing so. The circumstances in which it may do so will depend on the nature of the issues raised and service charge items in dispute, and will always be a question of fact and degree. In some instances, such as insurance premiums, it will be very difficult for the LVT to disallow the landlord's claim in the absence of any comparative or market evidence to the contrary. In other cases, such as gardening, cleaning or such

like, the position might be different where the nature and complexity of the work is fairly straightforward. It is only where the issue is finely balanced that resort need be had to the burden of proof."

17. This Tribunal is left with no other option but apply a robust and common sense approach. The Respondent, in failing to comply with our directions has, to some extent, disqualified itself from securing full recovery of the sum claimed. We are not satisfied, on the balance of probabilities, that all work as claimed has been carried out. We are deeply troubled by the conflicting accounts as to what the £750 was incurred in respect of. The Respondent only has itself to blame for failing to produce evidence to deal with the issues we must determine.

18. On the other hand, the Applicant admitted that he had not paid "about" 2 years ground rent and we have before us documents clearly showing expenditure arising in respect of a County Court claim resulting in a default judgment. Appended to the Applicant's letter of 9 May 2013 we also have a letter from the Respondent dated 7 September 2011, showing the service of a s.146 notice. Some costs have clearly been incurred.

19. Applying robust common sense (this Tribunal having not been provided with the evidence which it had directed) it seems to us that the following administration costs would be reasonable to incur in pursuit of 2 year's unpaid ground rent:-

    a. £120 – 4 letters chasing unpaid ground rent before issue of claim

    b. £200 for advice from a solicitor in respect of commencing a claim

    c. £70 for the court fee

    d. £28.91 interest on unpaid ground rents at time of claim

    e. £100 for the service of 2 sets of 146 notices

    f. £200 for the cost of consulting with a solicitor in respect of service of 146 notices.

    g. £67 interest at 8% for 1 year post judgment

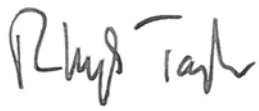
    h. £785.91 TOTAL SUM WHICH WE DETERMINE TO BE REASONABLE

20. With the evidence we have been provided, following directions, this is the best that we can do. As noted above, the sum of £2,071.67 has already been paid in any event.

21. We note that there does not appear to be a provision in the lease for the Respondent to retain overpaid administration charges. However, applying the case of *Warrior Quay Management Co Ltd v Joachim* [2006] EWLands LRX_42_2006 we determine that we have no jurisdiction to deal with any question of repayment. It is simply not a matter for us, whatever remedies the Applicant may have elsewhere. As the Applicant has paid £2,071.67 and £785.91 is due, this leaves an overpayment in this application of £1285.76

22. In this application the Applicant has invited us to make an order pursuant to s.20C Landlord and Tenant Act 1985. However, as pointed out by the Respondent, this application is concerned with costs incurred by virtue of the Applicant's admitted breach to pay ground rent. We accept the Respondent's point that the provision which governs this is clause 7.13 of the lease. Quite simply, the costs incurred by the Respondent in dealing with this claim do not need to be posted to the service charge account, but may be recovered directly from the Applicant himself. Of course, if the sums claimed were in and of themselves unreasonable, that is a matter which could be the subject of a further determination from us.

Dated 29 July 2013



Lawyer Chairman