

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0026//04/12

In the Matter of 103 Glan Gors, Harlech, Gwynedd LL46 2NX

Applicant: Glan Gors Management Limited (Glan Gors)

Respondent Ian Morgan

APPLICATION FOR LEAVE TO APPEAL BY Mr. I. Morgan

1. On 15th and 16th April 2013, the Tribunal heard the above claim following the transfer of proceedings in the Caernarfon County Court in relation to service charges for the years 2008 to 2011. The Tribunal's decision is dated 4th June 2013. This decision is in relation to an application for leave to appeal that decision to the Upper Tribunal (Lands Chamber) by the Respondent, Mr. Morgan.
2. The Tribunal convened to consider this application at the Tribunal offices, Southgate House, 1st Floor, West Wing, Wood Street, Cardiff on 31st July 2013. In considering this application, the Tribunal had regard to the principles contained in the Lands Tribunal's practice directions regarding appeals at paragraph 4.2.
3. These provide that Applicants must specify whether their reasons for making the application fall within one or more of the following categories: a) the decision shows that the LVT wrongly interpreted or wrongly applied the relevant law, b) the decision shows that the LVT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice, c) the LVT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect, d) the point at issue is or are of potentially wide implication.
4. Mr Morgan firstly complained (page 1 of his bundle) that the Tribunal had not extended the deadline for making his application for leave to appeal until he had received documents he had requested under the Data Protection Act or the Freedom of Information Act from the Tribunal. He states his case relates to the Human Rights Act, the Tribunal's disregard for civil liberties and procedural error. He wished to highlight serious concern about how the case was managed. Since the majority of the documents sought by him were already in his possession, it is not clear how their provision was necessary for preparation of an application for leave to appeal, which must relate to the order. Mr. Morgan's complaints do not contain any detail which might allow the Tribunal to conclude there had been a substantial procedural defect. Mr. Morgan also states he needed to discuss with the County Court Judge the exact interpretation of the order transferring the proceedings to the LVT and he believes that the judge was the main arbiter and the case management conference supersedes the authority of the Tribunal which is a quango funded out of tax payer's pocket. How the service provided by the LVT is funded is irrelevant to Mr. Morgan's application for leave to appeal to the Upper Tribunal but the LVT is not a quango. The LVT has determined such disputes as are within its

jurisdiction and the remainder of the claim has been remitted back to the County Court. The County Court Judge has no jurisdiction in relation to Mr. Morgan's application for leave to appeal to the Upper Tribunal.

5. Mr. Morgan also complains he was not given the opportunity to challenge the interpretation of the order of the District Judge transferring the case from the County Court. He considered his dispute related to his experience and disputes with management.
6. Section 83 of the Housing Act 1996 transferred the jurisdiction for the determination of the reasonableness of service charges to the LVT. Section 19 of the Landlord and Tenant Act 1985 provides that relevant costs shall be taken in to account in determining the amount of a service charge payable for a period (a) only to the extent they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard. Schedule 12 of the Commonhold and Leasehold Reform Act 2003 provides that where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question and may then dispose of all or any remaining proceedings pending the determination of that question by the leasehold valuation tribunal, as it thinks fit.
7. The order transferring the proceedings to the LVT on 23rd August 2012 provided as follows: "upon it appearing that this claim relates to a dispute in relation to a service charge which the Defendant considers to be unreasonable the claim be transferred to the Leasehold Valuation Tribunal (Wales) and the proceedings be stayed pending the decision of the tribunal". The Tribunal's findings as to the reasonableness of the service charges for the years in question are set out in the order at paragraphs 34 to 77. Other claims made by Mr. Morgan in his defence to the County Court proceedings are set out in paragraph 5 of the order. The Tribunal, in the order, made determinations in relation to other issues raised by Mr. Morgan in the County Court proceedings as to the service of service charge demands and the authority of Glan Gors to bring proceedings against Mr. Morgan. There had already been correspondence with Mr. Morgan as to the Tribunal's jurisdiction to determine the latter issue (see paragraphs 19 to 22 of the order). The Tribunal regarded the issue of whether service charges demands had been served as being within its jurisdiction. Other outstanding matters are now before the County Court Judge.
8. Mr. Morgan complains that he was not given a fair hearing, evidence supplied was ignored, suppressed or deemed irrelevant. He asserted he was not asked to prepare a statement of case or bundle of documents. Paragraph 3 of the directions notice dated 18th November 2012 provides for the provision of both these documents. Paragraph 9 of the Order sets out the evidence considered by the Tribunal in reaching its conclusions. The order sets out the submissions made by the parties and the Tribunal findings (see for example, paragraphs 35 and 37). It is true that the order does not deal with the issue of harassment but that is not something within the Tribunal's jurisdiction. As Mr. Morgan has now attended a case management conference with the County Court Judge, it is assumed any outstanding issues are

