First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	**:**	**CAM/00MD/LSC/2018/0050**
Property	**:**	**Nova House, 1 Buckingham Gardens, Slough, SL1 1AY**
Proposed Appellant	**:**	**Pell Buy It Investments Ltd.**
Proposed Respondent	**:**	**Ground Rent Estates 5 Ltd.**
Date of Application	**:**	**5th February 2019 (rec'd 7th)**
Type of Application	**:**	**For permission to appeal the Tribunal's determination of the reasonableness and payability of service charges and/or administration charges**
The Tribunal	**:**	**Bruce Edgington (Lawyer Chair) David Brown FRICS**

DECISION

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1. The tribunal has considered the proposed Appellant's request for permission to appeal dated 5th February 2019 and determines that:

    (a) it will not review its decision as a result of the application; 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 proposed Appellant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and be 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.

Reasons

3. The original reasoned decision in this case was sent to the parties on or before the 5th December 2018. An application for permission to appeal was

made by the proposed Appellant just outside the 28 day period but was accepted. The application was refused because there were no grounds for appeal set out.

4. In fact, an accidental error was made in respect of one figure in the decision and the Tribunal's attention had been drawn to this by the proposed Respondent's solicitors. An amended decision was issued on the 11th January 2019 and this application for permission is in time.

5. In refusing the first application, the Tribunal referred to the proposed amended decision and made the point that a further application for permission to appeal could be made when that arrived. It added these words "*As the proposed Appellant was represented by 2 counsel at the hearing and the person who signed the application for permission to appeal was not present, it may be helpful to perhaps suggest that counsel's assistance be obtained when drafting any grounds for appeal.*" This further application for permission to appeal is signed by the same person, i.e. Rita Pell, who was not present at the hearing.

6. This application for permission consists of some 16 pages. It seeks to re-argue matters which were before the Tribunal at the hearing. It should be remembered that, according to the Land Registry, there are some 68 long leases of flats in this building over 6 floors. Of those long leaseholders, only 1, the proposed appellant, took part in the proceedings and 2 others wrote in. These 2 others did not argue matters of law but just said that it was wrong that they were being asked to pay for fire wardens (paragraph 27 of the decision).

7. It is necessary for the Tribunal to consider the grounds of appeal in general terms because it would be wrong both in terms of cost and justice, to either just dismiss the application without reasons or just allow the application and let the parties re-argue their cases before the Upper Tribunal.

8. Of necessity, the points made and this Tribunal's responses are summaries only:

   (1) It is said that the tribunal failed to consider "*if, by whom, when and how any amount is payable by the Respondents*". The Tribunal was simply asked whether the costs of fire marshals up to September 2018, i.e. a finite amount already incurred, were recoverable as service charges under the terms of the leases, which is what it did.

   (2) The propose Appellant wants the Tribunal to consider a separate challenge to many other unrelated service charges. It wanted that separate application to be consolidated with this application and the Tribunal refused to do so because (a) it was an entirely separate application with completely different evidence and (b) that separate application is proceeding and will be heard in due course.

   (3) The Tribunal has made it clear in its decision that as an expert Tribunal it would not be drawn into determining a dispute between the leaseholders, the landlord and others as to who may ultimately be liable to pay for the conditions set by the Fire Service and other relevant

authorities and the replacement of the cladding. Those issues are likely to arise from either the contracts to sell the leases or the tort of negligence involving several potential third parties. The amounts will run into millions of pounds and, if not settled amicably, will inevitably have to be determined by a High Court Judge, at the least. These matters are quite separate from the matter raised in the application. This was one of the points raised by the Tribunal chair at the outset of the hearing (paragraph 19 of the decision) and neither counsel for the proposed Appellant sought to challenge the point i.e. that the Tribunal could not determine the ultimate liability. The proposed Appellant considers that all these issues should be decided at the same time.

