



Case No: D00CF733

IN THE CARDIFF COUNTY COURT

Cardiff Civil and Family Justice Centre  
2 Park Street, Cardiff, CF10 1ET

Date: 02/07/20

**Before :**

**HIS HONOUR JUDGE JARMAN QC**

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**Between :**

**MARGUERITE ANNE EDMUNDS**

**Claimant**

**- and -**

**(1) BRYAN JOHN NEWELL**

**Defendants**

**(2) CAPITAL HOMES LTD**

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**Mr William Williams** of Richard Thomas LLP for the **claimant**  
**The first defendant in person**  
**The second defendant did not appear and was not represented**

Hearing dates: 24 June 2020  
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### **Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be 10.30 on the 2 July 2020**

HIS HONOUR JUDGE JARMAN QC

**HH JUDGE JARMAN QC :**

1. This judgment deals with the application of the claimant dated 5 May 2020 for relief from sanctions for failure to comply with the orders of HH Judge Petts dated 4 and 12 November 2019. It was made after I raised the non-compliance at a case management conference on 30 April 2020, and directed that any such application should be made no later than 7 May 2020.
2. The claim, issued on 21 February 2018, as amended, is for unpaid service charges in the sum of £110,599.99 plus interest and damages and/or breach of covenant in the sum of £25,393.92 in respect of Flat 1 73 Cardiff Road, Cardiff (the flat) which the first defendant Mr Newell holds under a 99 year lease (the lease) which he entered into on 1 September 1997 with the husband and predecessor of the claimant, Mrs Edmunds. The latter's interest was transferred to his wife following his bankruptcy in 2018. The second defendant has played no active part in these proceedings.
3. The flat is one of three in a large Victorian dwelling at 73 Cardiff Road (No 73), to the rear of which the home of Mr and Mrs Edmunds called Tyn-y Coed is attached. The amended particulars of claim give details of the service charges claimed which fall into two main parts.
4. The first part relates to works to the roof exterior walls and forecourt of No 73 (the house works) which were the subject of a quote dated 1 April 2105 from building contractors known as Litespeed Ltd. The third share said to be due from Mr Newell in respect of those works was particularised as £77,587.64.
5. The second part relates to the work of removing and rebuilding of the rear wall of No 73 (the wall works) the costs of which was invoiced by a firm known as Varco Consultants Ltd (Varco) on 13 March 2017. The third share of Mr Newell in respect of this invoice was particularised as £31,680.
6. The damages claim was particularised as the cost of carrying out works of repair to Tyn-y-Coed due to alleged water damage by water emanating from the flat. These works were said to be invoiced by a firm called GRE Building Service in March 2016.
7. As well as these proceedings, on 30th January 2019 Mrs Edmunds made two applications to the Leasehold Valuation Tribunal (the tribunal). The first application was made pursuant to section 27A of the Landlord and Tenant Act 1985 and sought a determination as to the reasonableness of service charges for the period 2015-2016 in respect of the flat. The second was made pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002 and sought a determination that a breach of covenant had taken place.
8. The service charges referred to in the first application were also in respect of the house works contained in the Litespeed quote and the wall works carried out by Varco. The second application was based upon the alleged water ingress into Tyn-y-Coed from the flat in the sum of £25,393.92. On the face of the applications there was, to say the least, a very large degree of overlap with the issues raised in this claim.

9. The tribunal hearing was due to take place in June 2019 but was adjourned because the parties were not ready. In its later decision, the tribunal did not seek to attribute blame for this but did observe at paragraph 35 that these proceedings were ongoing and that “much of the evidence was repeated.” It encouraged the parties to stay these proceedings but noted that they “carried on regardless” which “caused confusion.” On 2 and 3 September 2019 the tribunal heard the two applications before it together. Richard Roberts represented Mrs Edmunds at the hearing, and he called her and her husband as witnesses, and a structural engineer Mr Varma. Mr Newell represented himself and gave evidence and called a structural surveyor Mr North.
10. By a notice of trial date dated 2 July 2019 in the present proceedings the trial was listed for a three-day hearing on 11-13 September 2019. By application dated 4 September 2019, Mr Newell applied to vacate the trial as the decision from the tribunal was awaited. That application was heard by Judge Petts on 11 September 2019 when counsel represented Mrs Edmunds and Mr Newell represented himself. Mrs Edmunds supported the application to adjourn. Judge Petts adjourned the trial and relisted it with a time estimate of two days in the trial window 18 November to 13 December 2019. The following week a new notice of trial date was issued give a trial date of 26 and 27 November 2019.
11. By a decision dated 4 November 2019, the tribunal, having earlier indicated its conclusion, gave full written reasons for its determination that no sum was payable by Mr Newell and for its dismissal of the application in respect of breach of covenant. In respect of the first application, the conclusion of the tribunal was as follows in paragraphs 100 and 101:

“The Tribunal's view of the expert and factual evidence lead inexorably to the conclusion that:

The wall works were not justified and should not have been carried out accordingly it was not reasonable to incur any sums in carrying them out.

