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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
case no: CAM/26UD/LSC/2012/0158

Property	:	**68 Millacres Station Road Ware SG12 9PU**
Applicant	:	**Granary Mansions Management Limited**
Respondent	:	**Peter Charles James**
Date of transfer from Hertford County Court	:	**21 November 2012**
Type of Application	:	**Transfer to the LVT pursuant to paragraph 3 of Schedule 11 to the Commonhold and Leasehold Reform Act 2012**
Hearing	:	**12 March 2013**

Members of the Tribunal

Francis Davey (chair)
Evelyn Flint
Lorraine Hart

Appearances

Applicant

David Foulds (solicitor)
Stephen Johnson
David Hume (director)

Respondent

Did not attend

DECISION

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1. The Tribunal had no jurisdiction to conduct an oral hearing on 12 March 2013.

2. The Tribunal intends to proceed without an oral hearing. This decision constitutes notice of that intention pursuant to regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 ("the Regulations"). The determination of the Tribunal will take place after **22 April 2013**. Either party may request an oral hearing if they submit a request to the Tribunal on or before that date.

3. Noting that the Respondent is outside the United Kingdom, the Tribunal orders, pursuant to regulation 23(5) that service of any document or notice on the Respondent may be effected by sending it to the electronic mail address petercjames@btinternet.com.

4. If the Respondent wishes to make any further submission to the Tribunal he must do so no later than 21 days from the date this order is sent to the parties.

Reasons

Procedure

5. The Tribunal inspected the premises and surrounding property at 10:00am.

6. On reaching the hearing venue, the Tribunal was concerned whether it could conduct a hearing. On considering the case papers, the following chronology emerges:

7. Attached to the Respondent's defence form are a number of letters from the Respondent to the Applicant's representatives, giving the Respondent's address as 2 Golwg Y Fan, Brecon, Powys, LD3 9HJ ("the Powys address").

8. The last letter to use the Powys address was dated 27 August 2012.

9. In the Claim Form the Applicant gave the Powys address as the Respondent's address for service.

10. In his response, signed and dated 16 September 2012, the Respondent gave a different address for service: Glanynys House, Cwmbach Road, Aberdare, CF44 0NF ("the Aberdare address").

11. Unfortunately, on transfer, all communications from the Tribunal have been sent to the Powys address and not the Aberdare address.

12. In his response form, the Respondent also gave an email address as petercjames@btinternet.com. The Tribunal offices have sent two emails to the Respondent at that address:

13. On 25 February 2013, to which was attached copy correspondence including a letter from the Tribunal to the Respondent asking why he had not complied with the Tribunal's directions. That letter included the heading "Hearing Date 12 March 2013".

14. On 11 March 2013 (the day before the hearing), at the Tribunal chair's suggestion, the Tribunal office sent an email asking "*Could you please confirm by return if you will be attending the hearing scheduled for tomorrow regarding 68, Millacres, Station Rd., Ware?*".

15. The Respondent answered by email on the morning of 12 March 2013 "*this is the first time I have heard of such a case, and I am overseas in Australia, to which the management company were informed in Oct 2012.*"

The law

16. Regulation 14(8) of the Regulations provides that "If a party does not appear at a hearing, the tribunal may proceed with the hearing if it is satisfied that notice has been given to that party in accordance with these Regulations".

17. Thus, the Tribunal could not "proceed with the hearing" unless it was satisfied that notice had been given "in accordance with these Regulations".

18. Regulation 14 also provides:

"*(2) The tribunal shall give notice to the parties of the appointed date, time and place of the hearing.*

(3) Subject to paragraph (4), notice under paragraph (2) shall be given not less than 21 days (or such shorter period as the parties may agree) before the appointed date.

(4) In exceptional circumstances the tribunal may, without the agreement of the parties, give less than 21 days notice

of the appointed date, time and place of the hearing; but any such notice must be given as soon as possible before the appointed date and the notice must specify what the exceptional circumstances are."

19. Regulation 23(1)(a) deems that a notice is given to a person where it is delivered or sent by pre-paid post to a person's usual or last known address.

20. Regulation 23(5) permits the Tribunal to dispense with the giving or sending of a notice if the intended recipient is out of the United Kingdom or for some other reason a notice or other document cannot readily be given or sent in accordance with the Regulations.

21. The Tribunal did not think it could find that any of the notices sent to the Powys address had been given in fact to the Respondent. The Respondent had made clear to the court in September 2012 that his address for service was the Aberdare address and it is therefore likely that he chose that address, rather than the Powys address, precisely because the Powys address was no longer useful to him.

22. The Respondent's last known address was the Aberdare address. Notices were not sent there and so regulation 23(1)(a) does not apply.

23. It is clear that the Respondent is able to receive email at the email address given in the claim form. It is therefore more likely than not that he did receive the Tribunal's email of 25th February 2013 which did give the date of hearing.

24. In the Tribunal's view, this was not sufficient for two reasons:

    a) regulation 14(2) requires that the time and place be given, and they were not;

    b) it would constitute short notice, but no explanation of exceptional circumstances (if indeed exceptional circumstances existed) were given as required under 14(4).

25. The Respondent's email of 11 March 2013 suggests that he is "out of the United Kingdom", since it implies that he has moved to Australia more or less permanently. The Tribunal could then exercise its power under regulation 23(5) to dispense with service.

