Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0026/10/22

In the Matter of Flats 2 and 3, 73 Cardiff Road, Llandaff, Cardiff

In the matter of an Application under Section 27A Landlord and Tenant Act 1985.

Applicants	**Unicam Holding LLC**
Respondents	**Mrs Marguerite Edmunds**
Tribunal	**Judge Shepherd** **Kerry Watkins FRICS**

DECISION

1. The Applicant is the leasehold owner of Flat 2 and Flat 3, 73 Cardiff Road, CA5 2AA ("the premises"). The Respondent is the freehold owner of 73 Cardiff Road. Her husband Laurence is in fact the operative party but he was declared bankrupt and transferred ownership to the Respondent. The Applicant is a company run by Glanmore Blunt based in the USA. Mr Blunt lent money through his company to Laurence Edmunds in 2015-2016. The sum loaned was £900,000. He was given security in the premises in return for the loan. Mr Edmunds said that he was going to develop the flats once the loan had been cleared. In the event he didn't clear the debt indeed he didn't pay any of the sums due. The Applicant sought and obtained possession of the premises. In addition, the County Court awarded the Applicant over a million pounds in damages.

2. At some stage the Respondent's husband commenced major works at the premises. These works figured in previous proceedings involving Mr Newell the leaseholder of Flat 1. There followed a dispensation application which resulted in the Respondent being given qualified dispensation from consultation. The order stated the following:

    The Applicant is giving dispensation pursuant to s.20ZA. The dispensation is strictly limited to the works proposed in the application namely rebuilding the roof, rebuilding the rear wall, make safe existing building, renew walls, damaged brickwork and replace where required, renew sills and doors, replace windows with new hardwood frames, remove staircase and replace in common area, renew and replace water , mechanical and electrical installation and replace existing damaged floors and ceilings. The Applicant is also given dispensation to carry out all remedial works required to reinstate the Respondent's home at Flat 1 , 73 Cardiff Road, Llandaff, Cardiff, CF52AA to the

condition it was in before the Applicant's husband removed the rear wall and roof without proper consultation or justification. The dispensation is made conditional on the Applicant not seeking to recover any sums from the Respondent for the works in the application which have been caused or occasioned by the actions of Mr Edmunds in removing the rear wall and roof from the building. This application does not concern the issue of whether any service charge costs will be reasonable or payable. If the Applicant seeks to recover costs from the Respondent in relation to any of the works in the application the Respondent retains the right to challenge the reasonableness and payability of those charges. It will be for the Applicant to satisfy the Tribunal that the works have not been occasioned by the actions of removing the rear wall and roof of the building.

3. Further clarification was given by the Tribunal subsequently confirming that the condition also benefitted the Applicant in the present case.

4. The present application concerns service charge demands made on 24 March 2022 by the Respondent in respect of Flats 2 & 3, totalling £278,743.86 and £350,331.36 respectively. These demands were accompanied by quantified demands prepared by Downies (South Wales) Quantity Surveyors.

5. In separate County Court proceedings between Mr Newell and the Respondent the Respondent was ordered by way of a mandatory injunction to carry out a number of works and the scope of those works extended to the reinstatement of the entirety of the rear wall of the Building, the removal of all steelwork, the removal of the extensions to Flats 2 & 3 and the removal of the new roof to the Building. The Respondent subsequently made applications to vary the terms of the injunction and the terms were varied.

The leases

6. The leases for flats 2 and 3 are virtually identical. By a combination of clause 2 and 4(1), the Applicant is required to pay by way of further rent a Service Charge and other sums payable in accordance with the Fifth Schedule. By clause 1(1) 'Service Charge' is defined as meaning the service charge payable by the Applicant as defined, calculated and payable in accordance with the terms of the Fifth Schedule.

7. By paragraph 1 of the Fourth Schedule, it was agreed that for the purposes of the Fourth and Fifth Schedules, the expression 'Service Cost' means the total fees, charges, costs, expenses, disbursements or outgoings of whatever nature (together with VAT on any of the same) paid, discharged or incurred or which may be paid, discharged or incurred by the Respondent or on the Respondent's behalf in respect of the 'Services'.

