Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION OF LEASEHOLD VALUATION TRIBUNAL (WALES) CONCERNING PERMISSION TO APPEAL.

Premises:	(1) St James Mansions, Mount Stuart Square, Cardiff Bay, Cardiff. (2) St Stephens Mansions, Mount Stuart Square, Cardiff Bay, Cardiff.
LVT ref:	LVT/0020/08/13
Applicants:	(1) St James Mansions RTM Company Limited (2) St Stephens Mansions RTM Company Limited
Respondents:	(1) Fairhold NW Limited (2)Peverel OM Property Management Limited
Determination:	17 December 2013
Tribunal:	Mr R S Taylor – Lawyer Chairman Mrs Ruth Thomas MRICS – Surveyor member

1. The Tribunal made its decision in this case in two stages.

2. At the start of the hearing on the 16 October 2013, the parties invited the Tribunal to determine, as a preliminary issue, the status of a counter-notice in respect of the First Applicant's application. This appeared a convenient way to proceed and, having determined the point, the Tribunal's decision dated the 17 October 2013 resolved the First Applicant's application.

3. The Second Applicant's application was the subject of a fully contested hearing on the 17 October 2013 which resulted in a decision dated the 13 November 2013.

4. By a notice dated the 5 November 2013 the Second Respondent seeks permission to appeal against the decision made on the 17 October 2013.

5. By a notice dated 3 December 2013 the Second Applicant seeks permission to appeal against the decision made on the 13 November 2013.

6. As permission is sought in respect of each case and it appears convenient to deal them together, this decision retains the designations which the parties had when before us.

7. The Tribunal reminds itself of the Upper Tribunal (Lands Chambers) Practice Direction, para 4.2 which provides that permission to appeal may be granted where:

    a. 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 procedural defect;

    d. The point(s) at issue are potentially of wide implication.

8. The St James' grounds of appeal also draws attention to the case of *Fairhold Mercury Ltd v HQ (Block 1) Action Management Company Ltd* [2013] UKUT 487 (LC) in which it was stated by the Deputy President of the Upper Tribunal (LC), Matrin Roger QC:-

> "When permission to appeal is requested in a case such as this, raising a discrete question of the interpretation of a statutory provision, the first-tier tribunal should consider whether there is a reasonable prospect of the applicant demonstrating that the tribunal has wrongly interpreted or applied the relevant law. The first-tier tribunal should ask itself whether the appeal has a real or realistic prospect of success, as opposed to a fanciful prospect. If the first-tier tribunal, having heard the argument and made its own decision, is satisfied that there is no real prospect of the Upper Tribunal coming to a different conclusion, it should refuse permission; if it considers that the point in issue remains fairly arguable, it should grant permission. If the point on which permission is sought is a purely technical one, as it was in this case, the first-tier tribunal should be slower to grant permission in cases of more substance."

St James' appeal.

9. Before dealing with the substance of the St James' grounds of appeal the Tribunal makes two preliminary points.

10. The Tribunal accepts that in the St James matter its *primary* formulation of how the test in *Mannai Ltd v Eagle Star Insurance Co Ltd* [1997] AC 749 has been applied here was wrong. Having embarked upon a preliminary determination on the 16 October (which took most of the day), the Tribunal was bound to make a quick decision by the start of business on the 17 October, so that the parties knew whether they were contesting one or both substantive applications. In so doing the Tribunal accepts that its primary formulation of how *Mannai* applies might have been dealt with differently. However, it is to be noted at paragraph 24(c) and 26, the Tribunal did consider, in the alternative, what the position might have been in the event that we did apply "reasonable recipient" test.

11. Second, no detailed submission was advanced on behalf of the Second Respondent in respect of the case of *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC). Mrs Khan, appearing for the Second Respondent, simply invited the Tribunal to "adopt the approach set out in *Avon Freeholds*" without further particularisation of what that meant precisely. The St James' grounds of appeal makes specific reference to paragraph [39] of that case, namely that the right approach would have been, "… to consider whether the statutory provisions have been substantially complied with, and whether such prejudice has been caused as to undermine the right to manage process as a whole." The Tribunal accepts that this exercise was not *explicitly* carried out in the decision by reference to *Avon Freeholds*.

12. Standing back and considering paragraphs 3 – 6 of the St James' grounds of appeal, we ask ourselves "is there a real or fanciful prospect of success, is it fairly arguable?"

13. We have decided that, bearing in mind that the "reasonable recipient" test was applied in the alternative at paragraphs 24(c) and (26), there is only a fanciful prospect of success for the following reasons:

14. The Tribunal was bound to place great weight upon the distinction between 'required particulars' and 'inaccuracies' in light of the cases of *Assethold Limited v 15 Yonge Park RTM Company Ltd* [2011] UKUT 379 (LC) and *Assethold Limited v 14 Stansfield Road RTM Company Limited* [2012] UKUT 262 (LC). (Since our decision we also note the further Upper Tribunal decision of *Assethold Limited v 13-24 Romside Place RTM Company Limited* [2013] UKUT 0603 (LC).)

15. Having placed what we consider to be the appropriate emphasis upon these cases it is *implicit* in our reasoning that had we applied the test at [39] of *Avon Freeholds* explicitly, we would have concluded that the statutory provisions had not been substantially complied with in circumstances where we would be bound to hold that the right to manage process had been fundamentally undermined.

16. We did not have the benefit of *York v Casey* [1998] 2 EGLR 25 when we made our decision, but note the test of Peter Gibson LJ, cited with approval in the case of *13-24 Romside Place*, where it is stated, "The key question will always be: is the notice a valid one for the purpose of satisfying the relevant statutory provision." We remain of the view that the counter-notice here was not so valid.

17. We do not accept that it was necessary for any evidence to be called by the First Applicant to demonstrate it was "confused or otherwise mislead…" As stated in the Tribunal's decision [24(c)], it appeared to us that the reasonable recipient *might* not be sure which part of the counter-notice was incorrectly completed. The fact that the mistake was made in both Respondents' documents, from our perspective, made the position even more confusing for the reasonable recipient. We did not consider evidence was necessary in order to apply that interpretation to the document.

18. No substantive reason has been advanced in the grounds of appeal why the approach in *15 Younge Parke* and *14 Stansfield* place should not also apply to counter-notices.

St Stephens' appeal.

19. We have carefully considered the St Stephen's grounds of appeal.

20. This is a long document which repeats many of the submissions which were made to us in closing by the Second Applicant. It is difficult to meaningfully engage with the document without simply repeating the Tribunal's determination. We do not consider that we are incorrect in this aspect of the case, or that the Second Applicant has any real prospect of success.

Decision.

21. Accordingly, we refuse permission to appeal in both cases.

Legal Chairman

18 December 2013