26. The difficulty with that approach is that the Respondent has given an address for service within the United Kingdom (the Aberdare address). It would, in the Tribunal's view, be wrong to exercise regulation 23(5) where a party has given a formal address for service and the Tribunal has not given that party formal notice of its intention to consider ordering substitute service or dispensing with service altogether. As a matter of principle, parties should expect that their choice of address for service is respected.

27. For these reasons the Tribunal considered that it could not proceed with the hearing.

28. As to the inspection, the Tribunal considers that it saw all that it usefully could and that it would be unlikely for the Respondent to suffer any prejudice because of his absence at the inspection. While parties have a right to a hearing, they do not have a right to an inspection. For that reason the Tribunal considers it appropriate to dispense with service of notice for the inspection.

Further disposal

29. Having met, inspected the property and considered the papers together, the Tribunal is in a good position to dispose of the matter on the papers. Given that the Respondent is now based in Australia, and to prevent the Applicant having to incur legal fees for attending on a further occasion, the Tribunal considers that would be the best approach.

30. Accordingly notice is given pursuant to regulation 13(1). The Respondent may always make a request, pursuant to 13(1)(b) that a hearing takes place.

31. Given also that the Respondent submitted a thorough defence to the claim in the county court, we do not believe that the Respondent needs any additional time to deal with the Tribunal, subject to any additional comments he may wish to make.

32. In order to ensure that no further problems arise, and given the Respondent's statement in the email of 11 March 2013, we will order that any notice may be sent to the Respondent via his electronic mail address "petercjames@btinternet.com".

33. The Respondent's conduct might be open to criticism. He appears to have ignored the email of 25th February 2013.

Mr Foulds told us that the Applicant has sent its communications to the Aberdare address, including the Tribunal bundle. The bundle itself was returned undelivered.

34. The Respondent was well aware of the county court claim against him. It was his responsibility to make sure that he kept abreast of developments in that case. There is some evidence before the Tribunal that he did not do so. The Tribunal has not heard from the Respondent, who may have a perfectly satisfactory explanation of his actions.

35. Nevertheless, the Tribunal warns the Respondent that, if he wishes to challenge any part of this decision, he will be expected to give a very full account of himself and, in particular, explain why he failed to ensure that documents sent to the Aberdare address were dealt with and why he failed to engage with the 25th February 2013 email.

Further submissions from the Applicant

36. Given that the Tribunal had considered the evidence and the Applicant's representative was in attendance, we thought it would be useful to raise a number of questions that had occurred to the Tribunal. As a result of the Tribunal's decision that no hearing could take place, the answers to these questions must be treated as simply further additions to the Applicant's case, to which the Respondent must have an opportunity to respond.

37. As a result the Tribunal will give the Respondent 21 days from the date this decision is sent to the parties to submit a response to the Applicant's further submissions.

Pedestrian gates

38. One of the Respondent's complaints (paragraphs 4 of his letter dated 29 March 2012, attached to his defence form) was that the service charge included expenditure on communal pedestrian and vehicle access points which went beyond maintenance. The lease permitted money only to be raised for maintenance, and therefore these sums would have to be disallowed.

39. We asked the Applicant to comment on the installation of a new gate at the rear of the property and supplementary pedestrian gates at the front.

40. Mr Foulds referred to his submission at paragraph 8 of his skeleton argument, relying in particular on the case of Holding & Management Limited v Property Holding & Management Trust plc [1990] 1 EGLR 65, in which Nicholls LJ said of maintenance obligations:

"*As living standards rise, so this or that feature can be expected to be changed or added to the building. Examples might be high-speed lifts or improved air-conditioning*"

41. Mr Foulds suggested the reasoning in that case could apply to the installation of new gates as local conditions changed, that is, members of the public were using the complex as a cut through to the shops, thereby posing a potential security risk and causing inconvenience to Lessees. The expectations of residents in such a complex might change.

Size of overall service charge bill

42. Paragraph 2, Schedule 6 of the lease states (amongst other things):

"*... the Lessee shall pay the estimated Service Charge in advance of the then current year (which estimated charge shall not exceed the actual payment made the previous year) unless the Company shall in General Meeting resolve that a greater sum is required and any payment of Service Charge under this Clause in any annual account submitted by the Company (save such as may have been accumulated for the purpose of a reserve fund) shall be credited against the Rent or Service Charge payment in the succeeding year.*"

43. One interpretation of "the actual payment made..." was that it referred to the total paid by the Applicant to third parties – in other words the service charge expenditure in that year. If that were right, then it might appear that the service charge budget for 2012 was too high.

44. Mr Foulds submitted that "the actual payment made..." would refer to the total payment of all leaseholders to the Applicant – in other words the service charge income. He suggested two reasons for thinking so:

45. The purpose of the provision is to protect leaseholders against sudden increases in the amount they pay and to

ensure predictability. His interpretation would more naturally achieve that object.

46. The payment of the advance charge was due on the 1st January of each year. It would be impossible in practice to know what the expenditure for the previous year had been in time to inform a leaseholder of the sum due from them. Construing the lease as a whole, the paragraph must be referring to service charge income.

The reserve fund

47. The Tribunal also asked about the decision to retain relatively large sums – £50,000 in the 2012 projection – for the reserve fund.

48. Mr Hume told us that the Applicant had long adopted a "cautious approach". They were concerned that there should be no surprises for leaseholders in the form of large payments in any single year brought about as a result of the need to do major repairs or cyclical work. He told us that professional advice was sought as and when required to make these decisions.

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Francis Davey
Chair
20 March 2013