now being resolved. Paragraphs 10 to 18 of the order sets out the submissions of the parties and the Tribunal's findings in relation to the service of service charge demands. Mr. Morgan does not agree with the conclusion reached by the Tribunal but does not state how a right to appeal arises save to assert he was not given a fair hearing. The Tribunal endeavoured to treat both parties in the same way. The Tribunal allowed Mr. Morgan's wife to give evidence though she is not a party to the proceedings. It did not show favour to Glan Gors. For example, at the hearing, Mr. Hancock asked the Tribunal to strike out Mr. Morgan's objections to individual items of service charges contained in the Scott Schedule where Mr. Morgan had merely stated "unreasonable" as this did not comply with the direction dated 18th December 2012 that Mr. Morgan explain why the charges were disputed. The Tribunal did not allow Mr. Hancock to proceed with that application as it was made too late and was thus unfair to Mr. Morgan. Mr. Morgan also complains he has not been provided with a Welsh translation of the order. The Welsh language scheme provides that when a person has advised that their preferred language is Welsh, any orders or findings issued by the Tribunal will be bilingual. The proceedings have been conducted entirely in English and Mr. Morgan did not inform the Clerk his preferred language was Welsh. Nevertheless, a translation is being prepared.

9. Mr. Morgan asserts the points he made show he was not given a fair hearing and treated as equals and the Tribunal has failed in its duty of procedural equality and his human rights have been breached. The Tribunal does not consider Mr. Morgan in making this bald assertion has shown there to be a substantial procedural defect.
10. Mr. Morgan complains (page 5) about the way the pre trial review was conducted on 4th February 2013. These complaints have previously been dealt with in correspondence with Mr. Morgan (and which Mr. Morgan has not included in his appeal bundle, now attached). They form no part of the order and therefore cannot be the subject of an appeal to the Upper Tribunal.
11. Mr. Morgan complains about the conclusions reached by the Tribunal in relation to the service charge demands (pages 12 and 15). He claims Glan Gors was allowed to change its case and he was not, though he has not specified what Glan Gors was allowed to change. Glan Gors did not change its case. Mr. Morgan's complaint, in essence, is that the Tribunal accepted the service charge demands had been sent to him. The Tribunal has set out in paragraphs 10 to 18 of the order the evidence taken into account in arriving at its decision.
12. Mr. Morgan complains that Glan Gors were allowed to hand in documents at the hearing and he was not given a reasonable time to respond. Mr. Hancock on behalf of Glan Gors did hand in one document which was not relied upon by the Tribunal in making its decision. Mr. Hancock did hand authorities on the day and Mr. Morgan was offered the opportunity to consider them.
13. At page 18, Mr. Morgan refers to the contract between Glan Gors and the Freeholder, one of the issues raised in Mr. Morgan's defence. The Tribunal's findings are at paragraphs 19 to 31 of the order. In relation to the points made in paragraph d), paragraph 27 of the order sets out one of the submissions made by Mr. Hancock on behalf of Glan Gors, paragraph 29 sets out evidence contained in emails provided to the Tribunal in relation to the history of the relationship between the freeholder and Glan Gors and paragraph 30 of the order sets out a submission made by

Mr. Hancock on behalf of Glan Gors. Mr. Morgan has not identified any matter coming within paragraph 4.2 of the practice Directions.

14. At page 19, Mr. Morgan complains the accounts supplied for 2008-9 and 2009-10 were not certified in compliance with s28 of the Landlord and Tenant Act, nor were the summaries. This was not an issue previously raised and in any event Mr. Morgan does not identify any matter giving rise to a right to appeal to the Upper Tribunal.
15. At page 20, Mr. Morgan raises the issue of Mr. Varley's authority to represent Glan Gors. The Tribunal's findings are at paragraph 31 of the order. It appears Mr. Morgan disagrees with the Tribunal's findings but has not identified any matter within paragraph 4.2 of the practice directions.
16. At page 21, Mr. Morgan complains the Clerk to the Tribunal provided misleading information. Point 1 has been dealt with above. Point 2 is incorrect. Mr. Morgan made his comments on the Scott schedule and was invited to comment further during the course of the hearing.
17. At page 22, Mr. Morgan sets out why he disagrees with the Tribunal's conclusion as to the reasonableness of the service charges. Of itself, this is not a ground to grant leave to appeal to the Upper tribunal. No matter within paragraph 4.2 has been identified.
18. Mr. Morgan disagrees with the Tribunal's findings as to the grounds maintenance charges, the TV and the GGRA subscription (page 60). That is not of itself a reason to grant leave to appeal to the Upper Tribunal. The Tribunal's findings are at paragraph 42, 49-51 and 52 of the Order.
19. The Tribunal are not clear as to what Mr. Morgan is referring at page 62. Mr. Morgan repeats at page 68 a number of points. He complains he was given no written agenda for the hearing though the chair explained to the parties the Tribunal would hear evidence from them as to the issues pleaded and then hear from the parties in relation to the matters raised in the Scott Schedule, by reference to the bundle of supporting documents produced by Glan Gors. The Chair suggested on the afternoon of the second day of the hearing that Mr. Morgan was repeating to the Tribunal what he had stated in the Scott Schedule without making any new points. The Tribunal assured Mr. Morgan that all the points in the schedule would be taken into account in reaching its determination and Mr. Morgan accepted this.
20. The composition of the Tribunal is a matter for the President.
21. The Tribunal refuses permission to appeal.

DATED this 9th Day of September 2013



CHAIRMAN