



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00MW/LBC/2020/0001

Property : 10 Vantage Point, 4a Queens Road, Cowes,
Isle of Wight PO31 8BY

Applicant : Vantage Point Cowes Ltd

Representative : Allsquare Law

Respondent : Nicholas Peter Harrison

Representative :

Type of Application : Determination of breach of lease

Tribunal Member(s) : Judge D. R. Whitney

Date of decision : 6th April 2020

DECISION

Background

1. The Applicant seeks a determination that the Respondent is in breach of the terms of his lease.
2. The Respondent is the registered proprietor of a leasehold interest in Flat 10 Vantage Point, 4a Queens Road, Cowes, Isle of Wight PO31 8BY (“the Property”).
3. The original application sets the breaches complained of being non-payment of service charges and ground rent and failure to pay taxes, specifically Council Tax.
4. Directions were issued on 3rd January 2020.
5. The Respondent has not engaged with the process. All documentation has been sent to an address in Reigate being the address for the Respondent as registered at the Land Registry.
6. The original directions proposed that the matter would be dealt with on paper. Neither party has objected to the same and this is the tribunals determination of this application.
7. References in [] are to page numbers within the bundle supplied.

The Law

8. The relevant law is set out in section 168 of the Commonhold and Leasehold Reform Act 2002.

Determination

9. The tribunal has considered carefully all of the documents within the bundle.
10. The Respondent owns the leasehold interest in the Property by way of a lease dated 30th November 2011 made between the Respondent (as leaseholder) and Banner Homes Southern Limited (as freeholder) [4-66]. Land Registry entries of the leasehold title are within the bundle [72-75].
11. It is not stated anywhere within the Application upon what basis the Applicant brings the claim. The tribunal makes its determination on the basis that the Applicant is the freeholder of the Property and therefore the person so entitled to seek a determination but if they are not then they do not have locus standi to bring this application in this tribunals determination.

12. The Applicant in the original application [79-88] and witness statement from its solicitor, Mr Andrew Duncan, [1-3] attached to the application sets out the breaches claimed.
13. The breaches claimed include service charge and ground rent arrears together with associated costs and interest. Exhibited to Mr Duncan's witness statement [2 and 70] are two money judgments against the Respondent in the Applicants favour. One is dated 12 September 2018 and the second 7 October 2019.
14. If these judgements are for service charge and ground rent arrears and associated costs these judgments themselves stand as a determination of a court or tribunal. In this tribunals determination these judgments satisfy the requirement set out in section 81 of the Housing Act 1996 and this tribunal has no jurisdiction to make any further determination as to the same.
15. The Applicant also suggests the Respondent has breached clause 2 of Part 1 of Schedule 4 [25] which states:

“2. To pay all general and water rates and other outgoings of a recurring and non capital nature which are now or may during the Term be payable in respect of the Demised Premises.”
16. Mr Duncan sets out the basis of the alleged breach at paragraphs 15-18 of his witness statement. He refers to the fact that the Land Registry entries for the Respondent's title [72-75] have a number of Equitable Charges registered against the title in favour of Isle of Wight Council granted between 2015 and 2019. He explains he spoke to a lady called “Trisha” at the Isle of Wight County Court and “discussed with her that liabilities orders for unpaid council tax are considered within the Magistrates Court pursuant to The Council Tax (Administration and Enforcement) Regulations 1992.” This legislation is exhibited to the statement [77 and 78]. He goes on to state that “ I am therefore satisfied on the balance of probabilities that the final charging orders secured on the property relates to defaults on council tax”.
17. The Applicant invites the tribunal to make assumptions that the charging orders relate to council tax arrears. We are surprised that copies of the applications registering the charges have not been downloaded from the Land Registry. Further no enquiries have been made of the Isle of Wight Council as to the charges. The application generally lacks any real evidence or particularisation of the alleged breach.
18. The tribunal is not satisfied that on a balance of probabilities that any breach of clause 2 of Part 1 of Schedule 4 has been established by the Applicant.

Conclusion

19. The Application is dismissed and no breaches of lease have been determined by this tribunal.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

