

# Y Tribiwnlys Eiddo Preswyl

## Residential Property Tribunal Service (Wales)

### Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.  
Telephone 029 20922777. Fax 029 20236146. E-mail: [rpt@wales.gsi.gov.uk](mailto:rpt@wales.gsi.gov.uk)

#### **DIRECTIONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)** Landlord and Tenant Act 1985 s.27A and 20C

<b>Premises:</b>	19 Ffordd-Ty-Unnos, Cardiff. ("the property")
<b>LVT ref:</b>	LVT/0021/08/15
<b>Order:</b>	22 June 2016
<b>Applicant:</b>	Mr Tariq Mohammed Khan
<b>Respondent:</b>	Firstport Property Services Limited
<b>Members of Tribunal:</b>	Mr R S Taylor, Chair Roger Baynham FRICS

## ORDER

1. The application dated 18 August 2015 (signed on 20 July 2015 but received by tribunal on 18 August 2015) and the application transferred to the tribunal by order of the County Court at Cardiff dated 19 August 2015 (together "the substantive application") are dismissed.
2. The Respondent shall by 4pm on the 8 July 2016 file this order and reasons with the County Court at Cardiff so that the counterclaim may be considered.

Dated 22 June 2016

A handwritten signature in black ink, appearing to read "Rhys Taylor". The signature is written in a cursive style with a large initial 'R'.

Chairman

## REASONS

### Introduction

1. This is the Respondent's application which invites the tribunal to dismiss the Applicant's substantive application upon the basis that the Applicant's conduct is an abuse of process. This application is made in emails from the Respondent dated 3 May 2016 and 31 May 2016.

### The law

2. The tribunal has power to dismiss an application without consideration of the substantive issues by reason of regulation 11 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004. The rule provides that an application may be dismissed when "it appears to the tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal."
3. By regulation 11(2) before dismissing an application upon this basis the tribunal must first give notice to the Applicant in accordance with paragraph 11(3). Regulation 11(3) states that a notice must warn an applicant that the tribunal is minded to dismiss the application, the grounds upon which it is minded to dismiss the application and provide a date (not less than 21 days after the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question of whether the application should be dismissed. Such notice was sent by this tribunal in the form of an order dated the 4 May 2016.
4. The tribunal has in mind the cases of *Volosinovici v Corvan Properties Ltd* LRX/67/2006 and *Schilling v Canary Riverside Estate Management Ltd* LRX 41 2007, which requires the tribunal to undertake the following prior to dismissing any application upon this basis:-
  - a. Remind itself of the provisions of regulation 11 to ensure that proper notice has been given to the applicant. It must ensure that any hearing which is requested is held;
  - b. Analyse the facts relating to the application under consideration and to reach a conclusion as to whether the application (or some identified part of it) can properly be described as one or more of frivolous or vexatious or an abuse of the process of the tribunal;

- c. Consider whether, if the application can in whole or in part properly be described as frivolous or vexatious or otherwise an abuse of process of the tribunal, the facts are such that the tribunal should exercise its discretion to dismiss the application in whole or in part under regulation 11;
- d. Give clear and sufficient reasons for its conclusions.

**Factual background.**

- 5. The background to this application is as follows.
- 6. The tribunal determined a service charge dispute involving the parties and property on 19 December 2013. The Applicant's application for an order pursuant to s.20C of the Landlord and Tenant Act 1985 was refused. The application itself involved the rehearsal of many arguments which had already been considered by the tribunal in an earlier application involving other applicants on the same site.
- 7. A further service charge dispute involving the parties was proceeding through the County Court at Cardiff. This claim involved a counterclaim. Deputy District Judge Hendicott transferred the claim to the tribunal by order dated 19 August 2015, stating "The question of determination of the service and administration charge (if any) be transferred to the Leasehold Valuation Tribunal."
- 8. On the 18 August 2015 the Applicant's substantive application was date stamped into the tribunal. This invites consideration of service charge periods for year ending 2013, 2014, 2015 and 2016.
- 9. There was a PTR on the 14 October 2015 at which the Respondent was represented by Miss Khan and the Applicant appeared in person. Conventional directions were given to progress the application to a hearing. It was noted that by reason of the terms of the lease the tribunal did not have jurisdiction to determine the counterclaim which would have to be remitted to the County Court upon disposal of the matters before the tribunal.
- 10. On the 22 January 2016 the tribunal received an email from the Respondent indicating that it had failed to comply with the timetable as provided in the 14 October 2015 order. The Respondent apologised and sought a revised timetable.