There was no genuine intention at the date of the service charge demand to carry out the works in the original Litespeed quote. Instead Mr Edmunds was intending to redevelop the building in accordance with the planning application. In these circumstances the sums claimed are not reasonable.

Mr Roberts in an effort at damage limitation sought to persuade the Tribunal that at the very least the original Roger North report confirmed that some works were necessary in the building and that therefore the Applicant was entitled to at least a share of the cost of these works. With respect to Mr Roberts this was at best a speculative argument. Moreover the Tribunal's view of the overall conduct and behaviour of Mr Edmunds does not support any form of concession in relation to the application.”
12. The reference to a planning application was to an application made by Varco on behalf of Mr Edmunds in August 2016 for extensive works to No 73 including the

extension of the rear façade and the installation of lifts. By this time Mr Edmunds had purchased the leasehold interests in the other two flats at No 73.

13. As for the second application, the conclusion at paragraph 102 was:

“This application is dismissed. It is clear from the Lapidier reports that the water ingress into Ty-n-Coed was not caused by any action or omission by the Respondent.”

14. A case management conference in the present claim was listed before HH Judge Petts on the same day that the tribunal decision was made available. At that hearing Mrs Edmunds was represented by her solicitor and Mr Newell represented himself. Unsurprisingly, in light of that decision, Judge Petts dismissed the claim in respect of the cost of the walls works and the damages for water ingress.

15. In the recitals to the order, this was set out:

“AND UPON the Court further noting that:

- The Claimant has failed to comply with the directions made on the last occasion to file a case summary and draft directions
- The claimant is unable to explain to the court’s satisfaction which parts, if any of the claim remained for determination once the wall works and breach of covenant claims are removed since the claim for house works in the county court proceedings and in the tribunal appear to be based on the same quotation but for different amounts (£65,766.66 in tribunal proceedings, £79,919.99 in the county court proceedings)
- The Court cannot carry out proper case management of the remaining issues for trial without proper consideration being given in advance of the hearing as to what the parties consider the remaining issues are”

16. By paragraph 4 of that order, Mrs Edmunds was ordered to file and serve by 4pm 7 November 2019, amongst other documents, an explanation with reference to paragraphs in the amended particulars of claim and documents, as to what if any sums she says are still recoverable in the present proceedings and why, and an explanation as to what the difference is between the claim for house works in these proceedings and the failed claim for the Litespeed quotation in the tribunal proceedings. It is not in dispute that this was not complied with until after I raised the matter on 30 April 2020.

17. On 9 November 2019 Mrs Edmunds applied to stay the proceedings pending the outcome of her appeal against the decision of the tribunal and to vacate the trial listed for 26 November 2019. By order dated 12 November 2019 Judge Petts granted those

applications and ordered her to apply for further directions within 14 days of the determination of the appeal.

18. Permission to appeal the decision of the tribunal was finally refused on 29 January 2020. The present proceedings were then listed for a further directions hearing which came before me on 5 March 2020. Counsel was instructed on behalf of Mrs Edmunds, but due to unavoidable transport difficulties did not attend. There was little that could be done. At the request of Mr Newell I made direction for video evidence, and also listed the matter for hearing. The following day a third notice of trial date was issued listing the trial for 24 April 2020. Because of difficulties with the availability of counsel for Mrs Edmunds and the Covid-19 restrictions that hearing did not take place, and the matter come before me on 30 April 2019 to decide on the way forward.
19. It was when the matter came back before me on 30 April 2019, when Mrs Edmunds was represented by her solicitor William Williams, that I made the order referred to above. I also ordered the documents ordered to be filed by Judge Petts on 4 November 2019 should be filed by 7 May 2020. In paragraph 5 of the order it was made clear that on the hearing of any application for relief from sanctions, irrespective of subsequent compliance with that order, the court would consider using its case management powers to strike the claim out.
20. A written explanation as to the different sums claimed in the tribunal and in the present proceedings was duly filed on behalf of Mrs Edmunds. After referring to the finding of the tribunal set out above that there was no genuine intention to carry out the works in the original Litespeed quote, the explanation continued at paragraph 3 as follows:

“However, the claim as set out in paragraphs 14 and 15 of the Amended Particulars of Claim confirms that the Defendant as a member and director of the [right to manage] Company agreed to and approved the works which were necessary maintenance works. The Defendant was present at this meeting as confirmed in the minutes...”
21. The reference to the right to manage company was to 73 Cardiff Road Right to Manage Company (RTM) which was formed in 2010 to manage No 73 (it was later dissolved in 2017). The minute refers to the Litespeed quote of 1 April 2015 and to an agreement that such works were necessary and should be undertaken without delay. Mr Newell denies that he did agree to that course. The explanation also says that the agreement was confirmed in a letter from the RTM to Mr Newell on 28 May 2015, and to further meetings when he was present.
22. The way the issue is pleaded in paragraph 14 of the amended particulars of claim is as follows:

“At a quorate and properly constituted meeting of the RTM Company on 27 May 2015, at which the Defendant was present, the RTM Company considered these quotes and approved the scope of the works and costs set out in the quote of Litespeed. The Defendant raised no objection.”

23. In the following paragraph, after the letter of 28 May 2015 is referred to requiring Mr Newell to pay £77,587.64, it is pleaded:

“The Defendant again raised no objection, but did not, and has not to date, paid this sum.”

24. The tribunal dealt with that issue as follows at paragraphs 98 and 99:

“Although both parties were self - serving in their evidence to some degree the evidence of Mr Newell was preferred. He was largely honest although the Tribunal does not accept that he did not originally agree the Litespeed quote. He was at the RTM meeting when it was agreed. His unwillingness to admit that is attributed to the trench mentality that he and Mr Edmunds have developed during the dispute such that any concession would be considered a sign of weakness.

In contrast to Mr Newell the Tribunal found Mr Edmunds' evidence to be thoroughly unreliable. His account altered during his evidence as he recognised the weaknesses in his own case. His explanation that he had changed his approach and decided not to redevelop the building lacked any credibility and was not borne out by the objective facts that he had been pursuing works in accordance with a planning application he had submitted. Mrs [Edmunds] gave no evidence that assisted the Tribunal. She plainly knew nothing about what was going on and deferred to her husband in this regard. She was defensive and uncooperative when being cross examined.”

25. The explanation continues at paragraphs 6 to 9 that as a result and in consideration of this agreement some of the works in the Litespeed quote were carried out, including removal and replacement of the external steel staircase at £6,200, a new slate roof at £37,250, a new paved forecourt at £13,500 and repairs to spalled brickwork and stone cills at £19,806.35. In paragraph 9 it is said that the share of Mr Newell to these works is £23,118.85. None of these matters are presently pleaded in the amended particulars of claim.
26. There is then an explanation of the differences in the sum claimed in the tribunal and in these proceedings, which in essence is that one third of the total Litespeed quote was claimed in the tribunal but that “does not reflect the contractual obligation of the Defendant within the lease.”
27. There is then a subheading “Sums still recoverable” and in paragraph 12, it is said:
- “The Claimant submits to the Court that the recovery of the sum of £77,586.64 under contract still continues in these present proceedings...”
28. This is followed by a reference to the decision of the Upper Tribunal refusing permission to appeal the tribunal decision, in which it is said that the case on agreement is irrelevant to the reasonableness of service charges.