8. By paragraph 2 of the Fourth Schedule, 'Services' shall include all of the matters set out in the sub-paragraphs to that provision.

9. By paragraph 2(a): “Repairing maintaining rebuilding reinstating replacing renewing repointing inspecting and cleansing the structure of the Building and in particular the roofs foundations walls external woodwork brickwork ironwork chimney stacks and window frames (excluding the internal faces thereof) the joists and beams of the floors and ceilings balconies patios in each case not demised to any tenant within the Building and Conducting Media (not exclusively serving the Demised Premises) and the Landlord’s fixtures and fittings used in common by the Tenant and other occupiers of the Building and the electrical and mechanical installations so far as any such are not the sole liability of any particular lessee in the Building or at the Landlord’s discretion improving any of the items referred to in this paragraph”. By cl.1(1), ‘Conducting Media’ is defined as meaning all sewers, drains, wires, cables, flues, trunking, pipes, gullies, gutters, mains, watercourses, conduits and other conducting media now or at any time in, under, over or serving the Building and/or the ‘Site’ (also defined in cl.1(1)) or any part thereof (save those of statutory undertakers).

10. By paragraph 2(c): “Cleaning lighting repair maintenance renewal and decoration of the Common Parts…or at the Landlord’s discretion improving the Common Parts”. By clause 1(1), ‘Common Parts’ is defined as including (amongst other things) all entrances, passages, landings, staircases, lobbies, other structures, walls and all other common parts of the Building and/or the ‘Site’ available for use by the occupiers of the Building in common with others or not demised or intended to be demised to any occupational tenant of any part of the Building;

11. By paragraph 2(i): “Carrying out all other work or providing goods and services of any kind whatsoever which the Landlord may from time to time reasonably consider necessary or desirable for the purpose of maintaining or improving the Building and/or the Site…”;

12. The Fifth Schedule concerns provisions directed at the calculation and payment of the ‘Service Charge’ By paragraph 1(b), ‘Service Charge’ is defined as meaning such percentage as is attributable to the ‘Demised Premises’ (as set out in the Sixth Schedule) of the cost of providing the ‘Services’ set out in the Fourth Schedule. By the Sixth Schedule, save for ‘Services’ associated with a forecourt, the percentages applicable to Flats 2 & 3 are 33.33% and 33.34% respectively.

The law

13. The law applicable in the present case was limited. It was an assessment of the reasonableness and payability of the costs.

14. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that 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;
and the amount payable shall be limited accordingly.
(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

15. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

1. *An application may be made to [the appropriate tribunal]2 for a determination whether a service charge is payable and, if it is, as to—*
   a. *the person by whom it is payable,*
   b. *the person to whom it is payable,*
   c. *the amount which is payable,*
   d. *the date at or by which it is payable, and*
   e. *the manner in which it is payable.*
2. *Subsection (1) applies whether or not any payment has been made.*
3. *An application may also be made to [the appropriate tribunal]2 for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*
   a. *the person by whom it would be payable,*
   b. *the person to whom it would be payable,*
   c. *the amount which would be payable,*
   d. *the date at or by which it would be payable, and*
   e. *the manner in which it would be payable.*
4. *No application under subsection (1) or (3) may be made in respect of a matter which—*
   a. *has been agreed or admitted by the tenant,*
   b. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
   c. *has been the subject of determination by a court, or*
   d. *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
5. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

16. In Waaler v Hounslow [2017] EWCA Civ 45 the Court of Appeal held the following:

Whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for

deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations

The inspection

17. The Tribunal inspected the premises prior to the hearing. 73 Cardiff Road comprises a substantial 3 storey detached house constructed some 120 years ago located on one of the main arterial roads leading to the centre of Cardiff, which is approximately two miles distant, where all amenities are available. The property is within easy reach of local shops and other facilities in Llandaff.

18. The property was originally constructed with solid brick and stone exterior walls which have been, in part, cement rendered and has the benefit of a slate roof. The front garden is totally laid in brick providing hard standing for a number of cars.

