



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **CAM/12UD/LSC/2019/0060**

HMCTS code (paper, video, audio) : **P:PAPERREMOTE**

Property : **Oak Court, 53 Leverington Road,
Wisbech, PE13 1PJ**

Applicants : **1.David Johnson
2.Ajay Ahuja
3.Benjamin Francis
4.Olga Diamant**

Representative : **David Johnson**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **Application for permission to appeal**

Tribunal member(s) : **Judge Wayte**

Date of decision : **21 May 2020**

DECISION REFUSING PERMISSION TO APPEAL

Covid-19 pandemic: description of hearing

This application has been considered on the papers in accordance with the tribunal's usual practice for applications for permission to appeal. The documents that I have considered are the application for permission to appeal from the respondent dated 30 April 2020, the decision dated 3 April 2020 and the original hearing bundle.

DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondent's request for permission to appeal dated 30 April 2020 and determines that:
 - (a) it will not review its decision; and
 - (b) permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
3. Where possible, you should send your further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

REASONS FOR THE DECISION

5. As stated by the respondent in its grounds of appeal at 2(a), the principal challenge appears to be an appeal of the Judge's refusal to adjourn the hearing which took place on 5 March 2020 due to the alleged unavailability of the managing agent. As illustrated by the correspondence attached to the respondent's grounds of appeal, that decision was made on 23 December 2020. No further application was made for an adjournment, including at the hearing where the respondent was represented by counsel. In so far as an appeal lies to the Upper Tribunal in respect of such a case management decision, Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that any application for permission to appeal must be received within 28 days after the decision is sent out. Any application for an extension of time must be made in the application for permission. None was included here and in any event, it is difficult to see what reason would have justified such a late application. In the circumstances that ground of appeal is out of time and pursuant to Rule 52(4)(b) the application must not be admitted.
6. If the respondent's challenge to the hearing taking place in the absence of the managing agent is within time, notwithstanding the sequence of events set out above, such an appeal has no realistic prospect of success. In particular, at no time did the respondent provide a reason

for the alleged inability to attend the hearing or any evidence in support, despite being invited to do so by the tribunal. Its preparation for the hearing in respect of the disputed service charges was minimal with barely legible handwritten comments on the schedule of items in dispute. The respondent's statement (in letter form) merely stated that "With regard to the service charges we have filled in the schedule with exhibits and these are enclosed." The exhibits were in the hearing bundle and were taken into account by the tribunal in reaching its decision. The respondent was also represented by counsel.

7. Paragraph 2(b) of the grounds of appeal refers to works which have been undertaken at the property after the hearing. Given that the respondent was aware that the basement was flooded in March 2019 such works could and should have been carried out well before the hearing. In any event, it is not clear what the respondent seeks to use this new evidence for. The tribunal decided that the respondent was responsible for keeping the pumps in working order. The respondent has accepted that "there may be issues with the pumps". Lack of prior knowledge that the property even had a basement was accepted by the respondent's counsel to be irrelevant to liability: the landlord is fixed with constructive knowledge of his own property. Again, there is no reasonable prospect of success for an appeal on this point.
8. As to the items listed in paragraph 2 (c), apart from the challenge to the finding in paragraph 41 of the decision as to the insurance, they appear to amount to a disagreement with the tribunal's conclusions on the evidence as opposed to an appeal on a point of law. All items in the schedule were considered at the hearing with input from the respondent's counsel in accordance with his instructions. Many of the points that the respondent attempts to raise now were in fact also raised by counsel on its behalf and have therefore already been taken into account by the tribunal when reaching its original decision.
9. As to the challenge to paragraph 41 of the decision: although the respondent appears to claim representations on insurance were sent to the tribunal following the hearing, nothing was included with the grounds of appeal. The tribunal has carried out a further search of the file and generic email address and the only correspondence received within the relevant time period following the hearing was the letter from the respondent's solicitors in respect of the Right to Manage claim, as set out in paragraph 4 of the decision. In the circumstances, this ground is also rejected.

Name: Judge Wayte

Date: 21 May 2020