(4) The proposed Appellant says that subsection 18(2) of the **Landlord and Tenant Act 1985** ("the 1985 Act") was not considered by the Tribunal and should have been. That subsection deals with the costs or estimated costs to be incurred by a landlord. The application specifically related to costs which had actually been incurred which means that subsection 18(2) is not relevant to this particular application.

(5) The proposed Appellant sets out a number of written statements made by Rita Pell prior to the hearing which were not dealt with in the decision. The problem with this is that the proposed Appellant was represented by 2 counsel at the hearing. The case, by agreement of all counsel and the Tribunal, was dealt with on the basis of evidence called by the Applicant landlord and then submissions. No evidence was called by the proposed Appellant and Rita Pell was not present, although her statements were in the bundle and were considered by the Tribunal. The decision deals in full with all the points raised by counsel at the hearing and any other matters it considered relevant. All counsel expressed satisfaction that the members of the Tribunal had read and understood all the points being raised.

(6) As Ms. Pell was not at the hearing it is necessary to record that during the hearing, the Tribunal chair interrupted Ms. Kocharova, one of the proposed Appellant's counsel, in her cross examination of one of the witnesses as she repeated the same question in different ways. After the case had finished and whilst everyone was still present, the chair apologised to Ms. Kocharova if she felt that he was being rude. Ms. Jones, her senior, immediately stepped in and said that there was no need for an apology and added that she thought that the hearing had been conducted entirely appropriately.

(7) A complaint is made about the Tribunal refusing to consider evidence submitted after the hearing. As the Tribunal explained to the proposed Appellant at the time, the hearing had taken place and the Tribunal simply could not then re-open the case in correspondence.

(8) There is a complaint about the amendment to the decision when the Tribunal changed the amount of cost incurred up to September 2018 from £277,518.16 to £404,007.76. The proposed Appellant denies that it was an accidental slip and says that such an amendment would have been contested. The original statement of case by the landlord Applicant set out the figure as at the 1st May 2018 and that was

£277,518.16. The witness statement of Michael England, who gave evidence at the hearing, says that the further costs up to 30th September were £126,489.60 i.e. the total amount was £404,007.76. That written statement was dated 9th November 2018 and was served and included in the bundle for the hearing nearly 3 weeks later – including the invoices in support. The skeleton argument for the landlord repeated the point and it was not commented upon or challenged by counsel for the proposed Appellant. The original decision contained the first figure and did not add the second figure. This was an accidental slip and was corrected.

(9) There are repeated suggestions that case management decisions were wrong. As an example, a time estimate for the hearing of one day was given by the Tribunal chair which, the proposed Appellant says, is an example of the Tribunal's "*intent on dealing with the case quickly*". Two days were requested. The actual hearing lasted much less than a day and neither of the 2 counsel representing the proposed Appellant made any representations about the time estimate or complained or even hinted that they had insufficient time to present their client's case. Accordingly, the Tribunal does not understand the comment that "*the Tribunal categorically refused to consider a more appropriate timetable to fully consider all of the issues highlighted to the Tribunal long before the hearing*".

(10) Finally, the proposed Appellant says that the issues raised in this case have 'potentially wide implication'. With respect to the proposed Appellant, the only issue which has wide implication is the vexed question of who pays for the ultimate cost of removing and replacing cladding and the resulting further expense such as fire watches. The decision in this case does deal with this point very clearly by saying that this is not a matter for a First-tier Tribunal using its jurisdiction under the 1985 Act. The issue actually raised in this case depends entirely on the wording of the leases and the Tribunal's view as to whether any costs claimed are reasonable and payable. The wording of these particular leases is very wide and, according to the decision reached, include the fire watch or waking watch costs. Each of these cases will depend on the lease wording and can, and should be, determined on a case by case basis.

9. In all the circumstances, the Tribunal does not consider that any appeal is likely to succeed.

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Bruce Edgington
Regional Judge
8th February 2019