19. Approximately 25 years ago and due to the topography of the site a substantial apartment – Tyn–y–Coed was built at a lower level in the rear garden with access to the side of the premises.

20. The house was subsequently converted into 3 self-contained flats with the Respondent's flats positioned on the upper floors. Substantial additional works have been and still are being carried out to both the external and internal elements of the building to include extending the building at the rear and extensive internal alterations. The rear elevation now primarily comprises glazed curtain walling which is not fully completed. The windows to the front of the original property have now been replaced with double glazed units.

21. There are still considerable works to be completed to the building both internally and externally.

The hearing

22. The case was heard over two days on 30th September and 1st October 2024. Mr Wade of Counsel appeared on behalf of the Applicant and Mr Jagasia of Counsel appeared on behalf of the Respondent.

23. Mr Wade introduced his case taking the Tribunal through the lease terms. He said that his client had been effectively debarred from visiting the premises. He denied that his client had acquiesced in allowing the extensive development works in his flats. He submitted that the works were works of development or refurbishment which went well beyond the lease which deals solely with repair or improvement. He said that some of the invoices relied upon by the Respondent were suspect because amongst other things they involved work on a different site. One of the contractors relied on by the Respondent as the main contractor, Mr Said, had made a statement that he had not been involved in the site at all but had only been involved in the site at Aberdare. In the event Mr Said did not attend the Tribunal and the Tribunal attached limited weight to the allegations he makes.

24. Mr Wade's principal submission was that the Respondent and her husband had developed the site at his client's expense and without his permission. They had added on an extra floor.

25. Mr Jagasia went through his skeleton argument and read the relevant service charge provisions. He said the Downies report which reviewed the costs incurred supported the authenticity of the case. He said it was not an all or nothing exercise. The Tribunal may find that some of the costs are payable as recoverable under the lease while others were not. He gave the example of the chimney stack and staircase as recoverable items as they may have been in disrepair in any event.

26. Mr North gave evidence. He is a Chartered Building surveyor who previously gave evidence to the Tribunal and is familiar with the development. He accepted that the chimney stack required replacement. He also accepted that there were other works of repair which needed to be carried out including repairing the barge boards, metal gates and paviors. He accepted the Downies figures. He did not however accept that all of the works carried out were works of improvement. They were refurbishment or development. The windows however had been improved. He did not accept that the roof needed replacement in 2016 when he last inspected although works were needed to the chimney stack. Also he accepted that the external staircase needed to be removed at a cost of £3960.

27. Internally the staircase had been altered to accommodate the lift. He did not accept that the staircase needed complete replacement even if there was evidence of dry rot. He said that entirely new conducting media had been included and the accommodation had been reconfigured. He did not accept that the floors needed replacement and there was no sign of dry rot when he inspected the staircase in 2016. He said that the rewiring in the common parts was entirely the result of the development works.

28. Mr Ball gave evidence. He was the Chartered Building Surveyor instructed by the Respondent. He said his view had changed since he had initially reported. He had considered the dispensation decision. He said that the works largely involved refurbishment into a different building. There was necessarily a degree of improvement. The roof had been altered as part of the development. He said that the staircase removal was required at a cost of £3960 . He said that a substantial amount of the works however were development works. The door was in need of replacement. There was no evidence however that the original windows were in disrepair.

29. In relation to the internal staircase he said that there was a high potential for dry rot and on a balance of probabilities the staircase needed to be replaced. He said that the common parts services were only worked on due to the development. He said that the floors and ceilings may have needed works to introduce better sound insulation but the new mezzanine floor was not necessary. He said that a substantial part of the works in Flat 3 were development works. He accepted that second floor height had been reduced. He was unable to say where the costings for the Downies report were obtained from. No tendering had been carried out. The prices were budget estimates.

30. Mr Blunt gave evidence. He said he did not know about the planning permission decisions in relation to the development at the premises. He said Mr Edmunds would not allow him into his own flats. He had contacted the council to ask them to stop the works. He denied that he had acquiesced in the works.