11. In light of the Respondent's 22 January 2016 email revised directions dated 27 January 2016 were issued which the Respondent attempted to comply with.
12. The tribunal received a further communication from the Respondent which made plain that their attempts at service by post had been met with the post being returned marked "gone away." In light of this development the tribunal issued further directions on the 5 February 2016 in which provision was made for service upon the Applicant via email and for the Applicant to supply a postal address. In the recital to the order it was noted "And upon the Applicant being warned that if he fails to engage with his application it may be determined or dismissed in his absence."
13. According to an email dated 4 April 2016 from the Respondent, the Applicant failed to provide any further address save for 3 Claude Road, Cardiff (from which post had been returned marked "gone away").
14. In an email dated 18 March 2016 from the Respondent to the Applicant, the Respondent sought confirmation that 3 Claude Road could be used for delivery of postal documents. The Applicant replied on the 20 March 2016 confirming that 3 Claude Road remained his correct address and that he would be returning there on the 21 March 2016 and would be able to pick up any documents from a local depot. However, the Respondent received the documents back again marked addressee had gone away.
15. The Respondent emailed requesting another address on the 22 March 2016 or confirmation that the Applicant would be present. The Applicant replied on the 23 March that he would be at the property on the afternoon of the 24 March 2016. Service was attempted again and the documents were returned again on the 30 March, marked "gone away." In an email dated 4 April 2016 the Respondent first invited the tribunal to consider dismissal under regulation 11.
16. On the 6 April 2016 the tribunal received an email from the Applicant's email account but stating that it was sent by the Applicant's brother. It stated "We apologise for any delay in responding or missed any timelines, but I will assist my brother to get any documents to you promptly due to his health situation of the last few weeks. My brother Tariq Khan was involved in a serious accident resulting in neck and lower back injuries. He was taken for diagnostic MRI tests and subsequently underwent emergency spinal surgery on lower back and was

unable to mobilise his right leg. Since then he has continued to be with limited mobility due to chronic back pain and is unable to use a PC or lift the smallest items for a few weeks. I will do my best to get his outstanding documents up to date for your attention urgently, but I request an extension in light of his circumstances.”

17. In light of this development the tribunal issued further directions on the 11 April 2016. These required the Applicant by 29 April 2016 to file full particulars of his injury and a medical report from his GP or other suitably qualified medical practitioner. The Applicant did not comply with this, despite the generous time limit afforded for compliance and the fact that he clearly had his brother on hand to assist.
18. In light of the above the Applicant has failed to comply with directions which would be necessary to determine the substantive application.
19. By email dated 3 May 2016 the Respondent renewed its application for the substantive application to be dismissed as an abuse of process. On the 4 May 2016 a notice was issued by the tribunal reciting the particulars required under regulation 11(3). It stated that the tribunal was minded to dismiss the Applicant's application as he had abused the procedure of the tribunal in that the Applicant had:-
  - a. “Consistently failed to comply with directions issued by the tribunal;
  - b. On several occasions failed to accept documents served upon him by the Respondent upon the basis that he has “gone away” despite having provided such address for service.
  - c. Failed to provide any evidence whatsoever to support his contention that he has suffered serious injury making it difficult for him to take part in these proceedings. The tribunal issued directions on the 11 April 2016 requiring the Applicant set out his position with evidence by the 29 April 2016 and he has failed to do so or to communicate with the tribunal as to why he would require a longer period of time for compliance.”
20. As already indicated, the Applicant has been given an opportunity to ask for a hearing and has failed to do so. In an email dated 31 May 2016 the Respondent invited the tribunal to determine its application.

21. The tribunal is satisfied that the Applicant's wholesale failure to engage in the proceedings as described above does amount to an abuse of the process of the tribunal. If the Applicant was injured he or his brother could have complied the tribunal's order dated 11 April 2016 and sought further directions.

22. Further, the tribunal considers it just to exercise its discretion on these facts to dismiss the substantive application. The Applicant has been given every opportunity to engage and has failed to do so. This matter simply cannot be progressed substantively without the Applicant's engagement and the tribunal sees little point in proceeding to a final hearing where only the Respondent gives evidence.

23. Upon this basis the substantive application is therefore dismissed.

Dated 22 June 2016

A handwritten signature in black ink, appearing to read "Philip Taylor". The signature is written in a cursive, slightly slanted style.

Chairman