29. When the application for relief from sanctions came on for hearing, Mr Williams again represented Mrs Edmunds, and Mr Newell represented himself. When I asked Mr Williams how paragraph 9 of the written explanation (where it is said that £23,118.85 is due from Mr Newell in respect of those works set out in the Litespeed quote said to have been completed) sits with paragraph 12 (where it is said that £77,586.64 is due), his answer was to the effect that he would have to check and he also referred to the possibility of further amending the particulars of claim.
30. In my judgment it is not satisfactory that even now, some eight months after the tribunal decision, and after the hearing of these proceedings has been vacated on two occasions because of that decision and the subsequent application for permission to appeal, it is still not clear which sums are claimed from Mr Newell or why. Any defendant is entitled to know precisely which sums are claimed and on what basis, and this is certainly no less an entitlement where the defendant is a litigant in person.
31. Dealing with the application in accordance with the three stage test set out in *Denton v TH White Ltd* [2014] 1WLR 3296, Mr Williams realistically accepts that the failure to comply with the orders of 4 and 12 November 2019 is a serious and significant breach. In my judgment that is a proper concession. Although the former order did not refer expressly to the sanctions for non-compliance, it made clear that the court could not carry out proper case management without knowing what the remaining issues are. It is also noteworthy that the order itself expressly refers to previous non-compliance with court orders by Mrs Edmunds.
32. As for the reasons for the breach, Mr Williams submits that he believed that the former order had been superseded by the later and could not have been complied with until the appeal to the Upper Tribunal had been concluded, which happened on the 29 January 2020. However, that does not explain why the order was not then complied with and why it had not been complied with when I raised the matter in April. Again, Mr Williams realistically accepts that this explanation may not be a good explanation for the breach, and I agree.
33. As for all the circumstances of the case, Mr Williams submits that the breach has now been rectified and Mr Newell has not been prejudiced. I do not accept that submission. As indicated in paragraph 30, in my judgment it is still not clear precisely what sums are claimed from Mr Newell or the precise basis on which they are claimed. These issues remain obscure and/or subject to inconsistencies and further amendments to the amended particulars of claim are likely to be necessary to plead these matters properly.
34. However, the matter does not stop there. Although the tribunal found that Mr Newell did agree to the works set out in the Litespeed quote, it also found that Mr Edmunds' evidence that he had decided not to redevelop lacked any credibility, and that there was no genuine intention to carry out the works in the original Litespeed quote.
35. CPR rule 3.9(1) in requiring me to have regard to all the circumstances of the case so as to deal justly with the application, specifically includes the need for litigation to be conducted efficiently and at proportionate costs and to enforce compliance with rules, practice directions and orders. I have already referred to the fact that the 4 November 2019 order referred to a previous failure on the part of Mrs Edmunds to comply with directions to file a case summary and draft directions. That was not the first failure.

By application dated 5 April 2018, Mrs Edmunds had to apply for relief from sanctions because she had not exchanged her witness statements by 3 November 2017 as ordered on 4 September 2017. HH Judge Harrison granted relief by order dated 23 April 2019 and extended time to serve witness statements until 30 July 2018. The failure to comply with Judge Petts' order of 4 November 2019 was the third, and in my judgment the most serious in a series of failures to comply with court orders. It shows a pattern of inefficiency, unnecessary delay and unnecessary costs.

36. In my judgment that has been compounded by the decision on behalf of Mrs Edmunds to make applications to the tribunal in July 2019 which involved substantially similar issues between the parties as in the present proceedings.. It is difficult to see how it can be said that running the two sets of proceedings in parallel, to use the wording of the tribunal, could promote the objective of efficiency or cost proportionality.
37. Furthermore, the present application for relief was not made promptly. It should have been made, at the latest in February 2020 when the decision of the Upper Tribunal refusing permission to appeal was finalised. It was not made for a further three months and only then after it was raised by the court.
38. In my judgment there has been a marked and ongoing failure on the part of Mrs Edmunds to conduct these proceedings efficiently or at proportionate cost.
39. Although the 4 November 2019 order did not spell out the sanction for non compliance, it was made clear on his face the difficulty which the court faced in managing these proceedings without compliance. It may well be possible for directions now to be given to attempt to manage the proceedings to trial, but in my judgment the delay and the extra costs and the lack of clarity which has already occurred is such as to make it unjust to do so, and gives the court little confidence that justice is likely to be achieved by allowing the claim to proceed. I have to consider whether to refuse relief would be a proportionate response to those failures, and whether partial relief is appropriate. I have come to the conclusion taking all the above matters into account that Mrs Edmunds has had ample opportunity to put her case in order and has failed to do so and that relief from sanctions should not be granted. It my judgment it is proportionate that the claim should be stuck out.
40. In the alternative, as a result of the conduct and failure to comply with court orders set out above, I would hold that the statement of case ought to be stuck out under those CPR 3.4(1) or under the inherent jurisdiction of the court. In my judgment those matters render further proceedings on the claim unsatisfactory and jeopardises the fairness of hearing the claim, so as to amount to an abuse.
41. That leaves the counterclaim, whereby Mr Newell pleads that in March 2016 in breach of his landlord's covenant for quiet enjoyment Mrs Edmunds demolished a conservatory forming part of his flat, dug foundations and erected steel uprights on his demised property and caused other damage thereto. Directions should now be given in respect of hearing of the counterclaim. The parties should attempt to agree those directions and any consequential matters arising from this judgment. A draft order and/or written submissions should be filed by the parties within 14 days of hand down on any matter which cannot be agreed, and I will then make a determination of such matters on the basis of those submissions.