31. Mrs Edmunds gave evidence. She said Mr Blunt had not tried to gain access to the premises during the works. On one occasion he declined to enter when it was offered. She was cross examined about a number of the invoices but maintained that they were genuine.

32. In closing Mr Jagasia said that this was an exceptional case. He accepted that the sums, once the development works were removed were modest. The chimney stack, the external staircase, front cills and the main door all needed replacement. There was also some minor works to the side brickwork. The front windows were a recoverable cost.

Determination

33. The fact remains that the works carried out at the premises were overwhelmingly works of development. There is no right to recover these costs under the lease as they go well beyond works of improvement. They were carried out unilaterally without permission from the leaseholders. They have changed the building substantially. They have caused massive disruption and Mr Blunt has in effect been displaced from his own property. There is no question that he did not agree to the works expressly or by means of acquiescence. Quite the contrary he has been opposed to the development throughout. The Respondent and her husband have not taken his interest into account and have ignored county court rulings in his favour. Instead of complying with orders of the court they have continued with works of development and compounded this by seeking to recover the costs of the works from him even though he has not agreed to

his properties being substantially disrupted and changed. This continued up until the day of the hearing. The Respondent maintained that the Applicant owed the sums of £278,743.86 and £350,331.36 in respect of Flats 2 and 3. During the hearing presumably on the advice of Mr Jagasia her stance softened considerably. Her expert Mr Ball substantially changed his evidence and accepted that most of the works were works of development and went beyond improvement. His evidence was nonetheless unsatisfactory in particular his conclusion about the internal staircase having dry rot had no basis further than mere supposition. Overall, the Tribunal preferred the evidence of Mr North who freely conceded that some of the works may have been necessary even if the works of development had not taken place.

34. Mr Jagasia injected some realism into his client's case by accepting that the "eye watering" (his words) sums sought originally were no longer justified and only moderate sums were sought to reflect works that would have been necessary even if the development had not taken place. He asked the Tribunal to in effect carry out a hypothetical exercise of rewarding the Respondent for works from which the Applicant had derived benefit albeit that he had not agreed to it. These relatively minor repair/improvements included the replacement of the external staircase, the new front windows, the new main front door, works to the chimney, quoins and some improvement to the communal installations.

35. The Tribunal previously gave dispensation for particular works namely rebuilding the roof, rebuilding the rear wall, make safe existing building, renew walls, damaged brickwork and replace where required, renew sills and doors, replace windows with new hardwood frames, remove staircase and replace in common area, renew and replace water, mechanical and electrical installation and replace existing damaged floors and ceilings. It was made clear at that time that this was only dispensation from the consultation requirements under s.20 Landlord and Tenant Act 1985 and the payability and reasonableness of charges could still be challenged. It was also made clear that the Respondent should not seek to recover sums from the leaseholders which had resulted from her husband's unilateral decision to remove the rear wall and roof and render the building uninhabitable.

36. Following dispensation being given the development works started in earnest going well beyond the works described in the dispensation. The Applicant was apparently powerless to do anything about it and was effectively debarred from using the flats he owned. County court orders for possession and damages were obtained. The works apparently ceased after possession was obtained but the damage was done. The flats were altered irreversibly. Meanwhile Mr Newell's flat was not reinstated properly and was in a state of considerable disrepair due to substantial water ingress.

37. This is the context in which the Respondent seeks to recover sums from the Applicant. We do not consider that she should recover anything from him. Even if the Applicant has derived some benefit from the works carried out this is outweighed by the considerable wrong done to him. We have no doubt that none of the works at the premises would have been carried out if the development had not taken place. It is artificial to seek to extract parts of these works which may or may not have been

carried out in any event. The Respondent does not deserve recompense and none will be given.

Summary

38. The sums claimed from the Applicant are not reasonable and no sums are payable. The Tribunal exercises its discretion under s.20C Landlord and Tenant Act 1985 and prohibits the Respondent from recovering any costs incurred in this case from the service charges.

Dated this 11th day of November 2024

Judge Shepherd