9098

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UD/LIS/2013/0015**
Property	:	**15 Lydford Court, Clifton Walk, Dartford, Kent DA2 6RZ**
Applicant	:	**Bow Arrow Management Co Ltd**
Representative	:	**Brethertons LLP**
Respondent	:	**Maureen Nwando Chukwurah**
Representative	:	**Irene Chukwurah**
Type of Application	:	**Application for Permission to Appeal**
Tribunal Members	:	**Judge MA Loveday (Chair)** **Mr Richard Athow FRICS MRIPM** **Mr Peter Gammon MBE BA**
Date and venue of Hearing	:	**n/a**
Date of Decision	:	**10 July 2013**

DECISION

INTRODUCTION

1. The substantive application is for a determination of liability to pay certain charges in relation to a lease of a flat at 15 Lydford Court, Clifton

has elapsed has no right to have its application determined: see ***Grosvenor Estate Belgravia v Adams*** (2007) LRA/131/2007, Lands Chamber (disapproving ***Arrowdell Ltd v Coniston Court (North) Hove Ltd*** [2007] RVR 39 on this point).

10. In this case, the Tribunal declines to extend time for applying for permission to appeal to 6 July 2013 for a number of reasons. The application was made more than a week out of time. No explanation has been given for why the application was made late. The applicant is entitled to rely on the time limit expressed in paragraph 20 of the rules. There is no cross-application for permission to appeal which was made in time (as in the ***Adams*** case referred to above). The merits of the application for permission to appeal are not conspicuously strong (see below).

11. It follows that the application for permission to appeal is out of time, and must fail.

GROUNDS OF APPEAL

12. In any event, if the Tribunal is wrong about the above, and either (i) the application for permission was made in time or (ii) time ought properly to have been extended for applying for permission to appeal, the Tribunal would decline to give permission to appeal.

13. The Tribunal takes into account paras 4.2 and 4.3 of the Upper Tribunal (Lands Chamber) Practice Direction 2010. The Tribunal should give permission to appeal "where it appears that there are reasonable grounds for concluding that [it] may have been wrong for one or more of" the following reasons:
    "(a) The decision shows that the [Tribunal] wrongly interpreted or wrongly applied the relevant law;
    (b) The decision shows that the [Tribunal] wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;
    (c) The [Tribunal] took account of irrelevant considerations, or failed to take account of relevant consideration or evidence, or there was a substantial procedural defect; and/or
    (d) The point or points at issue is or are of potentially wide implication."

14. Dealing briefly with the grounds raised in the application for permission by reference to the Grounds for the Appeal attached to this application:

d. Grounds 9-10. The respondent argues that the LVT erred in allowing an administration charge for "debt management". The grounds of appeal are not entirely clear on the point, but the Tribunal did consider the issue of charge for debt collection at paragraphs 39-43 of its determination. Indeed, it found that one of these charges (£146.88) was not payable.

Judge MA Loveday (Chairman)
10 July 2013

a. Grounds 2-3. The respondent contends that the Tribunal LVT ought to have considered an argument that the freehold owner of the property was "Hills Properties". This argument appears to misunderstand the basis on which the claim was brought in the County Court and the LVT by the applicant. The applicant does not purport to be the freeholder: it is a management company to which service charges and administration charges are payable under the lease. The true identity of the freeholder was therefore not relevant to recovery of these charges. The Tribunal did consider arguments under LTA 1987 s.3 at paragraphs 26, 30 and 34 of its decision. These were the only arguments concerning the identity of the freehold owner which the parties addressed at the oral hearing.
b. Grounds 4-5. The respondent argues that the LVT erred in relying on the decision in ***Staunton v Taylor*** [2010] UKUT 270 (LC): see paragraphs 14-16 of its determination. The respondent refers to ***John Lennon v Ground Rents (Regisport) Ltd*** [2011] UKUT 330 (LC), which she referred to during the course of the hearing: see paragraph 15 of the LVT's determination. However, the point is hopeless. A careful reading of the ***John Lennon*** case shows that it followed the same approach of the Upper Tribunal in ***Staunton v Taylor***. The fact remains that the respondent sought to raise arguments that were not set out in her Defence in the County Court, and which were not remitted to the LVT by the court. The applicant could have applied separately to the LVT under s.27A to decide these matters, and it was also open to the parties to have agreed to request the LVT to extend the scope of the hearing to deal with these matters: see ***John Lennon*** at para 23. However, neither of these occurred in this case.
c. Grounds 6-8. The respondent refers to ***Beitov Properties Ltd v Elliston Bentley Mann*** [2012] UKUT 133. That case is not of any assistance on the issue, since neither party raised an argument that the Tribunal had gone beyond issues pleaded in court proceedings or issues remitted to it by the court. Moreover, the respondent misquotes the President of the Upper Tribunal in ***Beitov***. What he said was that "it is in my view generally inappropriate for a tribunal to take on behalf of one side in what is a party and party dispute a purely technical point, by which I mean a point that does not go to the merits or justice of the case." That is not what has happened here. The LVT has simply refused to allow one party to raise arguments going beyond those in the County Court proceedings which it has no jurisdiction to determine.